

The  
Leveson  
Inquiry

culture, practices and  
ethics of the press

**AN INQUIRY INTO THE CULTURE,  
PRACTICES AND ETHICS OF THE  
PRESS  
REPORT**

The Right Honourable Lord Justice Leveson

November 2012

4 volumes not to be sold separately  
Volume II

# **AN INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS**

**The Right Honourable Lord Justice Leveson**

November 2012

Volume II

Presented to Parliament pursuant to Section 26 of the Inquiries Act 2005

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## **PART F**

# **THE CULTURE, PRACTICES AND ETHICS OF THE PRESS: THE PRESS AND THE PUBLIC**

# CHAPTER 1

## INTRODUCTION

### 1. Overview

- 1.1** Whether published every day, every week or every month, the press produce a vast amount of reading material covering an enormous range of topics. The daily and weekly papers will cover – in no particular order – news, politics, investigations, foreign affairs, business, sport, culture (including books, art, film and theatre), property, fashion, travel, motoring, personal finance, entertainment, TV and radio, games and doubtless other topics. There are features and opinions, gossip and jokes. They inform and they entertain and they do so very much in the public interest. The overwhelming majority of these topics are attractively covered in a way that undoubtedly appeals to readers.
- 1.2** The reason that the Inquiry has not focussed on what is the overwhelming majority of the work of journalists is that, in the main, there is no public concern about the way in which most of these topics have been reported. The culture, practices and ethics of the press that are of interest to the Inquiry cover only one aspect of the way in which the press goes about its business. True, there could be arguments about the extent to which a travel journalist or food critic should inform the reader that he or she received a discounted or complimentary holiday or meal, but such issues are on the very edge of what the Inquiry has been concerned about. The focus, therefore, has only been on those areas which have been the subject of criticism; in particular, the way in which parts of the press can deal with individuals without regard to their rights and without regard to the public interest. It must be remembered that these are individuals who almost invariably do not have the same megaphone to defend themselves or put the contrary view.
- 1.3** Most of the topics covered by the press will never trouble any regulator, whether it is the Press Complaints Commission (PCC) or someone else. As a result, the need for a regulator and the scope of its authority is not dictated by issues that arise from the vast majority of stories. But that is not the same as saying that there is no need for a regulator. Most doctors behave impeccably towards their patients but a regulatory mechanism is necessary for those who do not, whether on a serial basis or because of a single lapse. The need to examine the criticisms of the press inevitably focuses on those areas that cause difficulty so as to ensure that, whatever the answer to regulation is, it can deal with these issues.
- 1.4** I am conscious that focussing on criticisms of the press will cause (and has, indeed, caused) many to criticise the Inquiry on the basis that it has been slanted to the poor practices and has paid insufficient attention to good practices. Piers Morgan, the former editor of the Daily Mirror, for instance, complained at the conclusion of his evidence that a lot of the very good things that newspapers have done and continue to do were not being highlighted by the Inquiry. He said it was *“like a rock star having an album brought out from his back catalogue of all his worst-ever hits”*.<sup>1</sup> To some extent, that is the inevitable consequence of the Inquiry’s Terms of Reference and its focus on public concerns and complaints rather than on the successes and achievements of the press. During the course of the Inquiry, I made it clear that I did not believe that the culture, practices and ethics of the press were predominantly

<sup>1</sup> p110, lines 10-22, Piers Morgan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>

sub-standard or worthy of criticism. In my view the majority of editors, journalists and others who work for both the national and regional press do good work in the public interest, as well as entertaining their readers. I have no doubt that the press can take pride in most of its work.

**1.5** However, good practices do not require a public inquiry and do not require regulation. They also take less time to define, describe and substantiate, and can be cast in a way that is entirely uncontroversial. It takes far more time and space to consider and analyse the extent to which complaints and criticisms are well-founded, and to identify the mechanisms that should be available to encourage all that is good while discouraging that which is properly capable of criticism. As a consequence, this important Part of the Report starts, at Chapter 2, with a recognition of the enormous value that the press plays in our daily life, and notes that for all of the examples of poor practice cited below, there are many more examples of good practice. However, having said that, the rest of this Part of the Report focuses on the concerns and complaints that have been made and expressed, along with the ways in which they have or have not been adequately addressed. It would be entirely wrong to view the number of words expended in this Report on the good versus the bad as reflecting any overall judgment. The nature of my task is to focus on those aspects of press culture, practices and ethics (even if in small pockets) which leave something to be desired. Inevitably, the focus is overwhelmingly on poor practice rather than good.

## 2. Module One and the Terms of Reference

**2.1** This Part of the Report examines the evidence the Inquiry has received relating to ‘the Press and the Public’, in other words, the first of the four modules into which the work of the Inquiry was conveniently allocated.

**2.2** The Terms of Reference do not specifically mention ‘the public’ (cf. politicians and the police) but it is obvious that any inquiry into the culture, practices and ethics of the press must investigate all the respects in which press conduct and behaviour (nouns which do appear in the express wording) impact on those who feature predominantly in the work of newspapers, in other words ‘the public’. Indeed, owing to the nature of the concerns which directly triggered the setting up of the Inquiry, I decided to bring ‘the public’ into the heart of the first module. The relationships between the press and the police, and the press and politicians, naturally give rise to slightly different issues which could best be addressed after Module One.

**2.3** The terminology – the ‘culture, practices and ethics’ of the press – was the subject of analysis by Counsel to the Inquiry in opening Module One in November 2011, and submissions by the Core Participants. The analysis of Robert Jay QC was as follows:<sup>2</sup>

*“It may be helpful to take those three terms together. We are looking at practices which may be widespread rather than isolated and sporadic. Practices which may be widespread, insofar as they are bad practices, may well flow from systems which are broken and/or from attitudes and mores which are dysfunctional. The more we may see patterns of behaviour and practices which are generic, and the more widespread they are, the more it may be possible to infer the existence of broken systems, dysfunctional attitudes and mores; and, overall, the existence of a culture which tends to explain why these problems are occurring in the first place.”*

<sup>2</sup> p19, lines 3-14, Robert Jay, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

**2.4** Further, in my ruling on the Application of Rule 13 of the Inquiry Rules 2006, I said this:<sup>3</sup>

*“Turning from the general to the specific, it is first necessary to consider the Terms of Reference which clearly visualise ‘the press’ as capable of being a sufficiently homogeneous group to allow analysis of its culture, practices and ethics even if (as is undoubtedly the case) different titles and different types of newspaper will or may exhibit different or slightly different approaches to them. Nobody, however, has suggested that the legal or ethical approach should be different even if the pressures, the likely impact of ethical considerations on the type of story sought and the willingness to take risks might be. Having said that, it is clear that an isolated act of criminal or unethical behaviour would not, of itself, represent the culture or constitute a practice of ‘the press’. Subject to a practice being sufficiently widespread to constitute evidence of a culture or practice of the press, however, there is no question of it being necessary to quantify that practice and, in any event, I will need to consider the extent to which the picture is built up inferentially and cumulatively.”*

**2.5** These broad interpretations, which in my view make the same points in different ways, have been my guiding principles throughout this Inquiry. Thus, the endeavour throughout has been to focus on the generic or, more precisely, what might on first examination be evidence bearing on the culture, practices and ethics of the press overall. On occasion, I have come to the conclusion that evidence which had the appearance of exemplifying this core issue within my Terms of Reference did not, in fact, demonstrate any generic failing, but rather was indicative of the isolated or wayward. On other occasions, I have rejected the submissions of Core Participants that I should conclude that some failing was a ‘one-off’ and have decided that it was, in fact, illustrative of a wider problem. Throughout, I have had regard to a possible broader picture without pre-judging the issue: whether or not a piece of evidence is truly part of the jigsaw has depended on assessing that evidence in its own terms and then more widely; but the point to be reiterated and fully understood is that the shape and nature of the jigsaw did not come into sharp and clear relief until the end of the Inquiry, after all the evidence had been assessed and analysed.

**2.6** There are three further points I would like to make at this stage. First, although I recognise the inherent difficulties, there are clear practical reasons why the press should be considered as a broad entity rather than as a series of individual print titles. This, as I have already stated in my ruling of 1 May 2012<sup>4</sup>, is not the same as saying that ‘the culture’ at each newspaper is exactly the same. Journalists move from newspaper to newspaper, and the commercial pressures I explore below are similar across the industry as a whole; I recognise that some newspapers are more profitable than others and that newspapers vary in respect of the sort of stories they like to print. Furthermore, the industry is fairly closely-knit in the sense that newspapers competing with one another tend to have a fair idea of what their colleagues or competitors are up to.

**2.7** Second, although the Terms of Reference are not worded so as to pre-judge the issue, it is clear that those who participated in their formulation were of the view that the culture, practices and ethics of the press left something to be desired. Thus, paragraph 1d of the Terms of Reference refers to ‘media misconduct’ (in the context of previous warnings), paragraph 2a to a ‘new more effective policy and regulatory regime’ (implying that the existing regime is ineffective to address the problem), and paragraph 2b to ‘future concerns about press

<sup>3</sup> para 46, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-2006.pdf>

<sup>4</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Application-of-Rule-13-of-the-Inquiry-Rules-2006.pdf>

behaviour’ (implying that press misbehaviour is a current concern). Plainly, the Terms of Reference require me to describe and characterise press conduct and, where appropriate, to identify causes: in other words, fully to diagnose the problem before potential solutions and remedies are recommended. Given what had been revealed at the News of the World (NoTW), that may not be surprising but it is important to underline that I have approached this exercise with an open mind, and not on the basis that the explicit and implicit premises of the Terms of Reference do not require independent validation by me.

**2.8** Third, and a point which again flows directly from an examination of the Terms of Reference, my recommendations must support *‘the integrity and freedom of the press...while encouraging the highest ethical and professional standards’* (paragraph 2a). It is clear from this language that the Inquiry must do its best to foster a free press which has integrity as well as ethical standards: indeed, the highest ethical and professional standards. Many commentators have focused on the importance of a free press (which I would be the first to recognise and uphold) without any reference to the need for an ethical press to possess integrity. These are demanding standards and require ethical judgments to be made at all material times: merely to broadcast the values of ‘freedom’ is seriously to overlook a complementary and equally important set of values, and to run the danger of creating or permitting that which is undesirable and not in the public interest. In my view, the unification of these twin requirements – freedom and ethics – is not an impossible aspiration: both may co-exist in the same press, working in harmony and in cooperation with each other. But the recognition of the need for an ethical press inevitably carries with it the recognition of the need for a responsible press, which respects the rights and interests and others, and which does not regard ‘freedom’ as the ultimate panacea or touchstone for its mores and conduct.

**2.9** As a final point, I should note that many of the arguments made in respect of the rights or wrongs of the practices and ethics of the press can turn on one’s view of the amorphous concept of the public interest. Many otherwise unethical practices may be made ethical simply by virtue of the fact that they are justified, in the circumstances, in the public interest. For example, covert surveillance and photography of an actress playing with her children in a private garden is almost certain to be unethical; by contrast, the covert surveillance and photography of drug dealers supplying heroin (in the equivalent of a back garden) is almost undeniably ethical and entirely in the public interest. As such, the Terms of Reference do require me, when assessing the culture, practices and ethics of the press, to engage in questions relating to the public interest.

**2.10** There can be many reasonable views of what is, or is not, in the public interest. In line with judicial authority, it is not for me to impose my own conception as the correct and only one: the judgment of editors and journalists should be given significant weight.<sup>5</sup> But that does not mean that journalists and editors have free rein to define the public interest however they choose. It is clear, as most (but not all) have fully recognised, that the public interest is something quite different from simply what interests the public.

### 3. Evidence in Module One of the Inquiry

**3.1** Module One sat for 40 days between 14 November 2011 (when Mr Jay opened the Module)<sup>6</sup> and 9 February 2012, closing with supplementary evidence from Paul Dacre. However, as I

<sup>5</sup> see for instance *Flood v Times Newspapers* 2012 UKSC 11

<sup>6</sup> <http://www.levesoninquiry.org.uk/hearing/2011-11-14am/> <http://www.levesoninquiry.org.uk/hearing/2011-11-14pm/>

have explained, the modules do not form hermetically sealed caskets and further evidence relevant to Module One was adduced at later stages.

- 3.2** The body of evidence received by the Inquiry is vast, both in terms of its volume and scope, and it will not be possible to deal with all of it in this Report. To do so would create a sprawling and overly cumbersome narrative which would imbalance the Report as a whole, lack appropriate focus and, in consequence, fail to do justice to the Terms of Reference. Instead, I adopt a more focused, thematic and analytical approach which serves to find the right balance between indiscriminate citation of the evidence on the one hand and overly boiling down the material on the other. My overriding goal is, and always has been, to set out a sufficient narrative which enables everyone to understand the basis of my generic conclusions in relation to the culture, practices and ethics of the press; and, even more saliently, my recommendations as to a new regulatory regime. Even adopting this more tailored approach, I recognise that there will inevitably be elements of duplication and overlap. This is largely for two reasons: first, certain pieces of evidence may be relevant to more than one generic conclusion, and second because there is more than one way of approaching, narrating and analysing the key elements of the story. My different angles of approach will sometimes require me to recruit the same evidence for slightly different purposes.
- 3.3** Module One saw evidence given by a range of people, chosen to provide as complete a picture as possible on the relationship between the press and the public. Those witnesses broadly fell into categories as described below.
- 3.4** First, the Inquiry heard from 21 witnesses from across British society, each with a different personal story to tell about their adverse treatment by parts of the press. As more fully explained below, some of the witnesses may fairly be described as ‘celebrities’; others were individuals who would challenge that characterisation and say that they do not seek out fame or media celebrity as such but find their way into the public eye only because they are good at what they do (whether it be acting, singing, writing, playing sports); others have featured in the press because they are unfortunate enough to be the victims of crime, or otherwise have been associated with notorious crime; and yet others have been ordinary people who have attracted press interest for whatever reason. Thus, the witnesses occupied a disparate range of occupations and social groups, and no one could fairly say that they were all celebrities, still less that they openly courted publicity and should therefore accept the rough with the smooth.
- 3.5** Although most witnesses were required both to make statements and to give evidence by reason of a notice issued under s21 of the Inquiries Act 2005, these witnesses (all of whom were speaking about intensely personal experiences) were not. They were self-selected from among the Core Participants who complained about press intrusion. As I have made clear, in the main, their evidence was not subjected to detailed probing by Counsel to the Inquiry and, in accordance with my direction, there was no cross-examination by the other Core Participants, although they did suggest questions (which Counsel generally then felt it appropriate to ask) and were, additionally, allowed (if not encouraged) to put in evidence in rebuttal if so advised. Accordingly, the Inquiry recognises that some of this evidence was not fully tested for its reliability and credibility in a manner which would have been appropriate had it been essential to reach findings of fact at a granular level. Nonetheless, nobody has suggested that the majority of the evidence received by those witnesses was anything other than reliable and so, as a whole, it casts important light on the broad issue of the culture, practices and ethics of the press.

- 3.6** Second, the Inquiry heard evidence from journalists and commentators who had written about their experience of the culture, practices and ethics of the press. Those critical of press standards included Richard Peppiatt, a former journalist, and Alastair Campbell, the former Director of Communications for No 10. At the other extreme end of the spectrum was Paul McMullan who rejoiced in an anarchical view of the approach to any standards within the press. In the middle, there were others whose evidence, on the face of their witness statements, was more favourable to the press, but who also needed to be probed and tested not least as they moved away from prior published statements on the subject matter. Witnesses in this category included Mr Morgan and Sharon Marshall, a former journalist with the NoTW.
- 3.7** Third, the Inquiry heard evidence from each of the national titles in England and Wales, some magazines and similar publications, and also from a sample of regional titles and those publishing in the devolved administrations. In the time available it was not possible to do other than hear from a representative sample of journalists in order to give me a flavour of the position, although it should be recorded that the Inquiry did hear in person from virtually all the national newspaper editors and proprietors (albeit that the timing of the evidence of many of the proprietors was at the start of Module Three not least because they had a number of topics to cover and I wished to ensure that they did not have to appear at the Inquiry more than once). Aside from being asked to elaborate on the key points made in their detailed witness statements, editors and journalists were asked to address and comment on examples of the culture, practices and ethics of the press which had come to the Inquiry's notice, some exemplifying ostensibly good practice, others less good.
- 3.8** Inevitably, the Inquiry's most detailed consideration was reserved for what may be called the 'really big stories', some of which are addressed as exemplifying facets of the culture, practices and ethics of the press below.<sup>7</sup> Equally inevitably, the Inquiry in these instances heard evidence from the journalists and editors involved: as was made clear at the time, and I reiterate, the purpose of doing this was not to subject the journalists in particular to personal censure, but rather to examine what they did (and did not do) for the light it was capable of throwing on the general picture. That said, I fully understand that the experience of giving evidence before a televised public inquiry could not always have been a pleasant one for the press witnesses concerned: the Inquiry is grateful for their contributions, and notes that, on all occasions, witnesses were treated with courtesy and consideration.
- 3.9** Fourth, the Inquiry also received evidence in Module One from those involved in electronic media and the internet, with a view to seeking to understand the specific challenges presented to press regulation generally by the existence of the worldwide web and the burgeoning range of possibilities created by new technology.
- 3.10** Fifth, the Inquiry heard evidence from a number of special interest groups bringing different perspectives to my deliberations. First, there was a range of groups, such as Trans Media Watch, ENGAGE and End Violence against Women, who complained about unbalanced reporting in the press of issues concerning them, and of the failure of the PCC to address their concerns. Second, there were other groups, such as English PEN and Index against Censorship, who came to the Inquiry with particular perspectives on Article 10, free speech and public interest issues. Third, there were organisations such as Full Fact and the Science Media Centre, concerned about inaccuracy in press reporting, either generally or in a specific context. This list is not exhaustive, either of the groups who testified or of the issues they covered, but it provides a flavour of the range of evidence the Inquiry has been asked to

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<sup>7</sup> Part F, Chapter 5

take into account: a considerable body of other evidence to like effect but affecting other interested or concerned groups was read into the record of the Inquiry.

- 3.11** Sixth, the Inquiry heard from those with experience in the Press Complaints Commission (PCC) and the Press Board of Finance (PressBof), covering the existing system of regulation of the press and proposals for the future. The Inquiry heard from the past and current directors and chairs of the PCC, and the current chair of PressBof, Lord Black. The present chair of the PCC, Lord Hunt, assisted the Inquiry with the then current state of play regarding the industry’s proposals for ‘self-regulation’ within a new contractual framework, and he returned to update me on this topic in Module Four.
- 3.12** Finally, a different perspective on the approach to stories came from the Information Commissioner and the police. As for the Information Commissioner, the evidence from Operation Motorman provides a window on the way in which some journalistic investigations were conducted or information researched (albeit without the knowledge of those affected). Its significance is such that it is summarised in Part E, Chapter 3; the position is then subject to separate analysis in Part H. As for the police, their investigations are detailed in Part E, Chapters 2, 4 and 5.
- 3.13** This short summary scarcely gives the full flavour of the scope, range and scale of the evidence the Inquiry received during the first 40 days of its sitting. The live oral evidence, accompanying witness statements and exhibits, and the read-in evidence, including all the documentary evidence and submissions, add up to a very substantial mass of material, all of which has been sifted, read, considered and analysed with a view to drawing the Inquiry’s generic conclusions. Recognising that this burden of material only represents a small proportion of the evidence which might have been adduced had time and resources been greater, I should nonetheless record that I believe that the evidence that has been received is sufficient in terms of its quality and quantity to enable me to discharge my Terms of Reference.

### Evidence from “the Public”

- 3.14** As set out above, the Inquiry heard evidence of unethical and damaging press behaviour from a broad and representative cross-section of society. Witnesses to the Inquiry have included: individuals with a public profile; the victims of crime and indeed those incorrectly accused of criminality or other wrong-doing by the press; innocent bystanders to events; and individuals who may themselves be of no obvious interest to the wider public but for their connections to the types of person set out above. These individuals have contributed to the Inquiry’s work either by formally testifying in person or through witness statements which were read in to the Inquiry record, or through the mechanism of informal submissions to the Inquiry from ordinary members of the public made in response to questions published on the Inquiry website. I recognise the obvious limitations inherent in this latter category of evidence and, whilst appreciating the contributions which have been made, do not place independent reliance on this informal material.
- 3.15** It is wrong to suggest that the public are somehow homogeneous, or that (as some commentators have suggested) the Inquiry has only heard the complaints of the rich and famous. This is not the case: the spectrum of people who claim to have been the victims of unethical or damaging behaviour by the press and have given their personal accounts to the Inquiry is broad.

## People with a public profile

- 3.16** People with a public profile can be visualised in different ways, depending mainly on how that profile arises. Evidently, there are those who occupy positions of power and responsibility in our democracy and who, by virtue of these functions, legitimately attract the interest of the press. Everyone can readily understand and appreciate who falls into this first category but, for my part, it is interesting to ask whether press proprietors and editors should be seen as being part of that group and, if so, how much press attention they personally attract. It should also be emphasised that what I have described as the legitimate interest of the press should not be understood as a *carte blanche* to look everywhere: the public's right to know is circumscribed by the subject-matter, and a correct appreciation of what the public truly has a right to know about.
- 3.17** 'People with a public profile' also includes those who have become famous as a consequence of their success in their chosen career or profession. This second sub-group includes (in terms of those who have testified before me): footballers, such as Garry Flitcroft; musicians, such as the singer Charlotte Church; as well as film and television stars such as the television presenter, Anne Diamond, and the actors Sienna Miller and Hugh Grant. These are all individuals in whom the public is interested as a consequence of the success they enjoy in their chosen walks of life, but they are also individuals whose private lives are largely unrelated to their professional lives and their careers.
- 3.18** As has been frequently pointed out to the Inquiry by the press Core Participants, some within this sub-group, but none of those mentioned above, have sought commercial advantage from displaying a particular brand or persona before the public, or have made representations about themselves for direct or indirect advantage. But one does need to be clear about this, because just as 'the freedom of the press' has been pronounced by some as a mantra which conquers all, so has 'hypocrisy' been used indiscriminately in support of unjustified intrusions into the private lives of the famous and the successful. By way of illustrating, but not at this stage analysing the point, Mr Grant told the Inquiry:<sup>8</sup>
- "... I wasn't aware I traded on my good name. I've never had a good name. And it's made absolutely no difference at all. I'm the man who was arrested with a prostitute and the film still made tons of money."*
- 3.19** Further, the writer JK Rowling also told the Inquiry that she most emphatically does not seek fame or to benefit from her public persona, yet is still the subject of intense press interest.<sup>9</sup>
- 3.20** This category of people with a public profile also includes a third sub-group: individuals who are famous only for their celebrity, or put another way the mere fact of their having entered the public eye. These people are those who actively participate in the 'celebrity industry,' actively pursuing publicity's sake, employing publicists to provide a steady stream of stories to the press and to inform paparazzi of their whereabouts, in order to ensure that they continue to appear in the public eye. This sub-group might reasonably be said to include, for example, some stars of reality television. Certainly in these cases, where the fame of the individual is linked to their exposure to the public through the press and other media, the relationship between individual and the press, and what is acceptable and what is unethical, is more nuanced. In such cases the public interest in what might otherwise be private matters may

<sup>8</sup> p86, lines 17-19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>9</sup> p41, lines 2-8, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

well be stronger and the nature of what can and cannot be considered private may be more difficult to determine.

## Victims of crime

- 3.21** Members of the public who have been at the receiving end of unethical behaviour by the press also include the victims of crime and individuals who have been linked, either directly or indirectly, to crimes. To an extent this level of scrutiny is understandable as crime remains a key concern for the public and indeed much crime reporting is of the highest standard. However, the Inquiry has heard evidence in relation to some crime reporting, by a number of newspapers, that is alleged to have fallen far short of acceptable standards of behaviour in terms of inaccuracy and intrusiveness, sometimes giving rise to concerns of the risk of prejudicing subsequent criminal proceedings and, in relation to those who are already the victims of crime, causing considerable additional harm and distress.
- 3.22** This category of individual includes those who have been harmed emotionally as well as suffering damage to their reputations, such as Drs Kate and Gerry McCann whose daughter Madeleine disappeared when the family was holidaying in Portugal in May 2007. The subsequent coverage of Madeleine's disappearance included libellous and highly inaccurate articles in a number of newspapers, particularly in The Daily Express which made a number of allegations about the entirely unproven role of Drs Kate and Gerry McCann in the disappearance of their daughter.<sup>10</sup>
- 3.23** This sub-category also includes the parents of the murdered school girl Milly Dowler. Bob and Sally Dowler were subjected to an unwarranted barrage of intense and intrusive media attention.<sup>11</sup> Aside from the well-publicised matters which led to the setting up of this Inquiry, moments of intense private grief were captured by photographers and published in the NoTW.<sup>12</sup>
- 3.24** These high-profile cases are far from isolated examples. The Inquiry also heard evidence from the parents of Diane Watson, who was murdered at school in Glasgow in 1991. In their evidence to the Inquiry, Mr and Mrs Watson not only raised the issue of unwarranted and indeed intrusive press attention but also, like the McCanns, pointed to the highly inaccurate and sensationalised reporting around their daughter's death.<sup>13</sup>
- 3.25** Such intense press interest is not restricted to the victims of crime but also extends to those who have been linked to, or wrongly, accused or suspected of committing, crimes. Christopher Jefferies was arrested in relation to the murder of the student Joanna Yeates at the very end of 2010 but subsequently was released without charge; he was not merely cleared of any wrong-doing but proved to have been a victim himself, the subject of disinformation by the killer intent on avoiding his own responsibility. However, as more fully examined below,<sup>14</sup> during the course of the investigation, Mr Jefferies was subjected to a protracted campaign of vilification in the press. This saw a significant number of libellous allegations made by a

<sup>10</sup> pp31-32, lines 16-19, Gerry and Kate McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

<sup>11</sup> pp74-75, lines 13-4, Bob and Sally Dowler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>12</sup> pp12-13, lines 16-14, Sally Dowler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>13</sup> pp97-98 *passim*, Margaret Watson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-2011.pdf>

<sup>14</sup> Part F, Chapter 5

number of newspapers, including The Sun and the Daily Mirror; both of which were later held to be in contempt of court. Indeed, so intense and unpalatable was this press attention that Mr Jefferies was forced to leave his home and change his appearance.<sup>15</sup>

### Innocent bystanders

**3.26** It is not only individuals with public profiles and the victims of crime who have been the subject of intense press scrutiny and potentially unethical and damaging reporting. There are also many other ordinary members of the public who have complained of unwarranted press attention in a number of different respects. In particular, the Inquiry heard evidence from a number of organisations representing minority, community and societal groups alleging that individuals within those groups, or the groups themselves, have attracted inaccurate and discriminatory press interest. By way of example only, I have already mentioned Trans Media Watch, a charitable and support organisation which represents the interests of members of the transgender community by in particular monitoring the quality of reporting of newspapers on transgender issues. Their basic complaint, which will be examined in greater detail below,<sup>16</sup> is that transgender people are subject to disproportionate and damaging press attention simply by dint of being members of that group, rather than in consequence of anything they might have said or done, and because of what they describe as an obsession in parts of the British press with ‘outing’ members of the transgender community.<sup>17</sup>

**3.27** Individuals who fall into this category do not consist only of members of pre-formed groups. The category also extends to individuals who may find themselves at the centre of damaging media attention, such as the families of suicides and also suicide victims themselves. The Inquiry has heard evidence of intrusive and damaging press attention directed at the grieving families of suicides. In evidence to the Inquiry, the Samaritans describe the damaging and intrusive nature of press reporting of the suicides of a number of young people in Bridgend over a six month period in 2007 and 2008.<sup>18</sup> During this time, it is argued, the relatives of some of these young people were not only subject to, sensationalised reporting which propounded unfounded speculation that they were linked through a cult or death pact, but also turned their relatives into the subject of newspaper stories.<sup>19</sup>

### Those with links to the above

**3.28** The last category of person to be considered here is broader and perhaps more nebulous; it covers those who have become the subject of press speculation and attention as a consequence of the links they may have to those groups or types of people described above. Included in this category are people like the parents of the singer Charlotte Church, who have been subject at times to intense press attention and a substantial number of intrusive and hurtful newspaper articles.<sup>20</sup> Media interest in the parents of Ms Church clearly has more to do with their relationship to their famous daughter than their own actions: such interest would not have arisen otherwise. Another is the mother of Hugh Grant’s daughter and,

<sup>15</sup> pp18-19, lines 25-6, Christopher Jefferies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-28-November-2011.pdf>

<sup>16</sup> Part F, Chapter 6

<sup>17</sup> pp56-57 *passim*, Helen Belcher, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-8-February-2012.pdf>

<sup>18</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Samaritans.pdf>

<sup>19</sup> p3, *ibid*

<sup>20</sup> pp22-23, lines 9-7, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>

indeed, her mother. Finally, there are the innocent bystanders, such as Mary-ellen Field, who are not even targeted or explicitly written about but become ‘collateral damage’ because of the suspicions generated by subterfuge.

## 4. The structure of Part F of the Report

- 4.1** Turning to the overall contours and direction of this Part of the Report, Chapter 2 summarises my own assessment of the evidence of good press practices, and reflects my view that the press can take pride in most of its work. However, even if the examples of good practice represent the vast bulk of the way in which the press works, it cannot be said that there is no cause for concern.
- 4.2** Chapter 3 moves to summarise the aspects of press practices which have given rise to complaint and concern. Standing back from all the evidence that the Inquiry has received over the past year, it is possible to discern a number of common themes or complaint headings which are set out in summary form in this Chapter before the further analysis which follows. Chapter 3 also summarises the nature of the harm suffered by individuals and by the public at large as a result of unacceptable press practices. It is necessary to assess the impact of unethical press practices in this way because the benefits of a free press cannot be assessed in isolation from other considerations: if a free press amounts to a press which, to a greater or lesser extent, fails to adhere to proper standards of behaviour, the consequences need fully to be understood.
- 4.3** Nobody denies that the poor practices identified in Chapter 3 exist in some form or other, although there may well be arguments or debates about the extent to which they prevail (if at all) in individual titles. It must be remembered, however, that this is a qualitative assessment based on more than the odd or exceptional example (what is happening?) rather than a quantitative assessment (to what extent and in what particular titles?). When considering the success or otherwise of a regulatory regime, that must be the starting point. It is also why the submission made by some individual titles (that the conduct of which complaint is made cannot be brought home to them) simply misses the point: I am required to consider the press as a whole and the fact that any particular title (if it be the case) may never engage in the practices of which complaint is made is irrelevant.
- 4.4** Chapter 4 is devoted to the culture at the NoTW, in respects beyond the practice of phone-hacking which is addressed elsewhere. I dedicated a week of Inquiry time to this topic in December 2011, and, on other occasions, witnesses such as Paul McMullan and Sharon Marshall testified in somewhat different ways to the culture at that now defunct title. Given that the goings-on at the NoTW were the immediate trigger to the setting up of this Inquiry, it is appropriate to devote a whole chapter to this issue.
- 4.5** Chapter 5 takes a series of what I am calling ‘case studies’ – in truth, some of the most egregious stories the Inquiry examined in Module One – as exemplifications of the unethical press practices which underpin the core generic conclusions reached in the following chapter, Chapter 6. Accordingly, the case studies should be read not as random or individual instances of sub-standard press practice but as the exemplars of a wider problem. The fact that a title or a journalist is either necessarily identified or is capable of identification in a case study should not be taken as meaning that I am seeking to place that title or that journalist in a different category to those responsible for other examples of poor practice given in evidence to the Inquiry.

- 4.6** In Chapter 6 I seek to evaluate and analyse, in detail, the evidence of press practices which have given rise to concern, and to come to what may be called generic conclusions about the culture, practices and ethics of the press from this critical stand-point. Inevitably, this is a lengthy chapter. Not merely is the evidence voluminous but the issues which arise from it are complex and multi-faceted. I should emphasise that in reaching the conclusions I do, I have paid very careful regard to all the evidence the Inquiry has accumulated as well as the Core Participants' helpful submissions.
- 4.7** Finally, in Chapter 7, I draw overall conclusions and seek to identify some of the drivers for unethical practices within parts of the press. Those drivers include the impact of commercial pressures in a shrinking newspaper market; the specific employment context in a number of newspaper titles; and inadequacies in internal governance and leadership at individual titles. Ultimately, the Chapter concludes with a recognition that the unethical practices identified throughout the Report require both cultural, as well as systemic, changes within newspaper titles. While these changes must come from within newspaper groups, they must also be monitored and enforced by a robust and empowered regulator.

# CHAPTER 2

## GOOD PRACTICE

### 1. The value and virtues of the UK press

#### Overview

- 1.1** This Chapter of the Report will examine what is far too easy to take for granted, namely that in so many important respects the press is a force for good in British society. This issue is capable of being analysed in a number of ways. The first two concern over-arching issues relating to society as a whole. Thus, the very existence of a free press is invaluable in the sense that societies without such a press are invariably totalitarian regimes which do not and cannot, countenance the type of scrutiny which only an untrammelled Fourth Estate is capable of applying. Second, as many Core Participants have pointed out, a free press is the lifeblood of a mature democracy: it is an invaluable medium for the representatives of the people to get their message across, and an equally invaluable means both of examining the political message and holding the messengers to account.<sup>1</sup>
- 1.2** The second type of analysis is more pragmatic but no less important; however many times it was repeated during the course of the Inquiry, it continues to require emphasis. Most of the work of the press represents good practice rather than bad. Broadly speaking, stories are accurate, informative, well-written and respectful of the rights and interests of others. Further and additional to that point, it is equally important to underline that the press carries out a valuable role in entertaining its readers according to their tastes and interests: indeed, if it failed in this important respect, readers would desert to other newspapers or other forms of media, including the array of electronic media currently available and ever burgeoning, as their preferred means of obtaining information.
- 1.3** These features lead to a further point which it is relevant to make in this context (as well as in other places). However cheap and easy access to online aggregated material, blogs and tweets might be, it is to those whose business is the collection, collation, accurate presentation and analysis of news, related commentary, current affairs, sports, fashion and entertainment (to name but a few) that the public look for informed views. Those who are in that business are called journalists and whether they produce their content in print or online, it is vital that their work continues to be trusted and recognised for the good that, in the main, it does and for the very important contribution that it makes to our society.

#### Existence of a free press: its intrinsic value

- 1.4** The submissions of News International have reminded the Inquiry of an exchange in Sir Tom Stoppard's satire on the British news media, *Night and Day*, published in 1978. Milne says to Ruth: *'No matter how imperfect things are, if you've got a free press everything is correctable, and without it everything is concealable'*. Ruth replies: *'I'm with you on the free press. It's the newspapers I cannot stand'*.

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<sup>1</sup> These concepts are discussed in greater detail in Part B Chapter 1 concerned with the importance of a free press and freedom of speech

- 1.5** The point is rightly made that freedom of the press is essential to a free society, and one of the key hallmarks of societies which are not free is the absence of a free press.<sup>2</sup> Arguably, the point can be taken even further: there is a close correlation between press freedom on the one hand and the extent to which a society may be seen as being open and free on the other. And this is not simply a matter of journalists, editors and proprietors not being held in the thrall of the Executive: press freedom requires the press to discharge their important responsibilities by being ever-questioning and ever-vigilant, if necessary noisy, iconoclastic, irreverent and unruly. It remains to be considered whether, as has been suggested, it is these same instincts which may from time to time cause the press to be led astray.
- 1.6** Accordingly, the existence of a free press is valuable in itself and not merely for all the benefits it carries with it. It is noteworthy that not one witness suggested anything to the contrary, and that virtually all the witnesses who had come to tell their personal stories of press misconduct were at pains to explain that they believed in the value of a free press in its own right. Being free, however, is not the same as insisting on a free for all without any accountability of any sort.

### Preponderance of good practice over the bad

- 1.7** Although the point has already been made that the Inquiry is not in a position to quantify reliably the amount of bad practice perpetrated by the press over the years, and furthermore does not need to do so in order properly to reach conclusions about the culture, practices and ethics of the press, or a section of the press, the converse is not the case: in other words, the Inquiry is able to state with confidence that the majority of press practice is good, if not very good. The evidential foundation for this conclusion is clear. First, there is the convergent evidence received from numerous witnesses over the course of the hearings. Second, there is the weight of evidence coming from the press Core Participants. Finally, the Inquiry has been able to make its own assessment of the overall quality of the work of the press over a number of decades: this is based upon its own reading, assisted in this context by the knowledge and experience of the Assessors. Given the quantity of newspaper print produced up and down the country day in and day out, no doubt running to thousands of pages, it should be obvious that, if the work of the press was not predominantly acceptable, the volume of complaints and litigation would be orders of magnitude greater than they have been both historically and more recently.
- 1.8** The Sun has provided the Inquiry with some hard data which supports this point.<sup>3</sup> A large issue of The Sun may contain 104 pages and 300 individual items, or even more, adding up to nearly 100,000 items over the course of a year. Of this total, fewer than half a dozen a week will result in a complaint to the PCC. Even recognising that stories are not always based on issues that could give rise to complaint and that, even if they do, many of those who might have wished to complain do not do so (whether out of disenchantment with the PCC or a reluctance to take on a large and powerful newspaper group), these statistics provide some overall support for the proposition that most press practice is good.
- 1.9** This reference to ‘good practice’ is intended to cover the work of the press generally, not just the work of news desks producing ‘hard’ or serious news. For the avoidance of doubt, here

<sup>2</sup> In the famous words of John Wilkes MP writing in the mid-C18th, *‘The liberty of the press is the birthright of a Briton, and is justly esteemed the firmest bulwark of the liberties of this country’*

<sup>3</sup> p13, para 5.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/08/Submission-from-The-Sun-in-response-to-Inquiry-questions.pdf>

the Inquiry has in mind the work of those writing and producing the comment, opinion and editorial sections of newspapers; the sports pages; the show business and entertainment pages; the features pages; the business and personal finance columns; the crossword and games pages etc. This list is not of course exhaustive, and will vary from print title to print title, but the general point needs to be reiterated and reinforced.

- 1.10** Further, the term ‘good practice’ is also intended to cover a number of different facets of journalistic practice. First is the means by which the material for stories is obtained, investigated, researched and tested for its accuracy. Second, there is the intrinsic interest, variety, imagination and quality of the stories, varying according to the tastes and interests of the newspaper’s readers. Perhaps the most compelling way of making this point is to record that the majority of newspaper content is stimulating and entertaining for its readers, recognising always that reader X may buy a particular paper for its sports coverage whereas reader Y may be more interested in its comment sections. Public taste is eclectic, but newspapers are extremely adept in attuning themselves to the viewpoints and various interests of the majority of their readers.
- 1.11** It is not inconsistent with the recognition that most of press practice is ‘good’ that journalists and editors will sometimes make mistakes, including errors of fact and of judgment. Sources, even multiple sources, may simply be wrong in a particular case, however right they might usually be; journalists might be misled by apparently reliable sources or websites putting out incorrect data and information; errors and slips may be made in the heat of the moment, in order to meet a particular deadline; editorial judgments may be incorrect in a specific instance notwithstanding that they may usually be entirely sound. Mistakes of this sort are made in every walk of life and are part and parcel of the human condition: depending on all relevant factors, they may be entirely consistent with good press practice. But whether or not they exemplify good or bad practice at the end of the day will depend on matters such as systems for checking information and sources, and the press response when the error is pointed out, including press willingness to engage with the complainant and sort things out as quickly as possible.
- 1.12** There are two aspects of press practice which merit particular mention. First, Lionel Barber, editor of the Financial Times, emphasised in his evidence that the reputation of his paper depended on getting the story right. In the context of financial reporting it may readily be understood that accuracy has a special premium, or rather that inaccuracy can be especially damaging, but the same general point may fairly be made in relation to the press as a whole. Newspapers trade on their reputation; their commercial success ultimately must rest upon the reputation they build for honesty, reliability and accuracy. This goes beyond the discussion of serious issues of politics or current affairs. A reader passionately interested in football, for example, will think twice about paying the cover price if the paper of his choice consistently ‘gets it wrong’ in relation to stories of interest to him or her.<sup>4</sup> Further, the reader will come to learn in due course whether stories are true or false. It flows from this that newspapers have every incentive to be as honest, reliable and accurate as they can.
- 1.13** Second, the Inquiry recognises that journalists often work under the pressure of deadlines, and in such circumstances simply do not have the luxury of triple-checking sources or satisfying themselves to the point that they are sure beyond reasonable doubt that a story is true. This is a factor which must be taken into account, although exactly how far the point goes is worthy of careful consideration. For example, however pressing the deadline, a piece which would be seriously defamatory if untrue would require careful checking indeed, and

<sup>4</sup> The Inquiry is not in a position to say whether this proposition is equally as accurate for racing tips

in the ordinary course prior notice to the subject, before being published. This is always a matter of fact and degree, involving the exercise of sound and sensitive judgment.

### Good journalism may also entertain

- 1.14** The Inquiry fully recognises and understands that not all journalism can or should be ‘worthy’ or high-minded. If this were some sort of requirement, or even a desirable objective, the outcome would be undemocratic and ultimately contrary to the public interest, because the readers of such a press would not be representative of the range of tastes, educational attainments and opinions which constitute modern British society.
- 1.15** An important section of the press, probably in truth the largest section, must be popular and must entertain. Even readers of more highbrow papers are not interested only in serious articles; light and entertaining pieces are all part of the overall package. The same naturally applies to an even greater extent in relation to the mid-market and tabloid press, and no one is remotely suggesting that this is an unworthy or inappropriate objective.
- 1.16** Thus, purely entertaining stories serve at least two functions: first, they have value in their own right, and accord pleasure to their readers on their own terms; second, they have a corollary function in attracting readers to the newsstand and in maintaining circulation; and the advantageous by-product of both these functions is that readers will participate more in the democratic process by being drawn to the news and comment pages of the paper which are often skilfully interwoven with the lighter sections and are usually written in a clear, compelling, user friendly and pungent style.
- 1.17** Journalism which has no value other than the fact that it entertains does not require a public interest justification provided that its processes of research and preparation, as well as its subject matter, do not impinge on the rights of others. Submissions from a number of the press Core Participants appear to have come close to suggesting that the Inquiry’s provisional view might be that a public interest justification is required for all stories: this is, as I hope has been made clear, to misunderstand the Inquiry’s analysis of the issue. A public interest justification is required only if rights and interests such as the privacy of private individuals may be harmed. In all other cases, subject to issues such as accuracy and the like, the press is both entitled and entirely free to publish what it likes in the way that it likes.
- 1.18** What might or does amount to ‘entertainment’ will naturally vary from paper to paper, and no one could or should be remotely prescriptive about this. Here, the issue touches subjective matters of taste and opinion which, subject to not overstepping various bounds, must lie solely within the editorial judgment of the newspaper in question.

## 2. Some case studies

- 2.1** At the directions hearing on 3 April 2012, I made the following statement:<sup>5</sup>

*“on a number of occasions it has been suggested to me that I have not paid sufficient attention to the good work of the press. Perhaps that’s an inevitable consequence of the terms of reference of the Inquiry, but in order that nobody can suggest that I have paid insufficient attention to that aspect, I will invite any title that wishes to submit what they perceive to be their top five public interest stories over the last few years, merely to reflect the other side of the coin.”*

<sup>5</sup> pp1-2, lines 14-8, Lord Justice Leveson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412pm.pdf>

- 2.2** In this section of the report I will address a selection of the public interest stories drawn to my attention by a number of the press Core Participants pursuant to my invitation, and consider some specific pieces of evidence referred to in written submissions as illustrative of good practice. Not every title responded to my invitation, and in any event not every story will be expressly covered below: some of the campaigns which are relied on as evidence of ‘public interest stories’ are not without controversy, and some are ongoing. I will conclude this section with the Daily Telegraph’s MPs’ expenses stories, since much Inquiry time was devoted to it from a number of perspectives.
- 2.3** Inevitably, I will be drawing attention to the work of individual titles. I see no difficulty in doing this because reference to good practice does not engage in any way what I have been calling the mantra and the self-denying ordinance.
- 2.4** I am also drawing heavily on the content and wording of the submissions of the press Core Participants. I should accordingly make it clear that by making reference to any particular campaign, I should not be interpreted as passing judgment on the merits of that campaign or any underlying argument, although I fully recognise the right of the relevant title to campaign as it sees fit. Furthermore, it is extremely important that this aspect of the work of the press, namely holding public authorities and others to account in ways that an independent mind has perceived is in the public interest, is recognised and appreciated. When dealing with practices of sections of the press that I criticise, nothing should be taken to detract from the role of the press generally to expose wrongdoing, incompetence or inefficiency, and to challenge those who make decisions about the way they were reached or basis for them.

### Associated Newspapers Limited

- 2.5** The Daily Mail’s written submission is that it is a newspaper which champions causes, fights injustice and raises millions from generous readers to help those facing real hardship. It has never been afraid, or frightened, to stand up against injustice, often in difficult or even dangerous circumstances.
- 2.6** The following are advanced as examples of public interest campaigns in recent years.
- 2.7** The first story advanced by the Daily Mail is the Stephen Lawrence campaign. When the prime suspects were acquitted in 1997 of Stephen’s murder in south east London in 1993, the Daily Mail took up the case. A front page proclaimed ‘Murderers,’ accused the suspects of the crime and printed their pictures. Under a headline: *‘The Mail accuses these men of killing. If we are wrong, let them sue us’*, the paper effectively challenged the suspects to sue. They did not. After the abolition of the rule against double jeopardy and new DNA developments, earlier this year two of the suspects were found guilty of his murder.
- 2.8** Second, two years after the 1998 Omagh bombing atrocity, in despair that the killers were still at large, devastated families of the 29 people, including the mother of unborn twins who had been killed in the outrage, approached the Daily Mail in a final attempt to win justice for their loved ones. the Daily Mail, which accused British justice of a *‘shameful betrayal’*, appealed to its readers and received support across the religious and political divide, raising £1.2 million to fund a landmark civil court action. In June 2009, the family finally succeeded when a historic Belfast court ruling awarded them more than £1.6 million in damages against the four Real IRA terrorists they accused of tearing their lives apart.
- 2.9** The third campaign identified by the Daily Mail concerns compensation for wounded servicemen. In 2007, the Daily Mail highlighted the paltry sums given to injured heroes by the Ministry of Defence and launched a campaign focusing on the case of paratrooper Ben Parkinson, 24, who lost both legs, the use of one arm, his speech and much of his memory

in a mine blast in Afghanistan. After a year of campaigning, the Government announced it was doubling the maximum pay out to the worst injured; this was followed, in 2010, by the announcement that compensation for thousands of others badly wounded in the line of duty, would also be raised, backdated to 2005.

- 2.10** Following the devastating tsunami on Boxing Day 2004, an appeal ('Flood Aid') by the Daily Mail raised nearly £16 million from readers; this was a world record for newspapers. Much of the money was filtered through the Disaster Emergency Committee, which represents major UK-based charities, but the paper also oversaw the rebuilding of a large state school for children of the poor in Galle on Sri Lanka's southern coast and the reconstruction of a fishing village in Banda Aceh, together with new boats for fishermen.
- 2.11** The Daily Mail has also drawn attention to the many other successful campaigns the newspaper has run. Just a few of them are Dignity for the Elderly; Osteoporosis; Alzheimer's drugs; Prostate Cancer Awareness; The £6 million Kosovo Appeal; the £5.5 million Farm Aid appeal; The Battle of Britain memorial; Coming Home; and Money Mail's campaigns to help readers get compensation from the banks, from the tax man and from Building Societies.
- 2.12** It may readily be understood that Associated Newspapers Ltd's examples of 'public interest journalism' are examples of campaigns which it has pursued with enormous vigour over the years, in each case in the public interest and with ultimate vindication. They illustrate a different facet of the vital public importance of the press, no less important than paradigm illustrations of investigative reporting. Further, some might argue that the Stephen Lawrence campaign was not merely fraught with obvious risk, (legal risk being only one potential concern) but it involved the difficult decision, raising serious public interest issues, as to whether to accuse those who had already faced a criminal trial for a crime as serious as murder (the private prosecutions brought by the Lawrence family having collapsed through lack of then available evidence). However, Paul Dacre, the editor of the Daily Mail back in 1997 as he is now, explained why he was prepared to support the Lawrence family in the face of injustice. It must be emphasised that his judgment has been entirely vindicated by subsequent events, namely the setting up of a public inquiry under the Chairmanship of Sir William MacPherson (along with its conclusions), the conviction of two men and the maintenance of public awareness of the case and its important ramifications.

## The Guardian

- 2.13** Appendix A to the Guardian's submissions, filed on 23 July 2012, details five recent public interest investigations conducted by Guardian News and Media Ltd.<sup>6</sup> I set out these in full.
- 2.14** The first concerns the death of the newspaper seller, Ian Tomlinson. In the days after the Mr Tomlinson's death, during protests over the G20 summit in April 2009, dogged reporting by the Guardian's Paul Lewis raised questions about the police account of the sequence of events leading up to his collapse. The official account was unpicked when the Guardian obtained video footage showing Mr Tomlinson being struck by a police officer before his collapse. Mr Lewis's reporting led to the reversing of the original pathologist's findings that Mr Tomlinson died of natural causes, an inquest returning a verdict of unlawful killing, and the prosecution (and subsequent acquittal) of a police officer for manslaughter.

<sup>6</sup> pp25-26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Closing-Submission-from-Guardian-News-and-Media-Ltd.pdf>

- 2.15** The second Guardian story concerns the tax gap. In a two week series of articles based on several months of investigation, a Guardian team in February 2009 revealed how leading companies including Barclays, GlaxoSmithKline and Shell were using a range of highly complex offshore devices to avoid paying millions in UK tax. The reports involved the Guardian in a legal battle with Barclays, which sought to prevent publication of documents outlining its tax avoidance schemes, and later led to the Government taking significant steps to crack down on tax avoidance.
- 2.16** The third story relates to the oil trading firm, Trafigura. In May 2009, The Guardian acquired a confidential document which suggested that the waste dumped from a tanker chartered by Trafigura in the Ivory Coast port of Abidjan was highly toxic. A large number of local residents became sick. Trafigura later attempted to gag the paper by seeking a super-injunction, preventing not just publication of the key document but even reporting of an MP's question about it. After a public campaign the super-injunction was lifted; Trafigura was later convicted by a Dutch court with regard to the delivery of the toxic waste to, and its export from, Amsterdam and fined 1 million Euros. The company is appealing the decision.
- 2.17** The Guardian also refers to its campaign in relation to rendition and torture of detainees. For more than five years and in scores of articles, The Guardian's Ian Cobain has painstakingly uncovered the extent of Britain's complicity in the torture and rendition of detainees in the face of countless official denials. Mr Cobain has linked Britain to the mistreatment of prisoners in Iraq, Libya, Pakistan, Bangladesh and Afghanistan. Mr Cobain's reporting was one of the key factors leading to the Government's decision to order an inquiry into allegations of British complicity in torture, now delayed until police investigation of two cases is complete.
- 2.18** Although the underlying disclosures by WikiLeaks remain potentially controversial, the Guardian's collaboration with whistleblowers' website WikiLeaks and four other international newspapers in 2010 and 2011 led to the publication of a string of major public interest stories touching almost every corner of the globe. They included the disclosure that Saudi Arabia was secretly putting pressure on the US to attack Iran, that US diplomats believed Russia was "a virtual Mafia state" and that a British oil company claimed to have "infiltrated" all of Nigeria's major ministries. The role played by the Guardian, however, is not controversial: it played a central part in ensuring that hundreds of thousands of documents which might have been dumped "raw" on the Internet were carefully analysed first and redacted to avoid exposure of vulnerable sources. More than 30 Guardian specialist reporters and foreign correspondents were involved in the huge effort to comb and authenticate the documents over several months.
- 2.19** The Guardian might also have drawn specific attention to the work of Nick Davies in investigating the phone hacking story over a number of years, culminating in the revelations of July 2011 which led directly to the setting up of this Inquiry. The criticisms made of that report are analysed in the case study dealing with the murder of Milly Dowler.
- 2.20** In my view, these are all excellent examples of public interest investigative journalism, properly so called: in other words, the unearthing of the often unpalatable truth by dogged hard work and persistence. This is different to the conduct of a campaign for or on behalf of causes which meet a newspaper's particular agenda. The latter may well discharge an important public interest function in the drawing of attention to worthwhile causes which would not otherwise have crossed the public's radar and may have no less importance, but the nature and quality of the journalism involved is somewhat different. Nor do I lose sight of the point that campaigning journalism might be much more controversial on the basis that it

is capable of dividing public opinion; here, the newspaper is providing its own megaphone to amplify the volume in relation to causes its editors or proprietors happen to favour.

## Northern & Shell

- 2.21** The Daily Star, the Daily Star Sunday, the Daily Express and the Sunday Express have supplied the Inquiry with copies of a considerable number of articles which comprise examples of good journalistic practice, whether it be campaigning journalism, investigative journalism, or a combination of the two. I propose to set out a representative sample below.
- 2.22** Both the Daily Express and the Sunday Express have mounted a campaign for veterans of Bomber Command to be accorded greater recognition in view of their and their late colleagues' service and sacrifice during the Second World War. This campaign has included pressing for veterans to be issued with the Second World War Campaign Medal, and for a Bomber Command Memorial to be inaugurated. On 28 June 2012, HM The Queen unveiled such a memorial in recognition of the 55,573 aircrew who lost their lives in the Second World War and the Daily Express published a souvenir edition to mark this event.
- 2.23** The Inquiry's attention has also been drawn to a number of stories in the Sunday Express relating to a scandal uncovered by the newspaper whereby social workers were "sexing up" documents to give local authorities the power to take thousands of children from their families and put them up for adoption, so as to meet flawed Government targets. The paper is also responsible for an ongoing campaign to achieve a greater understanding and openness in the discussion and treatment of mental illness.
- 2.24** A number of impressive public interest stories have been run by the Daily Star Sunday, but the following examples will suffice for present purposes. First, the newspaper ran several articles exposing the activities of the English Defence League (EDL) and contending that they could legitimately be described as dangerous thugs. When it appeared that the EDL was getting a groundswell of support among working class people, the newspaper continued running strongly worded editorials criticising the group and exposing the criminal records of several of their members. More recently, the newspaper's investigators spent months working on the scandal of PIP breast implants, speaking to victims and experts to ascertain the dangers the implants pose. Key successes include uncovering for the first time a detailed list of ingredients contained in the implants.
- 2.25** A third public interest inquiry was mounted which, on two occasions, revealed that the paper had found IT blunders by Government workers who placed restricted information in the public domain by failing adequately to redact them so that the restricted information was not revealed. These stories have led to a change in the way certain departments redact documents.
- 2.26** Fourth, the newspaper seeks to have an article each week covering the human side of the wars in Iraq and Afghanistan. Following complaints about the quality of equipment the servicemen were using, the Daily Star Sunday (along with other newspapers) wrote a series of articles calling for improvements to be made. These stories led to a marked improvement in equipment, including the decommissioning of so called Snatch Land Rovers. The fifth example is that the paper has been investigating unpublicised dangers surrounding Tamiflu for many months, after it found it had been linked to the deaths of 13 people. The newspaper exposed links between the licensing authority and the drug-maker, and has documented numerous complaints from patients affected by the drug.

## The Sun

- 2.27** The Sun’s written submissions and evidence refer to a number of its campaigns,<sup>7</sup> and I have borne these well in mind, recognising the arguable public interest in bringing these matters to the attention of their readers at the particular time. But, rather than setting these out specifically, I believe that it is more valuable at this stage to refer to some of the evidence given by its current editor, Dominic Mohan.
- 2.28** The first example of true public interest journalism concerns neither investigation nor campaigning. Rather, it is to explain extremely complex concepts of vital public importance. By way of example, Mr Mohan referred to an article published on 27 July 2011 in which The Sun gave a succinct description of the state of the Eurozone bailout crisis, saying that the majority of working people in the UK preferred to read *“a really concise and well-executed spread ... which gives them very quick, digestible summary of very, very complex issues”*.<sup>8</sup> He said that such reporting in The Sun was how *“millions of people learn of serious issues on a daily basis”*.<sup>9</sup> Nobody can pretend that the issues at stake are straightforward and there is no doubt that journalism of this type is of a very high order.
- 2.29** Mr Mohan also referred with pride to The Sun’s science reporting. He mentioned his engagement of Professor Brian Cox as *“The Sun’s Professor”*. He writes for The Sun *“on very complex issues like the Hadron Collider and digests them into very accessible chunks for the readers”*.<sup>10</sup> He also referred to praise for The Sun’s science coverage by the Science Media Centre:<sup>11</sup> its director, Fiona Fox, said Professor Cox was *“wonderful”*. She said that he and others who write on science for tabloids are *“genius”* and went on *“every single day they communicate very complicated and very important science to a mass audience”*.<sup>12</sup>
- 2.30** The Sun has also provided good illustrations of public interest stories which may fairly be described as examples of investigative journalism.<sup>13</sup> These can best be identified by reference to the headline and story: no further comment is necessary.
- 2.31** *“We smash poison doc’s prison plot to kill ex and baby”* (14 May and 16 June 2012). The Sun revealed how a doctor, already jailed for six years for drugging his mistress to try and force a miscarriage, was planning a revenge plot to kill her and her baby. In an undercover investigation, reporters from The Sun asked another convict secretly to film the doctor, Edward Erin, explaining his plan. The evidence was handed to the police and as a direct result Erin was jailed for an additional two years.
- 2.32** *“Court in the act – clerk brags of £500 bribes to wipe records of dangerous drivers”* (4 August 2011 and 19 November 2011). After a tip-off that a Magistrates Court clerk was offering to wipe clean convicted drivers’ licences, The Sun mounted an undercover operation to test the allegation. The Sun reporter sought and won approval from the editor and The Sun’s legal

<sup>7</sup> p8, para 33 and pp12-13, paras 52-54, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>

<sup>8</sup> pp54-55, lines 24-7, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-9-January-2012.pdf>

<sup>9</sup> pp54-55, lines 12-7, Dominic Mohan, *ibid*

<sup>10</sup> p52, lines 14-17, Dominic Mohan, *ibid*

<sup>11</sup> pp121-122, lines 24-3, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>12</sup> pp34-35, lines 17-13, Fiona Fox, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>

<sup>13</sup> p4, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Fifth-Witness-Statement-of-Richard-Caseby.pdf>

advisers to offer the clerk £500 and film the transaction, even though this was in contravention of the Bribery Act 2010, which came into force the previous month.<sup>14</sup> The evidence was handed to police and the clerk, Munir Patel, became the first person to be convicted under the Bribery Act 2010; he was subsequently imprisoned for six years.

- 2.33** *“Maddie fraudster nicked”* (25 November 2009). Kevin Halligen was a private detective employed by Drs Gerry and Kate McCann to help find their missing daughter. He swindled their charitable fund of £300,000 and went on the run after being accused of a £2 million fraud for which he was wanted in the US. The Sun tracked him down, he was arrested and he has now lost his appeal against extradition.
- 2.34** *“We’re in jail, dude”*, (6 February 2007). The Sun revealed the secret cockpit tape from a US jet which attacked a British convoy and killed a British soldier, Lance Corporal Matty Hull, in a friendly fire incident during the Iraq war. The Ministry of Defence had failed to produce the video at the inquest into Lance Corporal Hull’s death. But, as a result of The Sun’s investigation, the Coroner was able to deliver a verdict of unlawful killing.

## The Sunday Times

- 2.35** It is impossible not to mention the extremely well known exposure of the effect of the drug Thalidomide in the 1970s and the campaign against Distillers (spearheaded by the then editor, Sir Harold Evans) as one of the most outstanding examples of persistent and challenging journalism. It exemplifies both investigative and campaigning journalism and stands as an example of the power and effectiveness of the press at its very best. The much more recent illustrations put in evidence by The Sunday Times<sup>15</sup> are also good examples of investigative journalism which can have a campaigning effect. Once again, it is sufficient to illustrate them by reference to the headline and story.
- 2.36** *“Tory treasurer charges £250,000 to meet PM”* (Insight, 25 March 2012). The co-treasurer of the Conservative party, Peter Cruddas, was filmed by Sunday Times reporters selling secret meetings with the Prime Minister for donations of £250,000. He offered a lobbyist and undercover reporters, posing as overseas clients, direct access to the Prime Minister if they joined a “premier league” of party donors. Mr Cruddas resigned within hours of the story being published and Mr Cameron came under intense pressure to disclose the identities of all donors who had been entertained privately at Downing Street.
- 2.37** *“Vet offers only hope for Syrian wounded”* and *“We live in fear of a massacre”*, (19 February 2012). The last despatch from Marie Colvin, the renowned Sunday Times war correspondent, revealed the scale and depth of suffering among the 28,000 civilians caught up in the Syrian army’s shelling of the Babr Amr district of Homs. Ms Colvin was killed by a rocket on 22 February 2012, three days after her story was published, provoking international condemnation of President Assad’s regime and adding impetus to the efforts to secure Russian and Chinese backing for political transition in Damascus.
- 2.38** *“Revealed: the full horror of Misrata”*, (10 April 2011). The Sunday Times foreign reporter Hala Jaber boarded a gun runners’ trawler to get to the Libyan port of Misrata after it was besieged and bombarded for weeks with no independent access for journalists. She found a city in desperate need of humanitarian and military help. Her front page report increased

<sup>14</sup> For reasons identified in Part J Chapter 2 and by reference to the Code for Crown Prosecutors, it is inconceivable that anyone would consider there to be a public interest in prosecuting the journalist in these circumstances

<sup>15</sup> p1, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Fifth-Witness-Statement-of-Richard-Caseby.pdf>

international pressure for aid shipments to trapped civilians and NATO airstrikes on Colonel Gaddafi's forces in the area.

- 2.39** *“World Cup votes for sale”* (Insight, October 2010). The Sunday Times reporters exposed corruption in the FIFA voting process which decides who will host the football World Cup. During an investigation that lasted three months and involved travel to three continents, the undercover team discovered six senior FIFA officials, past and present, who offered to work as fixers and suggested paying huge bribes to FIFA executive members. One executive member asked for £500,000 for a personal project, another asked for £1.5 million for a sports academy. As a result, eight officials were suspended for between one and four years and, in future, every member country will have a vote on which country should host the World Cup rather than the decision being left to a secretive 24 man committee.

## The Telegraph

- 2.40** In written submissions filed on 2 May 2012, Telegraph Media Group Ltd drew attention to a number of recent public interest stories.<sup>16</sup> Pride of place goes to the MPs' expenses story which is covered under a separate heading below. Again, the stories speak for themselves.
- 2.41** *‘Baby Girls Aborted: No Questions Asked’*.<sup>17</sup> An undercover investigation by The Daily Telegraph disclosed that women were being offered illegal sex selection abortions. Doctors were secretly filmed offering to abort fetuses purely because they were either male or female, even though it is illegal to carry out a termination for that reason. One doctor, a consultant who works for both private clinics and NHS hospitals in Manchester, told a pregnant woman who said she wanted to abort a female foetus, *“I don't ask questions. If you want a termination, you want a termination”*. She later telephoned a colleague to book the procedure, explaining that it was for *“social reasons”* and the woman *“doesn't want questions asked”*. The Daily Telegraph's investigation also recorded several other doctors at clinics in other parts of the country offering similar terminations based on the unborn baby's gender. The consequence of this exposure is that there are now three separate and ongoing police investigations by the Metropolitan, Greater Manchester and West Midlands police forces. In addition, the matter is being pursued in separate professional investigations by the General Medical Council and the Nursing and Midwifery Council. Finally, the Care Quality Commission has made unannounced inspections at more than 250 abortion clinics.
- 2.42** *‘Cheating the System: How Examiners Tip off Teachers’*.<sup>18</sup> An undercover investigation disclosed that teachers were paying to attend seminars with chief examiners where they were advised on examination questions. One examiner was recorded telling the teachers what examination questions to expect and admitted *“we're cheating”*. The investigation exposed a system in which examination boards aggressively competed for *“business”* from schools. Evidence was uncovered that standards of examinations had been driven down to encourage schools to enter pupils for particular boards. The Chief Examiner of one examination board told one undercover reporter that *“there is so little content we don't know how we got it through”* and in an attempt to win new business told him *“we don't have to teach a lot”*. This investigation had an impact on millions of children across the country and the teaching profession. The Secretary of State for Education, Rt Hon Michael Gove, welcomed The Telegraph's investigation and there is now a fundamental review of the examination system, and an inquiry being conducted by the Education Select Committee in the House of Commons.

<sup>16</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/08/Public-Interest-Stories-from-Telegraph-Media-Group.pdf>

<sup>17</sup> February 2012, and various articles and dates thereafter

<sup>18</sup> December 2011, and various articles and dates thereafter

- 2.43** *'Inquiry into Stem Cell Clinic that offers help to Sick and Disabled'*.<sup>19</sup> This was a Sunday Telegraph undercover investigation at Europe's largest stem cell clinic, which was taking tens of thousands of pounds from the most vulnerable in society for unproven clinical treatments. The XCell-Centre clinic, in Germany, became the centre of a scandal following the revelation that it was conducting stem cell transplants which are illegal in Britain and most of Europe. Hundreds of British patients travel there each year. A Sunday Telegraph reporter was told that, if he underwent treatment at that clinic, there was a chance that he could be able walk again. The paper also uncovered that an 18 month old baby died and another was seriously injured following transplant of stem cells into their brains. The Sunday Telegraph investigation led to the clinic being closed by the German authorities but the paper and its journalists persisted with a follow up inquiry. These further investigations (reported in the paper in spring 2012) reveal that the chief executive and founder of the German clinic had now established another clinic in Lebanon.
- 2.44** *'Chronic Lack of Equipment Puts Soldiers' Lives at Risk'*.<sup>20</sup> In June 2007, the *Daily Telegraph* first disclosed worrying information about the lives of servicemen being at risk due to what it described as "*woefully inadequate*" resources. The paper highlighted serious supply problems and failures of equipment, such as the fact that only 70% of Chinook helicopters were available for use, only 50% of Apache helicopters were working and soldiers were buying their own binoculars as the Army supplied ones were inadequate. The Telegraph papers continue to report of worrying problems of this kind. Since the Coalition Government came into power, Telegraph revelations have included a private letter sent by the Defence Secretary warning the Prime Minister that "*draconian*" cuts in the defence budget cannot be carried out without "*grave consequences*". There continues to be strong Parliamentary and public interest in these issues.

## The Times

- 2.45** The Times has provided its view of the top five public interests stories published by the paper in the recent past. They are listed in evidence<sup>21</sup> and it is sufficient to select four examples. Headline and story provide sufficient detail.
- 2.46** *The tax avoiders* (19–21 June 2012). An undercover investigation by Times reporters revealed that thousands of wealthy people in Britain pay as little as 1% income tax. The comedian Jimmy Carr and members of the pop group Take That were named among those who used a Jersey based tax scheme that shelters £168 million from Her Majesty's Revenue & Customs (HMRC). As a result of The Times articles, the Prime Minister condemned Mr Carr's conduct and Mr Carr promised to conduct his financial affairs "much more responsibly". HMRC also vowed to shut down the "K2 scheme" used by Mr Carr and more than 1,000 others.
- 2.47** *"Fox in dock over links with "bogus aide"'"* (8–15 October 2011). Times reporters revealed that Adam Werrity, a defence consultant and friend of Liam Fox, the former Defence Secretary, was accompanying Dr Fox on trips around the world despite having no official role at the Ministry of Defence. The disclosures led directly to the resignation of Dr Fox.
- 2.48** *The Times' Adoption Campaign*, (April 2011). This Times investigation exposed the ways in which the adoption system had become riddled with delay and inertia, and how that had

<sup>19</sup> October 2010

<sup>20</sup> Various articles and dates

<sup>21</sup> p3, para 4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Fifth-Witness-Statement-of-Richard-Caseby.pdf>

affected children waiting for permanent new families. As well as stories, interviews, graphics and case studies, The Times commissioned Martin Narey, the former director-general of the Prison Service, to analyse the system and recommend reforms. The response was swift. First, in July 2011, the Government appointed Mr Narey as its first ministerial adviser on adoption with a remit to drive up the number of adoptions, especially at the worst performing local authorities. Then, in October 2011, the Prime Minister intervened to promise radical reform of the system. Finally, in December 2011, the Government announced it would scrap the bureaucratic assessment process for would-be adoptive parents and replace it with a more streamlined system.

- 2.49** *“Israel rains fire on Gaza with phosphorus shells”* (5 January 2009). The Times revealed that the Israeli Defence Force was using white phosphorus shells during an offensive over one of the most densely populated areas of the world. The shells, which can cause horrific burns, are banned under the Geneva Treaty of 1980 as a weapon of war in civilian areas, but not if they are used as a smokescreen. Human rights groups accused the Israelis of war crimes.

### MPs’ expenses

- 2.50** Over the years, there have been many examples of journalism at its best, resulting in ground breaking stories of national and international importance. The examples provided to the Inquiry by press Core Participants are no more than illustrative; and they are intended to underline that most journalists go about their work with legal and ethical principles very much in mind, and are willing to test the product of their work against what the public interest truly demands. It is not the intention of the Inquiry to identify what has been ‘the best’ or ‘the most important’ story but, without putting any one above any other, it is worth examining one of the recent ground breaking stories in a little detail, if only to demonstrate good practice and the proper exercise of editorial discretion.
- 2.51** On 8 May 2009, the Daily Telegraph published the first of a number of articles that detailed the expenses and allowance claims made by MPs over a period of four years from 2004–2008.<sup>22</sup> These claims contained a significant number of what were said to be fraudulent claims that breached both Parliamentary rules on expenses and allowances and, in some cases, the criminal law. The Telegraph’s exposé preceded the formal publication of data relating to MPs’ expenses and allowances by Parliament by a number of months. The data that formed the basis of the Telegraph’s stories was contained on one disk, supplied by an undisclosed source in exchange for payment of approximately £110,000. Representatives of the Daily Telegraph have told the Inquiry that, before deciding to buy the material, they satisfied themselves that the material was not, in fact, stolen and that its acquisition was not in breach of the criminal law.<sup>23</sup>
- 2.52** The disclosure by the Telegraph of MPs’ expenses claims was the subject of intense and extended media coverage and, indeed, public debate. The scale of wrong doing was quickly recognised by the then leaders of the major political parties. Such was the public outrage at the steady disclosure of expenses claims that MPs appeared to have tried to keep out of the public domain that, almost immediately, senior politicians offered an unreserved apology to the public. On 11 May 2009, the then Prime Minister, the Rt Hon Gordon Brown, apologised

<sup>22</sup> In the United Kingdom MPs can claim expenses, including the cost of accommodation, *“wholly, exclusively and necessarily incurred for the performance of a Member’s parliamentary duties”*. In the tax year 2007–2008, MPs’ cost of staying away from their main homes was limited to £23,083

<sup>23</sup> pp57–58, lines 18–5, William Lewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-10-January-2012.pdf>

*“on behalf of all politicians”* for the expenses claims that had been made. Later that day, the Leader of the Conservative Party, Rt Hon David Cameron, said that all MPs should apologise for the expenses scandal. He told the BBC that the system of expenses *“was wrong and we’re sorry about it”*.<sup>24</sup> On 12 May, Mr Cameron went further in his criticism of the claims made by some MPs and said that these were also *“unethical and wrong.”*<sup>25</sup> In a statement made to the House of Commons, the then Speaker of the House, Michael Martin, said that *“serious change”* was required in the future and that MPs should not just work within the rules, but rather in *“the spirit of what is right”*.<sup>26</sup>

**2.53** The impact of the revelations was significant. There was an immediate loss of confidence in the political system generally and in the established mainstream political parties in particular. This was most clearly manifest in an unprecedented spike in support for minority political parties. It was also reflected in the observations of leading commentators and thinkers. The editor of The Times, James Harding, called the unfolding scandal Parliament’s *“darkest hour”*.<sup>27</sup> On 23 May 2009, in a speech on the potential impact of the revelations on political life, the Archbishop of Canterbury, Dr Rowan Williams, warned that:<sup>28</sup>

*“the continuing systematic humiliation of politicians itself threatens to carry a heavy price in terms of our ability to salvage some confidence in our democracy.”*

Writing the same day in The Times, the columnist and former Conservative MP, Matthew Parris, suggested that:<sup>29</sup>

*“extravagance, genuine mistake, sly acquisitiveness and outright criminal fraud are now jumbled together in the national mind as though there were no moral differences”*.

### Background

**2.54** The publication of the details of expenses claims was neither the beginning nor the end of journalistic interest in the subject. Journalists had sought to uncover the detail of claims made by MPs through the use of powers granted under the Freedom of Information Act 2000 which had come into force in October 2004. The first requests for publication of MPs’ receipts date back to January 2005. Then, journalists Ben Leapman of The Sunday Telegraph, Jon Ungood-Thomas of The Sunday Times, and the freedom of information campaigner and journalist, Heather Brooke, submitted Freedom of Information requests relating to the expenses of 14 MPs, including the then Prime Minister Tony Blair, and the then Conservative front bencher, George Osborne.<sup>30</sup> These requests were twice rejected by the House of Commons authorities before they were appealed to the Information Commissioner, by Mr Leapman, Mr Ungood-Thomas and Ms Brooke, in the spring of 2005.<sup>31</sup>

**2.55** The then Information Commissioner, Richard Thomas, considered the three separate requests jointly for two years before, on 13 June 2007, deciding that the requested information should be disclosed.<sup>32</sup> He ruled that the disclosure should be in abridged and aggregated form and

<sup>24</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics/8043057.stm](http://news.bbc.co.uk/1/hi/uk_politics/8043057.stm)

<sup>25</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics/8044998.stm](http://news.bbc.co.uk/1/hi/uk_politics/8044998.stm)

<sup>26</sup> <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090511/debtext/90511-0003.htm>

<sup>27</sup> p1, James Harding, The Times, (15 May 2009, London)

<sup>28</sup> <http://news.bbc.co.uk/1/hi/uk/8064828.stm>

<sup>29</sup> p4, Matthew Parris, The Times, (23 May 2009, London)

<sup>30</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics/7233560.stm](http://news.bbc.co.uk/1/hi/uk_politics/7233560.stm)

<sup>31</sup> [http://news.bbc.co.uk/1/hi/uk\\_politics/7233560.stm](http://news.bbc.co.uk/1/hi/uk_politics/7233560.stm)

<sup>32</sup> ICO Case reference: FS50079619 available at [http://www.ico.gov.uk/tools\\_and\\_resources/decision\\_notices.aspx](http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx)

without the publication of the relevant receipts underpinning those claims. However, the Information Commissioner's decision was appealed by the House of Commons authorities later that month.<sup>33</sup> They argued that the disclosure would be "*unlawfully intrusive*".<sup>34</sup> The case was passed to the Information Tribunal to decide. The journalists who had submitted the original requests also appealed the decision.

- 2.56** Two months previously, in May 2007, a majority of MPs had voted for the Freedom of Information (Amendment) Bill introduced by the Conservative MP, David MacClean, which proposed to exempt MPs from the terms of the 2000 Act. The Bill was withdrawn shortly before its second reading in the House of Lords as peers were not willing to sponsor the bill.<sup>35</sup> Although unsuccessful, this was the first of three attempts by Parliamentarians to restrict the application of the Freedom of Information Act to Parliament ahead of the formal publication of MPs' expenses claims. In July 2008, amendments to the Freedom of Information Act 2004 were passed by Parliament. These exempted the addresses of Members of Parliament from the terms of the Act. Lastly, in January 2009, Harriet Harman QC MP, then the Leader of the House of Commons, tabled a motion intended to exempt expenses claims from disclosure under the Freedom of Information Act. Although Government MPs were placed under a three line whip, opposition Conservative and Liberal Democrat MPs opposed the motion. On 21 January 2009, the proposals were formally dropped by the Government.
- 2.57** In February 2008, the Information Tribunal published its decision on MPs' expenses, rejecting the defence put forward by the House of Commons authorities.<sup>36</sup> Further, it ordered the release of information on 14 MPs.<sup>37</sup> The hearings that led to the decision were not without further controversy: in particular, there were revelations around the content of the so called John Lewis list which set out the amounts that could be claimed for particular items without question or justification. The items on the list were benchmarked against the purchase price for such items at the John Lewis department store chain.
- 2.58** The decision of the Information Tribunal to order the publication of expenses was the subject of an immediate appeal to the High Court by a small number of senior MPs representing each of the main political parties. On 16 May 2008, the court ruled that the requested details of MPs expenses should be released.<sup>38</sup> Moreover, the High Court also ruled that further details not included in the original order made by the Information Commissioner should be disclosed, including addresses. Following the High Court ruling, no further appeal was lodged and, on 23 May 2008, the expense claims of 14 MPs, including the former Prime Minister Tony Blair and the Foreign Secretary, Margaret Beckett, were made public.
- 2.59** The ruling of the High Court and the subsequent disclosure of the expenses of the 14 MPs named in the test case, did not lead directly to or necessarily expedite the publication of the expenses claims of all MPs scheduled by the House of Commons authorities. It had been intended that publication would take place in November 2008 but the date of the release of the information was pushed back until the summer of 2009, ostensibly to allow for the

<sup>33</sup> <http://www.guardian.co.uk/politics/2008/may/07/houseofcommons>

<sup>34</sup> Anil Danwar, the Guardian, (7th May 2008, London), <http://www.guardian.co.uk/politics/2008/may/07/houseofcommons>

<sup>35</sup> <http://www.cfoi.org.uk/macleanbill.html>

<sup>36</sup> Decision of the Information Tribunal Case Reference numbers: EA/2007/0060, EA/2007/0061, EA/2007/0062, EA/2007/0063, EA/2007/0122, EA/2007/0123, EA/2007/0131 available on <http://webarchive.nationalarchives.gov.uk/20110206200309/http://www.informationtribunal.gov.uk/Public/search.aspx?Page=27>

<sup>37</sup> Decision of the Information Tribunal Case Reference number: EA/2007/0060, <http://webarchive.nationalarchives.gov.uk/20110206200309/http://www.informationtribunal.gov.uk/Public/search.aspx?Page=27>, p28, ss96-97

<sup>38</sup> Corporate Officer of the House of Commons v The Information Commissioner & Ors [2008] EWHC 1084 (Admin) reported at [2009] 3 All ER 403, <http://www.bailii.org/ew/cases/EWHC/Admin/2008/1084.html>

proper collation of the data.<sup>39</sup> In April 2009, the House of Commons authorities announced that publication of expenses, with certain information deemed “sensitive” removed, would take place in July 2009.<sup>40</sup>

**2.60** On 18 June 2009, more than one month after the first disclosures in the Daily Telegraph, the details of all MPs’ expenses and allowance claims approved by the House of Commons authorities during the period from 2004 to 2008 were published on the official Parliament website. However, a number of details, including personal data such as addresses, were redacted. The published data also excluded claims made by Parliamentarians that had not been approved for payment by the House of Commons authorities, as well as related correspondence between MPs and the Parliamentary fees office. These omissions resulted in further allegations in the press of unnecessary secrecy, and also served to confirm an increasingly widespread suspicion that the most serious abuses of the expenses system would not have come to light had the redacted documentation been the only information available. Details of voluntary repayments by MPs amounting to almost £500,000 were also published by the House of Commons authorities.<sup>41</sup>

**2.61** It is noteworthy that shortly after the publication of the first of the disclosures in the Daily Telegraph, the House of Commons authorities asked the Metropolitan Police Service (MPS), to investigate the journalistic activities of the paper. This request was declined by the MPS on the grounds that a prosecution would not, in any event, be in the public interest (although, as identified above, the then editor of the Daily Telegraph made clear in his evidence that the advice that he received was that no criminal act had taken place).<sup>42</sup>

#### *Disclosure by the Daily Telegraph: the story*

**2.62** On 30 April 2009, the Daily Telegraph obtained access to a full copy of all expenses claims made by MPs between 2004 and 2008. This data had been purchased from a middleman, Major John Wick, for the sum of approximately £110,000. The material had also been offered to other newspapers including The Times and The Sun. Mr Harding confirmed in evidence that his newspaper decided against purchasing the information because of concerns that it may have been stolen.<sup>43</sup> The Daily Telegraph began publishing in instalments, from 8 May 2009, the details of expenses claimed by certain MPs.

**2.63** Mr Lewis has given evidence at length to the Inquiry about the process which led to the purchase of the material by the Daily Telegraph. He said that the decision to purchase and publish the material was iterative: senior management at the newspaper were consulted throughout and fully aware of the need to establish the provenance and legality of the material, as well as the need to make most effective use of the limited ten day’s worth of access to the data that the Daily Telegraph had purchased in the first instance.<sup>44</sup> Mr Lewis also made clear that conditions based on fairness and impartiality were attached to the sale of the material by the seller.<sup>45</sup> Mr Lewis has said that he was mindful that the need to meet those

<sup>39</sup> p3, [www.parliament.uk/briefing-papers/SN05784.pdf](http://www.parliament.uk/briefing-papers/SN05784.pdf)

<sup>40</sup> p4, [www.parliament.uk/briefing-papers/SN05784.pdf](http://www.parliament.uk/briefing-papers/SN05784.pdf)

<sup>41</sup> <http://news.bbc.co.uk/1/hi/8493634.stm> accessed on 31 May 2012

<sup>42</sup> p17, para 31.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-William-Lewis.pdf>

<sup>43</sup> pp82-83, lines 19-13, James Harding, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>

<sup>44</sup> p59, line 4, William Lewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-10-January-2012.pdf>

<sup>45</sup> p58, line 21, William Lewis, *ibid*

conditions determined the scope and sequencing of the eventual publication of the material from 8 May.<sup>46</sup>

- 2.64** Mr Lewis told the Inquiry that the purchase and publication of data was a “*story laced with risk*”.<sup>47</sup> He said that those risks existed on a number of levels. First, senior management at the Daily Telegraph were worried that the material may have been fabricated as part of an elaborate hoax. He suggested that the memory of The Sunday Times’ publication of ‘the Hitler diaries’ in the early 1980s<sup>48</sup> had cast a long shadow over many of those who were in some way involved with that story.<sup>49</sup> Mr Lewis said that the legality of the data was also a serious consideration. However, Mr Lewis’ position was that there was an overriding public interest in ensuring that the data entered the public domain, and in exposing what he described as “*profound wrong-doing at the heart of the House of Commons*”,<sup>50</sup> as well as to ensure that readers were informed about how the “*MPs were fleecing the taxpayer*”.<sup>51</sup> Further, Mr Lewis told the Inquiry that the decision to publish was justified because the official disclosure of these expenses claims by the House of Commons authorities would have omitted key information, particularly around the re-designation of second-home nominations. Mr Lewis confirmed that the public interest in publishing data, rather than any commercial value or advantage to the newspaper, was the determining factor in the decision to purchase and publish the data.<sup>52</sup>
- 2.65** Aside from the advice on the criminal law which the Daily Telegraph received, Mr Lewis explained that there were further legal considerations that the newspaper had to overcome ahead of publication of the material. Specifically, these were around the conditions set down by the source of the data, and focused on payment for the data, the legal protection of the source and the fair and balanced treatment of the material.<sup>53</sup>
- 2.66** For Mr Lewis, the greatest challenge faced by the newspaper was in the analysis of the data itself within the initial ten day time-frame permitted under the terms of the sale.<sup>54</sup> This, Mr Lewis said, was undertaken by a dedicated MPs’ expenses team working solely and secretly on the data.<sup>55</sup> The team examined more than 1 million documents on the disk, representing about half of the total data set.<sup>56</sup> There followed serious consideration with colleagues at the paper as to how best to ensure that the revelation of the data was fair and balanced. In addition, the newspaper wrote to the MPs concerned in order to seek confirmation from them of the veracity of the claims. It was only when the then Justice Secretary, the Rt Hon Jack Straw MP, responded to the paper confirming the detail of his claims and providing an explanation for them that Mr Lewis felt sufficiently confident to proceed with publication of the story.<sup>57</sup>

<sup>46</sup> p58, lines 23-24, William Lewis, *ibid*

<sup>47</sup> p56, lines 15-16, William Lewis, *ibid*

<sup>48</sup> pp39-40, lines 25-19, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-25-April-2012.pdf>

<sup>49</sup> pp55-56, lines 23-8, William Lewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-10-January-2012.pdf>

<sup>50</sup> p61, lines 11-15, William Lewis, *ibid*

<sup>51</sup> p62, line 17, William Lewis, *ibid*

<sup>52</sup> pp61-62, lines 21-1, William Lewis, *ibid*

<sup>53</sup> p58, lines 16-25, William Lewis, *ibid*

<sup>54</sup> p59, lines 4-5, William Lewis, *ibid*

<sup>55</sup> p59, lines 4-12, William Lewis, *ibid*

<sup>56</sup> in all, the investigation involved scrutinising more than 4m documents, with a team of more than 10 reporters backed up by dozens of support staff

<sup>57</sup> p59, lines 13-25, William Lewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-10-January-2012.pdf>

**2.67** The Daily Telegraph revealed details of these expenses sequentially.<sup>58</sup> The first revelations concerned the expenses of the then governing Labour Party,<sup>59</sup> beginning with the claims made by members of the Cabinet.<sup>60</sup> Details of claims made by junior ministers and Labour backbenchers followed. A further tranche of expenses claims made by Labour MPs was published on 14 May.<sup>61</sup> In order to provide the fairness and balance imposed as a condition of purchase, the coverage did not focus exclusively on claims which had been made by the then Government. On 11 and 12 May, the Daily Telegraph revealed details of the expenses claimed by members of the Front Bench of the Conservative Party,<sup>62</sup> followed by the claims of backbench Conservative MPs. The expenses claims made by Liberal Democrat MPs were revealed last of the three main parties.<sup>63</sup>

### *Areas of abuse*

**2.68** In addition to the exposition and publication of specific allegations of incorrect claims, including claims for the cost of mortgages already repaid in full, the Daily Telegraph also set out alleged abuses of the Parliamentary “Green Book” rules on expenses and allowances. These, the newspaper rightly contended, provided considerable scope for a number of different abuses. In particular, the abuses set out by the Daily Telegraph related to costs of maintaining two residences, one in the constituency and one in London. Other alleged abuses brought to the public attention by the Daily Telegraph included (but were not limited to):

- nominating second homes: the Green Book states that “*the location of your main home will normally be a matter of fact*”. MPs and peers were able to ensure that their second home was the one which enabled them to claim more expenses;
- redesignating second homes: MPs were able to switch the designation of their second home, enabling them to claim for purchasing, renovating and furnishing more than one property. This practice has become known as “flipping”;
- subsidising property development: the Green Book rule that MPs could not claim for repairs “*beyond making good dilapidations*” was not enforced, and consequently MPs were able to add significantly to the value of a property. By implication some “second homes” were effectively businesses not homes since they were renovated on expenses and then rapidly sold;
- claiming expenses while living in “grace and favour” homes: Ministers with “grace and favour” homes in Westminster were also able to claim for a “second home” as well as their existing primary residence;
- overclaiming for food: MPs were permitted to claim up to £400 for food each month without receipts, even when Parliament was not sitting; and
- overspending at the end of the financial year: MPs were able to submit claims just before the end of the financial year, so as to use up allowances, without being challenged as to their legitimacy.

<sup>58</sup> p18, para 31.5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-William-Lewis.pdf>

<sup>59</sup> *ibid*

<sup>60</sup> *ibid*

<sup>61</sup> *ibid*

<sup>62</sup> *ibid*

<sup>63</sup> *ibid*

### Parliamentary reaction

**2.69** The expenses claims disclosed by the Daily Telegraph and subsequent public anger at the behaviour of MPs led to substantial changes to the manner in which Parliamentary expenses and allowances were administered. On 20 May 2009, Ms Harman, announced the creation of the Independent Parliamentary Standards Authority to manage Parliamentarians' expenses independently of any interference from Parliament.<sup>64</sup> Further, an independent Panel chaired by Sir Thomas Legg was established to examine all claims relating to the second home allowance between 2004 and 2008. The panel published its findings on 12 October 2009 as MPs returned to Parliament following the summer recess.<sup>65</sup> Many claims that had previously been regarded as legitimate were now considered to have breached the rules.

### Consequences

**2.70** As a direct result of the Daily Telegraph's exposé:

- (a) four MPs and two peers have been imprisoned; some peers have been excluded from the Lords' Chamber until repayment of their claims; and one former MP has been found unfit to stand trial, although in a trial of issue the jury found that she had committed false accounting and used false instruments;
- (b) several other MPs remain subject to police investigation;
- (c) there was the biggest shift in the composition of Parliament for a generation, with more than 100 MPs announcing their intention to retire or leave the House of Commons;
- (d) six ministers resigned or were reshuffled amid controversy over their expense claims;
- (e) the first resignation of the Speaker of the House of Commons in generations occurred;
- (f) more than £1 million in taxpayers' money has been returned to Parliamentary authorities by MPs;
- (g) a new transparent system with an independent regulator was established. In its first year, the new system led to a reduction in the cost of the MPs' expenses scheme of £15 million; and
- (h) in addition, the investigation led to wide areas of Government expenditure being opened up to public scrutiny and the acceptance that, as the Prime Minister put it: '*sunlight is the best disinfectant*'.

**2.71** The Daily Telegraph's detractors might say that the story brought the paper a huge publicity coup and the inevitable increases in circulation and sales: all the ingredients of a modern *succès du scandale*. Rupert Murdoch expressed his 'disappointment' that The Times had not felt able to buy up the story from the middleman when he was touting it around the market place. Overall, however, the Daily Telegraph earned whatever commercial advantages it secured from its substantial financial investment. Although it might be stretching language somewhat to call this a case of investigative journalism in the exact sense of the term (the material was effectively handed to the Daily Telegraph on a metaphorical plate and did not need to be rooted out in the manner of a Thalidomide investigation) the obvious public interest in the story and the fact that it was undeniably 'laced with risk' deserve full recognition. The data might have been bogus; there was certainly an issue as to whether some breach of the

<sup>64</sup> <http://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/the-new-parliament/parliamentary-standards-and-reputation/>

<sup>65</sup> <http://www.telegraph.co.uk/news/newsttopics/mps-expenses/6314659/MPs-expenses-Sir-Thomas-Legg-explains-his-rule-change.html>

criminal law had occurred (or, at the very least, ethical concerns surrounding the manner in which the data had been extracted and supplied); and a vast amount of work had to be undertaken to analyse and review the raw material not least to ensure accuracy. The legal and ethical issues were properly and responsibly addressed, and the Inquiry is fully satisfied that no corners were cut. This, as I am pleased to repeat, is an example of journalism at its best.

# CHAPTER 3

## COMPLAINTS OF AN UNETHICAL PRESS

### 1. Overview

- 1.1** As a prelude to the more detailed assessment and treatment of the evidence set out below,<sup>1</sup> this Part of the Report will summarise, with little weighing or assessment, the complaints voiced during Module One of the Inquiry of an unethical press. As cannot be over-emphasised, the criticisms are not of every title or every journalist, or even anything like every title or every journalist. The great majority of both perform their work admirably, ethically and with scrupulous attention to detail. The purpose of the Inquiry, however, was to address the practices of those who do not and any culture that is based on the latter rather than the former. Accordingly, references to unethical or unlawful practices of “the press” must be read as referring to such practices within “parts of the press”. It should be noted, however, that although some stories in the regional press have been the subject of criticism, the generic concerns are not directed to the regional press.
- 1.2** The initial wave of evidence received by the Inquiry from its first 21 witnesses, over five working days between 21 November and 28 November 2011, undoubtedly made an immediate and powerful impact within the Inquiry room and beyond. All those who spoke volunteered to do so; more have complained and some of the further statements have been put into the record of the Inquiry. Access to this evidence by the vast majority of the public has been through the Inquiry’s website which remains available to anyone who wishes to view or review this testimony: everyone therefore has the opportunity to test the Inquiry’s assessments and conclusions against this evidence base if so minded.
- 1.3** This Chapter summarises the thematic trends which emerged in the evidence given by the victims of unethical press practices in the first 5 days of the inquiry. But before beginning to examine these trends, it is possible to take a wider perspective. Complaints of an unethical press are of considerable lineage and are not confined to the United Kingdom. Of perhaps even greater relevance for present purposes is not so much the bare fact that such complaints have been made but rather the contemporary chord they often strike. For example, the great American jurists, Warren and Brandeis, writing in the Harvard Law Review in 1890 said this:

*“The press is overstepping in every direction the obvious bounds of propriety and decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle...”*

- 1.4** The reference to the need to satisfy a prurient taste hints at the commercial pressures operating on the press as long ago as 1890. More recently, Sir John Major writing at the very end of the twentieth century put the point somewhat differently:<sup>2</sup>

*“Across Fleet Street, sensational and exclusive stories sold extra copies – straight reporting did not. Accuracy suffered, squandered for something, anything, ‘new’. Quotes were reconstructed, leaks and splashes abounded, confidentiality was not respected and reputations sacrificed for a few days’ hysterical splash.”*

<sup>1</sup> Part F, Chapter 6

<sup>2</sup> Major, Sir J, *The Autobiography*, p359

- 1.5** At a perhaps higher level of generality, in mitigating his client’s case on his behalf at the sentencing hearing which took place on 26 January 2007, defence counsel for Clive Goodman said this:<sup>3</sup>

*“Mr Goodman has lived his life in a world where, and I say this with some trepidation, ethical lines are not always clearly defined, or at least observed...”*

- 1.6** Defence counsel was no doubt speaking on instructions when he made this submission. Regardless of the trepidation apparently evinced, the point counsel was making was not intended to be revelatory; rather, he was seeking to remind the judge that his client was operating within a wider press culture which did not always encourage best practice. It is unlikely that ‘the world’ he was referring to was confined to the microcosm of the News of the World (NoTW): it was intended as a wider metaphor comprising the press as a whole, or at the very least a section of it.

- 1.7** In his closing arguments on behalf of Northern & Shell, James Dingemans QC submitted, in the context of his succinct analysis of the culture, practices and ethics of the press, that:<sup>4</sup>

*“... [f]ourthly, the evidence shows that they have a tendency to see news as divorced from the individuals involved. Fifthly, in some areas, there has been shown a stunning lack of judgment to the extent that it might engage the criminal law, and I say no more about that; about where lines can properly be drawn between the public interest in acquiring news and privacy”*

- 1.8** In his closing remarks, Rhodri Davies QC on behalf of News International arguably went slightly further:<sup>5</sup>

*“Going on to the evidence heard in Module 1, there is no doubt that that made out the case that all has not been well with the press...”*

- 1.9** Finally, when asked for his assessment of the evidence the Inquiry received during Module One, Rt Hon Michael Gove MP, Secretary of State for Education recognised that the evidence disclosed a problem which was capable of being regarded as ‘serious’,<sup>6</sup> although he proceeded to observe that the cure might be worse than the disease. This, of course, raises a separate matter which will be relevant when discussing what ‘the cure’ might be. For present purposes it is sufficient to record that a wide range of witnesses, commentators, observers and interested parties have stated or opined that not all is well in the state of the culture, practices and ethics of the press: the complaints cannot be dismissed, as parts of the press have sought to do, as the whining of a few disgruntled celebrities.

- 1.10** The ground having being set, a thumb-nail sketch of the complaints of unacceptable press practice will now be set out under thematic sub-headings, recognising always a considerable element of overlap between many of these.

<sup>3</sup> Transcript of the proceedings before Gross J on 26 January 2007, p70E

<sup>4</sup> p66, lines 4-11, James Dingemans QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-23-July-2012.pdf>

<sup>5</sup> pp7-8, lines 25-2, Rhodri Davies QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-24-July-2012.pdf>

<sup>6</sup> p53, lines 23-24, Michael Gove, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-29-May-2012.pdf>

## 2. The complaints

### Failing to respect individual privacy and dignity

- 2.1** An overarching complaint which encompasses many of the individual cases set out below is that the press has failed always to treat individuals with common decency, and has failed always to respect individual privacy. This encompasses many of the unethical techniques complained of, including phone hacking, surveillance, blagging and harassment. It is also exemplified by complaints relating to the publication of private and/or sensitive material without any public interest justification, and the intrusion into grief or shock. Three of the 'case studies' examined below<sup>7</sup> are prime examples of this tendency: the way in which parts of the press treated the Dowlers, the McCanns, and Christopher Jefferies indicates a press indifferent to individual privacy and casual in its approach to truth, even when the stories were potentially extremely damaging for the individuals involved.
- 2.2** Further evidence relevant to this complaint included Sienna Miller's complaints of harassment, and the intrusion into the private grief of Anne Diamond and Baroness Hollins. Further evidence suggesting that parts of the press have failed to respect individual dignity and privacy were the examples seen by the Inquiry of the access and publication of sensitive personal information, including medical information, without any or any adequate consideration of the rights of, and effects on, the person in question and his or her family. Examples included the publication of confidential medical information relating to one of Gordon Brown MP's children in 2006, and the publication of extracts of the Kate McCann diaries in the NoTW in 2008: these are both the subject of detailed analysis below.
- 2.3** The key issues to be considered under this heading are whether practices existed within the press consistent with an unethical culture of seeing individuals (and celebrities in particular) as objects, that is to say, simply as material for a story; whether there was an unethical cultural indifference to the consequences of exposing private lives; and, whether there was an unethical cultural indifference to the public interest in exposing private lives, exemplified by failures to put in place adequate procedures to ensure that potentially relevant public interest considerations were addressed and recorded.

### Unlawful or unethical acquisition of private information

#### *Phone hacking*

- 2.4** A number of witnesses have alleged that they were the victims of phone hacking, in all but one case at the hands of a private investigator engaged, and perhaps journalists employed, by the NoTW.<sup>8</sup> Much of the supporting evidence is derived from the notebooks of the private investigator, Glenn Mulcaire, currently the subject of detailed review by the officers involved in Operation Weeting. Additionally, reliance may safely be placed for present purposes on the admissions and settlements made by News Group Newspapers in the civil proceedings and the acknowledgements that such actions were unacceptable and wrong made by representatives of that company, News International, and News Corporation before the Culture, Media and Sport Select Committee and the Inquiry itself.

<sup>7</sup> Part F, Chapter 5

<sup>8</sup> See the evidence of Charlotte Church, Sally and Bob Dowler, Mary-Ellen Field, Hugh Grant and Sienna Miller

- 2.5** Notwithstanding the number of arrests which have been made to date,<sup>9</sup> it is still not clear just how widespread the practice of phone hacking was, or the extent to which it may have extended beyond one title; and, in the light of the limitations which necessarily impact on this aspect of the Inquiry because of the ongoing investigation and impending prosecutions, it is simply not possible to be definitive. The evidence of Paul McMullan, Sharon Marshall and James Hipwell points to phone hacking being a common and known practice at the NoTW and elsewhere. In relation to other titles, the degree of knowledge, acquiescence and turning of the metaphorical blind eye may be difficult to assess quantitatively on the basis of the evidence the Inquiry has received (although a fuller analysis of this issue will be conducted below);<sup>10</sup> in qualitative terms, however, valuable evidence was obtained from witnesses such as Piers Morgan, Heather Mills, Jeremy Paxman and Dominic Mohan.
- 2.6** Although the Regulation of Investigatory Powers Act 2000 (RIPA) contains no defence of acting in the public interest, the Inquiry has examined the extent to which it could be argued that the hacking of voicemails was carried out in pursuit of stories which could properly and fairly be characterised as being in the public interest. There is no evidence that this is so: to such extent as the evidence has been ventilated, the hacking of voicemails was systematically deployed to garner pieces of gossip and tittle-tattle about the lives of celebrities and those otherwise in the public eye whether as victims of crime, politicians or potential sources for stories; in other words, to intrude into their privacy without any conceivable justification that could truly be argued to be in the public interest. Whereas in other contexts it has been argued by the press, or sections of the press, that there is a public interest in freedom of speech itself, and that an editor should be permitted to decide where the ethical balance falls, no such argument has been aired in this particular context.
- 2.7** Put at its very lowest, the Inquiry will need to consider whether, at least until 2006, there existed a culture within the press of indifference to the unlawfulness of the practice of phone hacking (or a lack of understanding of its unlawfulness, which itself is difficult to justify) and to its unethical nature. It will also be necessary to consider whether the evidence received is sufficient to reach conclusions in respect of the use of phone hacking at titles other than the NoTW.

### *Blagging*

- 2.8** Aside from the evidence generated by Operation Motorman,<sup>11</sup> a number of witnesses told the Inquiry how their privacy had been breached in contravention of the Editors' Code and also potentially section 55 of the Data Protection Act 1998, through the technique known as blagging. A flavour of this evidence may be given by furnishing a number of examples. In her witness statement<sup>12</sup> JK Rowling stated that, during the course of 1998, she received a telephone call purportedly from the Post Office. The caller explained that they had a package that the Post Office wanted to deliver but that they did not have Ms Rowling's address. On the face of it, this was a remarkable claim and, on being pressed to justify it by Ms Rowling, the caller swiftly hung up. It is difficult to avoid the inference that this was a journalist seeking personal information. Ms Rowling's husband-to-be appears to have received similar treatment by the press in 2000.<sup>13</sup> He was telephoned by a person claiming to be from the tax office seeking information regarding his address and earnings, and this was duly disclosed.

<sup>9</sup> Part E, Chapter 5

<sup>10</sup> Part F, Chapter 6

<sup>11</sup> Part E, Chapter 4

<sup>12</sup> p25, para 53, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-JK-Rowling2.pdf>

<sup>13</sup> p26, para 54, *ibid*

The following day this information was published by a Scottish newspaper and the paparazzi duly descended on Ms Rowling's future husband's home. The inference that the caller was a journalist is here even stronger.

- 2.9** HJK<sup>14</sup> gave a similar account of being the likely victim of this technique.<sup>15</sup> Again, there was a telephone call from someone claiming to be from the Royal Mail, but, on this occasion, the assertion was made that the address on a package had been ripped off and all that was left was the intended recipient's mobile phone number. HJK provided his/her address and later that month received an unwelcome visit from a journalist determined to find out whether he/she was in a relationship with X. The journalist was adamant as to the reliability of his sources, and subsequently proposed that HJK should come to 'an arrangement' with him regarding the disclosure of information. HJK refused to do so.
- 2.10** Overall, and in a similar manner to phone hacking, the Inquiry will need to consider whether there was a culture of indifference within the press as to the lawfulness of blagging (or a lack of understanding as to its unlawfulness), and to its unethical nature.

### *Email hacking*

- 2.11** The present state of affairs in relation to Operation Tuleta is set out elsewhere.<sup>16</sup> Given its current status it is difficult to reach any conclusions of a generic nature in relation to email hacking, save to observe that it remains possible that a considerable quantity of criminality will be exposed in due course.

### *Bribery and corruption*

- 2.12** Again, the present state of affairs in relation to Operation Elveden is set out elsewhere.<sup>17</sup> As of 31 October 2012 (Deputy Assistant Commissioner Sue Akers' fourth witness statement) a total of 52 individuals had been arrested by officers working on Operation Elveden; of these, 27 were current and former journalists (including journalists from The Sun; the Daily Mirror and its sister paper, the Sunday Mirror; and the Daily Star Sunday).<sup>18</sup> In an important piece of evidence, DAC Akers pointed out that offences of this nature were suspected to have been committed in at least three separate newspaper groups right up to early 2012.<sup>19</sup>
- 2.13** The fact that these arrests have occurred does not of course prove that an unlawful and unethical practice existed within the press of inducing, or seeking to induce, public officials to disclose confidential information about individuals or organisations; given the test required to justify arrest in the first place, it merely raises reasonable grounds to suspect that various offences may have been committed. Further, the ongoing criminal investigation hampers the ability of the Inquiry to explore the available evidence. Recognising these constraining factors, these developments cannot be dismissed as irrelevant.

<sup>14</sup> Witness anonymised under section 19 of the Inquiries Act 2005 to protect his or her Article 8 rights

<sup>15</sup> p2, para 4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-HJK.pdf>

<sup>16</sup> Part E, Chapter 6, sub-section 2 above

<sup>17</sup> *ibid*

<sup>18</sup> pp5-8, paras 14-23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf>

<sup>19</sup> pp6-8, paras 22-24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Third-Witness-Statement-of-DAC-Sue-Akers.pdf>. It must be emphasised that suspicion is no more than that. Every suspect remains innocent unless and until a criminal court determines otherwise

*Surveillance, subterfuge and similar intrusive methods*

- 2.14** A number of witnesses, as well as those contributing submissions on the Inquiry website, have described the use of covert surveillance or intrusive subterfuge by journalists or their independent contractors as a means of uncovering stories. This testimony covers a range of different techniques: by way of example, the deployment of private detectives to carry out what might be described as traditional surveillance of subjects; the recording of telephone conversations with subjects, sometimes coupled with the giving of assurances which are not kept; and the use of long-lens photography. At the very least, the issue arises of whether journalists give any, or any adequate, consideration to such surveillance being likely to generate relevant information in the public interest.
- 2.15** The evidence of journalists Sharon Marshall and Paul McMullan, which appeared to confirm the widespread use of such techniques by parts of the press, must be treated with a degree of caution. But it must also be considered in light of other evidence heard by the Inquiry. That evidence included the logbooks of private investigators Derek Webb<sup>20</sup> and Matt Sprake<sup>21</sup> which showed newspaper titles having commissioned covert and sometimes extended surveillance on hundreds of individuals, most of them so called celebrities, over a number of years. Mr Sprake's evidence that ethical questions were for the newspapers which commissioned his work rather than for him emphasised the importance of newspaper oversight of third parties.
- 2.16** Evidence from 'targets' of intrusive press techniques also supported the evidence of Ms Marshall and Mr McMullan. The inquiry heard of the gross intrusions into the privacy of lawyers Charlotte Harris and Mark Lewis by News International. It also heard of the paranoia caused by the surveillance on, and/or threats received by, politicians Tom Watson MP and Chris Bryant MP. Other witnesses, including Steve Coogan, gave evidence of the use by the press of duplicity and subterfuge to acquire stories that could not possibly be justified by the public interest.
- 2.17** The Report will need to consider the extent to which these practices and others were sporadic and limited or widespread and/or cultural within parts of the press.

**Unlawful or unethical treatment of individuals***Harassment*

- 2.18** A number of witnesses testified to a range of practices, including the use of intrusive photography, pursuit by photographers whether on foot or in vehicles, 'door-stepping' and 'staking out'. Here again the Inquiry will need to consider whether a culture existed within the press, or a section of the press, which encouraged or condoned these practices; or, insofar as these practices were perpetrated by independent contractors, which failed to ensure that sufficient steps were taken to ascertain whether information, photographs and data were acquired in a context in which an individual was subject to harassment.
- 2.19** Amongst the most cogent evidence of harassment of this nature was that given by the actress Sienna Miller. She gave a powerful account of acts of dangerous driving, and of being harassed, verbally abused and spat at by freelance photographers, until, that is, a court order protected her from such conduct in the future.<sup>22</sup>

<sup>20</sup> p4, para 9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Derek-Webb.pdf>

<sup>21</sup> pp3-10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Matthew-Sprake.pdf> Mr Sprake may prefer to call himself a photographer, but in substance he was a private investigator equipped with a camera

<sup>22</sup> p24, lines 12-18, Sienna Miller, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>

*“I would often find myself – I was 21 – at midnight running down a dark street on my own with ten big men chasing me and the fact that they had cameras in their hands meant that that was legal, but if you take away the cameras, what have you got? You’ve got a pack of men chasing a woman and obviously that’s a very intimidating situation to be in.”*

- 2.20** Ms Marshall in *Tabloid Girl* has written about the efforts that both she and her colleagues went to secure a story; common practices included the aggressive door-stepping of individuals. In one notable instance she described her efforts to door-step the broadcast journalist, Jeremy Paxman, by putting the same question to him 14 times,<sup>23</sup> in an attempt to report on rumours of an extramarital affair.<sup>24</sup> She described other occasions in which, whilst in pursuit of a story, she harried individuals at their home and refused to comply with requests to desist in her attempts to obtain a quote or break a story.<sup>25</sup>
- 2.21** Ms Marshall’s memoirs (which she sought to dilute in her evidence by talking about the use of ‘top-spin’) record a pattern of behaviour which is also described by a number of witnesses. Ms Miller, Sheryl Gascoigne and the McCanns gave consistent evidence of high-speed car chases by journalists and press photographers. Ms Gascoigne explained how, following her marriage to the footballer Paul Gascoigne, she was subjected to intense press scrutiny that sought to depict her as a money grabber and the cause of her husband’s issues with addiction and mental illness. This scrutiny went beyond coverage of her public appearances and extended to the sustained harassment of her in and around her home. At times it took extraordinary forms. One journalist followed Ms Gascoigne and her children from their home in Hertfordshire to the Bluewater shopping centre in Kent.<sup>26</sup>
- 2.22** In very different contexts, Christopher Jefferies and Kate and Gerry McCann described their experiences of sustained scrutiny and intrusion following the well-publicised events which attracted press interest. All three witnesses described how journalists and press photographers camped outside their homes, sometimes for days on end, making it impossible for them to go about their daily lives or indeed live comfortably or securely in the family home.<sup>27</sup>
- 2.23** In his witness statement Dr McCann told the Inquiry how at times his car was mobbed by journalists and photographers as he, or his wife, tried to drive with their family from their home. He recalled that journalists and press photographers banged on the car windows and shouted at the family even though their young children were not only visible but were also clearly distressed by such behaviour.<sup>28</sup>

### *Intrusion into grief or shock*

- 2.24** A number of witnesses told the Inquiry of occasions when journalists and press photographers intruded into moments of grief, shock and similar personal difficulty, in the face of clause 5 of the Editors’ Code and the wish of the witnesses to be left in peace. For example, Anne Diamond, the broadcast journalist and presenter, described how following the loss of her infant

<sup>23</sup> Ms Marshall claims that this was replicating Mr Paxman’s interview of a well-known politician in the 1970s

<sup>24</sup> Marshall, S, *Tabloid Girl*, pp51-52

<sup>25</sup> *ibid*, *passim*

<sup>26</sup> p6, paras 23-24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sheryl-Gascoigne.pdf>

<sup>27</sup> For broadly convergent accounts by other witnesses see: p8, para 24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>; pp3-6, paras 11-20, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf>; see p5, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-JK-Rowling2.pdf>

<sup>28</sup> p8, paras 47-48, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerald-Patrick-McCann.pdf>

son through cot death, she wrote to all the editors of the national newspapers asking them to stay away from the funeral. However, she told the Inquiry that she saw a photographer in the vicinity of the church, and that a photograph of her and her husband was then published on the front page of *The Sun* above a bogus story entitled ‘Anne’s plea’. The editor of *The Sun* rejected Ms Diamond’s husband’s request not to publish the photograph<sup>29</sup> and, following what she described as ‘emotional blackmail’, the family subsequently succumbed to pressure placed on them by the paper to join forces with *The Sun* to raise funds in aid of cot death research, rival papers carrying ‘spoiler stories’ shortly thereafter.<sup>30</sup> Thus, what should have been an intensely private moment of personal anguish was rendered all the more difficult and distressing.

- 2.25** Ms Diamond’s evidence on this topic related to events which occurred nearly 20 years ago, but not dissimilar evidence was given by Professor Baroness Sheila Hollins whose daughter Abigail was the victim of a brutal knife attack in April 2005. She told the Inquiry how a journalist tricked her way into the home of Baroness Hollins’ terminally ill mother and refused to leave until she was given a photograph of Abigail; eventually the police had to be called to secure her departure.<sup>31</sup> Similar acts of press intrusion and insensitivity included attempts to photograph Abigail at her grandmother’s funeral,<sup>32</sup> the taking and publishing of photographs of the whole family during a trip to Lourdes,<sup>33</sup> and surveillance of the entrance to Abigail’s home for a number of weeks. When one of the journalists in question was approached, he is alleged to have said that he was doing nothing wrong.<sup>34</sup>

### *Discrimination and the treatment of women and minorities*

- 2.26** The evidence bearing on this topic is addressed in Section 3 below when discussing the nature of the harm caused to public discourse by unacceptable press practices. The issue for consideration below<sup>35</sup> is whether an unethical culture, and concomitant practices, have existed within the press in relation to the discrimination and the treatment of women and minorities, in particular by demonstrating and fostering prejudice, unfairness and lack of respect and dignity, and failing to avoid prejudicial or pejorative reference to individuals’ race, colour, religion, transgender, gender, sexual orientation or disability.

### *Inaccuracy and inaccessibility*

- 2.27** Many witnesses have complained of stories about them being inaccurate or misleading (see, for the most egregious examples, the evidence of Christopher Jefferies and the McCanns); some have gone further to allege that evidence and quotations are deliberately fabricated in order to substantiate a story, add colour to it, or to pursue a particular line. Furthermore, organisations such as Full Fact have drawn to the Inquiry’s attention many examples of allegedly knowingly inaccurate or misleading reporting in areas such as asylum, immigration and climate change.

<sup>29</sup> p73, lines 6-15, Anne Diamond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-20111.pdf>

<sup>30</sup> pp73-75, lines 16-18, Anne Diamond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-20111.pdf>

<sup>31</sup> p14, lines 15-23, Professor Baroness Hollins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-2-February-2012.pdf>

<sup>32</sup> p2, para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Baroness-Hollins.pdf>

<sup>33</sup> p2, para 9, *ibid*

<sup>34</sup> p2, para 10, *ibid*

<sup>35</sup> Part F, Chapter 6

- 2.28** The point has already been made above<sup>36</sup> that it is in the nature of journalism that mistakes will be made: indeed, that is an unavoidable aspect of human nature itself. Deliberate falsification (or reckless reporting) of material and evidence is, of course, another matter altogether. The Inquiry will need to determine whether culture and practices exist within the press which fall short of the standards of accuracy which can reasonably be expected to be in the public interest. As part and parcel of this overall assessment, consideration will need to be given to whether, in particular, insufficient standards of care have been applied to avoiding the publication of inaccurate, misleading or distorted information, including pictures; and of whether misleading or inaccurate headlines have been deployed, knowingly or otherwise, with a view to attracting purchases.
- 2.29** Justice cannot be done to all the multifarious complaints of inaccuracy which the Inquiry received. Instead, for present purposes the focus will be on the evidence of a number of journalists. Both Richard Peppiatt and Sharon Marshall pointed to a propensity in some parts of the press towards a form of lazy journalism where quotes were made up to back a particular line in a story,<sup>37</sup> or where entire stories were built around fabricated quotations.<sup>38</sup> Both were also clear that in the newsrooms in which they worked this practice was neither limited to a small number of journalists nor deprecated. Rather, the practice was widespread, managers were aware of it and even offered cash incentives to staff.<sup>39</sup> It should be noted that this evidence has been strenuously denied by the papers concerned and that its quality wholly depends on the assessment the Inquiry makes as to their credibility and reliability as witnesses.
- 2.30** Similar evidence was provided to the Inquiry by Chris Atkins, the director of *Starsuckers*, a documentary on the willingness of tabloid newspapers to run stories supplied by third parties with little or no basis in truth. Mr Atkins described supplying one newspaper with a fabricated story about a particular celebrity's hair catching on fire at a party. In addition to running the story without making due efforts to check its authenticity, the paper further embellished the story by inventing a pithy conclusion: the paper wrote that another person at the party had put the fire out by punching the woman in her 'barnet'.<sup>40</sup>
- 2.31** Evidence of falsification and inaccuracy presented to the Inquiry goes beyond the fabrication of single or even small numbers of facts associated with a story or with a witness. Hugh Grant gave evidence about the publication in the Sunday Express of an entire article supposedly written by him; in fact, he had had nothing to do with it.<sup>41</sup>
- 2.32** In a revealing exchange with Robert Jay QC, Dawn Neesom, the editor of the Daily Star, said this:<sup>42</sup>

*Q. There might be a kernel of truth in the story, but in order to make it more appetising and entertaining to its readers, which obviously you are plugged into –*

*A. Yes, of course.*

<sup>36</sup> Part F, Chapter 2

<sup>37</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Pepiatt.pdf>; and Marshall, *S, Tabloid Girl*, p227-228

<sup>38</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Pepiatt.pdf>; and Marshall, *S, Tabloid Girl*, p201

<sup>39</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Pepiatt.pdf> p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Chris-Atkins1.pdf>

<sup>41</sup> pp9-10, lines 24-17, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>42</sup> P41, lines 17-23, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

Q. *you spin, embroider and weave around the edges of the story. Does that happen?*

A. *It's – I wouldn't quite put it in those words, but as I say, it's written in a style that we know works for our readers.*

- 2.33** On a separate but related topic, a considerable number of witnesses and commentators have complained about the use of misleading and inaccurate headlines, often it seems knowingly used in order to attract custom. By way of example only, a number of such instances were put to Ms Neesom,<sup>43</sup> and at least in one case she deployed the somewhat euphemistic adjectives 'dramatic' and 'eye-catching' to characterise the inaccurate headline used. She also accepted in this context, and perhaps in others, that newspapers do on occasion 'cross lines'.<sup>44</sup>
- 2.34** As with all these complaints of unethical conduct, an assessment will need to be made below<sup>45</sup> as to whether this particular problem is sporadic on the one hand or illustrative of a cultural strand within press practice on the other.
- 2.35** Aside from these complaints of inaccuracy, the Inquiry has also received a body of evidence which, on analysis, may be characterised as amounting to a generic complaint of it being difficult, if not impossible, for readers to assess for themselves the evidential basis for what is apparently being put forward as fact. This evidence may be categorised as follows: that there has been an insufficiently clear distinction between comment, conjecture and fact, as required by clause 1 of the Editors' Code; that insufficient information has been provided in relation to the sources of material published, on occasion giving rise to the suspicion if not the inference that the source did not exist; and, that insufficient care has been taken in relation to the special public interest in the understanding of material relating to public health, medical and other scientific matters.
- 2.36** It is fully understood that each of these three categories gives rise to its own set of problems. Newspapers are, of course, entitled to speculate and to offer their own opinions, and the definition of what is 'fact' is capable of being controversial, depending on the context. Furthermore, as a number of Core Participants have pointed out, with reference to legal authority, the distinction between fact and opinion in the specific context of the law of defamation is itself one of judgment: each does not require a separate, self-contained article or section of the newspaper, provided that it is reasonably clear to the reader from the tone and language used which is which. However, the complaint that has frequently been made is that, even with this element of latitude, fact and opinion are often so co-mingled that the reader is misled. Clause 1 of the Editors' Code correctly recognises the importance of this distinction, particularly in circumstances where the reader is placing trust in the newspaper as a reliable purveyor of news as fact. Many have complained that clause 1 is more honoured in the breach than in the observance, and the validity and strength of this complaint will therefore need to be assessed.
- 2.37** The issue of journalistic sources is more controversial, not least because clause 10 of the Editors' Code places a moral obligation on journalists to protect their confidential sources. If this obligation were to be interpreted as being *absolute*, in the sense of being incapable of yielding to countervailing public interest considerations, then clause 10 itself would be exceptionable as going further than the protections accorded to journalists under Article 10 of the ECHR and the law of contempt. In any event, there is a wider concern here, namely that journalists may not always act ethically when invoking what protections they should properly enjoy. The evidence heard from Richard Peppiatt, Alastair Campbell, Hugh Grant and Magnus

<sup>43</sup> pp52-58, lines 16-22 and pp62-67, lines 25-14, Dawn Neesom, *ibid*

<sup>44</sup> pp56-57, lines 17-1, Dawn Neesom, *ibid*

<sup>45</sup> Part F, Chapter 6

Boyd raised the strong suspicion, even if it did not provide conclusive evidence, that some journalists habitually refer to ‘sources’ even where the latter do not exist or where they have never said that which is attributed to them. But readers will never know where the truth lies, and will never acquire the means of finding out, because abuses of the system are extremely difficult to prove. The anonymous source (and one who truly requires anonymity as the price for giving up the story) can of course be an extremely valuable tool in the hands of the ethical and scrupulous journalist, but the possibilities for abuse are legion. An assessment will need to be made as to the extent to which the important principle of the anonymous source is abused, even if there is no obvious solution to that abuse.

- 2.38** The third category of complaint under this rubric is one articulated by a number of special interest groups in relation to scientific, medical and public health reporting: not simply is the concern one of inaccuracy, it also covers a failure to provide sufficient information to facilitate public understanding of what can often be complex and multi-faceted issues, where there may be no ‘right’ answer. The complaint has been variously expressed: as one of imbalance; or one of unreliability; and, in clear-cut instances, as one of frank inaccuracy. Again, it is appreciated that complex issues have to be set out in a manner comprehensible to readers, and that newspapers often succeed in distilling and presenting these in an admirably user-friendly fashion. The issue which arises, though, is whether there exists a strand of unacceptable practice within the press which needs to be recognised and addressed.

## Treatment of critics and complainants

### *General discouragement of public criticism*

- 2.39** Numerous individuals in public life have complained in evidence to the Inquiry that they have been afraid or unwilling to confront the power of the press, or – putting the matter another way, failings in the culture, practices and ethics of the press – owing to concerns about personal attack and vilification. The issue for consideration is not whether these fears are honestly held (given the weight of convergent evidence, this could not seriously be disputed) but rather whether the press has by its conduct caused, fostered or permitted such an ‘atmosphere’ to exist and be perpetuated whereby such fears have naturally spread.
- 2.40** The corpus of evidence relevant to this issue is vast, but for present purposes it can be considered in three parts. First, the Inquiry heard evidence of overt intimidation of those who had criticised the press. For example, after writing critical articles about the Daily Star in particular, and the tabloid press in general, Richard Peppiatt received threatening phone calls and text messages saying that he was “*a marked man until the day you die*”. Similarly, while Hugh Grant was criticising tabloid press ethics while appearing on Question Time, the mother of his child was called and told to “*Tell Hugh Grant to shut the fuck up*”.
- 2.41** Second, a significant number of the witnesses who testified during the first two weeks of Module One gave evidence of their fears of, or actual retaliation, by the press in response to complaints. JK Rowling made the point very compellingly in these terms:<sup>46</sup>

*“I would like to emphasise that what I’m about to say does not apply to the whole of the British press, but it is my experience with certain sectors of the British press. If you lock horns with them in this way, if you protest or you make a complaint, then you can expect some form of retribution fairly quickly, and I thought the fact that in this case a picture of my child was put into the papers, so very quickly after I’d asked them not to print my address, I thought that was spiteful, actually. Just spiteful.”*

<sup>46</sup> p68, lines 14-23, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

- 2.42** Her experience was consistent with a body of evidence received by the Inquiry suggesting that a practice has existed within the press of obtaining or publishing material about individuals or organisations with whom they have been in dispute or disagreement, in circumstances where it is legitimate to conclude that the aim was to ‘pay back’ or ‘punish’ for the disagreement by causing distress, embarrassment or discomfort, rather than because the article had a public interest for the readership.
- 2.43** Two possible examples of this practice may be provided at this stage although each will be discussed in greater detail below.<sup>47</sup> The first concerns what may be described as ‘real-time’ evidence generated by or during the course of the Inquiry: the Daily Mail accused Hugh Grant of ‘*a mendacious smear*’ after he had given evidence to the Inquiry when he speculated that his voicemail had been hacked by or on the instructions of Daily Mail journalists.<sup>48</sup> Second, a very similar sort of allegation was made by The Sun against Gordon Brown MP in relation to his claims of how the paper had obtained details of his son’s medical condition.<sup>49</sup> The terminology used by the paper was that Mr Brown’s allegation had been ‘false and a smear’.<sup>50</sup> The very obvious parallels between the two stories are notable, and an assessment is made below<sup>51</sup> of the extent to which the press response in those examples was fair and/or to what extent it reflected a wider culture of aggressive defence.
- 2.44** Third, examples were provided of aggressive press attacks on decision makers who brought proposals, or made decisions, perceived to be adverse to parts of the press. Vitriolic attacks by The Sun on female critics of Page 3 were prime examples. A further example was the press response (and not just the NoTW) to Max Mosley’s victory in his privacy action before Mr Justice Eady, which often appeared high in critical volume but low on reasoned and measured analysis. Some editors resorted to *ad hominem* attack, characterising the judge as being ‘arrogant’ and ‘immoral’.<sup>52</sup> Adverse comment about judges, and in relation to judicial decisions, can be entirely legitimate and represent the proper exercise of the right to challenge: I am not, for one moment, seeking to suggest otherwise. In this case, however, as was pointed out in the Culture, Media and Sport Select Committee Report on Press Standards, Privacy and Libel,<sup>53</sup> the criticism of the ruling was too often based on a frank misunderstanding of the judicial role in applying the well-established principles set out in Article 8 of the ECHR as explained by the Strasbourg court. In any event, it is worth pointing out that if, Mr Justice Eady had erred in this regard, it was open to News International to appeal his decision to the Court of Appeal: it did not do so. Had there been good grounds of appeal, it is implausible that News International would not have sought to exercise its rights.
- 2.45** The point goes further: quite apart from the extent to which titles do, in fact, write critically about those who have challenged them (all in the name of the exercise of free speech), the climate is such that that there is an undeniable perception that this is precisely what will

<sup>47</sup> Part F, Chapter 5

<sup>48</sup> pp85-94, lines 5-21, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>, pp89-125, lines 20-11, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-9-February-20121.pdf>; p9, line 14, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>; pp30-65, lines 2-16, Liz Hartley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-11-January-2012.pdf>

<sup>49</sup> pp26-34, lines 5-12, Gordon Brown, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-11-June-2012.pdf>; p8, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Witness-Statement-of-Gordon-Brown-MP.pdf>

<sup>50</sup> p34, lines 19-25, Rebekah Brooks, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-11-May-2012.pdf>

<sup>51</sup> Part F, Chapter 5

<sup>52</sup> Speech to the Society of Editors 9 November 2008, <http://www.pressgazette.co.uk/story.asp?storycode=42394>

<sup>53</sup> paras 68-76, <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/362/362i.pdf>

happen. Witnesses were reluctant to give evidence because of the fear of press retribution; some overcame that expression of fear but others did not. I do not make any finding or reach any conclusion based upon what is not part of the evidence but the same inference may be drawn from the unwillingness of journalists to speak out (which resulted in the necessity to hear evidence anonymously through the National Union of Journalists). The fear of journalists was not merely that the relevant title would not employ them: it was that a consequence of speaking out would be that they would no longer be able to obtain any employment in the national press. This feature alone raises real concerns about the culture and practices of the press, in closing ranks and refusing to accept and recognise that legitimate debate about its own role and methods of working is not to be shut down but encouraged.

#### *Failure to take reasonable steps to pre-notify*

- 2.46** Article 8 of the ECHR does not place an obligation on newspapers to pre-notify the subjects of intended stories as a matter of course<sup>54</sup> and it is easily understood why some stories cannot be the subject of pre-notification. However, concerns have been expressed during the course of the Inquiry that, in some of those cases where pre-notification did not occur, culture and practices have existed within a section of the press of deliberate decisions not to take reasonable steps to pre-notify the subjects of news articles in advance, without there being a good reason not to do so. The principal aim of this was to unfairly deny the subject of the article the possibility of verifying or challenging it, or to ensure that the story is not lost to a competitor. A number of journalists and editors testified to a reluctance to pre-notify in certain situations; the evidence relating to Max Mosley's privacy action and the publication of the Kate McCann diaries provides a powerful insight into the key drivers of press conduct in this type of situation. Each of these cases is considered as an individual example below,<sup>55</sup> but the absence of pre-notification is not examined as a problem to be addressed generally. All the evidence suggested that a failure to pre-notify was the very rare exception rather than a recurring practice or culture within the press.

#### *Failures to take reasonable steps to remedy*

- 2.47** Numerous witnesses gave evidence to the Inquiry of the difficulties they have faced in seeking an opportunity to reply to inaccuracies in stories (notwithstanding clause 2 of the Editors' Code) and in securing corrections or apologies, either at all or published with suitable prominence. Given the weight of evidence bearing on this issue (which is considered in detail below),<sup>56</sup> it may well be difficult for anyone to deny the existence of a problem;<sup>57</sup> it will, however, be necessary to examine whether its manifestation may fairly be characterised as illustrative of a cultural failing in the press or a section of the press.

## 3. The harm

- 3.1** Overall, it is possible to group these complaints of unethical practices by the press under two general headings. First, there are a series of complaints which, however formulated, amount in essence to an allegation that the press have failed to respect the rights and personal autonomy of individuals in circumstances where there is no, or no sufficient, public interest justification for that failure. Second, there are complaints of inaccuracy in press reporting, either in relation to what individuals have or have not done, or in relation to what might be described as matters of general public interest.

<sup>54</sup> Mosley v UK 2011 (Application No 48009/08)

<sup>55</sup> Part F Chapter 5

<sup>56</sup> Part F, Chapter 6 and Part J, Chapter 5

<sup>57</sup> pp56-57, lines 23-5, Sir Christopher Meyer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-31-January-2012.pdf>

- 3.2** All the ramifications of unethical conduct by the press need fully to be understood. Some of these may be obvious: defamatory reporting in relation to individuals is capable of destroying reputations although an action in libel goes some way to restore the position. Breaches of privacy may also do the same, and the fact that a story happens to be true (although it should never have been published) may lead to damage which cannot be repaired. This consequence is not inevitable because a breach of privacy which does not result in publication of any story may have only very limited (if any) adverse consequences: the private information may only be shared between a handful of journalists who themselves decide to keep it private. However, this prospect aside, some of the consequences of unethical conduct by the press are less obvious and therefore require exposition. Furthermore, consideration needs to be given to the broader, and perhaps deeper, consequences for a mature democracy respectful of the rights and freedoms of individuals of inaccurate and unjustifiably intrusive press reporting. This section of the Report will begin to examine these issues.

## Consequences of intrusive reporting

### *Phone hacking*

- 3.3** While phone hacking itself is a ‘silent crime’ inasmuch as the victim will usually be unaware of, or not even suspect, the covert assault on his or her privacy, its consequences – both direct and indirect – have often been serious and wide-ranging, as the evidence submitted to the Inquiry and separately generated by the phone hacking litigation has demonstrated.
- 3.4** The Inquiry has heard how the details of private lives, known only to the witnesses testifying (in other words, the targets of voicemail hacking) and their most trusted confidants and friends, became the subject of articles in the press.<sup>58</sup> Further, evidence was also received that, as a consequence of voicemail hacking, journalists and press photographers were able to record moments that were intensely private, such as relationship breakdown,<sup>59</sup> or family grief, without either the knowledge or input of the individuals concerned. Sienna Miller explained how she was the subject of many articles either speculating on or reporting the state of her relationship with the actor Jude Law. In many cases, the information that had formed the basis of these articles had been known only to Ms Miller, Mr Law and a very small number of confidants who had not shared the information further.<sup>60</sup> Ms Miller gave a graphic description of the fall-out from the voicemail hacking which News International has, of course, admitted took place. This included the corrosive loss of trust in aspects of family life, in relationships and in friendships, Ms Miller assuming, understandably, that her inner circle was the source of stories in the press.<sup>61</sup> She described herself as *“torn between feeling completely paranoid that either someone close to [her] [a trusted family member or friend] was selling this information to the media or that someone was somehow hacking [her] telephone.”* On one occasion she sat down with close family members and friends in one room and accused them of leaking stories to the press. Ms Miller explained that she felt that every area of her life was under constant surveillance; she felt violated, paranoid and anxious.
- 3.5** Other witnesses have told the Inquiry how they have lost friends and confidants as a consequence of the paranoia and mistrust engendered by phone-hacking. For example, Mary-Ellen Field described the damage done to her reputation and livelihood as the consequence of what she

<sup>58</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sienna-Miller.pdf>

<sup>59</sup> p3, *ibid*

<sup>60</sup> p3, *ibid*

<sup>61</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sienna-Miller.pdf>; p6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Mary-Ellen-Field2.pdf>; p10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>

believed to be the hacking of Elle Macpherson's voicemail. Given the publication of a number of articles about Ms MacPherson which set out in detail confidential information concerning her personal and private life, of which Ms Field had direct knowledge, Ms MacPherson assumed that Ms Field must have been the source of those stories. Ms Field's refusal to acknowledge responsibility led to accusations of illness and then alcoholism for which she subsequently underwent treatment. Finally it was decided that Ms Field was incapable of carrying out her employment to the required standard and she was dismissed from her position. This led to financial difficulties and the loss of friendship.<sup>62</sup> Ms Field has also made clear how difficult it has been to restore her reputation once such damage had been done.<sup>63</sup>

### *Other intrusive conduct*

- 3.6** The Inquiry has heard how the disclosure in the press of embarrassing or personal details not only impacts on the self-esteem and reputation of the person involved, but also affects others around them as well. For example, the spouses and children of witnesses have been subjected to bullying and abuse as a consequence of stories written about them. Garry Flitcroft described the abuse directed at his children at school following the publication of stories in the press about him.<sup>64</sup> He detailed how abuse by rival fans was so hurtful and offensive that his father could no longer watch him play football; he also believes that this ultimately contributed to his father's suicide.<sup>65</sup>
- 3.7** Witnesses have also spoken about the distress caused to spouses and partners by the aggressive pursuit of 'kiss and tell' stories and the knock-on effects of disclosures of infidelity. In a number of cases the disclosure of marital infidelity is believed to have led or contributed to a suicide attempt, or had a deleterious impact on the health of vulnerable members of the family.
- 3.8** Charlotte Church said that her mother found articles published by the News of the World about her father's infidelity, without forewarning, so distressing that it led to an attempt take her own life.<sup>66</sup> The Inquiry has heard similar testimony from Max Mosley, who has expressed the belief that the constant, unflattering and unpleasant coverage of him was a contributing factor in the suicide of his son.<sup>67</sup>

## Consequences of inaccurate reporting

- 3.9** The potential damage done by inaccurate reporting can extend well beyond the intrinsic harm attendant on the distortion of fact. Witnesses have explained that it can cause much greater distress, anguish and pain. Taking perhaps the most extreme and unsettling example, Margaret Watson has set out her belief that inaccurate and partial reporting of the murder of her daughter, Diane, contributed significantly to the suicide of her son, Alan, who was unable to cope with the unsubstantiated allegations levelled at his dead sister.<sup>68</sup> This evidence chimes with a number of submissions and witness statements received by the Inquiry from ordinary

<sup>62</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Mary-Ellen-Field2.pdf>

<sup>63</sup> News International has sought summary judgment on Ms Field's claim against it in the Chancery Division. It is believed that the basis of the application is not that Ms Field's version of events is necessarily incorrect, but that there is no evidence that her voicemail, as opposed to that of Ms Macpherson, was hacked. This gives rise to a number of legal arguments not relevant for the purposes of the Inquiry

<sup>64</sup> p8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Garry-Flitcroft.pdf>

<sup>65</sup> p8 *ibid*

<sup>66</sup> p9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>

<sup>67</sup> p13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Max-Mosley.pdf>

<sup>68</sup> pp4-6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Margaret-Watson.pdf>

members of the public who have reported their experiences of inaccurate reporting, and subsequent refusal by the press to engage with attempts to correct those inaccuracies. In a number of cases, that coverage has concerned the suicide of a family member.

- 3.10** Evidence of factual misreporting does not merely relate to suicide but also to the reporting on cases of murder. For example, the Director of Support After Murder and Manslaughter in Northern Ireland (SAMM NI), Pam Surphlis, described the routine inaccurate reporting by newspapers of murders committed in the Province. These inaccuracies related to the family details, age and background of the victims, and overall sensationalising of the murders, with damaging consequences for the families of the victims.<sup>69</sup> In her oral evidence Mrs Surphlis referred to the newspaper coverage of the murder of a 15 year old boy in which the victim was described as a heroin addict, when in fact he was diabetic.<sup>70</sup> She noted that “*once it goes in, whether right or wrong, it becomes fact*”.<sup>71</sup> Mrs Surphlis also described the press coverage following the murder of her father and sister in 1993. Her father, who was a faith healer, was described as a ‘*witchcraft clergyman*’.<sup>72</sup> Further, she gave the example of her sister, who in coverage of her death was always represented in a picture of her wedding dress even though she had endured years of marital abuse, notwithstanding that Mrs Surphlis had provided a different photograph.<sup>73</sup>
- 3.11** It goes without saying that reporting of this nature is particularly distressing to the family and friends of the deceased.
- 3.12** The cases of the McCanns and Christopher Jefferies are especially egregious examples of defamatory and sensationalised reporting causing, in their different ways, personal anguish and distress. These examples are treated in more detail below.<sup>74</sup>

### Impact on public discourse

- 3.13** The Inquiry has received submissions and evidence from various campaign organisations or pressure groups, think tanks, community representative groups, professional practitioners, trade bodies and academic institutions complaining of the impact of inaccurate and at times discriminatory and inflammatory reporting on public discourse. This is not a criticism of the right of the press to be partial: it is a complaint specifically directed to inaccuracy. This problem is aggravated by the unwillingness of the PCC to accept complaints from interest groups unless there is an identified ‘victim’ of the reporting willing to complain.
- 3.14** For example, evidence was received from ENGAGE, an organisation set up to promote improved awareness and standards of reporting in the British media of Muslims, as well as to encourage greater political participation and civic engagement of Muslims living in Britain.<sup>75</sup> ENGAGE provided examples of what it described as “inaccurate, unfair or discriminatory” reporting in some parts of the British press.<sup>76</sup> In particular, ENGAGE expressed concern at what it suggested was a tendency to present reporting of fringe and extremist elements as

<sup>69</sup> pp11-12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-SAMM-NI.pdf>

<sup>70</sup> p75, lines 11-18, Pam Surphlis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-8-February-2012.pdf>

<sup>71</sup> p75, lines 17-18, Pam Surphlis, *ibid*

<sup>72</sup> p83, line 4, Pam Surphlis, *ibid*

<sup>73</sup> p77, lines 17-24, Pam Surphlis, *ibid*

<sup>74</sup> Part F, Chapter 5

<sup>75</sup> ENGAGE website, [www.iengage.org.uk](http://www.iengage.org.uk)

<sup>76</sup> p9, lines 8-14, Inayat Bungawala, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>; p2, s3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/First-Submission-by-Engage.pdf>

representative of the viewpoints of British Muslims as a whole.<sup>77</sup> Examples of headlines which tended to reinforce that impression, but were without basis in fact, included “*Poppies banned in terror hotspots*” and “*Muslim only public loos*”. Reference was also made to a front page headline (“*Muslim plot to kill the Pope*”), published in the Daily Express in September 2010, which was later admitted to have no basis in fact.<sup>78</sup> Although the paper published an apology and correction after a complaint had been made by ENGAGE, Mr Bungawala on behalf of that organisation pointed out that it was “*a single sentence buried under a news item on page nine*”.<sup>79</sup> Tellingly, he explained that the size and placing of the correction does not mitigate the damage to community relations caused by a front page article of this nature.<sup>80</sup>

- 3.15** Similar concerns at the damage capable of being caused to community relations and potentially vulnerable individuals have been raised by other organisations, in particular those representing migrant and refugee communities. Such organisations include The Runnymede Trust, the Refugee Council and the Migrant and Refugee Community Forum.
- 3.16** In written evidence submitted to the Inquiry, both the Refugee Council and Migrant and Refugee Communities Forum suggest that some parts of the press seek deliberately (or, at least, recklessly) to conflate statistics for asylum and immigration to imply a growing “wave” of asylum seekers coming to the UK, despite evidence that the number of asylum seekers has fallen significantly since 2002.<sup>81</sup> <sup>82</sup> This view is also shared by the Joint Council for the Welfare of Immigrants, which contends that the motive may be a political one.<sup>83</sup> The Migrant and Refugee Communities Forum draws attention to a report by the Cardiff University School of Journalism, ‘*What’s The Story*’ (2003), which noted that asylum debates tended to focus heavily on statistics and figures which were un-sourced.<sup>84</sup>
- 3.17** In his book, *Democracy under Attack*, Malcolm Dean of Sheffield University suggested that certain strands of press reporting on asylum and immigration (and often the strand which may have been only loosely based in fact) have played a role in influencing Government policy on these issues.<sup>85</sup>
- 3.18** The submissions received in this area went a little further than simply criticising inaccuracies in reporting; they also claimed that there was a tendency in parts of the press to discriminate against certain minorities and to inflame tensions or exacerbate difference. The Refugee Council suggested that some titles were less active than others<sup>86</sup> in engaging with organisations who work with the relevant communities when seeking comments for articles on asylum and immigration: consequently, negative content is less likely to be balanced with positive stories.<sup>87</sup> ENGAGE drew attention to a report by the Cardiff School of Journalism, Media and Cultural Studies which concluded that, between 2000 – 2008, references in the press to radical Muslims outnumbered references to moderate Muslims by 17 to one.<sup>88</sup>

<sup>77</sup> p32, s1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Engage.pdf>

<sup>78</sup> p3, s5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/First-Submission-by-Engage.pdf>

<sup>79</sup> p3, s5, *ibid*

<sup>80</sup> p5, s2-3, *ibid*

<sup>81</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Refugee-Council.pdf>

<sup>82</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Migrant-and-Refugee-Communities-Forum.pdf>

<sup>83</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Joint-Council-for-the-Welfare-of-Immigrants.pdf>

<sup>84</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Migrant-and-Refugee-Communities-Forum.pdf>

<sup>85</sup> Dean, M, *Democracy under Attack*

<sup>86</sup> p5, para 4.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Refugee-Council.pdf>

<sup>87</sup> *ibid*

<sup>88</sup> Moore K, Lewis P, Lewis J, ‘*Images of Islam in the UK: The Representation of British Muslims in the National Print News Media 2000-2008*’: [http://www.irr.org.uk/pdf/media\\_muslims.pdf](http://www.irr.org.uk/pdf/media_muslims.pdf)

- 3.19** The Runnymede Trust emphasised its concerns in relation to the impact of inflammatory reporting by reference to an article published in the NoTW in 2003, which purported to describe the cost of moving a refugee family. It ran under the headline: “Asylum Seekers’ Free £220 Taxi” with a sub heading, “and guess what... YOU’RE paying the fare.” Concerns with this article include the publication of a photograph of the family in question in which the faces of the children were clearly visible (in breach of the Editors’ Code of Practice), the failure adequately to disguise the location of the family’s new property (it was identifiable by door numbering and signage), the tone of the article, which included leading questions, “WHAT DO YOU THINK? Does it make you angry...?” in capital letters, and the failure of the article to make clear that train tickets for the family were more costly than the fare for the taxi.
- 3.20** Concerns at the accuracy (as well as tone and content) of reporting in some parts of the press in relation to minority groups have also been raised elsewhere.<sup>89</sup> In her evidence to the Inquiry, Helen Belcher on behalf of Trans Media Watch described what she regards as the frequently pejorative nature of reporting in some parts of the British press on transgender issues.<sup>90</sup> The use of ‘before’ names as well as photographs of the individuals in question not only causes obvious distress but can place them at risk.<sup>91</sup> Ms Belcher also claimed that the tone of much reporting was derogatory and intended to cause ridicule.<sup>92</sup> She referred specifically to one article in The Sun which ran under the headline: “*Sex swap mechanic goes nuts at medics*”.<sup>93</sup> Apart from the inherently offensive nature of such language, Ms Belcher’s complaint was that it contributed to the shaping of public attitudes towards trans people.
- 3.21** Responding to this evidence from Trans Media Watch,<sup>94</sup> Dominic Mohan, the editor of The Sun, accepted that some reporting on these issues had been a “*bit insensitive*”, but claimed that it had improved.<sup>95</sup> The title had worked hard with the Mermaid Trust, an organisation that supports transgender people, to improve the quality of its reporting and, indeed, had received praise from some quarters.<sup>96</sup> Shortly after Helen Belcher had given evidence to the Inquiry, The Sun ran two further stories on transgender issues: one concerned coverage of a transsexual man who had given birth; the second to a five year old who had been born male but identified as a girl.<sup>97</sup> In a further written submission to the Inquiry, Trans Media Watch suggested that both stories were sensationalised and lacked wider context, and that real privacy concerns around the identification of vulnerable people were ignored.<sup>98</sup>
- 3.22** Concerns at the damage that can be done by sensationalised reporting were also raised by Professionals Against Child Abuse (PACA), an organisation that represents the professionals who work in child care and social services. In its submission to the Inquiry, PACA set out its

<sup>89</sup> For example, National AIDS Trust; UK Drug Policy Commission; Youth Media Agency

<sup>90</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Trans-Media-Watch.pdf>

<sup>91</sup> pp12-14, paras 17 and 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Trans-Media-Watch.pdf>

<sup>92</sup> p46, lines 7-19, Helen Belcher, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-8-February-2012.pdf>

<sup>93</sup> p48, Helen Belcher, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-8-February-2012.pdf>

<sup>94</sup> Mr Mohan’s second appearance before the Inquiry was in fact the day before Ms Belcher testified. However, he had been given advance notice of her written submission

<sup>95</sup> p128, lines 11-17, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>96</sup> pp128-129, lines 18-4, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>97</sup> p1-2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Supplemental-Submission-by-Transmedia-Watch1.pdf>

<sup>98</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Supplemental-Submission-by-Transmedia-Watch1.pdf>

belief that sensationalised and sometimes inaccurate reporting of failings in social services were putting at risk the lives of vulnerable young people.<sup>99</sup> PACA suggests that sensationalist reporting is damaging the profession through the popular vilification of individuals, and is impacting on retention and recruitment across the children’s care sector.<sup>100</sup> The PACA submission refers to work undertaken by the Association of Directors of Children’s Services (ADCS), which notes the rise of child protection vacancies; and, following a survey of users, found that a third of respondents believed the effectiveness of advice being offered by health professionals has been adversely affected.<sup>101</sup> A submission received from the Royal College of Psychiatrists also reflects similar concerns about the impact of press reporting on the profession and on recruitment and retention.<sup>102</sup>

- 3.23** In its submission the Royal College of Psychiatrists also expressed concern at the impact that the sensationalising of crime can have both on the victims but also on the rehabilitation of the perpetrators and, in particular, young offenders.<sup>103</sup> Likewise, the Youth Media Agency has suggested that the sensationalised reporting of youth crime and, specifically, the use of what it describes as an “*overwhelmingly negative vernacular*” in reporting of issues relating to young people risks harming their aspirations and opportunities.<sup>104</sup> Citing the coverage of the August 2011 riots by some newspapers as an example of the sensationalising of the role of young people in topical events, this organisation noted that just 26% of rioters were identified as aged 10-17, a statistic which was by no means clear from the coverage in some papers.<sup>105</sup>
- 3.24** The role of the press in shaping public attitudes to rape and violence against women has been criticised in evidence submitted by End Violence Against Women Coalition (EVAWC) and EAVES Housing. The latter’s submission cites research that it had conducted on the press reporting and statistical realities of rape.<sup>106</sup> It argues that in the British press there is a disproportionate coverage of the comparatively rare “stranger rape” stories and instances of falsely reported rapes, but reporting on the most common form of rape, which is committed by a person known to the victim, is infrequent.<sup>107</sup> It suggests that the imbalance discourages victims to speak up and report their experiences, believing they do not fall within the “real rape” template.<sup>108</sup>
- 3.25** Similarly, the EVAWC submission suggests that much press reporting on rape serves to perpetuate a number of societal myths around rape that are damaging both to victims and the criminal justice system as a whole. EVAWC notes reporting on a 2009 study which found that promiscuous men were more likely to commit rape.<sup>109</sup> However, press coverage of that study, particularly in the Daily Telegraph, suggested that the research claimed that provocatively

<sup>99</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Professionals-Against-Child-Abuse.pdf>

<sup>100</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-2-to-submission-by-Professionals-against-Child-Abuse.pdf>

<sup>101</sup> *ibid*

<sup>102</sup> pp1-2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Royal-College-of-Psychiatrists.pdf>

<sup>103</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Royal-College-of-Psychiatrists.pdf>

<sup>104</sup> p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Youth-Media-Agency4.pdf>

<sup>105</sup> p3, *ibid*

<sup>106</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Heather-Harvey.pdf>

<sup>107</sup> p12, [http://www.eaves4women.co.uk/Documents/Recent\\_Reports/Just%20Representation\\_press\\_reporting\\_the\\_reality\\_of\\_rape.pdf](http://www.eaves4women.co.uk/Documents/Recent_Reports/Just%20Representation_press_reporting_the_reality_of_rape.pdf)

<sup>108</sup> p12-13, *ibid*

<sup>109</sup> p23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/End-Violence-Against-Women-Coalition-Submission.pdf>

dressed women were more likely to be sexually assaulted.<sup>110</sup> Although the headline was removed from the Telegraph website following complaints from EAWC and other women's groups, EAWC are concerned that the damage had been done.

- 3.26** These complaints of the trivialisation of violence towards women in some sections of the press are echoed in evidence received by the Inquiry from OBJECT. It argues that the frequent juxtaposition in the tabloid press of images and text that depict women as sex objects with stories of violence towards women trivialises that subject matter.<sup>111</sup> In support of this proposition, OBJECT has submitted a number of articles published in *The Sun*, *The Daily Star* and *The Sport* in which this juxtaposition is evident. By way of example, OBJECT has drawn the attention of the Inquiry to a front page headline in *The Sun* which read: “*Death threats to Harry girl*”. That article was illustrated with a photograph of the young woman in question in her underwear.
- 3.27** The Inquiry has also received a submission from Beat, a campaign group which provides support for those tackling eating disorders. In its submission Beat expresses concern at what it alleges is the use of inappropriate images of severely emaciated women and men in some parts of the press to illustrate stories on anorexia nervosa and other eating disorders.<sup>112</sup> Beat contends that such images can cause harm to people either suffering or recovering from eating disorders,<sup>113</sup> as well as damage to the public awareness of such disorders by creating a false image of sufferers. That said, Beat also acknowledged recent and substantial improvements in the accuracy and tone of press reporting on these.<sup>114</sup>
- 3.28** It is worth repeating that both freedom of speech and freedom of the press permit wide latitude to editors and journalists to publish the stories they consider appropriate in the way that they wish.<sup>115</sup> The Editors’ Code of Practice, however, requires care to be taken not to publish inaccurate, misleading or distorted information (Clause 1(i)) and also requires the press to avoid prejudicial or pejorative reference to an individual’s race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability (Clause 17(i)). That is the standard that the press has set for itself. The evidence touched on here, and addressed further below,<sup>116</sup> includes reporting which falls at different points along a spectrum: some may be contentious, opinionated and partial, while still complying with the standard set; others may be inaccurate, prejudicial and discriminatory, and fall clearly on the wrong side of that standard. What is clear is that a critical mass of articles which breach the standard can have seriously deleterious effects on public discourse and community relations.

## Medical and scientific research

- 3.29** The Inquiry has also received a number of submissions from organisations working in medical and scientific research setting out concerns at what they perceive as the detrimental impact of the quality and accuracy of some reporting on issues relating to science and health policy. The Science Media Centre, through its director Fiona Fox, gave oral evidence to the Inquiry, and written submissions have been received from organisations such as the Wellcome Trust, Sense about Science, and the Cardiff University Brain Imaging Centre. Perhaps unsurprisingly,

<sup>110</sup> p23, *ibid*

<sup>111</sup> p2, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-statement-of-Anna-van-Heeswijk.pdf>

<sup>112</sup> p1, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-BEAT.pdf>

<sup>113</sup> p1, paras 3-4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-BEAT.pdf>

<sup>114</sup> p1, para 1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-BEAT.pdf>

<sup>115</sup> see also *Flood v Times Newspapers* [2012] UKSC 11

<sup>116</sup> Part F, Chapter 6

all these organisations cite press reporting on the MMR vaccination following the publication of a case study in *The Lancet* in 1998 as an example of how journalism that they allege was both inaccurate and unbalanced led to a media generated health scare.<sup>117</sup> Both the Wellcome Trust and Sense About Science have explained that in the immediate aftermath of the most intense period of coverage there was an estimated fall in vaccination rates of 61% in some areas of London,<sup>118</sup> as well as a much lower take-up of the vaccination overall.<sup>119</sup> This reduction is reported to have had a real impact on the risk that incidence of the diseases will increase with potentially serious consequences to those affected.

- 3.30** Similar, but more controversial, concerns have been raised by organisations in relation to the reporting of issues as diverse as climate change and drug addiction.<sup>120</sup> It is unnecessary to do more than touch on these: the relevant submissions are available on the Inquiry website for public scrutiny. It goes without saying that the Inquiry has not undertaken the task of forming its own expert scientific judgment on this material and, in any event, it is unnecessary that it should do so.
- 3.31** This body of evidence emphasises the need for balanced and responsible reporting on matters of public interest and, in particular, reporting that reflects the balance of scientific and/or medical opinion on any specific issue. This need arises because the press is regarded as a reliable and responsible source of information; if it was not so regarded (and the press itself would hardly want it so), this issue would not arise. If, for example, the overwhelming preponderance of informed medical opinion is to the effect that a vaccine is safe, any reporting of suggestive evidence to the contrary effect should recognise and fairly characterise the nature and quality of that evidence, and accord proper recognition to where the clear consensus of opinion lies. This is not to accord undue weight to the views of the scientific and medical establishment; rather, it is to accord due recognition to the strength of the available evidence to ensure that the position is not misrepresented. As the MMR story made clear, the failure to do so can have a widespread and harmful impact.

### Inaccuracy and harm: a wider perspective

- 3.32** Overall, there is a broader point which flows from the status and role of the press in a mature democracy as a reliable, authoritative and accurate purveyor of news and information. The press is trusted by its readers to adhere to high standards in terms of getting things right. The importance of differentiating between fact and opinion is that the public must be in a position to understand what is *fact* (and therefore to be relied on as such) and what is *opinion* (and therefore to be understood as precisely that). The public interest in facts being accurate is that readers may well be misled if they are not, their knowledge about the world may well be faulty as a result, and their judgments based on that knowledge may well be imperfect. The wider harm to the public interest of inaccurate journalism should be seen in that light.
- 3.33** There is, of course, no bright line for the way that accurate facts are described, or for the choice of accurate facts that are reported and it is recognised that journalists do not have

<sup>117</sup> p2, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Wellcome-Trust-Cancer-Research-UK.pdf>

<sup>118</sup> p2, para 7, *ibid*

<sup>119</sup> p2, para 2.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Sense-about-Science.pdf>

<sup>120</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Carbon-Brief.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-UK-Drug-Policy-Commission.pdf>

the same standards of impartiality that affect broadcasters. The challenge, in reality, is to the extent to which the Editors' Code (or any agreed code) is followed 'not only in the letter but in the full spirit' (see the Preamble to the Code) and the unwillingness of the press to be prepared to address legitimate complaints in that regard.

# CHAPTER 4

## SOME PRACTICES AT THE NEWS OF THE WORLD

### 1. Introduction

#### 1.1 As Robert Jay QC said in opening the Inquiry:<sup>1</sup>

*“In most institutions, cultural problems of this nature will usually emanate from high up within the organisation, but this will not always be the case. They will not always be the product of a deliberate policy decision made by those with power within the organisation to make them. Sometimes the existence of a culture derives from the operation of more subtle and complex forces, from historical trends, from what is condoned and not stamped upon, leading to insidious evolution and perpetuation, from complacency leading to arrogance and purblindness. There is clearly a range of possibilities.”*

1.2 There is an extent to which News International (NI) and the rest of the press have sought to draw a line between the practices that are alleged to have taken place at the News of the World (the NoTW) and the newsrooms of all other newspapers. Having argued originally that phone hacking was limited to one rogue reporter, one may be forgiven for thinking that the company and sections of the industry are now arguing that it was limited to one rogue title. On account of the ongoing criminal prosecutions<sup>2</sup> it is not possible for Part One of this Inquiry to investigate the allegations of illegal behaviour that surround the NoTW, and neither is it a matter for Part One to reach firm conclusions as to whether similar illegal behaviour has been engaged in elsewhere in given specified titles. The goal of Part One of the Inquiry is to discern the broad contours of the culture, practices and ethics of the press and reach conclusions on the extent to which those meet public expectations and support the public interest. Given the extent of the allegations against the NoTW, and the widespread view that the NoTW was not typical of the rest of national newspapers, I have focused in this Chapter of the Report on the culture at the NoTW. Elsewhere, I consider whether what may be described as the wider culture of the press was and is reflected in or by the culture of the NoTW (or not).

1.3 The criminal investigations and the many civil actions brought against the NoTW in relation to phone hacking mean there is a vast fund of information about alleged illegal practices in the hands of both NI, the police and in the High Court. However, the ongoing criminal investigations mean that the Inquiry has not been able to delve into any of this evidence and has been constrained in the areas of questioning that might have been pursued with many of those who were employed by the NoTW. Further, NI has drawn attention to the fact that they have not attempted to put forward a positive case in relation to the NoTW and has argued, therefore, that in the context of the Inquiry the NoTW is an ‘undefended party’.<sup>3</sup>

1.4 The NoTW is, indeed, in a unique position. The title was closed down in July 2011 by NI in response to the public distaste for what had been revealed about the widespread use

<sup>1</sup> p19, lines 14-25, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>2</sup> paras 1.38-1.40, Part A, the Introduction

<sup>3</sup> This submission has not been published on the Inquiry website, but was shared with the Core Participants to the Inquiry

of phone hacking as a technique at the paper, and in particular the alleged targeting of ordinary people and the victims of crime such as Milly Dowler. As previously explained, in respect of Operations Weeting, Elveden and Tuleta, NI has provided substantial quantities of information to the police relating to NoTW operations. A number of former NoTW journalists and executives have been arrested and charged, both in relation to phone hacking and other offences. Although the Inquiry has taken evidence from many of those involved it was not possible to ask questions about any issue that is the subject of criminal investigation, with the result that the picture presented is partial. This is a necessary consequence of what I have called the 'mantra'<sup>4</sup> but, in any event, I am not seeking to present a detailed account of how things happened in the NoTW newsroom.

**1.5** Rather, I am aiming to sketch out an impression of what was considered important at the NoTW, what the priorities were, how people behaved and what the prevailing attitudes were to ethical and legal constraints, the rights of individuals and the Editors' Code. The picture set out here is gathered from the evidence of a number of people who have worked at the newspaper over last ten or so years. None has been able to give a full account, and given the frank inconsistencies between some of the accounts that I have received (taken together with other reasons such as my assessment of them as witnesses) I am driven to conclude that not everything I have heard has been accurate or, in some cases, truthful. That said, I believe that the resulting picture is sufficiently robust to stand as a recognisable portrait of how the organisation operated over that period, without seeking to concentrate on, or draw conclusions about, the alleged illegal behaviour that is the subject of current or potential police investigations.

## F

## 2. Influence on culture at the News of the World

**2.1** This chapter will consider a number of different aspects of culture, practices and ethics at the NoTW, namely:

- (a) the impact of those in the most senior positions on the rest of the organisation: the chain of events surrounding the prosecution of Glenn Mulcaire and Clive Goodman and the civil litigation, in particular Mr Gordon Taylor's claim, provide an important and powerful insight into accountability and responsibility within the upper echelons of the NoTW. These issues have already been covered in considerable detail above,<sup>5</sup> and I reiterate here those findings and assessments;
- (b) the culture in the newsroom: how responsibility is handled at working level and the behaviour of the senior team towards their staff;
- (c) the pressures on journalists and editors: including how they inform actions and can influence the culture of the organisation;
- (d) the attitude within the newsroom towards individuals who were the subjects of potential stories: including what attitudes to privacy, as well as methods of persuading people to co-operate, can tell us about culture;
- (e) approaches to compliance, including the approach to data protection, with specific reference to Operation Motorman, the approach to legal compliance, dealing with complaints and attitudes to accuracy; and

<sup>4</sup> para. 1.38-1.39, in Part A for an explanation of the term

<sup>5</sup> Part E Chapter 4

- (f) finally, the relationship between the paper and the public, with reference to how the paper considers the wider public interest and its approach to public scrutiny.

## Setting the tone from the top

**2.2** In relation to the NoTW, the relevant influences on the culture and operation of the newspaper appear to be the ultimate owner of the title, the NI management, the editorial and executive team at the NoTW, the exigencies of operating as a Sunday title and the pervading culture and practices of the UK press and UK journalism. What follows attempts to describe the effect of some of these different influences.

**2.3** If the culture is set from the top of an organisation then, in seeking to understand the culture at the NoTW, it is essential to look at the approach taken by the ultimate owner. Rupert Murdoch, speaking no doubt in his capacity as Chairman of News Corp, told the Inquiry:<sup>6</sup>

*“I do try very hard to set an example of ethical behaviour and make it quite clear that I expect it. One can describe that in a number of ways. But do I do it via an aura or charisma? I don’t think so.”*

Talking generally about the role of his newspapers he said:

*“It was always to tell the truth, certainly to interest the public, to get their attention, but always to tell the truth.”*

He said that he felt that the public were the best arbiters of what should be in newspapers.<sup>7</sup>

**2.4** In describing the specific ‘brand’ of the NoTW, Mr Murdoch said:<sup>8</sup>

*“It’s a campaigning newspaper....certainly it was interested in celebrities, just as the public is, and a much greater investment went into covering the weekend soccer..... Coverage of celebrities, yes. Salacious gossip? Meaning – I take gossip as meaning unfounded stories about celebrities: no. I certainly hope not.”*

**2.5** Mr James Murdoch described the brand of the NoTW as:<sup>9</sup>

*“an investigative newspaper with exposés and the like, wasn’t only concerned with celebrities and salacious gossip, but also uncovering real wrongdoing, scandals, campaigning and so on and so forth.”*

James Murdoch told the Inquiry that the culture at the NoTW when he joined as Chief Executive was very different from that at BSKyB. He said that he wanted it to be ‘more collaborative’.<sup>10</sup>

<sup>6</sup> p28, lines 22-25, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-25-April-2012.pdf>

<sup>7</sup> p32, lines 12-22, Rupert Murdoch, *ibid*

<sup>8</sup> p44, lines 21-21, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf>

<sup>9</sup> p10, lines 12-16, James Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf>

<sup>10</sup> p6, lines 5-8, James Murdoch, *ibid*

### Code enforcement

- 2.6 When Colin Myler arrived at the NoTW he reviewed the protocols and systems in place and introduced changes where he thought they were necessary to improve the governance within the NoTW.<sup>11</sup> This included an amendment to the standard employment contract to make it:<sup>12</sup>

*“...abundantly clear that the employee understands and accepts that failure to comply with the requirement, which was PCC, criminal law, will lead to disciplinary proceedings, which may result in summary dismissal.”*

However, Mr Myler went on to say that during his time as editor there were no instances where failure to comply with the Code led to disciplinary proceedings.<sup>13</sup> He was able to recall one case that led to an oral warning and one that led to a written warning, but no others.<sup>14</sup> This is particularly surprising in the light of the adverse adjudications, mediated complaints and defamation actions settled during the period (as to which see paragraph 2.33 below) most, if not all, of which must, almost by definition, have breached the Code in some way.

### The culture in the newsroom

- 2.7 In looking at the culture of an organisation, it is important to consider the relationships between the organisation and its staff, how responsibility was handled at working level and, more particularly, what the NoTW was like to work for.

- 2.8 The Inquiry heard a number of different perspectives on what really mattered at the NoTW. Paul McMullan, former deputy features editor, described the *raison d'être* of the NoTW as “*chasing circulation and nothing else.*”<sup>15</sup> He spoke repeatedly and passionately about the fact that NoTW had the highest circulation of the national papers and that the readers appeared to welcome the sort of stories that he wrote:<sup>16</sup>

*“But the reality was it was bought in its millions. This is what the people of Britain want. I was simply serving their need, their – what they wanted to read.”*

In one of the most provocative statements made to the Inquiry, Mr McMullan said that:<sup>17</sup>

*“in a bizarre way, I felt slightly proud that I’d written something that created a riot and got a paediatrician beaten up, or whatever was the case,”*

as if he was delighted to feel (or glorified in the fact) that he had written an article that had moved people to action, even if the action itself had been utterly misguided and wrong.

- 2.9 Mazher Mahmood, an investigative journalist who has specialised in undercover exposures and ‘stings’, advanced a different view. He explained that he was motivated by public duty and exposing wrongdoing, so much so that not all his investigations had been with a view to

<sup>11</sup> p13, lines 17-20, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>12</sup> p16, lines 21-25, Colin Myler, *ibid*

<sup>13</sup> p18 lines 13-18, Colin Myler, *ibid*

<sup>14</sup> p21, lines 5-13, Colin Myler, *ibid*

<sup>15</sup> p43, line 1, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>16</sup> p43, lines 10-12, Paul McMullan, *ibid*

<sup>17</sup> p41, lines 6-8, Paul McMullan, *ibid*

eventual publication in the newspaper.<sup>18</sup> In discussion of a Court of Appeal finding that his real priorities were as a journalist wanting to publish a story, Mr Mahmood said:<sup>19</sup>

*“Of course, our motive is to publish an article in the newspaper. I’m not a police officer, I’m not a social worker; I’m a journalist.”*

- 2.10** An alternative view to that expressed by Mr Mahmood of what was driving people in the NoTW newsroom was provided by Stuart Hoare, on the basis of the discussions he had had with his late brother, Sean, a journalist at the newspaper, suggesting that the main aim was to deliver a story and deliver it as quickly as possible:<sup>20</sup>

*“it seems, you know, as though no one was in control. As long as they delivered an article, whether it could stand up or not didn’t really matter, but as long as they delivered something, and if they delivered something early on in the week, then all the better because they can go and do whatever they want to do for the rest of the week. It was a very strange world that they operated in.”*

- 2.11** It is difficult to assess the reliability of the evidence bearing on these differing perspectives, for at least two reasons. First, it has to be recognised that Mr McMullan’s evidence needs to be treated with very real caution given his tendency to exaggerate and sensationalise. He was not an attractive witness, although ultimately I conclude that his evidence did contain a substantial kernel of truth, once the elaboration is removed. Secondly, and notwithstanding my reservations about certain aspects of Mr Mahmood’s evidence which I address elsewhere, I am prepared to accept that he personally felt that he was discharging some sort a public function rather than merely generating commercial gain for himself and his employer. That said, the evidence of Messrs Hoare and McMullan does not stand alone and I have reached the conclusion that in broad and general terms, exaggeration aside, it does serve to identify at least one of the key drivers of culture at the NoTW.

## Pressures on journalists

- 2.12** It seems clear, therefore, that a drive for circulation increased the pressure on those working at the NoTW. The Inquiry heard from a number of former employees of the newspaper who were in complete agreement that the newsroom at NoTW was a very pressurised environment and that reporters were under pressure to deliver stories, preferably exclusive stories, regularly. Mr McMullan said that the consequence of not getting sufficient bylines was that you would get fired.<sup>21</sup> Neville Thurlbeck (who had occupied a number of senior positions as a journalist on the NoTW) told the Inquiry:<sup>22</sup>

*“there was a kind of an unofficial recognition that bylines were a reasonable performance indicator, and if your byline count was low, then obviously your job would be in jeopardy.”*

<sup>18</sup> pp33-34, lines 24-2, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>19</sup> pp36-37, lines 19-6, Mazher Mahmood, *ibid*

<sup>20</sup> p13, lines 12-19, Stuart Hoare, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>21</sup> p32, lines 9-25, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>22</sup> p17, lines 7-10, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

**2.13** Other journalists said the same thing. Daniel Sanderson, a former journalist at the paper, said that the environment of the newsroom was highly pressured and that you had to be available all the time.<sup>23</sup> Matt Driscoll, another former journalist who left the newspaper suffering from stress, said that there were lots of pressures on a news staffer at the NoTW to perform and get stories. He mentioned the pressures to get a story, to sell the paper, and to get a big front page exclusive.<sup>24</sup> Mr Driscoll also recounted his doctor's assessment of the pressure applied to journalists which was in terms that:<sup>25</sup>

*"journalists work under an incredible amount of pressure and stress, and it was his opinion that you get used to that level of stress. You just think that's normal. You know, the high sort of fast lane of Fleet Street does take its toll. You travel around the world, you work at a great pace, so if something doesn't go quite right, you can quite easily get tipped over the edge. You're used to a high level of stress, but you're almost at saturation point."*

**2.14** This picture of a newsroom under immense pressure was supported by anonymous evidence received from the National Union of Journalists (NUJ). As discussed below, such was the concern about the risk of repercussions for journalists giving evidence to the Inquiry that an application was made by the NUJ that I should be prepared to receive evidence anonymously. I acceded but, inevitably, treat the resulting evidence far more cautiously as a consequence. One journalist wrote that there was tremendous pressure at the NoTW, that everyone talked about the byline count and reporters had to do what they needed to get the story.<sup>26</sup> Another said *"The NoTW was an incredibly tough and unforgiving workplace"* and described seeing three or four members of staff collapse in the office in consequence, at least in part, from stress, as well as himself or herself having suffered from severe stress.<sup>27</sup> Sharon Marshall described the NoTW as *'a very tough working environment'* where you literally would not know what the person next to you was doing.<sup>28</sup>

**2.15** Whilst the picture of the NoTW as a tough and demanding, often stressful, working environment was not challenged by any of the evidence before the Inquiry, there was no such agreement on whether this toughness extended to bullying. Some have argued very clearly that that there was a bullying culture at the NoTW. Mr Driscoll told the Inquiry of his dismissal from the NoTW and the subsequent Employment Tribunal hearing. The Tribunal found that then editor of the NoTW, Andy Coulson, had *'presided over a culture of bullying'*<sup>29</sup> as well as specifying particular instances of behaviour by the editor that it considered to constitute bullying.<sup>30</sup> The Tribunal further found that the disciplinary proceedings leading up to Mr Driscoll's dismissal had been a pretext for the then editor's desire to *'get shot of'* Mr Driscoll.<sup>31</sup> The Tribunal felt

<sup>23</sup> pp89-90, lines 24-12, Daniel Sanderson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-2011.pdf>

<sup>24</sup> pp27-28, lines 23-5, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>25</sup> p39, lines 6-17, Matt Driscoll, *ibid*

<sup>26</sup> p1, para 1.1, Michelle Stanistreet, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/MS-Exhibit-11.pdf>

<sup>27</sup> p5, para 2.1, Michelle Stanistreet, *ibid*

<sup>28</sup> p43, lines 21-24, Sharon Marshall, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-20-December-2011.pdf>

<sup>29</sup> p3, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>30</sup> p52, lines 2-8, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>31</sup> pp52-53, lines 20-3, Matt Driscoll, *ibid*

that in conducting the disciplinary process the senior management team were going through a cynical process of giving an appearance of fairness towards Mr Driscoll.<sup>32</sup>

- 2.16** The Tribunal's findings were not the subject of any appeal by NI to the Employment Appeal Tribunal, notwithstanding the very substantial award of compensation to Mr Driscoll. However, it cannot be overlooked that Mr Coulson did not give evidence before the Employment Tribunal, despite the fact that he has subsequently said that he wished to do so, and that he has sought to challenge the findings of fact made by the Tribunal. Whatever his account now, I am not prepared to permit Mr Coulson or NI to re-litigate issues which, if they were live, could and (in my view) should have been argued before the Employment Tribunal at the appropriate time.
- 2.17** Ian Edmondson was the news editor at the NoTW for much of the relevant period. He agreed that there was a culture of bullying, saying that it emanated from the editor. He said this was true even for senior executives such as himself: *"It's not a democracy at a newspaper. Autocratic."*<sup>33</sup> A number of the journalists providing evidence anonymously through the NUJ echoed this perception, including one who described repeated bullying of themselves and colleagues,<sup>34</sup> and another who described what amounted to bullying of Clive Goodman.<sup>35</sup> A third described a *'systematic regime of bullying'* at the NoTW.<sup>36</sup> These journalists describe their experience of being bullied and seeing others bullied in graphic detail. Steve Turner, of the British Association of Journalists gave evidence of at least three cases, other than Mr Driscoll, of bullying at the NoTW in each of which:<sup>37</sup>

*"...the journalist was unreasonably subjected to disciplinary proceedings, realised that the newspaper felt his face did not fit any more and that they were trying to drive him out, and asked him if a severance package was available to resolve the matter."*

- 2.18** Others disagreed. Mr Sanderson was clear that he did not recognise the picture painted by other witnesses of a bullying culture at the title.<sup>38</sup> Another, Dan Wootton (who worked in Features before becoming TV editor and then Showbiz editor) was confident that he had experienced no bullying culture at the NoTW, although he ascribed this to his having worked on the Features desk and to different parts of the paper having different cultures.<sup>39</sup> Rupert Murdoch said that he was not aware of any allegations of bullying at NoTW or within NI, stating *"they always strike me as a very happy crowd,"*<sup>40</sup> but made it clear that the type of conduct found to have occurred in the Driscoll case had no place in NI newsrooms.<sup>41</sup>

<sup>32</sup> p54, lines 3-7, Matt Driscoll, *ibid*

<sup>33</sup> pp76-77, lines 25- 6, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>34</sup> p3, para 1.14, Michelle Stanistreet, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/MS-Exhibit-11.pdf>

<sup>35</sup> p5, para 2.2, Michelle Stanistreet, *ibid*

<sup>36</sup> p9, para 4.19, Michelle Stanistreet, *ibid*

<sup>37</sup> p14, lines 20-25, Steve Turner, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-20-December-2011.pdf>

<sup>38</sup> p90, lines 16-17, Daniel Sanderson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf>

<sup>39</sup> p26, lines 23-25, Dan Wootton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf>

<sup>40</sup> p97, lines 5-9, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf>

<sup>41</sup> p1, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Second-ws-of-Keith-Rupert-Murdoch-signed-22.05.12.pdf>

- 2.19** NI cautions the Inquiry about reaching any conclusion about a culture of bullying based on the allegations of a single individual or even a handful of individuals.<sup>42</sup> However, Mr Myler explained that when he became editor, he ran a staff survey asking about the working environment. The responses were clear that they had a long way to go to meet the aspirations of the staff. Mr Myler went on to say that his response included holding seminars for the heads of departments on how to welcome challenge and to avoid bullying. Mr Myler indicated that the subsequent year's survey results were much improved, putting the NoTW ahead of the rest of NI.<sup>43</sup> This lends some weight to the concerns of others that a bullying culture did, at least to an extent and prior to 2009, exist in the NoTW, as well as indicating that some steps were taken to address it.
- 2.20** It must be recognised that not all the evidence offered can be taken at face value and, in particular, as I have said, I must be very careful about placing too much reliance on the evidence of anonymous journalists unless it converges with other reliable evidence. However, in the light of the body of consistent evidence which the Inquiry has received, and of Mr Myler's evidence (which is not challenged by anybody) there can be little doubt that the NoTW was a tough working environment, that the staff collectively felt that challenge from superiors was not welcomed, and that bullying was a problem. The evidence which Mr Driscoll gave to the Employment Tribunal, repeated to me, along with the confirmation of witnesses (both identified and anonymous) satisfies me that, at least on occasion, individuals were, indeed, victimised and bullied. Whilst Mr Myler took steps to address the culture that he obviously perceived as being harmful, there was no evidence that any individuals responsible for bullying, or creating a climate at the paper which was unhealthy and oppressive, were disciplined in any way or that the victims were offered any support.
- 2.21** In any event, whether the pressures to perform amounted to bullying or not, it has been suggested by a number of witnesses that these pressures, both to deliver a story and to deliver sufficient evidence to make it legally defensible, may have led journalists to use whatever means were necessary, even if that meant stepping beyond the Editors' Code or the law. Mr McMullan described the attitude of a previous editor, Piers Morgan, as "*I want that story at all costs*" and "*I don't care what you have to do to get that story*".<sup>44</sup> He recounted a specific incident alleging that Mr Morgan, against the advice of Rebekah Brooks, had actively encouraged him to steal a photograph from a private house:<sup>45</sup> quite apart from the unsatisfactory nature of parts of Mr McMullan's evidence, that allegation was not put to Mr Morgan and I make no finding about it.
- 2.22** On the other hand, James Hanning (deputy editor of the Independent on Sunday) reported Sean Hoare suggesting that his impression was that getting stories that could be printed was more important than professional standards.<sup>46</sup> Mr Driscoll told the Inquiry that there was pressure to go along with using unethical or illegal methods to stand up a story:<sup>47</sup>

<sup>42</sup> This submission has not been published on the Inquiry website, but was shared with the Core Participants to the Inquiry

<sup>43</sup> pp17-18, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>44</sup> p35, lines 25-4, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>45</sup> p70, lines 15-21, Paul McMullan, *ibid*

<sup>46</sup> p39, lines 6-16, James Hanning, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>47</sup> p19, lines 14-21, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

*“it would be a very brave journalist...to suddenly say ‘I’m not happy with these techniques that are being used.’.....Anyone on that floor who complained too much would find themselves pushed out, certainly.”*

Mr Driscoll went on to say:<sup>48</sup>

*“there was a pressure to use, as it now turns out, almost any means necessary to make sure that a story was 100 per cent true.”*

**2.23** Mr Edmondson described an environment where anyone in the newsroom had to comply with an instruction from the editor, even when the editor’s instruction might be morally or ethically questionable. He said that an instruction from Mr Myler (denied by Mr Myler) that he misled Clarence Mitchell, the PR assistant to the McCann family, about the NoTW’s position in relation to Dr Kate McCann’s diaries was a particularly egregious example of an instruction effectively to deceive someone, but that there had been other occasions.<sup>49</sup>

**2.24** Mr Hoare described how he believed that his brother, Sean, had felt pressure to drink and take drugs in order to be able to do his job effectively, as he relied on mixing socially within the entertainment world.<sup>50</sup> Mr Hanning also described how Mr Hoare had felt that there was great pressure to perform and that he was put under increasing pressure when things were going less well.<sup>51</sup>

**2.25** Again, this general picture is reflected in the anonymous evidence given through the NUJ. One such witness said *“if you’ve got people who are hacking phones and producing great stories, the honest reporter is thinking they’re not in the same league, that something’s wrong with them”*.<sup>52</sup> Another complained of pressure to deliver too quickly:<sup>53</sup>

*“There’d be no time to make calls and get things right.....There was [one time] when I had to make up a quote – it was only once....I felt terrible. But I didn’t have a choice and I had to get the piece done.”*

A third said:<sup>54</sup>

*“I never made stuff up but the pressure on people was enormous.”*

**2.26** Other witnesses were clear that they had not felt under pressure to behave improperly in pursuit of stories or evidence. Mr Thurlbeck spoke of the “enormous lengths” to which they went to satisfy the lawyers as to factual accuracy, asserting that only proper means

<sup>48</sup> pp19-20, lines 25-15, Matt Driscoll, *ibid*

<sup>49</sup> p70, lines 11-16, Ian Edmondson, ; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>; the diary incident will be examined further in Part F Chapter 5 section below

<sup>50</sup> p23, lines 2-17, Stuart Hoare, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>51</sup> pp40-42, lines 21-3, James Hanning, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>52</sup> p1, para 1.2, Michelle Stanistreet, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/MS-Exhibit-11.pdf>

<sup>53</sup> p4, para 1.17, Michelle Stanistreet, *ibid*

<sup>54</sup> p11, para 4.27, Michelle Stanistreet, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/MS-Exhibit-11.pdf>

were used to achieve that aim.<sup>55</sup> Mr Sanderson said that he had no experience of working in uncomfortable situations, or of being forced to behave against the Editors' Code.<sup>56</sup>

## Approach to discipline

- 2.27** It is interesting to consider the NoTW's approach to staff who committed breaches of the Editors' Code or been found to have broken the law. Mr Myler explained that it was the practice that a journalist who failed to meet PCC Code standards would receive a written reprimand, though he could only recall one example of this happening from his four year tenure as editor.<sup>57</sup> According to Mr Myler, this was sometimes also the case in relation to lapses that did not lead to a PCC complaint.<sup>58</sup>
- 2.28** When Mr Thurlbeck was found by the High Court to have sent emails to potential interviewees which could be said to be tantamount to blackmail,<sup>59</sup> no action was taken against him by the NoTW in connection with the incident; neither does it appear that there was even a re-evaluation of the propriety of what had been done.<sup>60</sup> I shall return to the issue of these emails at a later stage of this review of the culture at the NoTW.
- 2.29** The treatment of Clive Goodman, as set out above,<sup>61</sup> was also instructive. Mr Goodman had been found guilty of a criminal offence and served a prison sentence for it. This is clearly grounds for dismissal under the News International Disciplinary Policy. Indeed, "[c]onviction for a criminal offence which may bring News International into disrepute..." is given as an example of gross misconduct which could lead to dismissal without notice or payment in lieu of notice.<sup>62</sup> However, as Mr Crone explained, Mr Goodman was given indications that he would be able to return to the NoTW.<sup>63</sup> In the event that, did not happen and Mr Goodman was dismissed, but he did secure in the region of £250,000 in payments and legal expenses in circumstances where one would have thought that his strict legal entitlement, regardless of any technical want of fairness by the company in its dismissal procedures, were nugatory or non-existent.<sup>64</sup>
- 2.30** There are different possible interpretations of the rationale for why there was any possibility or suggestion that Mr Goodman might have been taken back to work at the NoTW. One, put forward by Mr Goodman himself in his unfair dismissal claim, was that management recognised that Mr Goodman was operating within normal and accepted practice at the NoTW and it would be unfair for him to be dismissed as a result. Consequently it was appropriate, at least, for him to be compensated if he was not going to be able to keep his job. Another possible interpretation suggested was that executives at the newspaper felt a sense of

<sup>55</sup> p66, lines 10-19, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>56</sup> p93, lines 19-24, Daniel Sanderson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-2011.pdf>

<sup>57</sup> p21, lines 5-13, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>58</sup> p2, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Colin-Myler1.pdf>

<sup>59</sup> para 87, <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

<sup>60</sup> p6, lines 15-21, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>61</sup> Part E Chapter 4

<sup>62</sup> pp1-2, NI Disciplinary Policy and Procedure MOD100014850-1 (in pending read in list)

<sup>63</sup> p92, lines 9-18, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>64</sup> p103, lines 3-8, Tom Chapman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

paternal responsibility for Mr Goodman and his family and that they did not want them to be too heavily penalised for one mistake when set against a long and (largely) honourable career. A further interpretation is that, given his knowledge of inappropriate activity at the NoTW, by keeping him on the staff, Mr Goodman could be persuaded to keep such matters confidential. Mr Crone has denied that there was any *'keep your mouth shut'* element to the indications given to Mr Goodman that he might have a job at the NoTW after his release from prison.<sup>65</sup>

- 2.31** Any one of these arguments might also explain the willingness of the NoTW to reach a substantial settlement with Mr Goodman once he had been dismissed. Jon Chapman, former head of legal and corporate affairs at NI, told the Inquiry that the NoTW settled with Mr Goodman because they did not want to face the reputational damage of allegations being repeated in an Employment Tribunal.<sup>66</sup> Mr Chapman's contention was that the allegations were unsubstantiated but nonetheless damaging. There would be an equal rationale for persuading Mr Goodman not to repeat his allegations if they were, in fact, substantiated.
- 2.32** What is particularly striking are the differences between the treatment of Mr Thurlbeck and Mr Goodman, on the one hand, and Mr Driscoll on the other. Whilst Mr Goodman was dismissed, it took some considerable while for that conclusion to be reached. No formal action was taken against Mr Thurlbeck whatsoever, and any informal reprimand was offered only long after the event. Both of these cases involved unlawful (or potentially tantamount to unlawful) behaviour and breaches of the Code. By contrast Mr Driscoll had broken neither the Code nor the internal rules of the NoTW and was dismissed as rapidly and with as little personal consideration or compensation as possible.<sup>67</sup>
- 2.33** Looked at more broadly, the Inquiry has seen no evidence that the policy set out by Mr Myler, that breaches of the Editors' Code would result in a written reprimand, was implemented or enforced. NI has not provided any examples of such written reprimands, despite at least 17 upheld PCC complaints against the NoTW, including five since 2007,<sup>68</sup> and 19 defamation actions since 2005 including 12 settled.<sup>69</sup> Mr Myler cited four cases in which the PCC adjudicated against the NoTW while he was editor.<sup>70</sup> The Inquiry has been given no evidence of disciplinary action having been taken in response to those breaches of the PCC Code despite Mr Myler's assertion that it would have done so. Some five people were dismissed from NoTW in the period from 2005-2011 for misconduct, three of them in 2011, and no information is provided about what constituted misconduct in these cases. The example of Mr Driscoll demonstrates that this will not always relate to a breach of the Code.
- 2.34** Some NoTW journalists were clear that the Code was distributed to staff and they were made aware of their obligation to follow it. Dan Wootton confirmed that he attended a PCC seminar

<sup>65</sup> p92, lines 23-25, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>66</sup> p105, Tom Chapman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>67</sup> p103, lines 3-8, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>68</sup> MST database of PCC statistics <http://complaints.pccwatch.co.uk/search>

<sup>69</sup> data supplied by Linklaters 31 January 2012

<sup>70</sup> p2, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Colin-Myler1.pdf>

on the day that he joined the NoTW and was provided with a copy of the PCC Code that day, which he would carry with him at all times.<sup>71</sup> Ms Marshall echoed this, saying:<sup>72</sup>

*“when you start at the News of the World, you’re given a copy of the PCC code. Every journalist should know what the PCC code is. You wouldn’t be reminded of it on a daily basis. You should know it.”*

- 2.35** Ms Marshall told the Inquiry that she had resigned from the NoTW because she had been asked by her manager to do something which she considered unethical: she was told to put a story to a subject in a way and at a time that she considered inappropriate. In the event she did not comply with the request and no story ran. Ms Marshall said that the editor and deputy editor had not been aware of this request until she resigned and that they had tried to persuade her to stay.<sup>73</sup> However, she left, and the person responsible for the request had stayed in their job.<sup>74</sup> Ms Marshall also told the Inquiry that she was not aware of anyone having been disciplined for an ethical breach.<sup>75</sup>
- 2.36** As previously observed, not all the evidence adduced as to the pressure on staff to use all means possible, whether or not they were ethical or legal, to get a story and stand it up can be taken at face value. I repeat that only limited weight or reliance can be placed on uncorroborated anonymous evidence, and the evidence of Mr McMullan, Mr Driscoll, Mr Edmondson and Mr Hanning is challenged by NI on various grounds of unreliability. On the other hand, whereas aspects of NI’s challenges are, no doubt, well-founded, for reasons earlier explained, I have concluded that the evidence of these and other similar witnesses contains a substantial kernel of truth.
- 2.37** It goes further. Mr Thurlbeck’s continued denials of the use of improper means at the NoTW ring hollow in the face of the conclusions of Mr Justice Eady that he had resorted to a tactic that could be considered tantamount to blackmail; the fact that, even now, he does not accept any lack of propriety on his part speaks volumes. The evidence of how the NoTW treated staff who had gone too far clearly suggests that while there may not have been overt pressure to breach the Code or break the law, there was an attitude that expected results and that did not actively discourage, or penalise those who went beyond the boundaries of what was proper.

### 3. Attitude towards individuals

- 3.1** The attitude within the newsroom towards individuals who were the subject of potential stories, including specifically attitudes to privacy, shines a bright light onto the culture of a newsroom. This sub-section of the Report covers ground which is also addressed on a more generic basis below,<sup>76</sup> but it is convenient and appropriate to address here similar issues in the specific context of the NoTW.
- 3.2** The Inquiry has seen two distinct attitudes towards the subjects of stories or potential stories. The first is that celebrities or subjects must be humoured and nurtured in order for stories

<sup>71</sup> p25, lines 4-9, Dan Wootton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf>

<sup>72</sup> p48, lines 1-5, Sharon Marshall, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-20-December-2011.pdf>

<sup>73</sup> pp52-54, lines 2-25, Sharon Marshall, *ibid*

<sup>74</sup> p55, lines 15-16, Sharon Marshall, *ibid*

<sup>75</sup> p48, lines 6-17, Sharon Marshall, *ibid*

<sup>76</sup> Part F, Chapter 6

to continue to flow; and the second, as for example in the case of Max Mosley, considers individuals as commodities, and their interests solely from the perspective of legal risk to the company. There are three aspects of the treatment of individuals by the NoTW that I examine here:

- (a) the approach to privacy, including the attitudes to Article 8 rights, use of intrusion and surveillance;
- (b) pressure put on people to co-operate; and
- (c) deception, including blagging, and other investigative techniques.

### Privacy

**3.3** The Inquiry heard that, whereas libel had always been an issue for newspapers, concerns about privacy were more recent. Mr Crone said that privacy considerations had become more important as case law on privacy developed, dating that from approximately 2002/3.<sup>77</sup> He gave evidence that privacy incrementally became more important as a result. Mr Myler described how, coming back to the UK in 2007 after five years in the United States, the privacy landscape was unrecognisable:<sup>78</sup>

*“As a result of challenges and the change in the law, as it were, and verdicts, it was becoming very challenging to meet the requirements that the courts had laid down.”*

This, he said, led him to approach privacy issues with a cautious frame of mind.<sup>79</sup> Mr Thurlbeck said that privacy had become an important issue since 2008.<sup>80</sup> Before then, he said, there was less regard to privacy issues although there was always an awareness that there had to be *“an element of justification behind it.”*<sup>81</sup> It is notable that, in the case of both Mr Crone and Mr Myler, this increased caution with respect to privacy was driven by the development of law surrounding privacy, not by the requirements of the Editors’ Code or any general ethical considerations or changes in what the reading public were willing to support.

**3.4** The Inquiry heard evidence from a number of NoTW staff in relation to both the general approach to privacy and to specific incidents involving a breach of privacy. Mr McMullan was at the extreme end of the lack of respect for privacy, informing the Inquiry:<sup>82</sup>

*“In 21 years of invading people’s privacy I’ve never actually come across anyone who’s been doing any good. The only people I think need privacy are people who do bad things. Privacy is the space bad people need to do bad things in. Privacy is particularly good for paedophiles, and if you keep that in mind, privacy is for paedos, fundamental, no one else needs it, privacy is evil. It brings out the worst qualities in people. It brings out hypocrisy. It allows them to do bad things.”*

<sup>77</sup> pp63-64, lines 23-12, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>: he had in mind in particular *Campbell v MGN Ltd*, decided by the House of Lords on 6 May 2004.

<sup>78</sup> p34, lines 3-4, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-14-December-2011.pdf>

<sup>79</sup> pp34-35, lines 1-9, Colin Myler, *ibid*

<sup>80</sup> pp67-68, lines 23-3, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>81</sup> p69, lines 10-18, Neville Thurlbeck, *ibid*

<sup>82</sup> pp90-91, lines 23-9, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

**3.5** Mr McMullan argued that he saw no distinction between the public interest and what the public was interested in.<sup>83</sup> This line of argument led him to suggest that the level of sales of the NoTW demonstrated that its stories were essentially in the public interest.<sup>84</sup> He specifically recounted a story, in which he had been involved, that led to the subject ultimately killing herself. He recalled this story with regret, but continued to believe that there was no need for controls on privacy because the public did not seem to have a problem with the coverage.<sup>85</sup>

*"...because the News of the World readership didn't decline after that. It didn't put anyone off buying it."*

**3.6** Mr Mahmood argued that someone holding public office should have no right to privacy. By contrast, he suggested that in the case of those not holding office, any intrusion into privacy would need to be justified, for example on the grounds of exposing hypocrisy.<sup>86</sup>

**3.7** Mr Thurlbeck described a newsroom in which the question of whether privacy was being intruded into, and the justification for any such intrusion, was the subject of lengthy debates with the editor:<sup>87</sup>

*"It was something we talked about literally every day.....we did everything we could to ensure that we didn't step over those boundary marks."*

**3.8** Mr Sanderson said that in every story he would consider privacy, the public interest and whether he was adhering to the Editors' Code. However, he was unable to point to any consideration of breach of privacy in relation to the acquisition of the diaries of Dr McCann, appearing to feel that the matter would be satisfactorily covered by obtaining the consent of the McCanns to any proposed publication.<sup>88</sup>

**3.9** Describing the attitude of executives to privacy, Mr Crone said that he was sometimes asked to advice on what attitude a court might take in relation to the privacy aspects of a case:<sup>89</sup>

*"I would express the view that they were probably going to get into trouble over it. That wasn't always accepted in terms of 'we won't publish it', no."*

He explained that the executive's view of the public interest in publishing was not always in line with his (Mr Crone's) assessment of what a court would find.<sup>90</sup>

**3.10** Mr Wallis said that the NoTW had a policy until the early 2000s to make a 4 o'clock Saturday afternoon telephone call to the subject of an exposé, but that that was now impossible.<sup>91</sup> He explained:<sup>92</sup>

<sup>83</sup> p39, lines 16-18, Paul McMullan, *ibid*

<sup>84</sup> p40, lines 9-15, Paul McMullan, *ibid*

<sup>85</sup> p94, lines 14-20, Paul McMullan, *ibid*

<sup>86</sup> pp55-56, lines 13-18, Mazer Mahmood, *ibid*

<sup>87</sup> p67, lines 8-21, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>88</sup> p78, lines 2-20, Daniel Sanderson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf>

<sup>89</sup> p66, lines 3-15, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf>

<sup>90</sup> *ibid*

<sup>91</sup> p76, lines 15-23, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-20111.pdf>

<sup>92</sup> p77, lines 4-17, Neil Wallis, *ibid*

*“As the success of late-night Saturday injunctions increased, for reasons that were subject to debate and some discussion in the media and in the legal profession, it became clear that whatever the rights and wrongs of a case, it was becoming much more easy – easier for a judge to grant an injunction. If you – if that injunction was granted, that means (a) that you – all that hard work had to go on hold, and (b) it stopped becoming yours, because it then became out to the rest of the world. Because if you fought the injunction, it would be heard on a nice comfortable Thursday or Friday morning in the High Court and you, as a Sunday newspaper, have your story all over the daily newspapers.”*

**3.11** There are very real tensions between what the Inquiry has been told, for the most part, about the general approach to privacy, which suggested a careful consideration of the issues raised, and the actual decisions taken, and rationale for those decisions, in specific cases. A prime example of this is the publication of the story about Mr Mosley. It is not necessary to set out in detail the facts of the Mosley case, which can be found in the judgment of Mr Justice Eady in *Max Mosley v News Group Newspapers*.<sup>93</sup> In short, the NoTW published a series of stories alleging that Mr Mosley, the then head of the Federation Internationale de l’Automobile (FIA), had taken part in a ‘Nazi themed orgy’. The newspaper also published online a video of Mr Mosley engaged in sado-masochistic sex, alleging this be evidence of the Nazi orgy. In fact, the allegation of a Nazi theme was held by the court to have no basis in fact, but was no doubt an attractive headline for the newspaper and its readership on account of the fact that Mr Mosley is the son of former British Union of Fascists leader Oswald Mosley. The revelations in the NoTW were incredibly damaging to Mr Mosley and his family and amounted to a gross breach of his private life.

**3.12** In this case, Mr Thurlbeck could not remember with any precision when the public interest in breaching Mr Mosley’s privacy was considered. He was clear that he had no such conversation with the editor, Mr Myler, but did think he had discussed the issue with the news editor both when he started to research the story and throughout. Despite his earlier characterisation of regular and lengthy debates with the editor on privacy issues (see paragraph 3.7 above), when asked whether he thought it appropriate to discuss the public interest in invading Mr Mosley’s privacy with the editor, Mr Thurlbeck said:<sup>94</sup>

*“In the normal course of events I would talk to the news editor”.*

**3.13** Mr Thurlbeck was clear that decisions on prior notification of the subjects of stories was a matter for the news desk. He said:<sup>95</sup>

*“I would always wait for an instruction from the news desk before revealing our hand...and on this occasion I wasn’t told, therefore I assumed we weren’t putting the allegations to him....”*

**3.14** The editor, Mr Myler, and legal advisor, Mr Crone, did remember considering privacy issues in relation to Mr Mosley. Mr Crone’s view at the time was that if Mr Mosley was told in advance about the story there was a good chance that a pre-publication injunction would be granted. For this reason, and to guard against leaks, he advised against notifying Mr Mosley.<sup>96</sup> Mr

<sup>93</sup> [2008] EWHC 1777 (QB), <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

<sup>94</sup> pp82-84, lines 1-25, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>95</sup> p85, lines 17-25, Neville Thurlbeck, *ibid*

<sup>96</sup> p70, lines 1-5, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

Myler agreed that he believed that had Mr Mosley applied for an injunction he was likely to have been successful.<sup>97</sup>

- 3.15** Mr Crone said that he was not asked to advise on whether the video should be put on the website. He said, *“I thought it was pushing it to put up the video,”* but at no time did he advise that it should not be put up, or that it should be taken down.<sup>98</sup> It seems clear that there was no systematic consideration of the propriety of invading Mr Mosley’s privacy (or that of the other parties to the event), other than in the context of how to ensure that Mr Mosley was not put in a position to exercise his right to privacy by seeking an injunction to prevent publication. Mr Thurlbeck noted that one of the risks of an injunction application was that during the period of any interim injunction the story might leak out and the paper would lose its commercial advantage from the story.<sup>99</sup>
- 3.16** In the event, when Mr Mosley brought a claim for breach of privacy, Mr Justice Eady found that there was no public interest justification for the breach of Mr Mosley’s privacy. He also found that the decisions to publish the story and the online video were indicative of “casual” and “cavalier” editorial judgments. In awarding Mr Mosley £60,000 damages, he noted that *“no amount of damages can fully compensate the Claimant for the damage done. He is hardly exaggerating when he says that his life was ruined.”*<sup>100</sup>
- 3.17** A similar example of a casual and cavalier approach to privacy is offered by the handling of the diaries of Dr Kate McCann by the NoTW, discussed in detail below.<sup>101</sup> In short, the NoTW had come into possession of the personal diaries of Dr McCann, via a Portuguese journalist who had, himself, acquired them from the Portuguese police. It chose to publish highly personal excerpts from the diaries without the consent of Dr McCann.
- 3.18** Paragraph 3.8 above explains that Mr Sanderson, the NoTW journalist who acquired the diaries, confirmed to the Inquiry that he applied no consideration of privacy when acquiring them. His understanding was that the diaries would not be published without the consent of the McCanns; he appeared not to realise that the acquisition of the diaries alone involved a substantial breach of Dr McCann’s privacy, even without the intention to publish.
- 3.19** The Inquiry heard two conflicting accounts of the approach taken by the NoTW to gaining the consent of the McCanns to publish. First, Mr Myler told the Inquiry that he had instructed Mr Edmondson to make it clear to the McCann’s PR assistant, Clarence Mitchell, that the NoTW had the whole diary and that they were planning to publish extracts of it. He asserted that Mr Edmondson led him to believe that this had been done.<sup>102</sup>
- 3.20** Mr Edmondson, by contrast, gave evidence that he had had express instructions from Mr Myler to do no such thing.<sup>103</sup> Instead, he said he was instructed to have a conversation with Mr Mitchell that was ‘woolly’ and ‘ambiguous’. He was told not to reveal that the NoTW had

<sup>97</sup> p37, lines 3-7, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>98</sup> pp84-86, lines 8-1, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf>

<sup>99</sup> p22, lines 8-13, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-20111.pdf>

<sup>100</sup> para 236, <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

<sup>101</sup> Part F, Chapter 5

<sup>102</sup> p89, lines 20-24, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>103</sup> pp66-67, lines 23-7, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

the diaries in its possession, and not to reveal that they intended to publish extracts from the diaries, but to indicate that something would be published and to seek consent for the publication. This tactic of not giving full disclosure was to avoid the McCanns preventing publication by direct approach to Mr Myler, or by seeking an injunction.<sup>104</sup> For the reasons I set out in greater detail below,<sup>105</sup> I accept Mr Edmondson's account.

- 3.21** It seems clear from these examples that, despite some evidence to the contrary, the NoTW was not particularly exercised by issues of privacy, particularly in the context of 'big' stories. While Mr Crone was able to advise on what approach a court might take, such advice was used at least as much to determine strategy for evading legal intervention such as injunctions as to inform a principled decision on how to proceed. This is another manifestation of what may be identified as a general theme running through the culture, practices and ethics of the press, not merely prevalent at the NoTW but also elsewhere: the focus was only on legal risk, not on ethical risk (and, one might add, the dictates of ethical journalism) and the rights of the individual.

## 4. Intrusion

### Phone hacking

- 4.1** As explained earlier, it is not the business of this part of the Inquiry to arrive at conclusions on what may be described as a high level of granularity in relation to the facts relating to phone hacking. Although much, if not all, is likely to emerge during the course of criminal proceedings, further or detailed analysis can only be undertaken once the criminal investigation and any subsequent prosecutions are complete.
- 4.2** The activities of private investigator Glenn Mulcaire and former royal editor of the NoTW, Clive Goodman in the period between November 2005 and June 2006 were the subject of criminal proceedings in which both pleaded guilty; they were sentenced by Mr Justice Gross in January 2007. These proceedings are discussed in detail earlier in the Report.<sup>106</sup>
- 4.3** The sentencing of Mr Mulcaire and Mr Goodman set in train a number of civil claims brought by victims of alleged phone hacking against News Group Newspapers (NGN) and Mr Mulcaire. For example, on hearing of the conviction of Mr Mulcaire and Mr Goodman, the lawyer acting for Gordon Taylor, Mark Lewis, believed that information published about Mr Taylor had been obtained through illegal methods and advised his client to bring a civil claim. At this time, Mr Lewis explained in his evidence that it was believed there was a handful, in the region of 10 or 12 of victims of phone hacking.<sup>107</sup> It is now clear that the numbers of potential victims has swelled well beyond this figure.
- 4.4** In her evidence to the Inquiry Deputy Assistant Commissioner Sue Akers identified that there were potentially 6,349 victims that could be identified from the Mulcaire material, in respect of which 4,375 names were linked to phone numbers.<sup>108</sup> Of those, 829 people were regarded by the police as being likely victims of phone hacking.<sup>109</sup>

<sup>104</sup> p68, lines 19-22, Ian Edmondson, *ibid*

<sup>105</sup> Part F, Chapter 5

<sup>106</sup> Part E, Chapter 2

<sup>107</sup> p25, lines 8-13, Mark Lewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-23-November-20111.pdf>

<sup>108</sup> p5, lines 21-25, Sue Akers, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf>

<sup>109</sup> p6, lines 14-23, Sue Akers, *ibid*

- 4.5** The admissions of the NoTW in the range of civil claims brought in the wake of the convictions of Messrs Mulcaire and Goodman are important in establishing the extent of phone hacking at the title. On 12 May 2011 NGN admitted liability for the entirety of Sienna Miller’s claim<sup>110</sup> and, through a statement in open court read on 7 June 2011, it accepted that confidential and private information had been obtained by the unlawful access of her voicemail messages, that confidential and private information had been published as a result, and that there had been an invasion of her privacy, breaches of confidence and a campaign of harassment for over 12 months.<sup>111</sup> NGN accepted that these activities should not have taken place and that the articles should not have been published.<sup>112</sup>
- 4.6** NI has provided to the Inquiry a list of further admissions made in other proceedings: these include that Glenn Mulcaire had gained access to voicemails, and in some of the claims it is admitted that use was made of confidential information, obtained by accessing voicemails, in published articles. Rupert Murdoch gave evidence that, in the 72 civil cases that had been settled by 17 April 2012, NGN had assessed whether or not it was likely that voicemail interception occurred and accepted liability in principle only where it was appropriate to do so.<sup>113</sup>
- 4.7** The admissions by NoTW that voicemails have been unlawfully accessed, and the “discovered” information subsequently published, is significant. There can be no justification for the conduct admitted by NGN Ltd: wholly unsurprisingly, no public interest argument was advanced in any of the claims.
- 4.8** It is probably uncontroversial to state that phone hacking at the NoTW was not limited to Clive Goodman, but that there were an unknown number of others who were involved. Some evidence on this matter was given by Paul McMullan, Stuart Hoare and James Hanning. As I have already noted, Mr McMullan was not an attractive witness and was prone to exaggeration. Furthermore, the evidence given by Mr Hoare and Mr Hanning was hearsay evidence only, reporting conversations with Stuart Hoare’s late brother Sean. In addition, Sean Hoare had suffered from both drug and alcohol addiction problems whilst working for the NoTW, and he left the paper under circumstances which were not entirely happy.<sup>114</sup> These matters have obvious implications for the confidence that can be placed on their evidence. However, notwithstanding these considerable caveats, I am prepared to place some weight on this evidence, given its consistency with the evidence which has emerged in particular from the civil claims, from the MPS, and from victims of phone hacking.
- 4.9** Mr McMullan described the interception of telephone calls as a device that journalists had used for a long time. He said that, before 2000, the use of scanners to intercept conversations and obtain stories was widespread among journalists.<sup>115</sup> He went on to say that intercepting voicemail messages was a ‘school yard trick’ that was in common use among the general population.<sup>116</sup> He recalled a trade in PIN numbers and said that he had personally swapped

<sup>110</sup> p4, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sienna-Miller.pdf>

<sup>111</sup> <http://www.atkinsthomson.com/07.06.2011%20-%20Sienna%20Miller%20Statement%20in%20Open%20Court.pdf>

<sup>112</sup> *ibid*

<sup>113</sup> p45, para 194, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Keith-Rupert-Murdoch2.pdf>

<sup>114</sup> p6, lines 8-13, Stuart Hoare, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>115</sup> p47, lines 14-18, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>116</sup> pp50-51, lines 19-24, Paul McMullan, *ibid*

the number of Sylvester Stallone’s mother for that of David Beckham.<sup>117</sup> He said that the technique of hacking into voicemail messages was ‘not uncommon’ among journalists on the NoTW<sup>118</sup> although, in fairness to the NoTW but without necessarily accepting it as other than unsupported assertion, I should note that he also said that he:<sup>119</sup>

*“...thought the News of the World was one of the least bad offenders. The others were much worse.”*

**4.10** It is a matter of regret that Mr McMullan went further than was appropriate in his evidence, given the need to safeguard any future criminal proceedings and, for obvious legal reasons, his assertions of wider knowledge were not further pursued. It is perhaps a true measure and reflection on the man that Mr McMullan, alone among the witnesses who had appeared in front of the Inquiry, continued to maintain that:<sup>120</sup>

*“...phone hacking is a perfectly acceptable tool, given the sacrifices that we make, if all we are trying to do is to get to the truth.”*

**4.11** Mr Hoare, giving evidence of conversations he had had with his brother Sean, who died in July 2011, said that he had been told by his brother that phone hacking was a daily routine at the NoTW and, possibly to a lesser extent, at The Sun. In line with Mr McMullan’s view, Sean Hoare told his brother that the practice had been taken to the NoTW from The Sun.<sup>121</sup>

**4.12** Mr Hanning said Sean Hoare had told him that he himself had hacked phones, on numerous occasions, whilst working at the NoTW;<sup>122</sup> he gained the impression from his conversations with Mr Hoare a number of other employees of NoTW had engaged in phone hacking. Mr Hanning related a story told to him by Sean Hoare of a senior executive taking a call from a celebrity, who gave him her PA’s phone number in case he needed to get in touch, and then passing the number immediately to a colleague so that it could be hacked.<sup>123</sup> Another example he gave was purchasing the news list (that is to say the list of stories that are to be run) from another paper. Mr Hanning said that he had been told that this was a system which involved Mr Hoare and a colleague taking £400 in cash from the NoTW, paying £200 to their source and keeping £100 each.<sup>124</sup>

**4.13** Mr Hoare told the Inquiry that his brother had described to him a process whereby a specific colleague would be able to obtain the location of a person from their cell phone number.<sup>125</sup> It is speculated that one possible source for this information was the Police Service, although in practice it must also be possible that such information might ultimately come from the mobile phone operator who has access both to user data and cell site information.

**4.14** Mr Crone confirmed to the Inquiry that he provided advice on the legality of phone hacking in 2004, but due to legal professional privilege he would not say to whom he gave the advice or in

<sup>117</sup> p49, lines 14-18, Paul McMullan, *ibid*

<sup>118</sup> p49, lines 10-16, Paul McMullan, *ibid*

<sup>119</sup> p61, lines 22-23, Paul McMullan, *ibid*

<sup>120</sup> p44, lines 18-21, Paul McMullan, *ibid*

<sup>121</sup> p9, lines 9-21, Stuart Hoare, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>122</sup> p34, lines 7-12, James Hanning, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>123</sup> pp35-36, lines 21-7, James Hanning, *ibid*

<sup>124</sup> pp37-38, lines 23- 8, Stuart Hoare, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>125</sup> pp15-17, lines 8-5, Stuart Hoare, *ibid*

what context.<sup>126</sup> Without attempting to draw any conclusions about how many journalists or executives were engaged in, or aware of, phone hacking, it does seem clear, to use the words of Mr Silverleaf QC (albeit also having regard to additional evidence that was not available to him in June 2008), that there was “a culture of illegal information access” deployed at NGN in order to produce stories for publication. It is inconceivable that this was not symptomatic of a broader culture at the paper which regarded the imperative of getting information for stories as more important than respecting the rights of any individuals concerned or, indeed, compliance with the Editors’ Code or the law.

## Surveillance and the use of private investigators

- 4.15** There were three private investigators who have been identified as working for, or carrying out a significant amount of work for the NoTW. These are Glenn Mulcaire, Derek Webb and Steve Whittamore. They had different specialisations. For evident legal reasons this Report will not look in any detail at the employment of Mr Mulcaire by the NoTW. Whereas Mr Mulcaire was very much associated with phone hacking, Mr Whittamore’s *metier* was to obtain personal data, such as phone numbers, addresses and vehicle registration details. Mr Webb, by contrast, was an expert in surveillance and was used solely for that purpose. The Inquiry has not heard evidence of any other individual private investigators working for the NoTW but cannot assume that there were only three. Mr Webb told the Inquiry that he heard rumours about other private investigators working between 2003 and 2007 but that, beyond 2009, he was not aware of any private investigators other than himself working for the newspaper.<sup>127</sup>
- 4.16** Mr Whittamore provided services across very many national titles, and other media organisations, which demonstrates that the use of private investigators to obtain access to personal data was, at least until 2006, routine as a journalistic practice. According to the Information Commissioner’s report *What Price Privacy Now*, the ICO identified 228 transactions linked to the NoTW, through 23 journalists. This put the NoTW as the 5<sup>th</sup> highest user of Mr Whittamore’s services by volume of transactions and the 6<sup>th</sup> highest user by number of commissioning journalists.<sup>128</sup>
- 4.17** Mr McMullan told the Inquiry that the use of private investigators was ‘*too extensive*’. He said that in some weeks the NoTW paid Steve Whittamore £4,000.<sup>129</sup> Operation Motorman and its implications in this context are covered in detail elsewhere in this Report,<sup>130</sup> and the issue of how the NoTW reacted to the disclosure of Mr Whittamore’s activities is covered later in this section. For these purposes it is sufficient to note that use of Mr Whittamore to obtain personal data, whether legitimately or otherwise, was routine at least until 2006. No evidence has been presented to suggest that the NoTW continued to use private investigators to obtain personal data in this way subsequently, in particular after Mr Myler’s arrival as editor.

<sup>126</sup> pp32-36, lines 3-22, Tom Crone <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>127</sup> p126, lines 12-25, Derek Webb, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>128</sup> Information Commissioner’s Office, *What Price Privacy?*, p9 [http://www.ico.gov.uk/upload/documents/library/corporate/research\\_and\\_reports/ico-wppnow-0602.pdf](http://www.ico.gov.uk/upload/documents/library/corporate/research_and_reports/ico-wppnow-0602.pdf)

<sup>129</sup> p78, lines 6-13, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>130</sup> Part E, Chapter 3

**4.18** I turn now to Mr Webb. According to Mr Crone, it was and is a standard part of journalistic practice to watch the subjects of stories.<sup>131</sup> Mr Webb was recruited to work for the NoTW in 2003 by Mr Thurlbeck, whom he had met whilst working as a police officer, in order to provide surveillance services.<sup>132</sup> Mr Webb provided these services for the NoTW from 17 December 2003 until 20 November 2007, and then again from 20 March 2009 until the title closed in 2011.<sup>133</sup> During that time Mr Webb placed approximately 150 different people under surveillance on instructions from the NoTW.<sup>134</sup>

**4.19** When Mr Webb started working for the NoTW he obtained a private investigator's licence (although that was not required by the paper),<sup>135</sup> dubbed himself 'Silent Shadow' and invoiced the company for each shift worked.<sup>136</sup> He was given certain ground rules:<sup>137</sup>

*"They said that I do not go on private land, any private property, do not go hunting through rubbish bins and do not take pictures of – photographs of children or follow children connected to families. So if the child walks up the road, don't follow the child."*

His instructions sometimes did include following relations or contacts of celebrities,<sup>138</sup> for instance in the hope that they would lead him to the celebrity in question.<sup>139</sup>

**4.20** Throughout the period that he worked for the NoTW Mr Webb worked full time for them, carrying out surveillance on a mix of around 85% celebrities, politicians and sports stars, with the remaining 15% being people suspected of drug offences, addictions or crime.<sup>140</sup> From the work log Mr Webb provided to the Inquiry, it is clear that the majority in the first category were celebrities, and most of the instructions would be tips about sexual relationships, affairs and intimate relationships.<sup>141</sup> Mr Webb was clear that the number and nature of his assignments did not change at all in 2007 when Mr Myler took over as editor of the NoTW.<sup>142</sup>

**4.21** Mr Thurlbeck, who told the Inquiry that he had tasked Mr Webb with 'many dozens of assignments',<sup>143</sup> suggested the assignments were a mix of investigations into intimate relationships, drug taking or fraternising with undesirables.<sup>144</sup> However, Mr Webb said that people suspected of fraternising with criminals formed no part of the surveillance that he undertook,<sup>145</sup> and the work log provided by Mr Webb indicated that surveillance with a view to revealing criminal behaviour was very rare indeed.

<sup>131</sup> p58, lines 18-9, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>132</sup> p1, paras 2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Derek-Webb.pdf>

<sup>133</sup> p1, para 2, *ibid*

<sup>134</sup> p99, lines 19-22, Derek Webb, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-15-December-2011.pdf>

<sup>135</sup> p103, lines 10-16, Derek Webb, *ibid*

<sup>136</sup> p102, lines 13-25, Derek Webb, *ibid*

<sup>137</sup> p133, lines 19-25, Derek Webb, *ibid*

<sup>138</sup> p141, lines 18-25, Derek Webb, *ibid*

<sup>139</sup> p130, lines 18-24, Derek Webb, *ibid*

<sup>140</sup> pp134-135, lines 19-7, Derek Webb, *ibid*

<sup>141</sup> p135, lines 13-19, Derek Webb, *ibid*

<sup>142</sup> p111, lines 4-11, Derek Webb, *ibid*

<sup>143</sup> p27, lines 20-23, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>144</sup> p29, lines 1-4, Neville Thurlbeck, *ibid*

<sup>145</sup> p136, lines 1-4, Derek Webb, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-15-December-2011.pdf>

**4.22** Mr Webb was tasked by different journalists working for the news desk who would call or email with instructions.<sup>146</sup> Mr Thurlbeck told the Inquiry that all the assignments given to Mr Webb would be the result of some specific intelligence as “...it was too expensive to go on fishing expeditions .... and it’s just not something we would do....”<sup>147</sup> This was confirmed by Mr Webb.<sup>148</sup>

**4.23** Mr Thurlbeck explained that there would be consideration of whether the alleged behaviour was worth reporting as being in the public interest before Mr Webb would be tasked. These discussions and decisions were not, however, recorded,<sup>149</sup> and Mr Webb was not himself ever involved in any discussion of the public interest which justified the surveillance.<sup>150</sup> Mr Edmondson explained that, in relation to affairs, the consideration would largely be around whether the person was:<sup>151</sup>

*“projecting themselves in media as wholesome, faithful, would never cheat on their wife, and then doing something else in private....”*

**4.24** The ambiguity and subjectivity surrounding the terminology ‘projecting themselves’ should of course be noted, and in any event Mr Edmondson drew a distinction between how carefully these questions were considered before and after Mr Mosley’s successful action against the NoTW.<sup>152</sup> Mr Webb told the Inquiry that he was never involved in, or told of, any public interest considerations. Perusing the work log provided by Mr Webb, it would be very surprising indeed if all, or even the majority, of the instances of surveillance of celebrities and sports stars (generally in order to reveal intimate relationships) was so justified.

**4.25** Although not expressly mentioned in his evidence, it is clear from other evidence the Inquiry has received that, in 2007, Mr Myler brought in a new rule strictly limiting the use of private detectives.<sup>153</sup> Despite this apparent change in policy there appears to have been no immediate change of any sort with regard to Mr Webb’s employment: the nature and quantity of his work remained the same.<sup>154</sup> He did, however, stop working for the NoTW between November 2007 and January 2009 when he was charged with aiding and abetting misconduct in public office. Mr Crone told him that he would have to stop working for the NoTW if he was charged, but that he could come back to work if he was acquitted or if the charges were dropped.<sup>155</sup>

<sup>146</sup> pp109-110, lines 11-10, Derek Webb, *ibid*

<sup>147</sup> p30, lines 5-9, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>148</sup> p129, lines 3-4, Derek Webb, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-15-December-2011.pdf>

<sup>149</sup> p32, lines 4-19, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>150</sup> p123, lines 17-19, Derek Webb, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-15-December-2011.pdf>

<sup>151</sup> p55, lines 1-11, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>152</sup> p56, lines 15-19, Ian Edmondson, *ibid*

<sup>153</sup> pp58-65, lines 6-18, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-14-December-2011.pdf>; p3, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Colin-Myler1.pdf>; some interpreted the restrictions as a complete ban on the use of private investigators: see p59, lines 8-12, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>154</sup> p111, lines 4-25; pp114-115, lines 9-2, Derek Webb, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-15-December-2011.pdf>

<sup>155</sup> pp115-119, lines 19-4, Derek Webb, *ibid*

- 4.26** In the event, the charges were dropped and Mr Webb went back to the NoTW. At that point, he was told by Mr Thurlbeck that he would have to make some changes to the arrangements for his employment. Specifically, he was asked to change his company name from ‘Shadow Watch’ (to which he had changed it earlier from ‘Silent Shadow’) to ‘Derek Webb Media’, he was asked to surrender his PI licence (which had, in fact, lapsed while he was not working for the NoTW) and he was asked to get himself an NUJ card. He complied with all these requests.<sup>156</sup> Mr Webb was told that these changes were: *“in relation to the Clive Goodman affair.....that they didn’t want to be tied up with private investigators.”*<sup>157</sup> Mr Webb was clear that he had no journalistic experience and that he never wrote an article for the paper. He nonetheless was able to acquire an NUJ card.<sup>158</sup>
- 4.27** This process of trying to pretend that Mr Webb was a journalist was a particularly extraordinary one. It was quite clear from Mr Webb’s evidence that his role never changed and at no time did he consider himself to be doing the work of a journalist. However, clearly some executives at the NoTW felt it would be more appropriate for him to appear to be a journalist, hence the instructions relayed to him by Mr Thurlbeck. Mr Edmondson said that surveillance was something that a journalist or photographer would be expected to do,<sup>159</sup> but accepted that persuading Mr Webb to join the NUJ in order to be able to employ him, despite the introduction by Mr Myler of significant restrictions on using private investigators, was ‘just a sham’.<sup>160</sup> Mr Edmondson further told the Inquiry that Mr Myler, Stuart Kuttner and Mr Crone were all aware of this ‘pretence’.<sup>161</sup>
- 4.28** Mr Myler said that he regarded Mr Webb as a private investigator when he became aware of him in 2007 after his arrest.<sup>162</sup> Mr Myler said that once the charges against Mr Webb had been dropped, Mr Edmondson had approached him and asked if he would be more comfortable employing Mr Webb if he was a member of the NUJ. Mr Myler agreed, as: *“it made him more aware of the responsibilities of working for the News of the World.”*<sup>163</sup> Mr Myler did not suggest that this process made Mr Webb a journalist.<sup>164</sup> He was confident that appropriate oversight and processes were in place to ensure that Mr Webb was not doing anything that was not lawful and legitimate.<sup>165</sup>
- 4.29** Mr Crone, however, told the Inquiry that he thought Mr Webb was a freelance journalist.<sup>166</sup> His evidence on this point may be doubted: Mr Webb’s evidence was that, in 2007, he had discussed his criminal charge with Mr Crone in detail and Mr Crone had personally arranged the compromise agreement with Mr Webb when he was forced to leave his employment because of the charge, which directly related to his activities as a private investigator.<sup>167</sup>

<sup>156</sup> pp119-120, lines 25-13, Derek Webb, *ibid*

<sup>157</sup> pp120-121, lines 24-2, Derek Webb, *ibid*

<sup>158</sup> pp121-122, lines 13-6, Derek Webb, *ibid*

<sup>159</sup> p57, lines 2-13, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>160</sup> pp60-61, lines 23-1, Ian Edmondson, *ibid*

<sup>161</sup> p61, lines 2,19, Ian Edmondson, *ibid*

<sup>162</sup> p65, line 19-21, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>163</sup> p66, line 3-14, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>164</sup> p66, lines 11-13, Colin Myler, *ibid*

<sup>165</sup> pp68-69, lines 24-15, Colin Myler, *ibid*

<sup>166</sup> p52, lines 3-6, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>167</sup> pp117-118, lines 23-13, Derek Webb, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-15-December-2011.pdf>

- 4.30** There were two particular cases of surveillance which stood out from Mr Webb’s evidence: both were notable because they involved opponents or campaigners against the NoTW’s involvement in phone hacking.
- 4.31** The first example was the surveillance of Mark Lewis and Charlotte Harris, lawyers representing claimants in the civil claims brought against NoTW in respect of phone hacking. Mr Webb was tasked to follow each lawyer in order to try to discover whether they were having an affair. The surveillance task (which involved, for part of the time, the surveillance of the wrong person) lasted a week.
- 4.32** The rationale for the surveillance of Ms Harris and Mr Lewis was the concern, shared by Julian Pike at Farrers, solicitors then acting for NoTW, and Mr Crone, that they were not respecting confidentiality agreements relating to phone hacking settlements and that this was detrimental to NGN’s position. They further concluded that the right course of action was to try to prevent Ms Harris and Mr Lewis from acting in subsequent cases. One of the tools in this campaign was to be surveillance, to identify the nature of the relationship between the two solicitors that might lend circumstantial support to the allegation that they were exchanging confidential information.<sup>168</sup> Mr Pike said that he was aware that the NoTW had put Ms Harris and Mr Lewis under surveillance. He defended the decision to do so, saying that he would do the same again in the same circumstances.<sup>169</sup> He claimed not to know that the surveillance was not being carried out by a journalist.<sup>170</sup>
- 4.33** Mr Crone asserted that he did not commission private investigators to watch Ms Harris and Mr Lewis, but instead had agreed that Mr Webb would be asked to “ascertain the nature of the relationship” between them.<sup>171</sup> Mr Edmondson told the Inquiry that the surveillance of Ms Harris made him uncomfortable because it was not something which was likely ever to lead to a publishable story.<sup>172</sup> He said that he raised this with Mr Crone and that:<sup>173</sup>

*“Tom Crone’s response was that he accepted that, namely that it was unlikely material for inclusion in the newspaper as a story, but told me that the main reason to investigate was that it could provide the newspaper with good leverage against the two individuals.”*

- 4.34** Mr Crone continued to maintain, despite being the only witness before the Inquiry to believe it, that Mr Webb was employed as a freelance journalist,<sup>174</sup> though he did accept that in undertaking the specific task of surveillance of Mr Lewis and Ms Harris he was “doing something for the legal department.”<sup>175</sup>
- 4.35** This whole saga reflects poorly on all involved. The use of covert surveillance against solicitors representing the opposition in damaging litigation is dubious at best, particularly when it

<sup>168</sup> pp3-4, para 5-8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Julian-Pike1.pdf>

<sup>169</sup> p18, lines 11-14, Julian Pike, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf>

<sup>170</sup> pp3-4, lines 24-6, Julian Pike, *ibid*

<sup>171</sup> p57, lines 4-11, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>172</sup> p62, lines 3-8, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>173</sup> pp62-63, lines 25-4, Ian Edmondson, *ibid*

<sup>174</sup> pp57-63, lines 15-15, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>175</sup> p63, lines 19-21, Tom Crone, *ibid*

seems clear that the surveillance was commissioned in order to put pressure on the solicitors to withdraw from the litigation. It is a case of attacking the man and not the ball. Mr Crone must, ultimately, take final responsibility. Despite his efforts to persuade the Inquiry to the contrary, in my judgment he well knew that Mr Webb was not carrying out proper journalistic functions. Additionally, it was primarily his decision to engage Mr Webb to conduct discreet surveillance of Mr Lewis and Ms Harris in circumstances where there was no conceivable journalistic or other justification to do so: this was clearly in breach of their Article 8 rights.

- 4.36** The second notable example of NoTW surveillance is equally dubious. Tom Watson MP, arguably the most energetic of the anti-hacking MPs, and a member of the Culture Media and Sport (CMS) Select Committee was placed under surveillance during the investigation by the CMS Committee of phone hacking. As far as Derek Webb was concerned he was asked to try to prove an alleged affair (there was no affair).<sup>176</sup> The surveillance seems to have been part of an orchestrated attempt to put pressure on Mr Watson to step back from the hacking issue. Around the same time as the surveillance was commissioned, Lord Mandelson confirmed that Rebekah Brooks had asked him for Mr Watson and others on the Select Committee to be “pulled off” the hacking issue.<sup>177</sup>
- 4.37** It now appears that Mr Watson may not have been the only member of the Select Committee targeted for surveillance. On 3 May 2012, when reviewing Mr Watson’s book,<sup>178</sup> Mr Thurlbeck (describing what he had told Mr Watson in confidence and which Mr Watson had recorded in the book) wrote in the *New Statesman*:<sup>179</sup>

*“So the public now knows that, at the height of the hacking scandal, News of the World reporters were despatched to spy round the clock on the members of the culture, media and sport committee. The objective was to find as much embarrassing sleaze on as many members as possible in order to blackmail them into backing off from its highly forensic inquiry into phone-hacking.*

*It was a plan hatched not by the News of the World but by several executives at News International – up the corridor in “Deepcarpetland”, as the area staffed by managers and pen-pushers was known. And it failed because the reporters had grave reservations, so dithered and procrastinated. It wasn’t journalism, it was corporate espionage. Ten days later, the plot was cancelled.”*

- 4.38** Mr Thurlbeck’s article must be treated with some caution. When requiring him to provide a statement, the Inquiry made it clear that it wished to be informed about other aspects of the culture, practices and ethics at the NoTW and then specifically asked about his awareness of the surveillance carried out by Mr Webb (although the question was clearly not limited to Mr Webb). His answer was that Mr Webb had been engaged by the majority of the reporters on the NoTW (including him) “to undertake what journalists do on all newspapers have been doing for more than a century, namely to observe human behaviour and report on it” and that, so far as he was aware, Mr Webb had not been instructed to do anything illegal.<sup>180</sup> He did not provide this obviously extremely significant information (set out in the piece in the *New Statesman*) about the culture and practices within the paper. Neither did he volunteer

<sup>176</sup> pp39-40, lines 23-8, Tom Watson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-22-May-2012.pdf>

<sup>177</sup> p60, lines 8-14, Lord Mandelson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-21-May-20121.pdf>

<sup>178</sup> Watson, T & Hickman, A, *Dial M for Murdoch*

<sup>179</sup> [www.newstatesman.com/politics/uk-politics/2012/05/review](http://www.newstatesman.com/politics/uk-politics/2012/05/review)

<sup>180</sup> p9, para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Neville-Thurlbeck6.pdf>

it when he gave evidence on 12 December 2011. In view of my concern about the way in which this account emerged, I make no finding about it; if true, however, it reveals a very disturbing state of affairs and is suggestive of an ‘untouchable’ mentality. I share the concern expressed by the CMS Select Committee about the fact that NI was undertaking discreet surveillance of members of that Committee, a matter for which Mr James Murdoch has quite rightly fulsomely apologised.<sup>181</sup>

**4.39** I do not pass direct comment on the other assignments Mr Webb undertook between 2007 and 2011, save to note that any public interest justification for the surveillance of the many celebrities and sports stars contained in Mr Webb’s work log is likely to have been extremely thin in the vast majority of cases. It appears more likely that covert surveillance, like phone hacking, was considered by some within the NoTW to be an ordinary technique for news gathering, rather than an exceptional technique to be used where justified by the public interest in the underlying story.

## Persuasion and harassment

**4.40** It is a fact of life that not everybody is always keen to cooperate with the press, particularly when details of their own private lives or the private lives of their friends or family are involved. Journalists have therefore developed methods of persuading them to talk. A specific example arises in relation to the NoTW and has already been touched on. This relates to the approach of Mr Thurlbeck to the women involved in the Max Mosley case. The facts of the matter are that, following publication of the original story on 30 March 2008, Mr Thurlbeck sent emails to two of the women involved in the story in the following terms:<sup>182</sup>

*“Hope you’re well. I’m Neville Thurlbeck, the chief reporter of the News of the World, the journalist who wrote the story about Max Mosley’s party with you and your girls on Friday. Please take a breath before you get angry with me! I did ensure that all your faces were blocked out to spare you any grief and soon the story will become history, as life and the news agenda move on very quickly. There is a substantial sum of money available to you or any of the girls in return for an exclusive interview with us. The interview can be done anonymously and your face can be blocked out too. So it’s pretty straightforward. Shall we meet/talk?”*

**4.41** The following day he sent the two women another email:<sup>183</sup>

*“I’m just about to send you a series of pictures which will form the basis of our article this week. We want to reveal the identities of the girls involved in the orgy with Max, as this is the only follow up we have to the story. Our preferred story, however, would be you speaking to us directly about your dealings with Max and for that we would be extremely grateful. In return for this, we would grant you full anonymity, pixelate your faces in all photographs and secure a substantial sum of money for you. This puts you firmly in the driving seat and allows you much greater control ...”*

**4.42** As is clear, the women in question were given Hobson’s choice: cooperate with the NoTW or face public humiliation.

<sup>181</sup> p43, [http://www.parliament.uk/documents/commons-committees/culture-media-sport/Uncorrected\\_transcript\\_CMSC\\_10\\_November\\_11\\_James\\_Murdoch.pdf](http://www.parliament.uk/documents/commons-committees/culture-media-sport/Uncorrected_transcript_CMSC_10_November_11_James_Murdoch.pdf)

<sup>182</sup> para 81, <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

<sup>183</sup> *ibid*

- 4.43** Mr Thurlbeck gave evidence that, although his name was on these emails, they were dictated to him<sup>184</sup> by Ian Edmondson.<sup>185</sup> He was seemingly reluctant to name Mr Edmondson (he initially described him as a man on the news desk; Mr Edmondson was in fact the news editor) and agreed that he had given this account before Mr Justice Eady in the civil case brought by Mr Mosley. Mr Edmondson, on the other hand, said that he had no memory of the emails, or of emails of that nature being sent. He said they were drafted in language he would not use.<sup>186</sup> Mr Edmondson's evidence was somewhat equivocal. He was clear that he would have expected an approach to be made to the two women seeking their cooperation in a follow-up article. However, he asserted that he would not, in any circumstances, have allied himself with this type of approach to any witness.<sup>187</sup>
- 4.44** In truth, it does not matter which account is accurate. If either Mr Thurlbeck or Mr Edmondson was concerned about what was happening, that itself should have triggered some mechanism for review. This was not some small story on one of the back pages: what was being discussed was going to affect people's lives. Mr Thurlbeck concedes that they were sent by him, in his name and willingly.<sup>188</sup> It follows, therefore, that Mr Thurlbeck must accept responsibility for them and not merely as the cipher for someone else. He was after all the chief reporter at the paper and a journalist of very considerable experience.
- 4.45** As I have already observed, in his judgment in the Mosley case, Mr Justice Eady likened the emails to blackmail. He commented on Mr Thurlbeck's inability to see that point and cited the following cross examination from the trial:<sup>189</sup>

*“Q Let's be direct about this. There is a clear threat here that if they don't cooperate they will expose them in the News of the World?”*

*A No, I don't accept that. I think there was a clear choice here but there was no attempt to threaten them.*

...

*Q Let's get this straight. If the blackmailer says to the victim, 'Either you pay up or I'll put your picture in the newspaper' he's offering him a very fair choice?”*

*A No.*

*Q There's no threat?”*

*A No, because I'm asking for something here. Your example states that I'm asking for something in return for issuing a threat.*

*Q Yes, indeed you are.*

*A No, I'm offering to give them something. I'm offering to pay them money for an anonymous interview. I'm offering to pay them, not to take anything from them, so in that sense I'm not blackmailing them at all. That thought never crossed my mind. I'm offering them a choice.”*

<sup>184</sup> p92, lines 10-24, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>185</sup> p93, lines 20-21, Neville Thurlbeck, *ibid*

<sup>186</sup> p45, lines 2-23, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>187</sup> p51, lines 18-21, Ian Edmondson, *ibid*

<sup>188</sup> p92, lines 23-24, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>189</sup> para 87, <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

**4.46** In his evidence to the Inquiry, it seemed that Mr Thurlbeck still could not see the point and was untroubled that a High Court judge took a different view to his. Further, he appeared to suggest that all others at the NoTW shared his view. He said:<sup>190</sup>

*“The point that Mr Justice Eady makes is that it could be interpreted as being blackmail. I don’t interpret it that way, and we didn’t at the News of the World. Nobody at the News of the World – nobody, from the editor down – has discussed or accused me of blackmailing these girls. Now, if I had, I would have expected Mr Myler, who was a very fair-minded man, to have reprimanded me severely. We didn’t have a conversation about it because it simply was not the case.”*

**4.47** Mr Thurlbeck further explained that this was normal practice:<sup>191</sup>

*“People would often be reluctant to help a newspaper because of their identities coming out, and often deals would be done to protect their identities. We would say, “Look, if you talk to us anonymously, then we can write a story about this.” This happens all the time. [...] This is the course of a normal journalistic practice, if you like, offering people a degree of anonymity in return for evidence that could support a story.”*

**4.48** To the CMS Select Committee in 2009, Mr Crone denied both that Mr Thurlbeck’s behaviour could constitute blackmail and that the judge had considered that it might do so.<sup>192</sup> Despite Mr Crone’s approach in front of the Committee, he took a different line when he gave evidence to the Inquiry. When asked if he accepted that the emails amounted to blackmail he replied:<sup>193</sup>

*“They were pretty close, I think.”*

**4.49** Mr Myler accepted, both in the High Court and to the Inquiry, that he could see that the emails probably could not be interpreted other than as a threat and that he was surprised by them.<sup>194</sup> Mr Justice Eady concluded from the failure of Mr Myler to take any disciplinary action at all against Mr Thurlbeck that:<sup>195</sup>

*“it would appear that Mr Myler did not consider there was anything at all objectionable about Mr Thurlbeck’s approach to the two women, as he did not query it at any stage. This discloses a remarkable state of affairs.”*

**4.50** Mr Myler accepted this criticism.<sup>196</sup> He contradicted Mr Thurlbeck’s assertion that no one had discussed the matter with him, saying that he had, in fact, admonished Mr Thurlbeck<sup>197</sup> and, by implication, had also raised the issue with Mr Edmondson,<sup>198</sup> making it clear that ‘care needed to be taken.’ He told the Inquiry that writing in that way was ‘unnecessary’ and

<sup>190</sup> p4, lines 1-10, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>191</sup> pp92-97, lines 21-8, Neville Thurlbeck, *ibid*

<sup>192</sup> <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/362/9072101.htm>

<sup>193</sup> p75, lines 1-3, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>194</sup> p44, lines 17-24, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>195</sup> para 86, <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

<sup>196</sup> p47, lines 14-24, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>197</sup> p45, lines 1-3, Colin Myler, *ibid*

<sup>198</sup> p46, lines 3-5, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

*'totally inappropriate'*.<sup>199</sup> Mr Edmondson told the Inquiry that, on reading the emails now, he thought they were a threat.<sup>200</sup>

**4.51** I observe that Mr Myler's evidence to the Inquiry is inconsistent with his evidence to Mr Justice Eady,<sup>201</sup> to the effect that he did not at any stage raise any concerns with Mr Thurlbeck. It is likely that what he said to Mr Justice Eady (when the relevant matters were fresh in his mind) was correct but, again, the importance of this episode is what it says about the culture at the NoTW, the practice of journalism at the paper and the lack of attention paid to the rights of those who not merely might be affected but undoubtedly would be seriously affected by what was published.

**4.52** Rupert Murdoch's evidence on this issue was also revealing. Although he made it clear that at the time of giving his evidence he had not acquainted himself with the detail of Mr Justice Eady's judgment, Mr Murdoch's initial reaction to the judge's assessment was:<sup>202</sup>

*'No, it's not my position at all. I respect him and I accept what he says, I'm just simply saying that a journalist doing a favour for someone in returning [sic] for a favour back is pretty much everyday practice.'*

When probed on this issue he claimed *'I don't know if she was offered money but it happens'*, and subsequently said:<sup>203</sup>

*"And I may well agree with every word if I read it [i.e. the judgment of Eady J]. But it's a common thing in life, way beyond journalism, for people to say, "I'll scratch your back if you scratch my back."*

**4.53** Mr Murdoch did go away and read the judgment; he subsequently wrote to the Inquiry clarifying his evidence on this issue and explaining that it was not his intention to appear to take issue with the judge's conclusions. However, although Mr Murdoch would no doubt not wish to countenance the deployment of tactics tantamount to blackmail, his more general observations about the doing of favours and back-scratching are extremely revealing as to the culture, practices and ethics of the press more generally, and far more so than simply in the circumstances which he was then discussing. It is also revealing that the judgment of Mr Justice Eady had not been brought to Mr Murdoch's attention prior to his giving evidence to the Inquiry, or that he had chosen not to read it. It was, after all, a judgment in which the NoTW had been found to be guilty not only of practices tantamount to blackmail, but also of casual and cavalier journalism. It was costly for the NoTW and, according to many of the NoTW witnesses, it had led to a change in approach to privacy generally. That Mr Murdoch was not apparently familiar with it says something about the degree to which his organisation engages with the ethical direction of its newspapers.

**4.54** From the foregoing, it is difficult to reach any other conclusion than that Mr Thurlbeck, and possibly Mr Edmondson, regarded the approach taken in these emails as an entirely standard way to behave. Mr Thurlbeck was supported in this view by the complete lack of negative feedback from Mr Myler or any other senior colleague. The apparent change of heart of both Mr Myler and Mr Crone is noted, but the volte face comes far too late. On this basis, it seems

<sup>199</sup> p48, lines 3-11, Colin Myler, *ibid*

<sup>200</sup> p52, lines 20-22, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>201</sup> para 86, <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

<sup>202</sup> pp49-50, lines 23-1, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf>

<sup>203</sup> p51, lines 12-15, Rupert Murdoch, *ibid*

entirely probable that the approach taken in these emails was not so very unusual, that the attitude was condoned within the NoTW and that subsequent retractions have been driven as much by the public exposure of the tactic as by any genuine belief that such an approach was inappropriate. The conclusion of the CMS Committee on this point bears repeating:<sup>204</sup>

*“A culture in which the threats made to Women A and B could be seen as defensible is to be deplored. The fact that News of the World executives still do not fully accept the inappropriateness of what took place is extremely worrying.”*

**4.55** The example of the emails sent to the women in the Mosley case is an extreme instance of a technique described by the actor and comedian, Steve Coogan:<sup>205</sup>

*“The technique they often use is – these women are often vulnerable and not canny enough to understand the techniques of the press, and I know anecdotally that they – what they do is they say, “We’re going to run a story about you. It’s going to be very unsympathetic. We’re going to make you look tawdry.” They say this to the girl, “We’re going to make you look tawdry and awful and sluttish, but if you talk to us, you can make the story all positive and friendly and nice and we’ll make you look lovely and we’ll give you some money as well.”*

**4.56** Mr Coogan was himself treated in a similar way. He was called by a journalist from the NoTW and told that, if he would confirm certain aspects of a story, in return the journalist would guarantee that the more lurid details would be omitted.<sup>206</sup> In the event, Mr Coogan confirmed the story, and the NoTW in turn proceeded to publish the whole story, including the lurid details they had promised not to print. Mr Coogan indicated that this was not the action of a rogue reporter, but had been sanctioned, or even organised, by the subsequent editor, Mr Coulson.<sup>207</sup>

**4.57** In a rather different twist, Mr Driscoll told the Inquiry what happened in relation to the case of the medical records of a Premier League football manager, where information obtained by blagging was not used in a published story but was instead used to put pressure on the individual to cooperate with the paper on subsequent stories. Mr Driscoll said:<sup>208</sup>

*“I know there was a phone call to that football manager to tell him exactly what we knew and that he was very upset about it, and he made his thoughts known about that and said that there was no way he wanted that story to appear in public. And this is another technique on the News of the World, if you want to call it a technique, that information is a tradable commodity, and it was put to [blank] that we wouldn’t use this information and in the end it was mentioned to him that we would keep it quiet and we would keep it out the public domain, and because of that, he then started cooperating with the paper.”*

**4.58** Given that the information appears to have been accessed unlawfully, and its publication is likely to have been an actionable misuse of private information, the fact that the newspaper sought to bargain with the private medical information reveals a remarkable degree of

<sup>204</sup> para 55, CMS Report on Press Standards Privacy and Libel

<sup>205</sup> *ibid*; pp19-20, lines 17-2, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-20111.pdf>

<sup>206</sup> p18, lines 2-9, Steve Coogan, *ibid*

<sup>207</sup> p18, lines 14-21, Steve Coogan, *ibid*

<sup>208</sup> p15, lines 14-25, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

audacity and a disregard for both the privacy of the individual and the confidentiality of the information.

## Deceit

**4.59** Evidence to the Inquiry has revealed that it was absolutely standard practice across the industry, and certainly within the NoTW, to record all conversations without telling people that they were being recorded.<sup>209</sup> A number of witnesses gave evidence that it was standard practice at NoTW to make tape recordings of any conversations with sources.<sup>210</sup> Mr Thurlbeck said:<sup>211</sup>

*““you would have to equip yourself, obviously, with recording devices to record their admissions and write about it in the newspaper without fear of being sued for libel.”*

Mr Edmondson argued that this was entirely proper because people might otherwise not speak frankly.<sup>212</sup> The implication seemed to be that people may not be prepared to go so far, knowing that they were being recorded, as they would if they did not know. Whilst there may not be anything wrong with this practice (and a true record of what was said can have very real value), it does at least raise questions about trust between journalists and their sources (and in instances where the recording is not of a conversation with a source but someone like Clarence Mitchell the questions arise all the more acutely). Suffice to say, there are circumstances in which it might be considered to be low level deceit.

**4.60** It is not entirely clear that this is a practice permitted by the Editors’ Code. Paragraph 10 of the Code states:

- “i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held private information without consent.
- ii) Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.”

**4.61** The first limb of paragraph 10 appears primarily to relate to interception of a communication that does not otherwise involve the journalist, although this is not explicit. The second limb is more about a failure on the part of the journalist to be honest with those he or she is dealing with. In this context it is, at least, arguable that recording conversations without notifying the other party is a form of subterfuge. At any rate, it is not unreasonable to suppose that some consideration as to whether it is appropriate to do so should be undertaken in each case, rather than the routine recording of people without their knowledge or permission.

<sup>209</sup> p2, para 1.16, Michelle Stanistreet, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/MS-Exhibit-11.pdf>

<sup>210</sup> p65, lines 15-20, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>; p43, lines 15-21, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>211</sup> p63, lines 10-13, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>212</sup> p65, lines 15-20, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

- 4.62** This practice of covert recording sometimes goes further. An example is the video recording that Mr Thurlbeck persuaded his source to make of Mr Mosley. He explained that this was done for legal reasons:<sup>213</sup>

*“It was important for Michelle to video the orgy to ensure that we had sufficient evidence should Mr Mosley threaten to sue the News of the World for libel.”*

But the NoTW did not simply put the recording in a cupboard until it was needed for the inevitable libel or privacy case. Instead, they put it on their website, leading to some of the privacy issues discussed above.

## Blagging

- 4.63** Another technique that qualifies as deceit is what has been called ‘blagging’. Mr McMullan described the process of blagging on these terms:<sup>214</sup>

*“A blag might be: “Hello, I am Mr X’s accountant, could you please fax the bill”, and then you get a list of all the phone numbers that he’s just rung and then you ring them all up and you find the mistress he’s just rung.”*

- 4.64** Mr McMullan was clear that his belief was that this sort of activity was common at the NoTW.<sup>215</sup> He explained why:<sup>216</sup>

*“It’s very hard to get a story. You just don’t go up to a paedophile priest and say, “Hello, good sermon, and are you a priest because you like abusing choir boys?” It doesn’t happen. You don’t say, “Hello, I work for the News of the World.” You have to go to the nth degree to get to the truth.”*

Mr McMullan provided a specific example of a blag in which he was involved, securing access to a database of convicted paedophiles under false pretences and:<sup>217</sup>

*“basically plundered about 50 paedophiles who had raped and abused children and had served a sentence.”*

- 4.65** The circumstances described by Mr McMullan – blagging in order to uncover a paedophile ring – could be an example of investigative journalism in the public interest, depending on whose the database it was: blagging the information from the police or, for example, the probation service, in order to ‘name and shame’ raises different issues. Given that s55 of the Data Protection Act 1998 contains a public interest defence, some kind of blags are likely to be both lawful and compliant with ethical codes, provided there is sufficient prima facie evidence to justify the blag in the first place.

- 4.66** It is important to underline that I am not suggesting that deception is not a potentially legitimate tool within the armoury of a journalist: it will all depend on the circumstances. The concern will always be the circumstances in which and the purposes for which the deceit

<sup>213</sup> p75, lines 16-19, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>214</sup> p68, lines 5-16, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>215</sup> *ibid*

<sup>216</sup> pp46-47, lines 25-9, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>217</sup> p38, lines 15-25, *ibid*

is used. There is a real public interest in exposing crime or serious impropriety, protecting public health and safety and, depending on the circumstances, preventing the public from being misled. In those cases, journalists may well have to be devious to obtain the story and nobody is likely to criticise them for behaving in that way. The issue is the abuse of that technique simply in order to pursue stories or people without any public interest justification of any sort.

**4.67** The evidence from Operation Motorman,<sup>218</sup> challenges the suggestion that blagging was used, in the majority of cases, in the public interest. To the contrary, there is clear prima facie evidence that there was no public interest in much of the information that many of the blags obtained.

**4.68** At the NoTW blagging was not only used to get material that would eventually form the basis of a published story. Blagging was also used as a technique to obtain the codes required to engage in other forms of illicit access to information. Mr McMullan, when asked if he had paid officials at phone companies, said:<sup>219</sup>

*“The people we employed were more into blagging to try and trick people out of their PIN codes and that kind of thing, rather than actually paying someone who worked at Vodafone or whatever.”*

**4.69** Another example was given by Mr Driscoll, who described failing to track down details of the medical condition of a prominent football manager by ‘old-fashioned means’, to be subsequently called by his sports editor and told: *“the story is true. I have his medical records with me at the moment.”*<sup>220</sup> Mr Driscoll described what he had been told about how the medical records were obtained:<sup>221</sup>

*“I was told it’s through a blagging technique. I was told that will sometimes you’d get a situation where – if an investigator sent a fax to a GP or a hospital saying, “I’m his specialist, I need these details”, it was incredible how many times that would just get sent straight back. There were different techniques to obtain them and I was told they weren’t obtained through any illegal source but it was from through blagging at the time.”*

**4.70** Mr Driscoll said that this blagging was not done by the news editor himself, but that:<sup>222</sup>

*“there were specialist people on the News of The World who did that sort of stuff..... special people on the news desk or features desk that he went to.”*

**4.71** Mr Driscoll said that he was not personally happy with using blagging of this sort to get information,<sup>223</sup> but he did not raise these concerns with the sports editor or any other senior executive at the paper because he was afraid it would damage his career:<sup>224</sup>

<sup>218</sup> Part E Chapter 3

<sup>219</sup> pp77-78, lines 20-2, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>220</sup> pp13-14, lines 8-8, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>221</sup> p14, lines 13-22, Matt Driscoll, *ibid*

<sup>222</sup> p15, lines 1-9, Matt Driscoll, *ibid*

<sup>223</sup> p17, lines 7-8, Matt Driscoll, *ibid*

<sup>224</sup> p19, lines 14-21, Matt Driscoll, *ibid*

*“it would be a very brave journalist, certainly in the early years of his career on the paper, to suddenly say, “I’m not happy with these techniques that are being used.” You’d be basically making a decision over your career there. Anyone on that floor who complained too much would find themselves pushed out, certainly.”*

- 4.72** Mr Driscoll also provided another example when he was told that someone had persuaded the Football Association into revealing information about a drugs test by pretending to be from the football club of the individual concerned. This, he said, was a story which he had obtained from various sources, but it was the blagging phone call that satisfied the legal team that the story was true and therefore safe to print.<sup>225</sup> He suggested that this imperative to ensure that a story was true before publishing it was generally the reason for resorting to such techniques.<sup>226</sup>
- 4.73** Mr Driscoll asserted that this was common practice at the NoTW and widely accepted by his colleagues.<sup>227</sup> However, despite this assertion, he was clear that the two examples of blagging set out here were the only two of which he had personal knowledge during the years that he worked at NoTW.<sup>228</sup>
- 4.74** Mr Myler, Mr Wallis and Mr Thurlbeck all rejected Mr McMullan’s evidence on the widespread use and appropriateness of blagging, and indeed most of Mr McMullan’s evidence generally, saying that he painted a picture of the NoTW that they did not recognise.<sup>229</sup> Mr Thurlbeck said:<sup>230</sup>

*“My experience of the News of the World is that it was a highly professional organisation. It was staffed by some of the best journalists on Fleet Street, who worked with great diligence and integrity, and continue to do so. I don’t – I was proud to work alongside all of my colleagues. I have enormous respect for all of them. You know, there may have been a small caucus of people who gave us a bad reputation now.”*

- 4.75** I come to no conclusion as to the size of the ‘caucus of people’ who were responsible for the unethical practices identified in this Chapter, including blagging. However, I do conclude that blagging was utilised at the NoTW as a means to access private information, either by using third parties or by journalists themselves.

## 5. Investigative journalism

- 5.1** More substantial use of subterfuge and deceit is generally the preserve of investigative journalism, that is to say, when subterfuge and deceit are used the press generally term

<sup>225</sup> p19, lines 12-25, Matt Driscoll, *ibid*

<sup>226</sup> pp19-20, lines 22-15, Matt Driscoll, *ibid*

<sup>227</sup> p1, para 7-8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Matthew-Driscoll.pdf>

<sup>228</sup> p20, lines 16-19, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>229</sup> p27, lines 21-24, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>; pp17-18, lines 16-12, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-20111.pdf>; p95, lines 170-19, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-20111.pdf>

<sup>230</sup> pp15-16, lines 19-3, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-20111.pdf>

the result ‘*investigative journalism*’, regardless of whether that label is strictly merited. The Inquiry heard evidence from Mr Mahmood who carried out many hundreds of investigations whilst working for the NoTW and other titles. Mr Mahmood told the Inquiry that, before he embarked on an investigation, he would provide senior and legal staff with justification as to why the story was in the public interest and why any subterfuge was justified.<sup>231</sup> The specific methods to be used were discussed with the legal team and he would stay in constant touch with them during an investigation.<sup>232</sup> He explained that the approach at the NoTW was much more informal than he had been used to when working for The Sunday Times. There were, for example, no formal meetings or discussions, but nonetheless everything was discussed with Mr Crone.<sup>233</sup> Mr Mahmood gave evidence that, “*we were extra cautious to comply with the PCC Code,*” and that there was keen scrutiny of whether a proposal for the use of subterfuge would pass the public interest test. The key factors they would take into account were the exposure of criminality, or moral wrongdoing or of hypocrisy<sup>234</sup> and whether it would be possible to obtain the same information without using subterfuge.<sup>235</sup>

## Disguise

- 5.2 Mr Mahmood described situations in which he had masqueraded in many guises in order to obtain information for stories. In some cases, for example, he had posed as a client for prostitutes in order to secure evidence of drug dealing:<sup>236</sup>

*“They were dealing drugs to clients. I mean, sure, the only way to infiltrate them was to pose as a client and then the offer would be made to us.”*

On another well known occasion Mr Mahmood posed as a Sheikh, Mohammed al Kareem, in order to get his target to ‘relax’ and ‘be himself’.<sup>237</sup> The purpose of taking on these fake personalities was to make an offer for, or wait to be offered, illegal substances or to show a willingness to undertake unlawful or immoral actions in order to expose the commission of illegality.

## Inducements

- 5.3 The NoTW did pay for information. Mr Mahmood said:<sup>238</sup>

*“We advertised it. I don’t think there’s anything wrong with that, as long as the individuals are not profiting from their crimes by doing so. I mean, if they were whistle-blowing and helping us expose drug rings and paedophile rings and expecting a fee for that, then I see nothing wrong with that.”*

<sup>231</sup> pp5-6, lines 23-3, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>232</sup> pp6-7, lines 21-3, Mazher Mahmood, *ibid*

<sup>233</sup> pp8-9, lines 17-6, Mazher Mahmood, *ibid*

<sup>234</sup> pp11-12, lines 25-5, Mazher Mahmood, *ibid*

<sup>235</sup> pp16-17, lines 22-4, Mazher Mahmood, *ibid*

<sup>236</sup> p14, lines 12-14, Mazher Mahmood, *ibid*

<sup>237</sup> pp26-27, lines 13-6, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>238</sup> p20, lines 13-19, Mazher Mahmood, *ibid*

The issues surrounding payment for information are dealt with in detail later in this report.<sup>239</sup> In seeking to understand the culture of the NoTW it is sufficient to note that this was considered a standard practice.

- 5.4** Mr Mahmood was reluctant to explain his *modus operandi* to the Inquiry<sup>240</sup> but it was clear that in many cases it involved offering the target some inducement to commit the act that he was seeking to expose. Mr Mahmood pointed out that, in the Fake Sheikh case, judges both in the UK and at the European Court of Justice had ruled that there was no entrapment. He was keen to emphasise that, in his opinion, he did not entrap people. He went further, asserting that he did not believe that it was possible to ensnare normally law-abiding people into behaving in an illegal fashion;<sup>241</sup> he also said that the number of successful prosecutions following on from his stories was testament to the fact that his methods had been tested and considered appropriate time and again by the courts.<sup>242</sup>
- 5.5** Entrapment by a journalist is not ordinarily a defence to the commission of a crime. There are, however, ethical questions here as to the circumstances and extent to which it is right to encourage or entice someone into the commission of an offence that they would otherwise not have committed, at least on that specific occasion. Witnesses such as Alastair Campbell have drawn attention to this question, and have criticised Mr Mahmood for his *modus operandi*.<sup>243</sup>
- 5.6** Mr Mahmood was clear that there were circumstances in which he considered it ethical to break the law in order to get a story in the public interest. He used the example of purchasing child pornography in a case that led to the conviction of the supplier. He stressed that the overriding factor was the public interest and that he had never yet been prosecuted for drugs or other offences relating to work that he had done.<sup>244</sup> When pressed on whether there was a level of criminal behaviour to which he would not go in order to expose criminality, he indicated that he would not go out and rob a bank just to show that banks could be robbed.<sup>245</sup>

## 6. Approach to compliance

### Responsibility and accountability for compliance

- 6.1** The Inquiry was told by many witnesses that the editor was responsible for everything that happened at his or her newspaper, although they would not necessarily be aware of all that was going on. This was no different at the NoTW. However, there was very little clarity about who was responsible in practical day-to-day terms for compliance with legal and ethical requirements. Whilst individual journalists were clearly required by their employment contracts to comply with the terms of the Editors' Code, and to comply with other company policies and procedures, it has not been possible to ascertain who, if anyone, had senior responsibility for ensuring legal and ethical compliance within the organisation.

<sup>239</sup> Part F, Chapter 6

<sup>240</sup> p30, lines 5-6, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>241</sup> p26, lines 1-9, Mazher Mahmood, *ibid*

<sup>242</sup> p30, lines 14-16, Mazher Mahmood, *ibid*

<sup>243</sup> pp69-72, lines 14-23, Alastair Campbell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-30-November-2011.pdf>

<sup>244</sup> p35, lines 13-24, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>245</sup> p36, lines 9-11, Mazher Mahmood, *ibid*

- 6.2** Mr Crone, the legal manager at News Group Newspapers (NGN), told the Inquiry that he had no role in ensuring ethical (or, it would appear, even legal) behaviour within the company.<sup>246</sup>

*“I’m not a guardian of ethics, really....my job was really to advise on legal risk, the law relating to a particular situation that the newspaper was in or was thinking of getting in.”*

When pressed on the point he said, *“I don’t know who would be identified as the person most involved with compliance and ethics.”*<sup>247</sup> Mr Crone suggested that corporate compliance might be the responsibility of the Company Secretary<sup>248</sup> or the Chief Executive.<sup>249</sup>

- 6.3** In fact, Mr Chapman, the Company Secretary, told the Inquiry that his compliance function *“would have related to the commercial side of the business”*. He differentiated this from the editorial function and said it was limited to commercial and business support functions such as HR, production, advertising and marketing.<sup>250</sup> Mr Chapman felt that responsibility for compliance on the editorial side of the business would sit with the editorial legal team; in other words, with Mr Crone.<sup>251</sup>
- 6.4** Despite Mr Crone’s claim that ethical compliance might be a matter for Mr Chapman, when he became aware of serious ethical and legal lapses through his involvement in the legal challenge by Gordon Taylor, Mr Crone took only limited steps to alert those within the organisation who one might think should have been responsible for dealing with them. In particular, he said that he did not discuss the concerns about a ‘culture of illegal access to information’ with Mr Chapman. As has already been discussed above,<sup>252</sup> Mr Crone told the Inquiry that he did think that James Murdoch, the Chief Executive, was made aware of the situation in the Gordon Taylor case, including all *‘seriously relevant’* parts of the opinion provided by Mr Silverleaf QC.<sup>253</sup> He appeared to think that this represented bringing the matter to the attention of the right person.
- 6.5** James Murdoch told the Inquiry that governance was for the editor<sup>254</sup> (at this time Mr Myler). He said that he had sought, and was given, assurances that extensive training and procedures had been put in place and that the NoTW had been thoroughly investigated with respect to phone hacking, that no new evidence had been found and that the police had closed their case.<sup>255</sup> For his part, Mr Myler accepted ultimate responsibility for governance at the paper but said that he sought to instil:<sup>256</sup>

<sup>246</sup> p63, lines 19-22, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>247</sup> p43, lines 22-23, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>248</sup> p44, lines 6-8, Tom Crone, *ibid*

<sup>249</sup> p43, lines 20-23, Tom Crone, *ibid*

<sup>250</sup> p85, lines 8-14, Jon Chapman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>251</sup> p45, lines 21-23, Jon Chapman, *ibid*

<sup>252</sup> Part E, Chapter 4

<sup>253</sup> p45, lines 12-16, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>254</sup> p22, James Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf>

<sup>255</sup> pp19-20, James Murdoch, *ibid*

<sup>256</sup> p3, para 19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Colin-Myler1.pdf>

*“a culture of individual and collective responsibility for ensuring compliance with the PCC code and the law.”*

**6.6** Mr Myler was editor of the NoTW from February 2007 until July 2011. Although he drew some distinction between the culture in place at the newspaper before his arrival and that which he sought to deliver, he also argued that there were protocols and systems in place before he arrived and that *“the members of senior staff clearly understood their roles and responsibilities.”*<sup>257</sup> James Murdoch similarly took the view that there were senior legal managers in post who had a lot of experience,<sup>258</sup> and that the oversight structures in place (Management Boards and audit processes) should have been sufficient to ensure good governance.<sup>259</sup>

**6.7** Rupert Murdoch, having told the Inquiry that it was his clear understanding from Les Hinton, former Executive Chairman of NI, that Mr Myler had been put in place to find out *“what the hell was going on”*,<sup>260</sup> appears to have made no effort to follow up the matter directly. He told the Inquiry that he took no steps to see whether Mr Myler was discharging his brief as he relied on Mr Hinton to oversee the process.<sup>261</sup> Rupert Murdoch said that Mr Myler:<sup>262</sup>

*“never reported back that there was more hacking than we’d been told.”*

**6.8** The Inquiry is not in a position to allocate responsibility (or blame) as between these senior individuals. What is abundantly clear from the review of relevant events more fully covered above<sup>263</sup> is that the processes and people in place at the NoTW were not sufficient to ensure good governance. On the basis of the admissions made in the civil claims alone it is clear that the newsroom at the NoTW had, to use Mr Crone’s words, *‘lost its way’*<sup>264</sup> at least with regard to phone hacking.

## Data protection – Operation Motorman

**6.9** As might be expected, the NoTW was clearly aware that the Data Protection Act 1998 (DPA) was relevant to them. Specifically, the Inquiry heard that Mr Crone was once asked to put together a note on what the law of data protection meant in relation to working journalists, and did so. He did not, however, remember offering advice on the matter on a regular or ongoing basis,<sup>265</sup> although he did think that there might have been legal courses and other journalistic courses where data protection issues were addressed.<sup>266</sup>

<sup>257</sup> p24, lines 17-20, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>258</sup> p6, lines 4-13, James Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-24-April-2012.pdf>

<sup>259</sup> pp7-8, James Murdoch, *ibid*

<sup>260</sup> This is denied by Colin Myler: see the analysis of the issue in Part E, Chapter 4 above

<sup>261</sup> p28, lines 13-20, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf>

<sup>262</sup> p24, lines 14-17, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf>

<sup>263</sup> Part E, Chapter 4

<sup>264</sup> p53, line 15, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>265</sup> p37, lines 8-14, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>266</sup> p42, lines 14-17, Tom Crone, *ibid*

- 6.10** The essential narrative of Operation Motorman is set out above,<sup>267</sup> and need not be repeated here. The NoTW, in common with the rest of the newspaper industry, does not appear to have recognised these events as having any significance for its own processes, despite the clear implication that members of its staff might, to put it at its lowest, have been engaging Mr Whittamore to undertake unlawful activities.
- 6.11** Mr Crone accepted that he was aware of the arrest of Mr Whittamore and the fact that some of the latter's customers were NI employees, but confirmed that he had not been asked to provide any advice on the DPA in relation to Operation Motorman.<sup>268</sup> Further, there was no formal investigation of the allegations coming out of Operation Motorman.<sup>269</sup> Mr Myler, who arrived at the NoTW in 2007, explained that there was a NI policy in place that required compliance with data protection law and that as far as he knew it was complied with throughout his tenure as editor.<sup>270</sup> Mr Pike, the solicitor acting for NI, accepted that he was aware of the Operation Motorman material in 2008 and the implication that it pointed to a wider use of illegal methods of collecting stories within the NoTW, which could support the case being made by Mr Taylor.<sup>271</sup>
- 6.12** This is all in line with the approach more widely taken by national newspapers, that Operation Motorman raised no particularly pressing questions for the newspaper industry, or individual titles, to address. In one respect therefore, the NoTW is subject to the same criticism applicable to other titles: the evidence emerging from Operation Motorman and from the ICO's reports demanded action, but the evidence suggests that almost nothing was done in response. However, the NoTW is subject to specific criticism as well. The arrests of Mr Goodman and Mr Mulcaire in August 2006 came after the Operation Motorman revelations and between the ICO's publication of *What Price Privacy?* and *What Price Privacy Now?* Their arrests and subsequent convictions need to be seen in that context. A responsible title exercising effective governance would have questioned the credibility of the 'one rogue reporter' thesis in light of the ICO's evidence of a widespread and unlawful trade in private information, and would have demanded proper investigations into compliance with legal and ethical standards by its journalists.

## Accuracy

- 6.13** The PCC Editors' Code requires the press to "*take care not to publish inaccurate, misleading or distorted information*". Most complaints to the PCC are about alleged breaches of this provision.
- 6.14** Mr Driscoll was clear that stories were not fabricated at the NoTW. He said: "*Any suggestion of that, I think, is absolutely crazy because, you know, as I said, the litigation would be too severe. It would cost too much money.*"<sup>272</sup>

<sup>267</sup> Part E, Chapter 3

<sup>268</sup> p38, lines 1-5, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

<sup>269</sup> p42, lines 23-25, Tom Crone, *ibid*

<sup>270</sup> p62, lines 4-11, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

<sup>271</sup> pp41-42, lines 11-9, Julian Pike, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-13-December-2011.pdf>

<sup>272</sup> p21, lines 6-12, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

- 6.15** Mr Wootton explained that he would very rarely run stories without getting confirmation of their truth by notifying either the celebrity or his or her agent. Sometimes that would not be necessary because the story was already in the public domain. On very rare occasions he was requested by the editor or a senior executive not to put a call in.<sup>273</sup> In these situations the decision not to provide a right of reply would normally be to avoid the risk of leaks.<sup>274</sup> Mr Wootton said that in his experience a right of reply would only not be given if the newspaper or the editor was 100 per cent certain of the truth of a story.<sup>275</sup>
- 6.16** This emphasis on accuracy as an essential protection against libel action was echoed by evidence given by many witnesses to the Inquiry and it is clear that there is a serious legal imperative to get the facts right when the material to be published might be thought to be defamatory. However, it is far from clear that a similar passion for accuracy applies in respect of material that is unlikely to have legal ramifications if it is wrong. This issue is considered in more detail further on in the report.<sup>276</sup>
- 6.17** Once again, the Max Mosley story provides an admirable example of this issue. Mr Thurlbeck was criticised in Mr Justice Eady’s judgment in relation to the preparation of a statement by the woman who provided the information about the party. Mr Thurlbeck had prepared a statement for her to sign, drawn from the many conversations she had had with him. She signed this statement without amendments but Mr Thurlbeck later amended it himself, without seeking a further signature from the woman, and used parts of the amended statement in the story. Mr Justice Eady doubted Mr Thurlbeck’s evidence on this issue.<sup>277</sup> Mr Thurlbeck defended his actions on the grounds that:<sup>278</sup>

*“Mr Justice Eady is entitled to his opinion, but my – all I would say is this, in defence of this particular story: we were absolutely certain we got the facts right and nobody has come forward to show me that what I said had happened did not happen...”*

- 6.18** Mr Thurlbeck is, of course, entitled personally to disagree with the conclusions of the court, but I repeat that the NoTW chose not to appeal the decision. Amending a signed statement and deploying it as the statement affirmed by the witness without making clear the fact that it had been changed takes a measure of justification; it is further illuminating that, by the time he gave evidence to the Inquiry, Mr Thurlbeck still had not adjusted his approach to issues on which the court had reached clear conclusions.
- 6.19** The attribution of stories to individual journalists was another area where a degree of inaccuracy seemed acceptable. Mr Wootton told the Inquiry that:<sup>279</sup>

*“Where a desk head wrote a story, it was convention that the article would appear under another reporter’s name. However, in such circumstances, it could be that the first you knew of the article appearing under your name would be when you opened the paper and read it on a Sunday morning.”*

<sup>273</sup> p32, lines 11-19, Dan Wootton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf>

<sup>274</sup> p34, lines 17-18, Dan Wootton, *ibid*

<sup>275</sup> pp35-36, lines 24-2, Dan Wootton, *ibid*

<sup>276</sup> Part F, Chapter 6

<sup>277</sup> paras 88-91, <http://www.bailii.org/ew/cases/EWHC/QB/2008/1777.html>

<sup>278</sup> p14, lines 19-25, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>;

<sup>279</sup> p8, para 7.3.4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Dan-Wootton1.pdf>

- 6.20** Mr Wootton said that although this was standard practice across newspapers, it did not happen very often and was always seen as positive thing for the journalist who was ‘gifted’ the article.<sup>280</sup> Conversely, it was also usual practice to put Mr Wootton’s byline on his column even on those occasions when it had been written by someone else because he had been away.<sup>281</sup>

## Financial controls

- 6.21** A key aspect of corporate governance and compliance is financial control. There are three elements to consideration of this issue. First, the understanding of financial delegation and spending limits; secondly, controls on cash; and thirdly, the attitude to claiming of expenses.

### *Spending limits*

- 6.22** The Inquiry has been provided with little specific evidence relating to the financial delegation arrangements at the NoTW, but there is one point that appears worthy of note. Mr Crone told the Inquiry that he had delegated spending authority of £5,000. However, he routinely settled cases for more than £5,000 without any concerns arising, though he would usually consult the editor before doing so.<sup>282</sup> Despite the formal £5,000 limit, Mr Crone was unable to give a view on whether he had actual authority to offer a settlement of £150,000, as he had done in the Mr Taylor case:<sup>283</sup>

*“I don’t know the answer to that, but it certainly wouldn’t have been the first time – that’s probably pretty high, but I’d been over 100 a few times and no one had ever said to me afterwards, “You didn’t have authority to do that”, internally.”*

- 6.23** This lack of clarity over the financial limits of senior executives within the organisation becomes a matter of serious concern when taken in conjunction with allegations of an attempt to keep more senior management in the dark over important issues. It is certainly arguable that Mr Myler and Mr Crone had no choice other than to raise the Gordon Taylor case with James Murdoch, simply because the cost of settling the case had got beyond what either of them could imagine they had authority to approve. Financial controls are normally set in order to ensure that decisions of a level of importance to an organisation are taken by people in commensurate positions of authority and responsibility. If the delegated authorities are able to be easily breached then the ability of senior management to exercise oversight and governance is obviously reduced. Issues of alleged cover up have been addressed elsewhere.<sup>284</sup>

### *Cash payments*

- 6.24** One of the changes made by Mr Myler upon his arrival as editor was the introduction of new controls on cash payments, which required department heads to ensure that payments were legal and legitimate, or ‘*real payments to real people for stories that really exist*’.<sup>285</sup> As

<sup>280</sup> p38, lines 8-15, Dan Wootton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf>

<sup>281</sup> p38, lines 23-25, Dan Wootton, *ibid*

<sup>282</sup> p17, lines 4-15, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>

<sup>283</sup> p18, lines 5-9, Tom Crone, *ibid*

<sup>284</sup> In particular in Part E Chapter 4

<sup>285</sup> pp25-26, lines 7-20, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

a result of the new policies cash payments fell by around 89% from 2004/5 to 2007/8.<sup>286</sup> Mr Myler estimated that the majority of this change was due to a change of staff and processes in the features department.<sup>287</sup> This rather startling outcome suggests that, prior to Mr Myler's arrival, there was less than rigorous control of the use of cash. This is not an insignificant issue. Part of the NoTW's explanation as to how Mr Goodman had managed to task Mr Mulcaire without management being aware of what was going on was that he had paid Mulcaire cash outside of an otherwise legitimate contract. Whether or not that was true, the fact that the rules on cash expenses would allow it demonstrates, yet again, a lack of oversight and governance within the organisation that allowed inappropriate, or even illegal, behaviour to go unnoticed and unchecked.

### *Expenses claims*

- 6.25** Finally on the issue of financial controls I turn to the claiming of expenses. Mr McMullan suggested that in order to 'bump up salaries' staff were given a certain amount of leeway on expense claims. He suggested that he would generally claim between £15,000 and £20,000 of expenses in a year of which only £3,000 was legitimate.<sup>288</sup> Mr McMullan further suggested that an expansive approach to expenses was expected, and even encouraged by management.<sup>289</sup> This approach to expenses was broadly consistent with the account told by Ms Marshall in her book, *Tabloid Girl*, where she describes numerous examples of fabricated expense claims. In the book Ms Marshall describes the practices of journalists in relation to expenses as "all very definitely illegal"<sup>290</sup> and justifies such practices on the grounds that they "...sort of made up for all the years of impossible tasks, lousy years and bollockings".<sup>291</sup>
- 6.26** In her oral evidence Ms Marshall explained that all the specific examples of expense fraud in the book were anecdotal, but that the general attitude in the newsroom was that outrageous expense claims were funny rather than to be frowned on. She pointed out "we're not ripping off the taxpayer".<sup>292</sup> Although she back-tracked from most of the specific examples in the book, this expenses culture was one of the few areas where the basic thrust of Ms Marshall's evidence was consistent across both the book and her evidence to the Inquiry, and on that basis it is reasonable to conclude that it was true. Whilst Ms Marshall's evidence on the culture in respect of expenses was not directed specifically at the NoTW she suggested that this approach was common across all titles she had worked at. It should also be observed that Ms Marshall's general mantra in relation to assertions made in her book, namely that they amounted to 'topspin', was one I did not find particularly convincing in the context of her evidence as a whole. I allow for an element of exaggeration and 'gilding of the lily', but have come to the conclusion that her book contained a substantial kernel of truth, and her attempts to backtrack from it were not persuasive.
- 6.27** Ms Marshall's evidence was flatly contradicted by Mr Thurlbeck, who said that Mr Kuttner, the managing editor, was a forensic examiner of newspaper expenses. Everything required a receipt and any questionable claims would be returned and an explanation required.<sup>293</sup> The

<sup>286</sup> p28, lines 7-18, Colin Myler, *ibid*

<sup>287</sup> p31, lines 9-21, Colin Myler, *ibid*

<sup>288</sup> p98, lines 2-9, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>289</sup> p98, lines 12-19, Paul McMullan, *ibid*

<sup>290</sup> Marshall, S, *Tabloid Girl*, p178

<sup>291</sup> *ibid*, p182

<sup>292</sup> pp101-103, lines 10-9, Sharon Marshall, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-20-December-2011.pdf>

<sup>293</sup> pp25-26, lines 19-1, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

deputy editor, Mr Wallis supported Mr Thurlbeck's assertions but, if that were the case, it is difficult to see why Mr Myler felt driven to change the system or the dramatic effect of that change.<sup>294</sup>

### Bribery

- 6.28** Given the current police investigations into bribery of police and public officials, this Report cannot go into any detail on any specific allegations. However, some anecdotal evidence of little evidential value was offered. Mr McMullan said that he was aware of the NoTW paying police officers for information. He gave the Inquiry an example of taking a phone call from a royal bodyguard with information about where Princess Diana would be at a given time, indicating that the source might have been paid as much as £30,000 for such information because of the risks of providing it.<sup>295</sup> More significantly, Deputy Assistant Commissioner Akers told the Inquiry that the police had material that identified an ex-NoTW journalist who may have paid police for information. The police have arrested a number of ex-senior managers for authorising and facilitating such payments.<sup>296</sup>
- 6.29** It is not possible to go further but it seems fair to conclude that there is, at least, a real possibility that there was a culture of payments at the NoTW for information of the type discussed, facilitated or overlooked by management control of financial authorisations.

### Attitude to the PCC

- 6.30** A key issue in understanding the NoTW's approach to compliance is the attitude to the PCC. In this context I consider the PCC both as a body that enforces the Editors' Code and in respect of its two considerations of the phone hacking issue.
- 6.31** Taking enforcement of the Code first, I have already set out above that Mr Myler, when he became editor of the NoTW, made it clear that compliance with the law and the PCC code was mandatory, and that disciplinary procedures would follow for failure to comply. However, also as set out above, there is no evidence to show that failure to comply with the Code did result in any disciplinary action.
- 6.32** A number of NoTW journalists told the Inquiry that individuals at the newspaper did take the PCC seriously,<sup>297</sup> owing to the embarrassment to editors of an adverse adjudication. Specifically, Mr Wallis told the Inquiry<sup>298</sup>

*“We didn't want to fall foul of either legal problems or the PCC. An editor is not going to survive very long if he has a series of legal judgments against him. An editor is not going to survive very long if he has a series of PCC adjudications against him. It costs money.”*

<sup>294</sup> pp95-96, lines 20-11, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>295</sup> pp72-73, lines 17-17, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>296</sup> pp44-45, lines 22-5, Sue Akers, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf>

<sup>297</sup> p18, lines 16-20, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>; p104, lines 3-5, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>298</sup> p83, lines 6-10, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

He said that the senior executives constantly made it clear to journalists that they were not interested in the idea of breaking the law, breaching the PCC Code, risking libel claims or spending a lot of money on privacy law battles.<sup>299</sup>

- 6.33** It seems a reasonable conclusion from what has been set out in this Chapter that, although the NoTW may have had at all times appropriate policies in place to require journalists to comply with both the Editors' Code and the criminal law, and although individual journalists may have considered it important to do so, there was no clear line of accountability for oversight or enforcement of those policies: compliance, if it occurred, was accidental, rather than the consequence of the implementation of sound systems of governance. It is not possible within the confines of Part One of this Inquiry to allocate blame to individuals; neither, however, at this stage is it appropriate to exonerate any one individual at a senior level of responsibility within the corporate hierarchy.
- 6.34** It is at least possible that this systematic failure to hold anyone to account for breaches of the Code might have led to a sense among journalists at the NoTW that compliance was not, in fact, particularly highly rated and that breaches of the Code would go unpunished. If breaches of the Code lead to more, or better, stories, then systematic failure to penalise anyone for breaching the Code could be seen as indirect encouragement to do so. The fact that Mr Goodman was dismissed does at least suggest that the company was aware that it needed to appear to the outside world as though it took criminal activity seriously. The terms on which he parted from the company, however, and the discussions that preceded his departure, suggest that this was not altogether the case. The persistent failure of the company properly to investigate Mr Goodman's allegations that methods of unlawful interception were both widely in use and approved by management within the organisation was a significant failure of governance.
- 6.35** I have already set out in earlier Sections of the Report the circumstances of the two PCC considerations of phone hacking and the NoTW response. It suffices to say that an organisation which, at the very least, overstated the assurance that it was prepared to provide to its regulatory body (even, or perhaps especially, a self-regulatory body) is not an organisation that takes compliance seriously. It is clear that at no time did it occur to management at the NoTW to seek to drill down to discover precisely what Mr Mulcaire had done for the large amount of money he was paid or to respond openly to the enquiries made by the PCC. The same point can be made about the attitude of NoTW executives to the Select Committee Inquiries.

## Attitude to the courts

- 6.36** Finally, it is important to consider what the Inquiry has learned about the attitude of journalists and executives at the NoTW to the courts. It is notable that many of the NoTW witnesses, particularly Mr Thurlbeck, have maintained that, regardless of the judgment in the case, the story about Mr Mosley *was* in the public interest. The lack of respect for the judgment of Mr Justice Eady is perhaps exemplified by the fact that Mr Myler put the story forward for a '*scoop of the year*' award.<sup>300</sup> Any disappointed litigant is entitled to feel that the judge got it wrong but the evidence gives no sense of re-appraisal of the position in the light of the judgment: there does not appear to have been any detailed reconsideration or point by point

<sup>299</sup> p84, lines 13-18, Neil Wallis, *ibid*

<sup>300</sup> pp55-56, lines 20-23, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-14-November-2011.pdf>

rebuttal of the reasoning of the judge, such as might permit senior management to conclude that a review of their approach to issues of the kind generated by the case was unnecessary.

- 6.37** Similarly, Mr Mahmood refused to accept criticisms of him made by Mr Justice Eady in relation to a story which exposed a plot to kidnap the children of David and Victoria Beckham.<sup>301</sup> In such circumstances, it is perhaps unsurprising that Mr Crone testified that his advice to executives about the attitude that a court would be likely to take in any litigation was not always acted upon.<sup>302</sup>

## 7. Credibility of witnesses

- 7.1** NI has raised the point that the NoTW at any one time employed around 152 editorial staff, of whom only three have come forward to make allegations on the record of the issues covered in this Chapter of the Report. In addition, some five anonymous journalists have raised issues of concern about conduct at the NoTW. This is a tiny proportion of those who worked there. I accept this; I also accept that, with some exceptions, others who have given evidence who have worked at the NoTW have tended to disagree with the picture painted by Mr McMullan, Mr Driscoll and Mr Hoare. I have already pointed out that the evidence of these witnesses needs to be viewed with some caution. Furthermore, I am entirely content to accept that large parts of the NoTW, and many of the journalists, operated in a way that no-one has suggested was not entirely appropriate and in accordance with high standards. To some extent, those journalists are also victims having suffered damage to their individual reputations because of what has emerged from the NoTW over the last few years.
- 7.2** Having said that, however, for reasons which I have already given I do not consider that the evidence of bad practice to which I have referred can be disregarded. The evidence of these three whistleblowers and of the anonymous journalists in relation both to the use of the 'dark arts' and bullying possesses an internal consistency which provides considerable credibility, but it also coheres with other evidence, including the admissions made by the NoTW in civil proceedings, as well as evidence from victims of unethical press practices. For the purposes of this Report I do not have to take a view on precisely the extent to which any of these witnesses is providing a full and complete picture. Rather, I simply need to satisfy myself that there are cultural and ethical issues here which require addressing in the context of my finding that there is an essential kernel of truth within what each of these witnesses said.
- 7.3** It is also the case, as detailed in this Chapter, that even ignoring the evidence of those whom NI submit cannot be relied upon, and focusing only on the evidence of witnesses such as Messrs Myler, Thurlbeck, Edmondson and Crone have given, very serious concerns arise about the governance at the NoTW, the attitude of management and staff to the right to privacy, the attitude of management and staff to the law and the attitude of management to public scrutiny.

### The consequences

- 7.4** The possible criminal behaviour and its impact on the individuals involved are obviously very serious, but are not for this Report. What is, however, clear is that the financial implications

<sup>301</sup> p51, lines 20-22, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>302</sup> p66, lines 3-15, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>

for NI and ultimately for News Corp have been significant, from the costs of the civil claim settlements, the costs of the closure of the NoTW, including lost revenue, the failure of the BSkyB takeover and the commercial opportunities that that presented, through to the reputational damage done to the image of News Corp across the globe and any ramifications that may have. It may never be possible to quantify those costs, and certainly it is not necessary for me to attempt to do so, but Rupert Murdoch told the Inquiry that the scandal had cost News Corp ‘hundreds of millions’.<sup>303</sup>

**7.5** I conclude this Chapter of the Report with setting out the evidence of Mr Murdoch and his overall assessment of the phone hacking issue, both for the light it throws on that issue, and more generally:<sup>304</sup>

*“I think the senior executives were all informed, and I – were all misinformed and shielded from anything that was going on there, and I do blame one or two people for that, who perhaps I shouldn’t name, because for all I know they may be arrested yet, but there’s no question in my mind that maybe even the editor, but certainly beyond that someone took charge of a cover-up, which we were victim to and I regret and, you know, I’m getting ahead of myself now, perhaps, or getting ahead of you when I say that, you know, we did take steps after the conviction and the resignation of Mr Coulson. A new editor was appointed with specific instructions to find out what was going on. He did, I believe, put in two or three new sort of steps of regulation, if you like, but never reported back that there was more hacking than we’d been told. Harbottle & Lewis were appointed, and given a file. Now, it’s argued that they were only given a very specific brief, but I’ve got to say that I have not gone through that whole file that they were given of emails, but I have again tasted them and I cannot understand a law firm reading that and not ringing the chief executive of a company and saying, “Hey, you’ve got some big problems.”*

<sup>303</sup> p57, lines 19-20, Rupert Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-26-April-2012.pdf>

<sup>304</sup> p24, lines 2-25, Rupert Murdoch, *ibid*

# CHAPTER 5

## SOME CASE STUDIES

### 1. Introduction

- 1.1** The previous Chapter explored the culture, practices and ethics prevailing at the News of the World (NoTW) before its demise. This, and the following Chapter, takes a broader view. They seek to examine the wider evidence submitted to the Inquiry in some detail, with a view to making a general assessment of the culture, practices and ethics of the press, in line with the Terms of Reference. It should be understood that it is not possible or desirable to cover all the evidence submitted to the Inquiry in the Report: some of it will be referred to simply by way of footnotes to the main text; other parts of the evidence will not be mentioned expressly at all.
- 1.2** In this Chapter, before proceeding to examine the evidence as a whole,<sup>1</sup> I examine in detail a number of individual examples of press reporting in recent years. Some of those examples will be well known to many reading this report and include the reporting of the disappearance of Amanda (Milly) Dowler, the disappearance of Madeleine McCann, the arrest of Christopher Jefferies on suspicion of murder and the publication of details of the medical condition of the former Prime Minister, the Rt Hon Gordon Brown's son. The first three of those, at least, were chosen because they exemplified what might be described as the most egregious cases of unethical journalistic conduct.
- 1.3** The final examples included in this Chapter are defined by the fact that they are contemporaneous with the Inquiry; they are stories which emerged during the course of, or subsequent to, the formal hearings, and may indicate that the risks identified in the following Chapter cannot be dismissed as historical. They include the Daily Mail's attack on Hugh Grant's 'mendacious smears', the press treatment of the family of Sebastian Bowles after his death, and the contrasting approach to the recent stories which impacted on the privacy of two members of the Royal Family.
- 1.4** All (except the Royal examples) were subjected to detailed scrutiny during the course of the Inquiry. The theme common to them all, and which therefore merits their generic description as 'case studies', is their link to the next chapter of the Report containing the wider criticisms of the culture, practices and ethics of the press, and the emergence of patterns. In other words, each case study exemplifies at least one and often several of the attributes of and flaws in the press which have been addressed at length below;<sup>2</sup> in this Chapter, however, they are not addressed from the perspective of the criticism but rather from the perspective of the victim, thereby providing some insight into the overall impact of the way in which the relevant story has been reported. Accordingly, the time taken to examine these cases is not for the purpose of levelling specific criticisms against individual titles and journalists (although I recognise that this might be a by-product of the exercise) but for the light they shine on the wider picture. It follows that the analysis of each case study will not be exhaustive; it will merely be sufficient to illuminate and buttress the generic conclusions that I have felt it appropriate to reach.

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<sup>1</sup> Part F, Chapter 6

<sup>2</sup> Part F, Chapter 6

- 1.5** What follows in this introductory section is a thumbnail sketch of each of these case studies, as a prelude to the more detailed analysis set out in subsequent chapters.
- 1.6** The evidence relating to the reporting of the disappearance of Milly Dowler is examined as the first of these case studies. This Inquiry was set up in the light of the public reaction to the Guardian's story published on 4 July 2011 that the voicemail of Milly Dowler was hacked into and tampered with by one or more journalists from the NoTW, such that a number of her voicemail messages were deleted, thereby giving her family false hope in her well being.<sup>3</sup> The evidence relating to these allegations will need to be examined, not least because the Guardian later retracted that part of its story that asserted that one or more messages had been deleted.
- 1.7** Of equal if not greater importance, however, is that Mr and Mrs Dowler were subjected to intrusive and insensitive press reporting at a time of intense personal distress. Such was the appetite in certain sections of the press to acquire information and photographs which would enable 'the story' to be kept alive as one of ongoing human interest to readers, these sections of the press often overlooked the privacy rights and personal feelings of the Dowler family. Thus, the family came to be treated as little more than a commodity in which the press had an unrestricted interest.
- 1.8** The Inquiry also heard at length from Dr Kate and Dr Gerry McCann, who, following the disappearance of their daughter Madeleine in Portugal in May 2007, were the victims of what may only be fairly described as serial defamations in a number of newspapers between September 2007 and January 2008. The McCanns were initially the subject of balanced and sensitive press reporting in the British press: not merely did the story attract the open-hearted sympathy of the public, owing to the way that it resonated on a number of obvious levels, but the parents took a strategic decision at a very early stage to engage with the press in order to avail the search for their daughter.
- 1.9** By the summer of 2007, however, what had begun as a sympathetic approach by the press to an ongoing personal tragedy had altered; this change had been prompted by 'leaks' from the Portuguese police to the local and British media representing their version or speculation of what might have happened to Madeleine. Some, but certainly by no means all, sections of the press in the UK decided to run with stories which alleged that the McCanns were in some way responsible for the disappearance of their daughter. One title prided itself in the fact that it was apparently fair minded because on one day it would print a hostile story while the next it would provide a more sympathetic portrayal. The defamatory reporting continued for approximately four months, the principal perpetrator asserting that the public appetite for the story was undiminished. Ultimately, it took the threat and then the reality of libel action to bring this spate of reporting to an end, and the McCanns received substantial damages and a front page apology in settlement of their claims.
- 1.10** It was inevitable and entirely in the public interest that there be full reporting of stories about both Milly Dowler and Madeleine McCann. Like the Dowlers, however, the McCanns were also treated as if they were a commodity in which the public, and by extension the press, had an interest or stake that effectively trumped their individual rights to privacy, dignity or basic respect. The press believed that the public's legitimate interest in the story was insatiable, and that belief required it to sustain that interest by following every possible development or turn, however implausible or apparently defamatory. Also like the Dowlers, the McCanns were the victims of grossly intrusive reporting, prying photographers and an ongoing 'media

<sup>3</sup> <http://www.guardian.co.uk/uk/2011/jul/04/milly-dowler-family-phone-hacking>

scrum' which paid little or no regard to their personal space, their own personal distress and, in particular, the interests of Madeleine's younger siblings.

- 1.11** There are two other aspects of the McCann 'case study' which merits its inclusion as such. First, the PCC did nothing until it was too late, and the reasons for this inactivity need to be explored. Secondly, the NoTW published highly personal extracts from Dr Kate McCann's diary in September 2008 following a telephone conversation between its news editor and the McCanns' spokesman, Clarence Mitchell, on 12 September. The Inquiry was provided with a transcript of that conversation at an early stage, but without knowing the full background it was difficult to discern the true purpose of the conversation and what was understood or agreed by or between the participants to it. However, when he came to give evidence, the news editor accepted that Mr Mitchell had been deliberately misled so that it would appear that he had given his consent to the publication of the extracts on behalf of Dr McCann whereas in truth he had not.
- 1.12** Another individual who was the victim of unbalanced, prejudicial and wildly inaccurate press reporting was Christopher Jefferies, who was arrested on suspicion of being involved in the murder of Joanna Yeates on 30 December 2010. Mr Jefferies gave evidence to the Inquiry and, notwithstanding the remarkably measured and dispassionate terms in which it was given, testified to a series of egregiously defamatory and unfair articles in a number of national newspapers over the New Year period, which hinted, rumoured, speculated, suggested, or at times indicated that he was the perpetrator. Again, this is a very clear example of injudicious, sensationalised and intemperate reporting which was designed to feed what the newspapers concerned judged to be the curiosity and prurient interest of their readers; this was no doubt, supported by an (entirely erroneous) assessment that the police had 'got the right man'. In the result, the police had not: Mr Jefferies was released, initially on police bail; subsequently, the perpetrator of Ms Yeates' murder (who had provided information which purported to implicate Mr Jefferies) was arrested, charged and convicted at a trial which did not challenge responsibility for the killing. Mr Jefferies brought defamation actions against a number of newspapers, and the Attorney General successfully brought contempt proceedings against two.
- 1.13** The next case study which will be examined concerns the story published in The Sun in 2006 regarding the illness of one of Mr Brown's children. This story is of interest for a number of connected reasons. First, even without disclosing its source so as to permit his or her identification, The Sun has refused to explain how the story was sourced. The second reason concerns the absence of any public interest justification for publishing a story about the health (ie the private life) of a child; and the third is the circumstances in which the paper sought to obtain the consent of Mr and Mrs Brown to its publication. The evidence in this last respect has clear resonances with the evidence of Anne Diamond, the broadcast journalist and presenter, relating to the death of her infant son and her enforced association with The Sun's cot death charitable appeal, and the evidence relating to the obtaining of Dr Kate McCann's consent, through a conversation with her agent, to the publication of extracts from her personal diary.
- 1.14** There is much that could be discussed about the evidence that actor Hugh Grant provided and he would be the first to say that press treatment of those who have achieved what is called 'celebrity status' should only be considered behind the complaints of people like the Dowlers, the McCanns and Mr Jefferies. He is included as a case study because of a detail in his evidence and the reaction that it provoked. He gave evidence to the Inquiry as to his belief that a story in The Mail on Sunday about an alleged flirtation with a 'plummy-voiced executive' had been obtained by voicemail hacking. Mr Grant accepted that he had no hard evidence to

support this belief; it was an exercise in speculation (although it might otherwise be described as inference). The day after he had appeared before the Inquiry, on 22 November 2011, the Daily Mail published a piece which accused Mr Grant of making a ‘mendacious smear’ against the Mail titles. It is of value because it is a good example of the strategy of ‘defensive attack’ (although the Mail titles argue that the story was entirely justified) which itself represents a strand within the culture of the press. It is also of interest since the relevant evidence grew out of the Inquiry’s proceedings themselves.

- 1.15** During the course of the Inquiry, Sebastian Bowles, an 11-year old schoolboy, was tragically killed in a coach crash in Switzerland. Unfortunately, his family was subjected to insensitive and intrusive press reporting which failed to respect their privacy and their grief. The evidence given by the family solicitor, Giles Crown, chimed with evidence given during the course of Module One of the Inquiry, more fully set out and footnoted below. Again, this has been selected by the Inquiry as a case study because it is illustrative of a clear strand within the culture, practices and ethics of the press, as well as shining light on the effectiveness of the PCC.
- 1.16** The final Section of this Chapter deals with two significant stories which entered the public domain after the formal Inquiry sessions concluded in July 2012. They relate to the private lives of two members of the Royal Family, Prince Harry and the Duchess of Cambridge. The intrusions in relation to Prince Harry, and the contrast with the approach to the story relating to the Duchess of Cambridge and the ramifications of both, form the basis of an important case study, illustrating as it does a series of generic issues surrounding the approach to clause 3 of the Editors’ Code and the general provision relating to the public interest; the relevance of publication on the internet; and the overall response (or lack of it) of the Press Complaints Commission (PCC).

## 2. The Dowlers

- 2.1** Bob and Sally Dowler fully appreciated that the disappearance of their daughter, Amanda, known as Milly, was a ‘massive news story’. From the start, the press was ‘like a double-edged sword’:<sup>4</sup> as many have pointed out in similar vein, there is often a fine line between the need to engage the press to publicise a predicament or a cause, and the dangers of press intrusion. As Mrs Dowler explained in her witness statement:<sup>5</sup>

*“What we did not appreciate was the extent to which the newspapers would intrude on our private turmoil and how little control we would have over where the lines were drawn in this respect. We did not have any experience in dealing with the media and we have to make a lot of difficult choices, without the benefit of professional advice and at an extremely harrowing time in our lives. It felt like a lot of our decisions to engage the press had ramifications beyond those you could logically expect.”*

- 2.2** The Dowlers gave examples of two types of media intrusion which, in the light of all the other evidence the Inquiry was subsequently to receive, appear to be commonplace. First, in the months following Milly’s disappearance, Mr Dowler was frequently ‘door stepped’ by journalists and photographers looking for a story. In the words of Mrs Dowler:<sup>6</sup>

<sup>4</sup> pp1-2, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sally-Bob-Dowler.pdf>

<sup>5</sup> p2, para 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sally-Bob-Dowler.pdf>

<sup>6</sup> p3, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sally-Bob-Dowler.pdf>

*“Bob would be in the front garden and a reporter would pop up asking a question about the case. In our experience, the journalists rarely started by introducing themselves. They would simply launch into a series of questions about Milly...”*

- 2.3** Second, a particularly poignant piece of evidence concerns an occasion when the Dowlers decided to walk home from Walton-on-Thames railway station following the route which Milly habitually took. This was intended to be an intensely private moment. As Mrs Dowler explained to the Inquiry:<sup>7</sup>

*“I met Bob and then we just basically quietly retraced her steps and no one was really around, so it was very much like the day she’d actually gone missing, and we put out missing leaflets with her photograph and a telephone number on, and that number had been changed, and I was checking the posters to see if the number – if the right poster was up, and as I walked along, I was sort of touching the posters. And we walked back to our house, which is maybe three-quarters of a mile, something like that, and that was on the Thursday, and then on the Sunday, that photograph appeared in the News of the World and I can remember seeing it and I was really cross because we didn’t see anyone. They’d obviously taken the picture with some sort of telephoto lens. How on earth did they know we were doing that walk on that day? And it just felt like such an intrusion into a really, really private grief moment, really.”*

- 2.4** An article in the NoTW published on 12 May 2002 was headlined, ‘*The Longest Walk*’. The secondary headline was, ‘*Face etched with pain, missing Milly’s mum softly touches a poster of her girl as she and her hubby retrace her last footsteps.*’ Although this doubtless made a story replete with human interest, it is difficult to argue with Mrs Dowler’s observation that this was an unjustified intrusion into a moment of private grief. The very language of the article indicates that the NoTW was well aware of the intrusion, but whether the editor or sub-editor gave any thought to whether it might be justified is impossible to know at this distance. If he or she did, the judgment reached was misconceived.

- 2.5** One of the questions which the Dowlers asked themselves at the time was ‘*how on earth did they know that we were doing that walk on that day?*’<sup>8</sup> There is no evidence that NoTW photographers were carrying out day-to-day surveillance of the Dowlers on the off-chance; had they been doing so, obvious ethical concerns would arise. Another possible inference (as to which I make no finding) is that the NoTW discovered the Dowlers’ likely whereabouts on the day by listening to a phone message.

- 2.6** The Dowlers also gave evidence as to the occasion on which Mrs Dowler gained access to Milly’s personal voicemail message, having previously only been able to hear the automated message. To the best of their recollection this occurred in April or May 2002 after a visit to the Birdseye building at Walton-on-Thames in order to view some CCTV footage. As Mrs Dowler told the Inquiry:<sup>9</sup>

*“we were sitting downstairs in reception and I rang her phone ... And it clicked through onto her voicemail, so I heard her voice, and it was just like – I jumped – “She’s picked*

<sup>7</sup> pp12-13, lines 23-10, Sally Dowler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>8</sup> p13, lines 7-8, Sally Dowler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>9</sup> p19, lines 14-21, Sally Dowler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

*up her voicemails, Bob, she's alive", and I just – it was then, really. Look, when we were told about the hacking, that is the first thing I thought."*

- 2.7** At the time Mrs Dowler managed to access her daughter's voicemail it is clear from the evidence that emerged during the course of the criminal proceedings that Milly was already dead. The 'false hope moment', as it came to be described, was generated by the fact that voicemails on the system were deleted, with the consequence that the automated message – signifying a full voicemail – was replaced by the personal voicemail greeting.
- 2.8** In the article published on 4 July 2011 the Guardian's account was along the lines that NoTW journalists, or someone acting on their behalf, were responsible for the deletion of these messages. However, the accuracy of this account was questioned in December 2011, and given its obvious importance the Inquiry sought further assistance from the Metropolitan Police Service (MPS) and Surrey Police who undertook a full investigation into what happened. Ultimately, in May 2012 the Inquiry received a witness statement from Detective Chief Inspector John MacDonald, of the MPS, which was read into the record.<sup>10</sup>
- 2.9** This evidence conclusively established that the Dowlers had visited the Birdseye building shortly after 18:00hrs on 24 March 2002, which was three days after Milly's disappearance. The family liaison officer's log records:<sup>11</sup>

*"At 19:10 hours Mr and Mrs Dowler were taken home by the FLO. Whilst at home, Mrs Dowler rang Milly's mobile. The log records that Mrs Dowler 'became distressed as Milly's voicemail was now on the recorded message whereas previously there was a recorded message (automated)."*

- 2.10** Although call data subsequently established that the time of Mrs Dowler's call was 18:32hrs (ie over 30 minutes earlier than the FLO's log record, which was completed after the event), it is clear from all the available evidence that the 'false hope moment' occurred during the early evening of 24 March 2002 and not in April or May as the Dowlers had originally believed. They are not to be criticised for this in any way, since at the time of giving their witness statement they were being asked to recall traumatic events occurring nearly a decade beforehand.
- 2.11** DCI MacDonald's investigation revealed that Milly's last call to her own voicemail was at 17:07hrs on 20 March, and one of Milly's friends called her voicemail at 19:46hrs on 21 March and left a message. This was almost certainly the tenth message left on Milly's voicemail: at this point, the mailbox was full, and a 'generic' (ie automated) message was left. But, after 72 hours, messages began to be automatically deleted. In the words of DCI MacDonald:<sup>12</sup>

*"The phone provider has also confirmed that when the voicemail box was full the automated message would be heard, and once messages had started to drop off, the personal voicemail greeting that Mrs Dowler heard would again have come into effect."*

<sup>10</sup> p10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-DCI-John-Macdonald.pdf>

<sup>11</sup> p16, lines 1-6, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-DCI-John-Macdonald.pdf>

<sup>12</sup> p20, lines 6-10, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf>; p7, para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-DCI-John-Macdonald.pdf>

- 2.12** Accordingly, the probable inference is that Mrs Dowler’s call was made shortly after one of the previous messages was deleted – 72¾ hours had elapsed between Milly’s friend’s call and Mrs Dowler’s.
- 2.13** There are two additional pieces of evidence which fall to be considered, although on analysis they do not bear on the genesis of the ‘false hope moment’. First, on 26 March 2002 there was a voicemail platform migration by the service provider, Mercury one2one. That migration included Milly’s voicemail. It would have had the effect of resetting Milly’s personal greeting to an automated voicemail message, which would have remained as such until changed by the owner of the phone. Yet this occurred two days after the key date for present purposes, and could have had no impact on the false hope moment. Second, DCI MacDonald gave evidence that a message left on Milly’s voicemail at 14:10hrs on 26 March was shown as a saved message when Surrey Police listened to it at 15:25hrs. The issue is complicated by the fact that there were a number of technical matters being carried out on that day by the service provider, but in the words of DCI MacDonald:<sup>13</sup>

*“It is not possible to state why the message left at 14:10 hours on 26 March was shown as a saved message when Surrey Police listened to it at 15:25. One possibility is that it was subject to an illegal intercept in that 75 minute period. However we should also consider the lack of a complete set of call data for that time when trying to interpret what happened.”*

- 2.14** It is neither necessary nor appropriate for present purposes to delve further into these issues. Unnecessary, because whatever happened on 26 March 2002 can have no logical bearing on Mrs Dowler’s state of mind two days earlier, and inappropriate, because the whole issue of possible illegal interception of Milly’s voicemails is now the subject of criminal proceedings. It is, however, appropriate to make reference to what was said on behalf of the Guardian newspaper on 9 May 2012 immediately after DCI MacDonald’s evidence had been read:<sup>14</sup>

*“The Guardian story of 4 July 2011 was based on multiple sources and their state of knowledge at the time. Our error, as we acknowledged and corrected last December, was to have written about the cause of the deletions as a fact rather than as the belief of several people involved in the case. We regret that. After five more months of intensive inquiry, the police have found that the passage of time and the loss of evidence means that ‘reaching a definitive conclusion is not and may never be possible.’”*

- 2.15** It would be otiose for the Inquiry to comment on the Guardian’s expression of regret, which speaks for itself. Whereas it is true that a definitive conclusion is not possible on the existing state of the evidence, and may never be, the Inquiry does conclude on the lower standard of proof of the balance of probabilities that tampering with or illegal interception of Milly Dowler’s voicemail was not the cause of the ‘false hope moment’: this resulted from nothing less banal than the automatic deletion of messages in the ordinary course of the workings of the system.

<sup>13</sup> pp30-31, lines 23-4, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf>; p16, para 38, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-DCI-John-Macdonald.pdf>

<sup>14</sup> p34, lines 8-17, Gillian Phillips, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf>

**2.16** But it remains worthwhile to underline that the essential gravamen of the Guardian’s original story of 4 July 2011, namely that Milly Dowler’s phone was hacked by or on the instructions of journalists employed by the NoTW, was correct, and is now the subject of criminal charges.

**2.17** Surrey Police have submitted detailed evidence to the Inquiry and to the Culture, Media and Sport (CMS) Select Committee bearing on this issue.<sup>15</sup> This establishes that shortly before 13 April 2002 NoTW reporters listened to at least four voicemail messages left on Milly’s phone, one of which (timed at 10:13hrs on 27 March 2002) they had transcribed as follows:

*“Hello Mandy. This is [REDACTED from [REDACTED] recruitment agency. We are ringing because we are starting interviewing today at [REDACTED]. Call back on [REDACTED]. Thanks. Bye.”*

**2.18** The NoTW apparently deduced from this that Milly was still alive and using the name ‘Mandy’ to seek work in the area where the agency was based. The agency notified Mercia Police that it had received two telephone calls from a woman claiming to be Mrs Dowler (either a hoaxer or a journalist) asking whether Milly was working for them. The agency gave out no information to the caller, but on 13 April 2002 NoTW reporters attended at the premises of the agency in search of further leads. At 12:10hrs on 13 April the joint owner of the agency contacted Surrey Police by telephone, stating:

*“We have had a News of the World reporter... harassing us today. He says that our agency has recruited Milly as an employee, demanding to know what we know and saying that he is working in full co-operation with the police.”*

**2.19** That last assertion was of course untrue. Surrey Police then contacted the NoTW which admitted that it had acquired its information from Milly’s phone (claiming to have obtained the number and PIN from school children) and confirming that it had a recording of the voicemail message.

**2.20** Later on 13 April the NoTW contacted Surrey Police claiming that it was confident of its sources and that it was intending to print the information it had relayed to the police as a news story. Despite police warnings that the message was probably the work of a hoaxer, the NoTW went into print on Sunday 14 April 2002 with its angle on the story.

**2.21** It is unnecessary for the Inquiry to investigate every aspect of this somewhat convoluted sequence of events, which undoubtedly would have impacted on the police investigation in April 2002. Surrey Police carried out no arrests at the time, but detailed investigations have been conducted pursuant to Operation Weeting. It is sufficient for present purposes to state that the main thrust of the article published in the Guardian on 4 July 2011, that Milly Dowler’s voicemail was hacked into by NoTW journalists, was correct. As the Dowlers explained in their witness statement, they received substantial compensation from News International (NI) to mark the egregious conduct of their employees. Even if that conduct did not embrace causing the ‘false hope moment’, its characterisation as egregious remains apposite.

**2.22** The Guardian’s error in relation to the circumstances in which Milly’s voicemail messages were deleted was significant although, in the light of all the circumstances, had it been couched in more cautious or less certain terms may not have been capable of criticism at all. It certainly did not justify the attack that followed: I am certainly not criticising it or the paper. Nor, as I pointed out on 4 December 2011, does the Guardian’s error in any way undermine

<sup>15</sup> <http://www.parliament.uk/documents/commons-committees/culture-media-sport/Surrey-Police-to-Chairman-17-January-2012.pdf>

the reasons for setting up, or the work of, this Inquiry, despite what some have suggested.<sup>16</sup> The fact remains that the NoTW hacked the phone of a dead schoolgirl called Milly Dowler. The revelation of that story rightly shocked the public conscience in a way that other stories of phone hacking may not have, but it also gave momentum to growing calls for light to be shed on an unethical and unlawful practice of which there were literally thousands of victims. In that context, whether or not NoTW journalists had caused the “false hope” moment is almost irrelevant.

### 3. Kate and Gerry McCann

- 3.1** In his submissions opening Module One of the Inquiry, David Sherborne, Counsel for the Core Participant Victims, described the press treatment of the McCanns as a ‘national scandal’: not merely had they suffered the personal tragedy of the abduction of their daughter, they were subjected to a barrage of press reporting which could only be fairly characterised as a diatribe. Clearly, therefore, it is appropriate to take the experience of the McCanns as a ‘case study’ warranting further examination for the light it throws on the culture, practices and ethics of the press. Their case is also highly illuminating in the context of the action, or rather the inaction, of the PCC.

#### The McCanns’ personal perspective

- 3.2** Madeleine McCann was abducted from a holiday apartment in Praia da Luz, Portugal, on 3 May 2007, shortly before her fourth birthday. Her parents were dining with a number of friends at a tapas bar within the holiday complex and also within sight of the apartment where she was sleeping, together with her younger twin siblings. As Dr Gerry McCann’s witness statement makes clear, much has already been written about the details concerning Madeleine’s disappearance, and no one reading this Report is likely to be unaware of the basic facts. These include the fact that the McCanns are still searching for their daughter. In terms of the chronology, however, it should be noted that on 7 September 2007 the McCanns were accorded the status of *arguidos* (ie persons of specific interest to the investigation, but not a synonym for an accused) by the Portuguese *Policia Judiciaria* (PJ). This was somewhat of a watershed in terms of the nature and quality of press reporting.
- 3.3** Just as the Dowlers had articulated the need to engage with the press in order to gain their assistance and support, the McCanns explained that they had no option but to implement a proactive press strategy: they were in a foreign jurisdiction, and time was of the essence in this, as in all other, child abduction cases. Such were the pressures of press engagement that it was necessary at an early stage to enlist the full-time assistance of a press advisor, Clarence Mitchell; he had been seconded to the Foreign and Commonwealth Office as part of the media liaison at this town. Dr McCann stressed to the Inquiry that the initial experiences of dealing with the press were positive:<sup>17</sup>

*“I think for those people who can remember, it was a very unusual scenario, and we got a distinct impression that there was a genuine want to help attitude from the journalists there, and I think also many of the executives who perhaps saw what had happened to us and there was a huge amount of empathy. So I really did feel early on there was a desire to help.”*

<sup>16</sup> for example, <http://www.dailymail.co.uk/news/article-2073364/Police-reveal-theres-evidence-News-World-deleted-Milly-Dowler-voicemails.html>

<sup>17</sup> p14, lines 7-13, Gerry McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

**3.4** Unfortunately, these favourable impressions began to dissipate when the McCanns returned home from Portugal. Much has been said by other witnesses about press intrusion and the behaviour, in particular, of paparazzi; the experiences of the McCanns were no different. They had become a news item, a commodity, almost a piece of public property where the public's right to know possessed few, if any, boundaries. As Dr McCann explained:<sup>18</sup>

*“When we got back to our home in Rothley, again there were tens of journalists – we live in a cul de sac, at the end of it – camped outside our house, cameras, helicopter crews following us. We were hemmed in the house for a couple of days before the police moved them to the end of our drive.*

*Q. Then you tell us that photographers were still banging on car windows, even with one or more children in the car; is that right?*

*MRS McCANN<sup>19</sup>: And they stayed there until December 2007. That was only after we had help to get them removed, but they were there every day, and they'd wait for Gerry to go and they knew I'd have to come out of the house at some point with the children. It would be the same photograph every day, we'd be in the car, myself and two children, the photographers would either spring out from behind a hedge to get a startled look that they could attach “fragile”, “furious”, whatever they wanted to put with the headline, but there were several occasions where they would bang on the windows, sometimes with the camera lenses, and Amelie said to me several times, “Mummy, I'm scared.”*

**3.5** In answer to the suggestion that the positive decision made by the McCanns to engage with the press in order to serve their own interests effectively meant that they had waived their rights to privacy and everything else, Dr McCann said this:<sup>20</sup>

*“Well, it has been argued on many occasions that by engaging then it was more or less open season, and I think it's crass and insensitive to suggest that by engaging with a view to trying to find your daughter, that the press can write whatever they want about you without punishment.”*

**3.6** Dr McCann was not of course suggesting that the press was obliged to write about him only on his terms rather than on theirs. However, the point he was making was entirely valid; a decision to engage with the press does not make a private person public property for virtually all purposes, still less does it begin to justify defamatory reporting.

**3.7** The protracted spate of defamatory reporting commenced in September 2007 and had to be endured by the McCanns over four torrid months ending in January 2008. It only stopped after the McCanns were driven to take legal action against the worst perpetrators. It is well known that British newspapers were relying on reports in Portuguese journals and other sources which were either associated with, close to, or directly part of the PJ. But, as the McCanns themselves explained, the British press often did not know the source; or did not know whether it was accurate, exaggerated or downright untruthful; or (as the McCanns believed) sometimes made up.<sup>21</sup>

<sup>18</sup> pp27-28, lines 6-3, Gerry McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

<sup>19</sup> there is an error in the transcript. This should of course read ‘Dr G. McCann’

<sup>20</sup> p19, lines 17-22, Gerry McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

<sup>21</sup> pp16-17, lines 23-1, Gerry McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

**3.8** A number of titles were guilty of gross libels of the McCanns and of serious and total failure to apply anything approaching the standards to which each has said they aspire.<sup>22</sup> For that reason, the nature of the errors perpetrated by certain sections of the press will be explored, but at this stage it is sufficient to make the observation that, aside from the gross inaccuracy of the reporting in issue, some of it was, to put it bluntly, outrageous. One particular piece in the Daily Star published on 26 November 2007 certainly justifies being so described and Dr McCann was moved to go yet further:<sup>23</sup>

*“Q. “Maddie ‘sold’ by hard-up McCanns.” This is the article you do refer to, the selling into white slavery allegation. Probably you don’t want to dignify that with a comment?*

*A. That’s nothing short of disgusting.*

*MRS McCANN: I think this same journalist, if memory serves right, also said we stored her body in a freezer. I mean, we just ...*

*LORD JUSTICE LEVESON: Just to make the comment, there’s absolutely no source for that assertion in the article.”*

**3.9** In January 2008, letters before action were sent to a number of newspapers. The first response came from Northern & Shell, on behalf of the Daily Express, on 7 February. According to Dr McCann, the Express rejected the complaint on the straightforward ground that the McCanns were *arguidos*, but the paper suggested that they do an interview with OK! magazine; this was an offer which was rightly (and without any exaggeration) characterised by Dr McCann as *‘rather breathtaking’*.<sup>24</sup>

**3.10** It did not take very long, however, for Northern & Shell to modify their position and, on 19 March 2008, a statement was read out in open court in which liability was admitted. The settlement also involved the making of a substantial payment into the Madeleine fund and the printing of an apology on the front page of the Daily Express and the Daily Star.<sup>25</sup> The apology correctly pointed out that *‘it is difficult to conceive of a more serious allegation’*. It also correctly recognised that *‘there is no evidence whatsoever to suggest that Mr and Mrs McCann were responsible for the death of their daughter, they were involved in any cover up and there was no basis for Express Newspapers to allege otherwise’*. Given this admission, it is difficult to understand why the defamatory articles ever saw the light of day in the first place.

**3.11** It should also be mentioned that others involved at the periphery of the McCann tragedy were the subject of defamatory reporting which led to substantial libel settlements. Mr Robert Murat was wrongly accused of being involved in some way in the abduction and was traduced in the British press; and the friends of the McCanns who had dined with them

<sup>22</sup> p13, paras 78-80, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerald-Patrick-McCann.pdf>; In July 2008 proceedings were commenced against Associated Newspapers Ltd in respect of 67 articles published in the Daily Mail and the Evening Standard over a five month period, as well as over 18 articles on the latter’s website. These proceedings were compromised by the payment of a substantial donation to the Madeleine search fund and the publication of an apology in the Evening Standard. The Daily Mail were willing to publish a number of ‘free adverts’ to aid the search, but refused to publish any apology, claiming that the supportive articles they had written counter-balanced the others. As Dr McCann explained, by that stage he did not wish to embark on a protracted dispute with the newspaper, particularly given the need to maintain good relations with the press in continuing to publicise the search for Madeleine

<sup>23</sup> p37, lines 3-16, Gerry McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

<sup>24</sup> p38, line 23, Gerry McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

<sup>25</sup> pp39-40, lines 22-1, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

on the evening of Madeleine’s abduction were falsely accused of being implicated in a cover up.

**3.12** If ever there were an example of a story which ran totally out of control, this is one. The appetite for ‘news’ became insatiable, and once the original story had run its course the desire to find new leads and ‘angles’ began to take over, with their corollary tendencies of sensationalism and scandal. Not merely was the rigorous search for the truth the first principle to be sacrificed but also was any respect for the dignity, privacy and wellbeing of the McCanns.

**3.13** Sections of the press have suggested that this was very much a ‘one off’ and scarcely illustrative of their culture, practices and ethics. But all the material evidenced below<sup>26</sup> indicates that this is not the case: although the treatment of the McCanns may very well be one of the most egregious examples, the inquiry heard examples of similar practices from numerous witnesses. As paragraph 373 of the CMS Select Committee’s Second Report, dated 9 February 2010, makes clear:<sup>27</sup>

*“The newspaper industry’s assertion that the McCann case is a one-off event shows that it is in denial about the scale and gravity of what went wrong, and about the need to learn from those mistakes.”*

## The press perspective

**3.14** The Inquiry heard from two of the Daily Express journalists involved in reporting the McCann story. No criticism is made or to be inferred of them, because it was not their decision to run with the story generally or to publish any specific or individual pieces. For present purposes it is necessary to draw attention only to a short extract from the witness statement of one of the journalists.<sup>28</sup>

*“Although I was confident of the veracity of the reports I was writing, due to the secrecy of justice laws they were impossible to prove, to any satisfactory legal standard, at that time...Due to the restrictions of the Portuguese law, anyone who was unhappy about something that had been written or said about them and wished to take action would almost certainly have been successful. As a journalist this is a wholly unsatisfactory position which, in my view, leaves news organisations at the mercy of potential litigants. They simply are unable to defend themselves.”*

**3.15** The witness elaborated on this in oral evidence, and stated that he was certain that there were conversations between the news desk and lawyers about this. He continued: ‘*and that was the situation we were in and there was no way round it*’.<sup>29</sup> This reveals much about the culture, practices and ethics of the press. The journalist made it sound as if his newspaper was in the metaphorical cleft stick but, even on cursory analysis, this was not the case. There was no imperative to continue to report on the McCanns, still less to tell this particular story unless, of course, it is accepted that there was overwhelming pressure, both commercial and otherwise, to tell it. The news desk recognised that if the story were told on the basis of the

<sup>26</sup> Part F, Chapter 6

<sup>27</sup> <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/362/362i.pdf>

<sup>28</sup> p4, paras 22-23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-David-Pilditch.pdf>

<sup>29</sup> p62, lines 16-22, David Pilditch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-December-2011.pdf>

unconfirmed reports coming out of Portugal, then ‘*anyone who was unhappy*’ would have had a close to cast-iron claim.

**3.16** It is of interest that the journalist could not bring himself to mention the McCanns by name; they, after all, would be the prime candidates for being ‘unhappy’ about the story. By then, they had become almost depersonalised, a commodity. Further, the newspaper decided to publish in the face of the concerns they had identified, placing themselves at ‘*the mercy of potential litigants*’. Again, the McCanns are not mentioned by name and the newspaper is close to being placed in the role of victim. As the journalist put it, ‘*they [the newspaper] simply are unable to defend themselves*’. One might have thought that the more sensible response to this assessment, rather than bemoaning the apparent unfairness of being placed in an impossible position, would have been the prudent course of not publishing stories which not only could they not prove, but for which they had not a scintilla of evidence. Behind the scenes briefings by police officers, themselves under pressure and constrained by Portuguese law which were passed through third and fourth parties, could hardly be thought to constitute any, let alone a sound, basis for publishing such allegations as truth.

**3.17** These issues were taken up with the editor of the Daily Express at the relevant time, Peter Hill. He frankly accepted that running the McCann story was very high risk,<sup>30</sup> given all the factors identified by his journalists. When asked to explain why he chose to publish in those circumstances, Mr Hill explained:<sup>31</sup>

*“Because this was an unprecedented story that in my years of experience I can’t remember the like. There was an enormous clamour for information and there was enormous – there was an enormous push for information. It was an international story, on an enormous scale, and there had not been a story involving individuals, as opposed to huge events, like that in my experience and it was not a story that you could ignore and you simply had to try to cover it as best you could.”*

**3.18** But ‘covering it as best you could’ meant running a story in circumstances where there was a high chance that it was untrue and, in any event, was utterly unprovable. Mr Hill accepted the ‘very high risk’,<sup>32</sup> and felt driven to publish anyway, placing him and his paper in ethical difficulties in the context of clause 1 of the Editors’ Code and legal difficulties with the law of defamation. His answer also betrays a curious form of logic: if, as was probable, the particular story was untrue, then it both could and should have been rejected. A different, truthful and, by definition, better story should have been written based on the research that the journalists could undertake that generated facts that could be proved. ‘Covering it as best you could’ did not mean throwing caution to the winds.

**3.19** Mr Hill was also asked whether the interests of the McCanns were taken into account. He was adamant that they were:<sup>33</sup>

*‘Of course. We published many, many, many, many stories of all kinds about the McCanns, many stories that were deeply sympathetic to them, some which were not’*

<sup>30</sup> p20, line 6, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>31</sup> p20, line 9-17, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>32</sup> pp83-84, Dawn Neeson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>;

<sup>33</sup> pp20-21, lines 25-2, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

**3.20** Unfortunately, Mr Hill’s answer betrays a similar curious form of logic: the deeply sympathetic stories on this approach should be regarded as being capable of being weighed in the balance in some way against the stories ‘which were not’, these being the stories which, as was put to Mr Hill, accused the McCanns of killing their child. His answer to that proposition was that the stories he ran were only repeating the accusations of the Portuguese police.<sup>34</sup>

**3.21** The self same logic underpinned the evidence of the proprietor of Express Newspapers, Richard Desmond, when he was asked about this topic. Mr Desmond said this:<sup>35</sup>

*“I’m not trying to win points here, because we did do wrong, but I could say there were more, if there were 102 articles on the McCanns, there were 38 bad ones, then one would say – and I’m not trying to justify, please, I’m not trying to justify anything, but you could argue there were 65 or 70 good ones.”*

**3.22** Notwithstanding the language deployed, this was an attempt by Mr Desmond to expiate, or at the very least to mitigate, his company’s conduct, which simply fails to recognise that it is completely misconceived.<sup>36</sup> It is additionally unfortunate that further questions revealed that Mr Desmond’s apology was not entirely unqualified:<sup>37</sup>

*“and once again I do apologise to the McCanns, you know, et cetera, et cetera, et cetera, but there are views on – there are views on the McCanns of what happened. And there are still views on the McCanns of what happened...What I think is free speech is very important and if we get any more regulation – I mean, what are we trying to do in this country? Are we trying to kill the whole country with every bit of legislation and every bit of nonsense?”*

**3.23** This was another revealing answer, since by it Mr Desmond revealed what I consider to be a very disturbing philosophical approach to the concepts of free speech and a free press. For him, at the end of the day, the issue was all about free speech and the threat of excessive regulation. On this approach, press standards and ethics were close to being irrelevant. Mr Desmond had made that clear towards the start of his evidence, when he disputed that ethical lines could be drawn.<sup>38</sup> Finally, it should be noted in this context that Mr Desmond was inclined to blame the PCC for failing to give his paper guidance<sup>39</sup> rather than accept that his editor should accept at least some responsibility.

**3.24** The PCC should have done more, but Express Newspapers could not reasonably infer from the PCC’s inaction that their action was ethical. Mr Desmond, like his Finance Director Paul Ashford,<sup>40</sup> also blamed the PCC for acting hypocritically by criticising Mr Hill after the event, particularly in circumstances where Express Newspapers had behaved no differently from anyone else. There is merit in the argument that an even-handed regulator should have taken

<sup>34</sup> p21, lines 13-15, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>35</sup> p84, lines 18-23, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>36</sup> pp88-89, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>37</sup> p86, lines 3-19, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>38</sup> p64, lines 5-18, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>39</sup> p77, lines 15-17, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>40</sup> pp39-40, lines 15-5, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

everyone to task and there is force in the point that criticism of the approach of the press generally could and should have gone wider, but this is not an allegation of hypocrisy: the PCC were not applauding the conduct of other titles while condemning the Express (which demonstrated the most egregious failings); they were simply using emotive language borne out of a degree of anger to condemn the Express and saying nothing about others.<sup>41</sup>

**3.25** On the other hand, the real point is that a regulator, acting in the interests of the public, while respecting free speech, should have taken much firmer action in relation to the way in which this story was reported, even though the titles affected would have found unpalatable the criticism that they should have faced. That the PCC did too little too late is not a complaint which it lies in Mr Desmond's mouth to make.

**3.26** One of Mr Hill's journalists had said in evidence that his editor was 'obsessed' with the story. Mr Hill rejected that description of his state of mind,<sup>42</sup> although in explaining his motives and reasons for persevering over so many months, his revealing answer was as follows:<sup>43</sup>

*"I've already explained to you the basis for that decision, which had gone all the way back to my time on the Daily Star when I had realised that it was – that the readers were more – the readers continued to be interested in the stories far longer than the journalists, and it was my policy to continue the stories and I followed it with many different stories. It started with Big Brother, it went on to Princess Diana, various other things, and that had always been my policy. It was nothing to do with an obsession, it was more to do with a method of working."*

**3.27** In other words, Mr Hill's 'method of working' tended to discern little or no difference between 'Big Brother' and the McCanns: this was all about similar commodities and what he believed his readers were interested in. The obvious potential link between what Express readers were apparently interested in and circulation figures was one which the Inquiry explored, but in the end it was not possible to reach any firm conclusions. Mr Hill testified that he believed that circulation went up as a result of the McCann stories and that this was a factor in his persisting with them.<sup>44</sup> He himself viewed the circulation figures and came to that empirical conclusion. However, the Inquiry's examination of the data did not disclose any clearly discernible patterns.<sup>45</sup>

**3.28** Overall the justifications advanced by Messrs Hill and Desmond for the frankly appalling treatment of the McCanns were, as has been clearly demonstrated, both self-serving and without foundation.

## The PCC's response

**3.29** Two days after Madeleine's disappearance, the PCC contacted the British Embassy in Lisbon and asked the consular service to inform the McCanns that the services of the PCC were

<sup>41</sup> pp91-92, lines 23-5, Sir Christopher Meyer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-31-January-2012.pdf>

<sup>42</sup> p26, lines 2-6, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>43</sup> p26, lines 12-23, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>44</sup> p24 *passim*, p25, lines 18-23, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>45</sup> Exhibit PWH3 to the witness statement of Peter Hill (which included circulation figures for the Daily Express between 1 January 2007 and 4 January 2009) was provided to the Inquiry on a confidential basis. It has not been published as it includes commercially sensitive data

available to them. Dr Gerry McCann’s evidence was that he was unaware of this until 2009 when he gave evidence before the CMS Select Committee. He told that Committee that he did not recall receiving such a message but, had he done so, it would have been lost in all the other information the family was bombarded with at the time.<sup>46</sup>

**3.30** Dr McCann accepted that the PCC had been extremely helpful in dealing with the unwanted intrusion into the privacy of the twins.<sup>47</sup> The PCC intervened to contact editors and broadcasters reminding them of the Code and, thus, not to take photographs or similar images of the children; this practice stopped.<sup>48</sup> The PCC was also helpful in removing photographers from outside the McCanns’ driveway, although this was only after “*what we felt was a very long period*”.<sup>49</sup>

**3.31** A meeting took place between Dr McCann and Sir Christopher Meyer, former PCC Chairman, on 13 July 2007. There is no dispute between them as to what was said. Sir Christopher’s evidence was that he explained to Dr McCann, at a time when there had only been one complaint to the PCC against a newspaper and that was not proceeded with, that he effectively had a choice: either he could complain to the PCC, or he could take legal action, but he could not pursue both courses simultaneously.<sup>50</sup> When asked what the PCC did for the McCanns over the most distressing period, which was between September 2007 and January 2008, Sir Christopher said this:<sup>51</sup>

*“We were in pretty close contact with the press handlers of the McCanns. By that time, it was as gentleman called Clarence Mitchell, who I think may have appeared before you, and we stood ready to intervene if they wanted it. We come again to the question of the first party. You see, you can’t be more royalist than the king on these matters. You cannot wish to stop something more ardently than the first party. But by that time, I think they had chosen to go to law. I can’t say exactly, because it’s not for me to say, when they first hired Carter Ruck. So it’s not as if we were sitting there...”*

**3.32** This was a roundabout way of saying that the PCC did nothing. True, the PCC was on hand if the McCanns had not decided to litigate, but they should not have been presented with such a choice. Given the options which Sir Christopher had himself explained to Dr McCann, and given the scale of the defamatory treatment to which he and his wife had been subjected, this was a classic case of Hobson’s choice. Further, as Dr McCann himself pointed out, it was invidious that he and his wife were being asked to contemplate bringing a complaint against a body on which the editor of the Daily Express sat. A regulator of press standards, worthy of that name, would not have left the McCanns in such a predicament at the time of their maximum distress. Either the McCanns should not have been presented with mutually incompatible alternatives and given the option of pursuing both, or the PCC should have been ‘*more royalist than the king*’ (to quote Sir Christopher) and taken unilateral action.

**3.33** Sir Christopher took the editor of the Daily Express to task for his conduct on the very day that the McCanns’ libel action was settled. This was too little, too late, and even after the facts had been conclusively established (by admission) the PCC took no formal action. As the CMS

<sup>46</sup> para 354, <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcmcomeds/362/362i.pdf>

<sup>47</sup> paragraph 3.4 above

<sup>48</sup> p17, para 103, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerald-Patrick-McCann.pdf>

<sup>49</sup> para 356, <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcmcomeds/362/362i.pdf>

<sup>50</sup> pp84-87, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-31-January-2012.pdf>

<sup>51</sup> p85, lines 3-15, Sir Christopher Meyer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-31-January-2012.pdf>

Select Committee correctly pointed out, and as will be discussed in more detail below,<sup>52</sup> the PCC was empowered under its Articles of Association to launch an inquiry in the absence of a complaint. The McCann case ought to have been visualised as a prime candidate for such a course of action.

- 3.34** The Inquiry cannot improve on the conclusions of the CMS Select Committee in February 2010 when reviewing the McCann case:<sup>53</sup>

*'374. In any other industry suffering such a collective breakdown – as for example in the banking sector now – any regulator worth its salt would have instigated an enquiry. The press, indeed, would have been clamouring for it to do so. It is an indictment on the PCC's record, that it signally failed to do so.*

*375. The industry's words and actions suggest a desire to bury the affair without confronting its serious implications – a kind of avoidance which newspapers would criticise mercilessly, and rightly, if it occurred in any other part of society. The PCC, by failing to take firm action, let slip an opportunity to prevent or at least mitigate some of the most damaging aspects of this episode, and in doing so lent credence to the view that it lacks teeth and is slow to challenge the newspaper industry.'*

## The Kate McCann Diaries

- 3.35** Dr Kate McCann had kept a personal diary recording her innermost thoughts and feelings following the disappearance of her daughter. It was intensely private, and she did not share its contents even with her husband. The diary was seized by the PJ in August 2007 pursuant to its investigations, but the Portuguese court ordered its return to Dr McCann, as well as the destruction of all copies in its possession. The PJ had translated the diary into Portuguese and unfortunately one of the copies of the translated version found its way into the hands of a Portuguese journalist.
- 3.36** A former NoTW journalist told the Inquiry how a copy of the diary was acquired by the paper on payment of a substantial sum and then translated back into English. As Dr McCann pointed out in her evidence, the re-translated text did not completely match the wording of the actual diaries, but this is a minor point when set against the scale of the violation to her privacy which came to be perpetrated.
- 3.37** The journalist's understanding was that the news editor, Ian Edmondson, would *'confirm with the McCann press spokesperson that the diary was genuine'*, and would obtain his consent to publish extracts from the diary. However, his written and oral evidence about these matters was somewhat vague,<sup>54</sup> not because he was seeking to mislead the Inquiry in any way but for reasons which will soon become apparent.
- 3.38** One piece of evidence given by the journalist was particularly revealing:<sup>55</sup>

*'But I think in terms of considering it being appropriate to publish Mrs McCann's diary and the obvious considerations over privacy, the view taken by senior executives was that there were all sorts of false allegations being made about the McCanns and they*

<sup>52</sup> Part J

<sup>53</sup> <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/362/362i.pdf>

<sup>54</sup> Daniel Sanderson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Daniel-Sanderson.pdf>

<sup>55</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Daniel-Sanderson.pdf>

*really were being pilloried in the press, that this account gave a true picture of the McCanns and dispelled some of the lies being written about them'*

In other words, the predominant consideration was not concerns about the McCanns' privacy but rather the newspaper's own evaluation that this was a sympathetic story which placed them in a good light and was above all else true. This is exactly the same sort of reasoning process which the Inquiry has so often noted in its review of the critical material below.<sup>56</sup>

**3.39** Colin Myler, the editor of the NoTW at the time, was asked about these matters. He had had previous dealings with the McCanns and had, for example, berated Dr Gerry McCann for doing an interview with Hello! Magazine in preference to the NoTW.<sup>57</sup> His version of events was that his news editor, Ian Edmondson, obtained consent to the publication of extracts from the diaries from Mr Mitchell.<sup>58</sup>

*"Q. But the obvious question, Mr Myler, is this: why did you not telephone either of the McCanns and find out whether they consented?"*

*A. Because Ian Edmondson had assured me on more than one occasion that Clarence was aware of what we were intending to do and had said, "Good". I think it was very clear from Mr Edmondson's point of view how he'd spelt out what he was doing, and indeed I stressed very clearly by using the phrase that I did not want Kate to come out of church on Sunday morning and find that the diaries were there without her knowledge.*

*Q. But you were of course aware that if Dr Kate McCann had not given her consent to the publication of this personal diary, she would be outraged by the publication. You were aware of that, weren't you?"*

*A. I wouldn't have published if I'd thought that she hadn't been made aware of it.*

*Q. And Mr Edmondson was telling you that he'd obtained consent on what day?"*

*A. Well, it was absolutely clear from the Friday to the Saturday that that assurance had been given to him and given again to me.*

*Q. It was going to be a front page story, wasn't it?"*

**3.40** Mr Edmondson's account differed from Mr Myler's. He explained that he tape-recorded his telephone conversation with Mr Mitchell without the latter's knowledge in the interests of 'accuracy', although he accepted that this entailed an element of misleading his interlocutor.<sup>59</sup> Mr Edmondson was asked to state whether he made it clear to Mr Mitchell that it was the intention of the NoTW to publish extracts from the diary verbatim. It is worth setting out his answer in full:<sup>60</sup>

*"A. I didn't make it clear.*

*Q. And you say because you were given express instructions by Mr Myler?"*

<sup>56</sup> Part F, Chapter 6

<sup>57</sup> p14, para 84, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerald-Patrick-McCann.pdf>

<sup>58</sup> pp87-88, lines 12-9, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-14-December-2011.pdf>

<sup>59</sup> pp65-66, lines 20-4, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>60</sup> pp67-68, lines 8-22, Ian Edmondson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

A. *Correct.*

Q. *When did he give you those instructions? Can you recall?*

A. *From memory, at a meeting on Thursday of that week.*

Q. *Why did he give you those instructions?*

A. *I attended a meeting with Mr Myler and Tom Crone where we discussed this story. I think we got the story to a point where I was prepared to present it to Tom and Colin, the editor. Colin gave – sorry, I beg your pardon, Tom gave his legal view, which I'm told I'm not allowed to repeat, but which dismayed, shall I say, Mr Myler. So he decided to ask me to make a call to Mr Mitchell, not make it clear what we had, tell him in general terms, basically make it very woolly. I think someone previously used the word "ambiguous", and that is absolutely spot on what he wanted.*

Q. *So the preferred outcome for the end point of the conversation with Mr Mitchell would be what?*

A. *To give him the impression that we were running a story but not tell him specifically what story, certainly don't tell him that we were in possession of the complete diaries, as we understood. There had been extracts in the diaries – of the diaries in Portuguese papers which had been translated into the English papers, but certainly not to the extent that we had. He was frightened that if Clarence knew what we had, he might take action.*

Q. *Well, he would do – was the fear that he would, at the very least, tell his clients, the McCanns, what was going on?*

A. *Correct.*

Q. *And they would certainly get back to Mr Myler by phone?*

A. *Correct.*

Q. *Or make an application for an injunction to stop the News of the World publishing? Is that what it amount to?*

A. *That's exactly what it would."*

**3.41** This was devastating evidence. It would be remarkable if Mr Edmondson was seeking to mislead the Inquiry regarding Mr Mitchell being given a 'woolly' or an 'ambiguous' account of the newspaper's intentions: it was a frank admission of unethical conduct and fits the transcript of the conversation. Mr Edmondson's version of events was not available when Mr Myler testified some eight weeks previously, but it has since been put to him for comment. It is inherently more probable that Mr Edmondson would have been acting on instructions with regard to an issue of this nature rather than making the executive decision himself. In any event, the frankness and precision of his evidence on this issue, including his reference to Tom Crone and legal advice, renders it more likely than not<sup>61</sup> that his account is correct.

**3.42** Regardless of issues of individual responsibility, this case study is particularly illuminating for this reason. Read in isolation and out of context, it could be said that the transcript is somewhat ambiguous so that it could be deployed in support of a contention that, in some way, Mr Mitchell consented on behalf of the McCanns to the publication of extracts from the diaries. Thus, it was regarded by the paper as important to obtain written evidence which could be used if necessary to justify what happened. Read in the context of Mr Edmondson's explanation, however, the position is crystal clear. It is equally clear that deliberate decisions

<sup>61</sup> para 2.54, Part F, Chapter 4

were made within the NoTW to obtain this evidence by obfuscatory tactics and to deploy to their advantage the fact that a conversation of sorts had occurred should the need subsequently arise. In the result, there was a letter before action, and the matter was settled without the necessity of its ventilation in court.

**3.43** But the impact on Dr Kate McCann in particular was traumatic. As Dr Gerry McCann explained in his witness statement, *'Kate was distraught and morally raped.'*<sup>62</sup>

**3.44** What the McCanns did not make explicit when giving their evidence, but was or ought to have been entirely obvious to any empathetic observer, is that the conduct of the press as highlighted in this section of the Report served only to magnify and compound their distress and upset consequent upon the abduction of their daughter.

**3.45** Overall, it is impossible to disagree with Professor Brian Cathcart, professor of journalism at Kingston University, and his pithy and trenchant assessment:<sup>63</sup>

*"I draw the analogy with, you know, other areas of life. If there's a railway accident, there is an inquiry and lessons are learned. In the press, I was very influenced by observing the McCann case develop over month after month after month like a slow motion crash, and yet there was no introspection in the industry afterwards. The damages were paid, the books were closed, and they moved on. That is not – you know, we wouldn't accept in the railway industry or in, for example, a hospital, we wouldn't accept that nobody went back and assessed what had happened and tried to identify how things could be changed to prevent it happening again. So I think a mechanism – a regulator who is prepared to go in and do that is essential."*

F

## 4. Christopher Jefferies

### Introduction

**4.1** Joanna Yeates was the tenant of Christopher Jefferies who owned a number of flats in the Clifton area of Bristol. Mr Jefferies is a retired English teacher, having enjoyed a long and distinguished career at Clifton College between 1967 and 2001. On 19 December 2010 Ms Yeates' partner, who had been away for the weekend, reported her as missing to the police. On Christmas Day her body was found at the edge of a quarry three miles away; she had been strangled to death. The Avon and Somerset Constabulary opened a large-scale murder investigation and press interest in the story was, understandably, massive.

**4.2** Unsurprisingly, given that he was the victim's landlord, Mr Jefferies was invited to assist the police with their inquiries, and he voluntarily provided two witness statements. Totally out of the blue as far as he was concerned, at about 7am on 30 December 2010 Mr Jefferies was arrested by officers of Avon and Somerset Constabulary and then taken into custody for questioning. This lasted for three days, whereupon Mr Jefferies was released on police bail. On 22 January 2011 Vincent Tabak was arrested on suspicion of murder, and he was formally charged the following day. For reasons which it is unnecessary to address here, Mr Jefferies' bail conditions were not formally lifted until 4 March 2011. Tabak pleaded guilty to the manslaughter of Ms Yeates on 5 May and, as is well known, he was convicted of Ms Yeates' murder on 28 October 2011.

<sup>62</sup> p14, para 86, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerald-Patrick-McCann.pdf>

<sup>63</sup> pp73-74, lines 23-12, Professor Brian Cathcart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-8-December-2011.pdf>

## Press reporting while Christopher Jefferies was in custody

**4.3** From the moment he was arrested on 30 December 2010, any publication in relation to Mr Jefferies was subject to the ‘strict liability rule’ set out in section 2(2) of the Contempt of Court Act 1981: in other words, it would be a contempt of court for any publication to create a substantial risk that the course of justice in the proceedings in question (commenced by the fact of the arrest) would be seriously impeded or prejudiced. This placed significant constraints on the nature and scope of subsequent press reporting. The issue was not simply one of balance; a newspaper could be in contempt by virtue of publishing one prejudicial article, even if the same newspaper published many favourable ones. It is noteworthy that on 31 December 2010 the Attorney General, having seen the first wave of reporting in certain sections of the press, felt compelled to issue a public statement to editors warning them of the need to comply with the 1981 Act. Additionally, there were the limitations imposed by clause 1 of the Editors’ Code and the general law of defamation.

**4.4** The most damaging articles appeared in the press between 31 December 2010 and 2 January 2011. Mr Jefferies’ own characterisation of this material was that it amounted to a ‘*frenzied campaign to blacken my character*’, and contained the ‘*wildest flights of fantasy*’. As he put the matter in his witness statement:<sup>64</sup>

*‘I can see now that, following my arrest, the national media shamelessly vilified me. The UK press set about what can only be described as a witch-hunt. It was clear that the tabloid press had decided that I was guilty of Ms Yeates’ murder and seemed determined to persuade the public of my guilt... by publishing a series of very serious allegations about me which were completely untrue, allegations which were a mixture of smear, innuendo and complete fiction. I have been told by friends and family that while I was in custody extraordinary efforts were made by the media to contact anyone who may have had any knowledge about me, including friends from schooldays whom I had not seen for some considerable time, and former pupils. The tabloid press undertook what was quite simply gratuitous dirt-digging’*

**4.5** Mr Jefferies gave evidence about what he called the ‘*eight worst offending articles*’ which were published in six separate newspapers over a three day period.<sup>65</sup> Three of these featured in contempt of court proceedings brought by the Attorney General in July 2011, which was after it had been conclusively established that Mr Jefferies could not have been the killer. In the result, News Group Newspapers (NGN) Ltd was fined £18,000 in respect of an article published in The Sun on 1 January 2011, and Mirror Group Newspapers (MGN) Ltd was fined £50,000 in relation to articles published in the Daily Mirror on 31 December 2010 and 1 January 2011 respectively.

**4.6** It is unnecessary to dwell on the language and tone of the ‘offending articles’. It is sufficient to draw on their characterisation by the Lord Chief Justice in the contempt proceedings. As for the article published in The Sun on 1 January 2011, Lord Judge said:<sup>66</sup>

*‘The articles in the one issue of The Sun were written and laid out in such a way that they would have conveyed to the reader of the front page and the two inside pages over which the stories were spread that he was a stalker, with an obsession with death, who let himself into the flats of other occupants of the building where*

<sup>64</sup> p4, paras 20-21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Christopher-Jefferies.pdf>

<sup>65</sup> p5, para 25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Christopher-Jefferies.pdf>

<sup>66</sup> para 37, <http://www.bailii.org/ew/cases/EWHC/Admin/2011/2074.html>

*Miss Yeates lived, and that he had an unhealthy interest in blonde young women. ... Although the articles contain statements or words which could be said to have been favourable to Mr Jefferies, these were quite insufficient to counter the way in which the spread of the articles, and their content, associated Mr Jefferies with this murder. These articles would have certainly justified an abuse of process argument, and although their effect is not as grave as that of two series of articles contained in the Mirror, the vilification of Mr Jefferies created a very serious risk that the preparation of his defence would be damaged...'*

- 4.7 And as for the articles published in the Daily Mirror on 31 December 2010 and 1 January 2011, he went on:<sup>67</sup>

*'The material in the two publications of the Daily Mirror is extreme. True, it does not positively assert that Mr Jefferies was guilty of involvement in paedophile crimes, or the unsolved murdered many years earlier. It is submitted that the articles were unflattering, suggesting that he was an eccentric loner. So they were. But they went very much further. It was asserted, in effect directly, that his standard of behaviour, so far as sexual matters were concerned was unacceptable, and he was linked to both the paedophile offences and the much earlier murder offence. That indeed was the point of the articles. The juxtaposition of the photographs of two murdered women, together with the layout of the places where they died in proximity to Mr Jefferies home, was stark. And in the context of the murder of Miss Yeates herself, the second article implied that Mr Jefferies was in a particularly convenient position, as her landlord, to have gained access to her premises to commit a murder, according to the article, committed by an intruder...'*

- 4.8 Ultimately, Mr Jefferies successfully brought proceedings for defamation against eight newspapers<sup>68</sup> in relation to allegations contained in 40 separate articles.<sup>69</sup> At the hearing before Mr Justice Tugendhat on 29 July 2011 when the libel settlements were announced, Mr Jefferies' solicitor said this:<sup>70</sup>

*"Christopher Jefferies is the latest victim of the regular witch hunts and character assassination conduct by the worst elements of the British tabloid media. Many of the stories published in these newspapers are designed to 'monster' the individual, in flagrant disregard of his reputation, privacy and rights to a fair trial."*

- 4.9 Similar strictures had previously been made in a somewhat different tone, but with equivalent accuracy, by Ms Yeates' partner, Greg Reardon, who issued a press statement on 1 January 2011 in these terms:<sup>71</sup>

*'Jo's life was cut short tragically but the finger pointing and character assassination by social and news media of as yet innocent men had been shameful. It has made me lose a lot of faith in the morality of the British press and those who spend their time fixed to the internet in this modern age ... I hope in the future they will show a*

<sup>67</sup> para 34, <http://www.bailii.org/ew/cases/EWHC/Admin/2011/2074.html>

<sup>68</sup> The Sun, the Daily Mirror, the Sunday Mirror, the Daily Record, The Daily Mail, the Daily Star, The Scotsman and the Daily Express

<sup>69</sup> p5, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Chrisopher-Jefferies.pdf>

<sup>70</sup> <http://www.guardian.co.uk/media/greenslade/2011/jul/29/joanna-yeates-national-newspapers>

<sup>71</sup> p10, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Chrisopher-Jefferies.pdf>

*more sensitive and impartial view to those involved in such heartbreaking events and especially in the lead-up to potentially high-profile court cases.'*

- 4.10** But, as Mr Jefferies has pointed out,<sup>72</sup> the majority of newspapers failed to print this section of his tribute, and those who did omitted critical wording, altering the meaning completely.

## The press perspective

- 4.11** The Inquiry heard from two journalists involved in these stories, one employed by MGN and the other by NGN, the publishers of the Daily Mirror and The Sun newspapers generally, as well as from those who played an editorial role. As with the McCanns, no criticism is made or to be inferred of the journalists, because it was not their decision to run with the story generally or to publish any specific or individual pieces.

- 4.12** It is clear from their evidence that a number of former pupils of Mr Jefferies were approached by journalists to give their views of his character, personality and temperament. This in itself was a risky and unwise course of action; it could be treated as an opportunity for old scores to be settled, and some may also have believed that there could be no smoke without fire. To their credit, not every pupil succumbed to these temptations. Whereas it is true that many of the articles written about Mr Jefferies included favourable material, the point made by the Lord Chief Justice in the contempt proceedings (namely that this was quite insufficient to nullify the prejudicial impact of the disparaging material) is of course entirely valid; and in any event that which spoke of Mr Jefferies in positive terms did not do full justice to the quality and weight of that material. Furthermore, evidence given by one of the journalists does altogether chime with evidence the Inquiry has already noted in relation to the McCanns:<sup>73</sup>

*“Well, obviously hindsight’s a wonderful thing, and looking back, we – everybody at the Daily Mirror is very regretful of the coverage and we do apologise to Mr Jefferies for vilifying him in such a way, but you have to understand at the time it was such a high profile murder investigation. There was huge public interest and concern over the tragic death of Joanna Yeates.*

*LORD JUSTICE LEVESON: I understand that. Actually, let me share this with you, Mr Parry: that’s one of my concerns, that everybody in retrospect will say, “Well, that clearly went too far and this clearly was wrong and that shouldn’t have happened and we’ll put in place mechanisms to try to prevent it in the future” – until the next enormous story comes along and it all just drains away.*

*A. I accept that, but I think you’ll find that this particular story was perhaps, you know, a watershed moment for the industry. It wasn’t – an eye opener. It wasn’t just the Daily Mirror. It was a number of newspapers who fell foul of this.”*

- 4.13** There is clearly a sense here of the story acquiring its own close to irresistible momentum and running out of control. The same sense emerges from other evidence the Inquiry received, some of which is set out below.

- 4.14** The duty editor at The Sun over the New Year period in 2010/2011 was Stephen Waring, its current publishing director, the editor Dominic Mohan being on holiday. Mr Waring gave entirely frank evidence about his paper’s coverage of this story, and freely admitted

<sup>72</sup> p11, para 30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Christopher-Jefferies.pdf>

<sup>73</sup> p52, lines 4-24, Ryan Parry, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>

his mistakes. He also volunteered the fact that he spoke to Mr Mohan about the coverage in the 1 January edition and that the latter said that he thought that the paper should be more balanced.<sup>74</sup> Mr Waring gave the following explanations as to how the story came to be published in the way in which it did:<sup>75</sup>

*“... to me there are three elements to this. There’s the material we’d previously published the day before, ie the first day of Mr Jefferies’ arrest, and there was a lot of critical comment about his character from four unnamed pupils, ex-teachers, people – former acquaintances, and that set a particular tone, which coloured my judgment wrongly, but that coloured the judgment. There was the nature of the story, which, just to put it in context, this story had been, as I say, on the front page for seven previous editions, there was a general bafflement as to the motive for this appalling murder, and Mr Jefferies’ inconsistency, as it was perceived in his story the day before he was arrested seemed, wrongly, to be the great breakthrough, and this led to a great outpouring of adverse comment about his character ... But the key aspect of this is the light in which this was legalled. I can’t speak for the lawyer’s own mind, but we are talking about an era where there was a far more liberal interpretation about what we could get away with in print.”*

**4.15** This reference to what newspapers could ‘get away with in print’, which was Mr Waring’s own choice of language, was a reference to the application of the contempt of court legislation by the Attorney General. However, as the Divisional Court in the contempt proceedings amply made clear, the Attorney was merely applying the law as it had been set out and applied in the relevant legislation. If previous holders of that office had been applying a more liberal interpretation of the law, then newspapers were indeed ‘getting away with’ more than they should have done. In any event, this was not simply a question of contempt: it was a gross libel. Nonetheless, this evidence chimed with other evidence heard by the Inquiry that, in large parts of the press, the primary concerns of legal and managerial oversight are to avoid litigation: the fact that a particular story, or a particular method might have been unethical, but legal, received little attention.

**4.16** It would be wrong to leave Mr Waring’s evidence without setting out his closing remark in full:<sup>76</sup>

*“Could I just say one other thing? Please don’t judge my colleagues by the errors I’ve made in this edition, because they are a bunch of very committed, hard-working individuals, the finest journalists in Fleet Street, and the Sun is a very vibrant paper that is a compassionate paper. We produce 100,000 items a year. We got this one badly wrong and I admit that, but these mistakes do happen.”*

**4.17** Richard Wallace gave evidence about the Mr Jefferies’ case in his capacity as editor of the Daily Mirror at the relevant time. As with Mr Waring, he frankly admitted that on this occasion his newspaper fell short of its own benchmark standards of fairness, justice and compassion,<sup>77</sup> and that this was a ‘very black mark on [his] editing record’.<sup>78</sup> Mr Wallace claimed that the Daily Mirror was acting on the faith of a number of off-the-record briefings from police

<sup>74</sup> p77, lines 2-3, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>

<sup>75</sup> pp82-83, lines 3-6, Stephen Waring, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>

<sup>76</sup> p86, lines 18-25, Stephen Waring, *ibid*

<sup>77</sup> p65, lines 6-10, Stephen Waring, *ibid*

<sup>78</sup> p67, lines 4-5, Stephen Waring, *ibid*

officers,<sup>79</sup> the existence of which has been denied by the former Chief Constable of Avon and Somerset Constabulary, Colin Port, in his witness statement to the Inquiry.<sup>80</sup> The Inquiry is not in a position to resolve this potential conflict of evidence, nor does it need to. The possibility that the Daily Mirror was in receipt of unauthorised briefings as opposed to authorised, off-the-record guidance has not been overlooked.

**4.18** Mr Wallace was asked to consider whether there were broader reasons underlying the Daily Mirror's error of judgment in this case. It is worthwhile setting out his answer in full:<sup>81</sup>

*“Q. So what was it that was driving you to take such a risky decision? Was it simply such a big story that you couldn't afford to ignore it?”*

*A. No, I made a very serious misjudgment.*

*Q. I'm trying to explore what pressures were on you. Was it because of the competition with your rivals, who were also covering the story very extensively and in lurid terms?”*

*A. Competition is always keen within Fleet Street. That has led us to have a very – and continue to have a very vibrant press. The envy of the world, I might add. But – one always wants to beat the competition, but one should not become reckless in seeking to beat your competition. How, in your view, would you learn from the mistake that you made on this occasion to avoid something like this happening again?”*

*A. I think Mr Jefferies' name will be imprinted on my brain forever more. It will change very much the way I deal with any story of this nature in the future.*

*Q. Apart from that, is there any practical change that could be made to reduce the risk of something like this happening again?”*

*A. I don't believe so, because ultimately it's down to the judgments of editors and, you know, as I found in this regard and other mistakes have been highlighted, we all make mistakes. I'm not seeking to downplay those mistakes or dismiss them; I'm just saying you can have as many safeguards and checks and balances in place as you would like but these errors are going to happen. It's about creating a climate, I believe, which makes all editors think perhaps a little bit longer than they have previously.”*

**4.19** Putting to one side the concerns arising from Mr Wallace's failure to identify any specific changes that could be introduced to avoid such reporting in the future,<sup>82</sup> he was right to point out that editorial judgment will always be an important factor, and that mistakes will be made, even in the most ethical of systems. However, the final point he made in this section of his evidence is deserving of greater emphasis. Mr Wallace referred to the creation of a 'climate'; this Inquiry has throughout spoken in terms of creating a culture, and one of greater respect for the rights of individuals and, as in Mr Jefferies' case, for the rule of law. The Daily Mirror believed that their story was accurate, otherwise they would not have published it. To suggest otherwise would be to accuse the paper of malice, and there is simply no evidence to support that allegation. It is possible to make the relevant point far more modestly in this way: even if the story had not been defamatory, the Daily Mirror and other newspapers should not have published it. Mr Wallace accepted that no editor should become reckless in

<sup>79</sup> pp65-66, Stephen Waring, *ibid*

<sup>80</sup> p4, para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Chief-Constable-Colin-Port.pdf>

<sup>81</sup> pp72-73, lines 12-19, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>

<sup>82</sup> Part F, Chapter 7

seeking to beat the competition, and in this particular case he should also accept that he fell short of that standard too.

**4.20** It is worth making another point as well. Much has been said, quite rightly, about the exceptionally good reporting that comes out of the press in this country. That is not, however, the point. What matters is the fact that poor decisions and serious lapses in the standards that the press set for themselves are more than occasionally evident and few papers can say that they have never published a story that failed to meet the standards of the Editors' Code. A regulatory system is there to uphold standards for all, however they normally behave; it needs to exist alongside any question of redress and whether or not the particular breach gives rise to an actionable tort.

**4.21** Mr Jefferies was the victim of a very serious injustice perpetrated by a significant section of the press. Without such reporting, it is hard to accept that he would have found it necessary to change his appearance and effectively lodge with friends for approximately three months. For those who have said that the Inquiry has been overly concerned with the complaints of celebrities, Mr Jefferies was not such an individual. Nor were the McCanns or the Dowlers. Clearly, all of these witnesses would have wished for nothing more than to have remained well out of the public eye and off the front pages of newspapers but, for reasons beyond their control, that was not where they found themselves.

## 5. The Rt Hon Gordon Brown MP and his son's illness

### Introduction

**5.1** In November 2006 The Sun published private medical information about the son of the then Chancellor of the Exchequer, the Rt Hon Gordon Brown MP. At the time of publication, Mr Brown's son was four months old, and the story reported his diagnosis of cystic fibrosis.<sup>83</sup> The Inquiry heard extensive evidence in relation to this story and, because of the light it throws on a number of aspects of the culture, practices and ethics of the press, it is appropriate to address it in some detail. The factual disputes which arose during the course of the evidence will only be resolved to the extent necessary to illuminate the culture of the press in general.

**5.2** For example, there is considerable dispute between the then editor of The Sun, Rebekah Brooks and Mr Brown as to how the story was sourced in the first place. For a number of reasons which will be explained, it is simply not possible to resolve that dispute on the available evidence, and it would have been difficult to do so even had the Inquiry decided to investigate the story in depth and require further evidence to be provided. What is not in dispute is that there was no public interest in the story sufficient to justify publication without the consent of Mr and Mrs Brown.<sup>84</sup> The medical information published by the newspaper was private information about a very young child and it therefore deserved the utmost protection. Prior to publication, only a small handful of doctors, other health workers and family members ought to have been, and the Browns would say were, aware of the diagnosis, and it would have been obvious to anyone in possession of the information that it was highly sensitive and not to be disclosed without consent.

**5.3** In July 2011, at the height of the phone hacking scandal, Mr Brown made further allegations as to how The Sun might have obtained the material for the original 2006 story. The response

<sup>83</sup> <http://www.thesun.co.uk/sol/homepage/news/73335/Browns-baby-has-cystic-fibrosis.html>

<sup>84</sup> pp137-138, lines 14-23, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

of The Sun to those allegations shares similarities with the response of the Daily Mail to Hugh Grant's evidence to the Inquiry, addressed at Section 6 below.

- 5.4 Furthermore, Mr Brown's evidence to the Inquiry itself generated a hostile reaction in certain sections of the press. That reaction, and the ultimate resolution of the issue to which it related, is discussed below.

## The Sun's source

- 5.5 The article published in The Sun on 13 July 2011<sup>85</sup> stated that the source of the original story was a *'shattered dad whose own son has the crippling disease and who wanted to highlight the plight of sufferers'*. Although the article contains the categorical denial of this gentleman that he had seen confidential medical records (*'all of which is the truth as I shall answer to God'*), it is not specific as to how he had come about this information, save to allege that *'he has links with the Brown family'*.
- 5.6 Mrs Brooks was asked to explain this lack of specificity when she gave evidence. Her account was as follows:<sup>86</sup>

*"Q. How had he got the information?"*

*A. He'd got the information because his own child had cystic fibrosis and he'd got the information, I should say, through a very small – it's not a small charity, but there is a charity aspect to the Cystic Fibrosis Society, and he got it slightly by involvement through there.*

*Q. What sort of involvement?"*

*A. Mr Jay, I'm not going to tell you any more about the source because I don't want to reveal his identity.*

*Q. But you're not.*

*A. Well, I feel uncomfortable answering that because I think it could lead to his identity. You're asking me where information came from and the source, and I think they are matters that I have to respect in a source coming to the newspaper. The main point of this issue is Mr Brown accused the Sun of hacking into his son's medical records to get this story and that wasn't true.*

*LORD JUSTICE LEVESON: It wasn't accurate?"*

*A. No, sorry, it wasn't accurate."*

- 5.7 Although the matter was pursued further with her, Mrs Brooks was adamant in her refusal to breach the confidentiality of the source. Without knowing more of the background circumstances, and exactly how the source had apparently obtained the information from the charity mentioned, the Inquiry is not in a position to judge whether Mrs Brooks' refusal to answer further questions – on the ostensible basis that the source's identity might be disclosed – was justified or not. Further, the possibility that the source, (assuming he existed), obtained this information by unlawful or unethical means has not been overlooked, but here again the Inquiry is in no position to make a finding.

<sup>85</sup> <http://www.thesun.co.uk/sol/homepage/news/3691926/The-Sun-exposes-the-allegation-that-we-hacked-into-Gordon-Browns-family-medical-records-as-FALSE-and-a-smear.html>

<sup>86</sup> pp32-33, lines 14-8, Rebekah Brooks, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-11-May-2012.pdf>

- 5.8** Mr Brown's evidence was that The Sun's account was incorrect, and that the information as to his son's medical condition had been obtained in circumstances of a breach of confidentiality:<sup>87</sup>

*"In 2006, the Sun claimed that they had a story from a man in the street who happened to be the father of someone who suffered from cystic fibrosis. I never believed that could be correct. At best, he could only have been the middleman, because there were only a few people, medical people, who knew that our son had this condition. In fact, for the first three months that our son was alive, I just have to say to you, we didn't know, because there were tests being done all the time to decide whether this was indeed his condition or not, and only by that time, just before the Sun appeared with this information, had the medical experts told us that there was no other diagnosis that they could give than that this was the case. So only a few people knew this. I have submitted to you a letter from Fife Health Board which makes – the National Health Service in Fife, that is – which makes it clear that they have apologised to us because they now believe it highly likely that there was unauthorised information given by a medical or working member of the NHS staff that allowed the Sun, in the end, through this middleman, to publish this story. Now, whether medical information should ever be hounded out without the authorisation of a parent or of a doctor through the willingness of a parent is one issue that I think it addressed, and I know the Press Complaints Commission code is very clear, that there are only exceptional circumstances in which a child's – or information about a child should be broadcast, and I don't believe that this was one of them."*

- 5.9** Mr Brown's oral evidence contained an accurate summary of the contents of the letter from the Fife NHS Board to which he referred.<sup>88</sup>

- 5.10** The written closing submissions lodged on behalf of Mrs Brooks urge the Inquiry not to reach any finding of fact on the source of the story.<sup>89</sup> The points are made that not merely was Mrs Brooks entitled to refuse to disclose her source, but also that NI has other documentary material in its possession which could throw light on the matter. I accede to Mrs Brooks' submissions, but not without a degree of reluctance. The letter from the Fife NHS Board does not conclusively prove that Mrs Brooks' account is incorrect: full details of the investigations it carried out are not provided, and the term 'very likely' does not exclude other possibilities. This case study illustrates precisely the sort of difficulties which arise as and when a journalist such as Mrs Brooks invokes the protection for sources vouchsafed by clause 14 of the Editors' Code of Practice.<sup>90</sup> Further, it is one of the consequences of the very real protection that the law rightly gives to journalists in relation to sources but it serves to underline the difficulty in holding the press to account (or allowing the press to vindicate itself) if there is a challenge to the propriety of the way in which the information has been obtained. Mrs Brooks' evidence to the Inquiry could well have been accurate; on the other hand, if it had been inaccurate, the means of exploring and demonstrating that proposition is precluded by the terms of clause 14 if not the general law.

<sup>87</sup> pp27-28, lines 11-16, Gordon Brown, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-11-June-2012.pdf>

<sup>88</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Exhibit-GB9-to-Witness-Statement-of-Gordon-Brown-MP-Black.pdf>

<sup>89</sup> p9, paras 31-32, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Closing-Submission-from-Rebekah-Brooks.pdf>

<sup>90</sup> [http://www.pcc.org.uk/assets/696/Code\\_of\\_Practice\\_2012\\_A4.pdf](http://www.pcc.org.uk/assets/696/Code_of_Practice_2012_A4.pdf)

## Consent for publication

- 5.11** Mr Brown's evidence to the Inquiry was that neither he nor his wife expressly consented to publication of the story. In his words:<sup>91</sup>

*“Our press office was phoned by a journalist from the Sun and said that they had this story about our son’s condition and they were going to publish it. I was then contacted. I was engaged in the pre-budget report. I immediately, of course, phoned my wife, Sarah, and we had to make a decision. If this was going to be published, what should happen? We wanted to minimise the damage, to limit the impact of this, and therefore we said that if this story was to be published, then we wanted a statement that went to everyone that was an end to this, and there would be no further statements, no days and days and days of talking about the condition of our son.*

*Unfortunately, this was unacceptable to the Sun newspaper. The editor phoned our press office and said that this was not the way that we should go about this, and to be honest, if we continued to insist that we were going to make a general statement, the Sun wouldn’t, in future, give us any chance of advance information on any other story that they would do.*

*It was at that time that the editor of the Sun phoned my wife, whose aim then, having accepted that this was a fait accompli – there was no thought that the Press Complaints Commission could help us on this. I think we were in a different world then. Nobody ever expected that the Press Complaints Commission would act to give us any help on this, and we were presented with a fait accompli, I’m afraid. There was no question of us giving permission for this. There was no question of implicit or explicit permission.*

*I ask you: if any mother or any father was presented with a choice as to whether a four-month old son’s medical condition, your child’s medical condition, should be broadcast on the front page of a tabloid newspaper and you had a choice in this matter – I don’t think there’s any parent in the land would have made the choice that we are told we made, to give explicit permission for that to happen. So there was no question ever of explicit permission.”*

- 5.12** Mrs Brooks' account was that the Browns, and Sarah Brown in particular, gave their consent to the publication of the story:<sup>92</sup>

*“A. I think in the period of time of receiving the information and publishing the information, which is – which, by the way, went to all newspapers – all newspapers published it around the same day – I spoke to the Browns. I will have spoken probably to people around them but I definitely had more of a communication with Sarah Brown, as she was my friend, and I probably discussed it with her more. The sequence of events were: Fraser Brown was born in July. I think the information came to the Sun in the late October. I think the Browns’ position at the time was very much that they had had the tests confirmed, and as Prime Minister and his wife, they felt that there were many, many people in the UK whose children suffered with cystic fibrosis. They were absolutely committed to making this public and they were also – one of the most overwhelming memories of that time for me was the Browns’ insistence*

<sup>91</sup> pp29-31, lines 12-2, Gordon Brown, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-11-June-2012.pdf>

<sup>92</sup> pp41-43, lines 10-12, Rebekah Brooks, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-11-May-2012.pdf>

*that when the story was published, that we absolutely highlighted the positives in association with the cystic fibrosis association.*

*Q. The story was published in November, when the child was four months old – I said four years old; that’s incorrect – and before, I think, the diagnosis was confirmed. Is that true?*

*A. No. I think – and this is again from my conversations back in 2006 with the Browns and people who advised them – I’m pretty sure we ran the story in the November and the tests were confirmed some time in the October.*

*Q. When you spoke to Mrs Brown – that’s your evidence,*

*Mrs Brooks – was it on the basis that: “Look, we’ve got this story, we’re going to run with it, let’s see how we can run with it in a way which is least harmful to you”, or something like that?*

*A. Absolutely not, and I think that – as you’ve seen in my witness statement, I was quite friendly with Sarah Brown at the time. Very friendly. She’d been through a hell of a lot already. I think my first thing I would have said to both of them was – would have been a much more considerate and caring response to hearing the news myself. I was very – I was very sad for them. I didn’t know much about it and I wanted to find out what had gone on.*

*You have to remember that the – this is 2006. This is only five years later that Mr Brown had ever said anything – that he was in any way concerned about my behaviour, the behaviour of the Sun, how we handled it. Indeed, after 2006, I continued to see them both regularly. They held a 40th birthday celebration party for me. They attended my wedding. I have many letters and kind notes. Sarah and I were good friends. And so I felt – hence the story in the Sun in 2012 was quite tough – was that Mr Brown’s recollections of that time weren’t the same as my own.”*

F

**5.13** Mrs Brooks’ testimony serves to highlight two lacunae in the evidence which renders it difficult for the Inquiry fully to resolve the stark evidential dispute, or at the very least profound differences of recollection, between these two witnesses. First, Mrs Brooks stated that other newspapers published the story ‘around the same day’. It is now clear that those other newspapers published the story on the basis of a press release sent out by the Browns the night before publication in The Sun. Although Mr Brown did not give evidence in relation to this press release, it appears (for reasons set out in more detail below) that the Browns issued the press release once they realised that publication in The Sun was inevitable. Second, the Inquiry did not hear directly from Mrs Brown. To have required her to give evidence would have been a disproportionate step in all the circumstances, and the Inquiry cannot properly speculate as to what assistance, if any, she might have been able to give.

**5.14** Mrs Brooks’ account possesses at least two surprising features. First, the claim that the Browns were ‘*absolutely committed to making this public*’ frankly defies belief: one hardly needs Mr Brown himself to point out that no parent in the land would have wanted information of this nature to be blazoned across the front page of a national newspaper. On the other hand, if the complaint is well founded, the fact that the Browns appeared to have remained friendly with Mrs Brooks after November 2006 is itself somewhat surprising. Mr Brown’s explanation, that his wife ‘*is one of the most forgiving people I know*’,<sup>93</sup> may indeed be correct (and I do not seek for one moment to challenge it), but, in these circumstances, she would have to be. Interestingly, Mr Brown went on immediately to say that ‘*we had to get on with the job*

<sup>93</sup> p34, lines 18-19, Gordon Brown, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-11-June-2012.pdf>

*of doing what people expect a politician to do, to run a government*:<sup>94</sup> this itself throws much light on the relationship between the press and politicians, with its implication that the imperative of continuing to 'get on with' NI was abiding.

- 5.15** It is possible to reconcile this apparent conflict of evidence without concluding that any witness sought deliberately to mislead the Inquiry. Mr Brown's evidence was assuredly right when he said that he and his wife felt that they were being presented with a *fait accompli*. A journalist, and not Mrs Brooks, had telephoned his press office with the news that The Sun was going to publish this story; or, putting the matter at its lowest, this was the inference which the press office drew. From their own previous experience or knowledge of the culture, practices and ethics of the press, the Browns now perceived that this was now a matter of damage limitation, and they sought to come to an arrangement with The Sun on that basis. Clearly, the Browns did not believe that they could persuade The Sun or its editor to take a different course altogether, otherwise they would have tried to do so. Some of the detail of Mr Brown's account could not be put to Mrs Brooks when she testified, because it simply was not available at that stage. What is clear is that Mrs Brooks telephoned Mrs Brown and each believed at the end of that conversation that a concordat had been reached: Mrs Brown, because she had no option; and Mrs Brooks, because the Browns did not explicitly oppose the publication of the story.
- 5.16** Mrs Brooks is to be criticised in two interconnected respects, but only to the extent necessary to address the culture, practices and ethics of the press. I do not find (as Mrs Brooks asserted) that the Browns were absolutely committed to making the fact of their four month old son's illness public, nor do I accept that their press release the night before publication evidences that fact. However, it should be made clear that I am not thereby holding that Mrs Brooks deliberately misled the Inquiry. Mrs Brown is highly unlikely to have said anything expressly along the lines that she was "absolutely committed" to making the fact of their son's illness public, and insofar as Mrs Brooks drew that inference from Mrs Brown's acquiescence or failure to remonstrate, she is guilty of a degree of blinkeredness if not self persuasion. Had she stopped to place herself in Mrs Brown's situation, she would have begun to understand the predicament in which she had been placed. In all the circumstances, Mrs Brooks should have asked a series of direct questions of Mrs Brown to satisfy herself that consent was fully and freely given, and should have given her the express option of vetoing publication.
- 5.17** In the result, the Browns managed the revelation of the information via their own press release, the story was subsequently published in a way which placed the Brown family in a sympathetic light, and The Sun had its front page. The Browns had been presented with Hobson's choice, and they took the line of least resistance. In that way they avoided both the risk of The Sun publishing an account to which they had not contributed, and the possible political fallout with NI which might have ensued had they strenuously objected.
- 5.18** The fact that Mrs Brooks might well not have published this story in The Sun had the Browns expressly asked her not to do so does not reflect badly on her, but speaks volumes for the culture, practices and ethics of the press. In this particular instance, she held all the reins of power, and the Browns held none; to the extent that they felt that could not even ask Mrs Brooks to back off.
- 5.19** Further, this form of *fait accompli* is a familiar one to this Inquiry. The Brown's evidence strikes concordant notes with the evidence of witnesses such as Ms Diamond and the singer, Charlotte Church, to name but two.

<sup>94</sup> p34, lines 21-22, Gordon Brown, *ibid*

## False smear

5.20 The article published in The Sun on 13 July 2011<sup>95</sup> commenced with this sentence:

*'The Sun today exposes the allegation that we hacked into Mr Brown's medical records as FALSE and a smear'.*

5.21 Unsurprisingly, given that similar language had been used by another newspaper in November 2011 and this was still fresh in the Inquiry's mind,<sup>96</sup> I pursued a line of questioning with Mrs Brooks on this matter:<sup>97</sup>

*"LORD JUSTICE LEVESON: Now, my question. Would you look, please, at the first line of the Sun article: "The Sun today exposes the allegation that we hacked into Gordon Brown's family medical records as false and a smear." My concern is whether it's fair to describe that as – it may be incorrect, but as "false and a smear".*

*A. In the general point, I can absolutely see what you're saying, sir, is correct, but this was not – this was a particular journey that the Sun had been involved in since the beginning of the information coming into the Sun newsroom and what happened after that and subsequent to that.*

*LORD JUSTICE LEVESON: But if he never knew how you got it, all you can say – and you're entitled to say, "He's just got it wrong."*

*A. He came to the wrong assumption in 2011.*

*LORD JUSTICE LEVESON: And that's absolutely fair. So the issue is whether it's part of the culture of the press that actually attack is the best form of defence. So people don't just get it wrong; it's "false", in capitals, and "a smear". Do you see the point I'm making?*

*A. I do see the point you're making, but, sir, the context of that article was written after Gordon Brown had – first of all, I think his first appearance in Parliament since he stepped down as Prime Minister was to come to the House and speak incredibly critically and, in some cases, made wrong assumptions through his testimony to the House, and then the second thing he did, he then went on, I think, the BBC – I can't remember – to do an interview with another wrong assumption that the Sun had got the story from [the child's] medical records, and I think combining the two, if you like, attacks from Mr Brown that had never ever been raised by him in any shape or form with any of us at News International or Mr Murdoch – he never once mentioned press ethics or practices in his – in our entire relationship – that the Sun felt that it was a smear, that he was doing it five years later for a particular reason, and I think that's why they wrote the story that they did. Now, I was chief executive at the time. I didn't write the story but I'm defending their right to write the story like that.*

*LORD JUSTICE LEVESON: All right. You've provided an answer, but actually what you've demonstrated is that the Sun believed – and they may be right or wrong, I don't know – that Mr Brown had added two and two and two and got 27, whereas in fact, if you took each one of the incidents on their own, it may have been he may have*

<sup>95</sup> <http://www.thesun.co.uk/sol/homepage/news/3691926/The-Sun-exposes-the-allegation-that-we-hacked-into-Gordon-Browns-family-medical-records-as-FALSE-and-a-smear.html>

<sup>96</sup> see discussion of the Daily Mail's allegation of a "mendacious smear" by Hugh Grant at Section 6 below

<sup>97</sup> pp34-36, lines 19-24, Rebekah Brooks, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-11-May-2012.pdf>

*made a mistake, he may be wrong to reach the conclusion – that’s all fair enough, entirely proper, but it goes a bit further than that.*

*A. I accept that this story does, but if you imagine for the Sun, the Sun – and I know I keep mentioning this, but the Sun has a trust with its readership.”*

- 5.22** Ultimately, the issue for Mrs Brooks was the reputation of The Sun in the eyes of its readers. This struck another chord, in that in a different context (the pursuit of campaigns) Mrs Brooks stated that all that The Sun did was to reflect the viewpoint of its readers. In other words, editors and journalists are mere reflectors of public opinion rather than the drivers of it, and the readers are always the pre-eminent concern. Mrs Brooks discountenanced the suggestion that by criticising Mr Brown in this way the paper was unnecessarily raising the temperature and indulging in an exercise in ‘aggressive defence’; she could understand the point that was being put to her, but could not begin to see the issue from Mr Brown’s perspective, instead preferring to defend the paper’s right to publish this type of story.
- 5.23** The parallels with the ‘mendacious smear’ story<sup>98</sup> and other evidence referred to below,<sup>99</sup> are obvious.

## The aftermath of Mr Brown’s evidence to the Inquiry

- 5.24** On 25 June 2012 Linklaters on behalf of NI wrote to the Inquiry drawing its attention to an article in The Sunday Post (a newspaper published in Dundee) on 17 June which stated:

*‘The Sunday Post heard about the baby’s condition weeks before they [sic] were published in The Sun. We contacted the Browns, and they told us that they did not want to comment. We respected their privacy, and didn’t print the story. Remember that not all newspapers are the same.’*

- 5.25** Rather than draw attention to the way in which The Sunday Post sought to distance itself from the conduct of The Sun newspaper, as well as to the fact that the Brown family’s ‘no comment’ is hardly consistent with Mrs Brooks’ evidence that they were absolutely committed to broadcasting their son’s condition, the point Linklaters made was that Mr Brown’s evidence to the effect that *‘there were only a few people, medical people, who knew that our son had this condition’* must be incorrect. Linklaters asked the Inquiry to obtain further evidence from The Sunday Post and Mr Brown relating to this issue.
- 5.26** On 28 June 2012 The Times published a short piece which reported on Linklaters’ request to the Inquiry, and referred to Mr Brown’s claim that The Sun had *‘illegally obtained information from his son’s medical records’*.
- 5.27** However, on Wednesday 2 July The Times felt constrained to publish an apology in these terms:

*‘The Sunday Post has now explained it did not know that the baby had, or was being tested for, cystic fibrosis. And we accept that Mr Brown’s evidence to the Leveson Inquiry was not as we described it: he told the Inquiry that he had been told by the Fife Health Board it was ‘highly likely’ that the information about his son’s condition originated from an NHS staff member. We are happy to clarify the position and apologise to the Brown family.’*

<sup>98</sup> Section 6 below

<sup>99</sup> Section 10 of Part F, Chapter 6

- 5.28** Although the Inquiry accepts the explanation given in the third witness statement of Pia Sarma, editorial legal director at the Times Newspapers Limited, dated 3 September 2012 that facts set out in the article in The Times dated 28 June 2012 were themselves obtained from information supplied by The Sunday Post, it is clear that the author of that article had misread Mr Brown’s evidence to this Inquiry. Others have suggested that on this occasion The Times demonstrated a lack of objectivity borne out of its desire to protect another NI title: this is certainly a possible inference, but would require more specific evidence to substantiate.
- 5.29** Considering the episode as a whole, the treatment of Mr and Mrs Brown by NI left much to be desired. It cannot be equated with the treatment experienced by the McCanns, Dowlers or Mr Jefferies, but, as a whole, the experience of the Browns provides a fine example of a number of aspects of unsatisfactory and/or unethical press practices further examined below.<sup>100</sup>

## 6. Hugh Grant and ‘the mendacious smear’

- 6.1** Hugh Grant was one of the first witnesses to give evidence before the Inquiry in November 2011. At paragraph 11 of his first witness statement he referred to an article published in the Mail on Sunday on 18 February 2007.<sup>101</sup> The article speculated that the cause of the breakdown of Mr Grant’s long term relationship with Jemima Khan was a series of late-night phone calls with a ‘glamorous young Cambridge-educated film executive from Warner Brothers’ with a ‘plummy-voice’. The article continued:

*‘a source revealed last night...Hugh was always disappearing for meetings and whenever he was on the phone to this woman, Jemima would hear her plummy laughter. She would always call Hugh on his mobile, but Hugh would tell Jemima the woman was calling to discuss the movie. Then he’d switch his phone off. Jemima has been very upset about it...’*

- 6.2** This article was defamatory of Mr Grant, and he successfully brought proceedings for libel against the publishers. According to his first witness statement,<sup>102</sup> the woman in question was an assistant to an executive at a film company associated with Warners. She was middle-aged, happily married, and never had been a girlfriend of Mr Grant. She left voicemail messages on Mr Grant’s phone, and these were ‘*plummy-voiced and sometimes jokey*’.
- 6.3** Mr Grant had not suggested in the libel action that Associated Newspapers Ltd (ANL) may have hacked into his mobile phone. At that stage his only concern was likely to have been his cause of action in the tort of defamation, and, in 2007, the issue of phone hacking had not achieved the level of prominence that it was subsequently to acquire. Paragraph 11 of Mr Grant’s first witness statement concluded with this sentence:<sup>103</sup>

*‘We know from Paul Dacre’s assertions that the Mail papers have never based stories on intercepted phone messages, so the source of the story remains a great mystery’*

<sup>100</sup> Part F Chapter 6

<sup>101</sup> p4, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Hugh-Grant.pdf>

<sup>102</sup> *ibid*

<sup>103</sup> p4, para 11, *ibid*

- 6.4 Although Mr Grant was of course not directly accusing the Mail papers of hacking into his phone, that he was lightly hinting at such a possibility was not lost on the Inquiry. It is worthwhile setting out the relevant part of Mr Grant's oral evidence in full:<sup>104</sup>

*“Q. Are you suggesting there that the story must have come from phone hacking?”*

*A. Well, what I say in this paragraph is that the Mail on Sunday ran an article in February 2007 saying that my relationship with my then girlfriend, Jemima Khan, was on the rocks because of my persistent late-night flirtatious phonecalls with a plummy-voiced studio executive from Warner Brothers, and it was a bizarre story, completely untrue, that I sued for libel over and won and damages were awarded, a statement was made in open court. But thinking about how they could possibly come up with such a bizarre left-field story, I realised that although there was no plummy-voiced studio executive from Warner Brothers with whom I'd had any kind of relationship, flirtatious or otherwise, there was a great friend of mine in Los Angeles who runs a production company which is associated with Warner Brothers and whose assistant is a charming married middle-aged lady, English, who, as happens in Hollywood, is the person who rings you. The executive never rings you. It's always their assistant: “Hi, we have Jack Bealy(?) on the phone for you.” And this is what she used to do. She used to call and she used to leave messages and because she was a nice English girl in LA, sometimes when we spoke, we'd have a chat about English stuff, Marmite or whatever. So she would leave charming, jokey messages saying, “Please call this studio executive back”, and she has a voice that could only be described as plummy. So I cannot for the life of me think of any conceivable source for this story in the Mail on Sunday except those voice messages on my mobile telephone.*

*Q. You haven't alleged that before, have you, in the public domain?*

*A. No, but when I was preparing this statement and going through all my old trials and tribulations with the press, I looked at that one again and thought that is weird, and then the penny dropped.*

*Q. I think the highest it can be put is, frankly, it's a piece of speculation on your part, isn't it, in relation to this?*

*A. Yes, you could – yes, speculation, okay, but I would love to know – I mean, I think Mr Caplan, who represents Associated, was saying earlier today that he'd like to put in a supplementary statement and – you know, referring to the things I say today. Well, I'd love to hear what the Daily Mail's or the Sunday Mail's explanation for that article is, what that source was, if it wasn't phone hacking.”*

- 6.5 Taking Mr Grant's evidence as a whole, it is reasonable to conclude that he freely accepted Counsel's suggestion that he was speculating as to the source of the article, yet was seeking an explanation from ANL as to the circumstances in which the article came to be published in the Mail on Sunday. This conclusion is entirely supported by paragraph 17 of Mr Grant's second supplementary witness statement, where he said this:<sup>105</sup>

*‘Nevertheless I accepted entirely that this was of course speculation on my part as only the newspaper has the documents or evidence on which the story was prepared. I never saw any in the legal proceedings.’*

<sup>104</sup> pp7-9, lines 22-21, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>105</sup> p5, para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Supplemental-Witness-Statement-of-Hugh-Grant1.pdf>

- 6.6** Mr Grant’s evidence attracted a lot of media publicity, not least because he had covered a range of issues and this has been the first day of the evidence sessions of the Inquiry. Paul Dacre, the editor-in-chief of all the ANL titles and the editor of the Daily Mail, heard a report of Mr Grant’s evidence on the 16:00hrs radio news. Again, it is worthwhile setting out the whole of the relevant section of his oral evidence to the Inquiry:<sup>106</sup>

*“A. Can I explain the circumstances of that? I was off that day on an outside appointment. Not off; out of the office on an outside appointment, and I was driving back and the 4 o’clock news came on the BBC and the headline was as followed: “Another major newspaper group has been dragged into the phone hacking scandal. Actor Hugh Grant has accused the Mail on Sunday – Associated Newspapers’ Mail on Sunday of hacking phones.” It was a terrible smear on a company I love. We had to do something about it. I discussed with the Mail on Sunday’s editor what our response was. A long convoluted press statement was being prepared. I was deeply aware – and he was deeply aware – that you had to rebut such a damaging, damaging allegation, and we agreed on the form of words: “It was a mendacious smear.” Let me explain why I feel it was a mendacious smear. You will have read – you have already interviewed our legal director on this for a considerable amount of time. Our witness statements have made clear that Associated is not involved in phone hacking and we’ve denied phone hacking in this instance, anyway, specifically.”*

- 6.7** The ‘form of words’ which Mr Dacre was referring to appeared on page 11 of the Daily Mail published on the day after Mr Grant testified, that is to say on 22 November 2011. It read:

*‘The Mail on Sunday utterly refutes Hugh Grant’s claim that they got any story as a result of phone hacking. In fact, in the case of the story Mr Grant refers to, the information came from a freelance journalist who had been told by a source who was regularly speaking to Jemima Khan. Mr Grant’s allegations are mendacious smears driven by his hatred of the media.’*

- 6.8** The Inquiry is only concerned for present purposes with the final sentence of this extract from the Daily Mail and the reference to ‘mendacious smears’. Unsurprisingly, the protagonists to this dispute were concerned to seek to persuade the Inquiry to investigate whether or not Mr Grant had been the victim of voicemail hacking. Dealing with the rebuttal, Mr Grant submitted a witness statement from Ms Khan which emphatically contradicted the suggestion that she had been speaking to a source: she said that the first she knew any “plummy-voiced” woman calling Mr Grant, or anything similar, was when she read it in the Mail on Sunday.<sup>107</sup>
- 6.9** ANL, on the other hand, placed before the Inquiry material which sought to indicate that Mr Grant’s speculations were both illogical and without evidential basis.<sup>108</sup> Although the Inquiry tested Liz Hartley, the head of editorial legal services at ANL, on her supplemental statement and permitted some limited cross examination of Mr Dacre by Mr Sherborne, it is unnecessary for this evidence to be analysed in this Report. For reasons discussed below, I do not accept the propositions advanced by ANL but it is very important also to make it clear that neither do I conclude that the Mail on Sunday or any journalist employed by it knowingly used material

<sup>106</sup> pp85-86, lines 18-17, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

<sup>107</sup> p3, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Jemima-Khan.pdf>

<sup>108</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Supplemental-Witness-Statement-of-Liz-Hartley.pdf>

for this story which had been sourced by phone hacking: equally to be fair, Mr Sherborne on behalf of Mr Grant did not contend that I should.

- 6.10** Given the specific nature of the Inquiry's concern, further questions were asked of Mr Dacre in order to establish whether he knew exactly what Mr Grant had claimed in evidence before the Mail's rebuttal went out. Mr Dacre said this:<sup>109</sup>

*"LORD JUSTICE LEVESON: But did you ask precisely what Mr Grant had said?"*

*A. Yes, of course. I had that because I was in liaison with the office.*

*LORD JUSTICE LEVESON: So you knew that the headline did not reflect what he'd said?"*

*A. Yes, but that – the damage was being done and I'm glad to say that once we got our statement out, we had a much, much more balanced reporting of it by the BBC and other media. But if that had been allowed to stand, it would have been devastating for our reputation.*

*MR JAY: I just wonder, Mr Dacre, whether you didn't shoot from the hip a little but too fast on this occasion.*

*A. Not at all. It needed rebutting instantly. This is how modern communications work. It is my view that Mr Grant made that statement on the opening day of the court – Hacked Off, the organisation backed by the Media Standards Trust, attempted to hijack your Inquiry with that highly calculated attempt to wound my company, and I -*

*Q. I'm not altogether clear, Mr Dacre, whether you're saying that Mr Grant perjured himself. That's what "mendacious smears" might suggest.*

*A. I'm not going to go into that area. I've tried to tell you the context of why we had to rebut this. I mean, let me say as clearly and as slowly as I can: I have never placed a story in the Daily Mail as a result of phone hacking that I knew came from phone hacking. I know of no cases of phone hacking. Having conducted a major internal enquiry, I'm as confident as I can be that there's no phone hacking on the Daily Mail. I don't make that statement lightly, and no editor, the editor of the Guardian or the Independent, could say otherwise. I'm prepared to make this – I will withdraw that statement if Mr Grant withdraws his statements that the Daily Mail and the Mail on Sunday were involved in phone hacking.*

*Q. I'm not sure I'm in a position to broker a deal between you, but can I just ask this, Mr Dacre: why didn't you come back, as it were, in the measured way you're coming to this Inquiry and then just say –*

*A. I've tried to explain – sorry.*

*Q. And then say at the end:*

*"In the circumstances, Mr Grant is incorrect."*

*A. Because then it would have been too late."*

- 6.11** As I have already indicated, I make it clear that I accept Mr Dacre's evidence that he never placed a story in the Daily Mail (or permitted one to be placed) which he knew came from phone hacking. That said, he did not engage with Counsel's question that the use of the term 'mendacious smears' might amount to an allegation that Mr Grant had committed perjury. The various written submissions of ANL maintained that the adjective 'mendacious' possesses

<sup>109</sup> pp87-88, lines 5-25, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

a number of possible meanings, and argued that the term taken in context and properly understood in law amounts to nothing more than ‘honest comment’. In my judgment, however, reading the article in the manner in which I have been invited, the Daily Mail was accusing Mr Grant of lying. Mr Grant would only be lying if, in speculating as he did, he did not believe that his evidence had any foundation.

**6.12** However, equally in my judgment, in making that accusation the Daily Mail was increasing the temperature and went too far. The ‘plummy-voiced’ executive, apart from apparently being young, glamorous and Cambridge educated, was described in the article in the Mail on Sunday in particular by reference to the quality of her voice, as apparently discerned by someone hearing it on Mr Grant’s mobile phone. Mr Grant knew that a lady with a voice which could reasonably be described in this way had left voicemail messages. From his own perspective, he also knew that the claim made in the article that he discussed this lady’s phone calls with Ms Khan was incorrect (at the time he gave his evidence, he did not have Ms Khan’s witness statement which further contradicted one important evidential plank on which the article was founded). He also knew that the lady in question was, with respect to her, middle aged rather than ‘young’, and he might well have believed that the references to her glamour and being Cambridge educated were poetic licence on the part of the newspaper. It follows, viewing the matter solely from Mr Grant’s perspective, that there was some basis for his concern (which in answer to a leading question he accepted was speculation) that an individual had listened to the contents of his voicemails. This person was, of course, not necessarily the ‘source’ referred to in the article, but could equally easily have been someone who had spoken to the source about the story without identifying how the information became available.

**6.13** Mr Dacre accepted that his principal objective shortly after 16:00hrs on 21 November 2011 was to get out a strongly worded denial which would safeguard the reputation of his newspapers. However, in so doing he acted precipitately, in particular in failing to ascertain exactly what Mr Grant had said when he testified. His explanation that further inquiry along those lines would have meant that the response of the Mail titles would have been ‘too late’ does not justify the aggressive line which was adopted in defence of its position. A response which defended the Mail’s position in regard to phone hacking and stating words to the effect that Mr Grant’s speculation was just wrong, while robustly defending the Mail’s position, would have achieved the same outcome without the accusation of perjury.

**6.14** Of course, Mr Dacre was perfectly entitled to decide what he wanted to put in the paper for which he had ultimate editorial control. He is entitled to challenge my view (as he has in robust and trenchant terms). As far as I am concerned, however, the point of this case study is that it is a good example of the phenomenon of ‘aggressive defence’ identified above.<sup>110</sup>

## 7. Sebastian Bowles

### The accident

**7.1** At 21:15hrs on Tuesday 13 March 2012, a road traffic accident occurred in a motorway tunnel near Sierre, Switzerland, when a coach returning school children from a skiing trip to their homes in Lommel and Heverlee, Belgium, struck a brick wall. 28 people, including 22 children, lost their lives. It was a devastating tragedy of unimaginable proportions which, beyond the immediate traumatic effect upon families, relatives, friends and everyone touched by it, will have undeniably affected the lives of a very substantial number of people either forever or for

<sup>110</sup> Part F, Chapter 6

a very long time. One of the children killed in the crash was a British boy, Sebastian Bowles, then 11 years of age. Not surprisingly, the facts were extensively reported.

- 7.2** The story is relevant to the work of the Inquiry not simply because of the way in which it has been reported in the press and the extent to which the press intruded into the grief of the family but also because all this happened while the Inquiry was underway, immediately after evidence about intrusive reporting which was to similar effect had been given. It is also important because it demonstrates the work done by the PCC in circulating member organisations about the concerns of the family; it equally highlights the unreality of a system that depends solely on complaints as a trigger therefore ignoring (and, thus, appearing to condone) potentially significant breaches of the Editors' Code.

## Press activity

- 7.3** Mr and Mrs Bowles learnt about the accident in the early hours of the following morning and Mr Bowles travelled to Switzerland by the first available flight. That afternoon, he learnt that Sebastian had not survived and he was joined by his wife and their nine year old daughter at the Hotel Des Vignes which had been designated by the Swiss authorities as the centre for parents with children involved in the crash. In the morning of 15 March, with other families, the three of them were taken to the scene of the crash. Although press photographers had not been permitted onto the hotel property (and coaches had been placed in front of the gate to obstruct the view and line of sight), they were photographed from a distance with neither their knowledge nor their consent while they waited under the porch of the hotel to get on the coach that would transport them to the scene. On 16 March, one of these photographs of the Bowles family (including Sebastian's younger sister, obviously grieving) was published in the Daily Mail.<sup>111</sup>
- 7.4** 16 March saw the publication of a great deal of other material. Prior to the trip, a website had been set up as a blog so that the children on the trip could send messages to their families, sharing their experiences both in writing and by photographs. The website was not password protected and thus was open to anyone but it was obviously intended to provide a mechanism for personal communication. It included a photograph of Sebastian in his skiing outfit; this photograph soon appeared on The Sun website; a representative of Mr Bowles' employers contacted The Sun requesting that no photographs be published and (when told that it had been put on the website) asked that it should not be reproduced in print. However, no attention was paid to this request and the photograph was carried on the front page. In addition, the paper quoted comments and salutations written by Sebastian, clearly intended to be personal but which had formed part of his daily postings to his family.
- 7.5** Besides printing the photograph from outside the Hotel des Vignes, the Daily Mail also published the photograph in skiing clothes and quoted from his blog (described as "an online message to his parents"). The Daily Telegraph also published the blog and the photograph from it. The immediate result was that the website had to be taken down although the record has been preserved for the families.
- 7.6** In the meantime, what was described as 'packs of press' descended on the Bowles family homes in London and Belgium, making enquiries in the area. In Belgium, the problem became sufficiently acute that the police had to be called (and had to return every half hour).

<sup>111</sup> in order to protect the privacy of the Bowles family to such extent as is possible, and notwithstanding the fact that the information is, at least to a large extent, in the public domain and available, this Report will not publish references to their names, the precise articles or photographs or other family details

Perhaps more understandably, but notwithstanding requests to be left alone (not the least being from the representative of Mr Bowles' employers), British and other journalists politely approached them (once with flowers, sometimes apologetically) but all were then prepared to reduce their requests into writing and did so.

- 7.7** More was to come. Mr Bowles had a Facebook site which he believes had a privacy setting 'friends only' on which he had published personal, family photographs to share with his family and friends. On 17 March, a number of these photographs appeared on The Mail Online: Mr Bowles had not given permission (not would he have given permission) for what he described as photographs of an "obviously private, personal and family nature" to be published. These photographs caused him to contact Giles Crown, a friend who is also a media lawyer. He spoke to the PCC whose on duty representative was sympathetic and asked him to put his concerns into writing; Mr Crown then wrote to the various editors (copied to the PCC) that afternoon.
- 7.8** The letter made it clear that Mr and Mrs Bowles "sincerely wish to be left to grieve the death of their son in peace without media intrusion" and referred to various clauses of the Editors' Code; particular emphasis could be placed on clauses 3(i) (privacy), 3(iii) (photographs in private places), 5(i) (intrusion into grief), 6(ii) (photographs of children without consent). The letter asked that the privacy of a memorial service be respected and that all private photographs be removed from all media websites; although without limitation, this particularly referred to the taking or publication of photographs of Sebastian's younger sister. The letter suggested that human decency, Article 8 of the European Convention on Human Rights (ECHR) and the PCC Code all demanded that the privacy of the family be respected.
- 7.9** There was no immediate response from the Daily Mail but a follow up email on 18 March (Sunday) elicited a reply on 20 March to the effect that the photographs had been taken from the Facebook page on the Friday without permission but that they were "openly accessible" and that, as the privacy settings had been increased, they would be removed. The photograph taken at the Hotel des Vignes of three members of the Bowles family (notwithstanding that one of them was clearly a child) had not been removed by the time that Mr Crown's statement was circulated to Core Participants. The Daily Mail now explains that the photograph had been obtained from a respectable picture agency (which it believed should have asked itself the correct questions) and that they were not aware that the photograph included Sebastian's sister who was not identified in the caption, although she had, in fact, been cropped out of another photograph.
- 7.10** The Sun similarly referred to the fact that the photograph from the online blog had been distributed by picture agencies and was clearly available which is why they considered it appropriate to publish it. By the time that Mr Crown spoke to the editor of the Daily Telegraph (who knew family and had been a fellow school governor with Mrs Bowles) he was told that he was "late to the party" and that he had held off publishing because he knew Mr Bowles although it was legitimate to publish a photograph that was in the public domain and had been taken in a public place.
- 7.11** It was not only the press in the UK that published material of which complaint is made; Mr Crown has learnt that the Belgian Journalists' Council (Raad) is investigating certain aspects of the reporting of the incident by the Belgian media particularly in relation to "people in vulnerable positions, such as minors and victims and their families" and that "any identification must be weighed against the social importance of reporting".

- 7.12** Mr Bowles is the first to recognise that the accident was a tragedy of national significance in Belgium and Switzerland; he had no objection to extensive media coverage of it and that Sebastian’s nationality provided an obvious focus for the UK press. His objection has been to the personal nature of the coverage and the intrusion.
- 7.13** The way in which this story was reported undeniably raises issues under the Editors’ Code in relation to privacy, the discretion surrounding the reporting of grief and shock (particularly in relation to the reporting and photographing of such grief in children) and the extent to which it is appropriate to publish photographs or material such as that trawled from the school trip website which one would have thought would obviously not have been intended for public consumption. This raises the question of who should be considering these issues, the value of a complaint (the damage having been done and no regret being sufficient to remove the additional impact that the press coverage had) and the need for an enunciation of standards.
- 7.14** Although I might have a clear view, I do not think it would assist if I sought to take the place of a regulator in this very topical case although it certainly says something about the practices of the press. The most important point, however, is that it is not in the least surprising that Mr Bowles does not pursue a complaint; his focus remains on the loss of his son. The matter was put clearly by Mr Crown in these terms:<sup>112</sup>

*“I would just like to try and make clear that [the Bowles] family have no wish to have a fight with the media in any sense. They gave evidence reluctantly because they felt it was the right thing to do. They are disappointed that with regard to such an immense tragedy they would have expected some greater restraint from the media in the way the tragedy was reported and in [Mr Bowles’] view that wasn’t the case.*

*Just to emphasise, their over-riding desire [is] that their privacy is maintained as it is still, as you will understand, a very recent event and additional publicity at this point would greatly aggravate the family’s [grieving].”*

- 7.15** As much as any of the stories covered by this Report, this account underlines the very real dilemma faced by the press when balancing the respect that is owed to those who suffer almost unimaginable personal tragedy with which, in some way, they have to come to terms, and the legitimate public interest in an incident that has significance for everyone. I repeat the proposition that if nobody will review editorial decisions in the absence of a formal complaint, (that would require energy to deal with by someone who has far greater issues to have to confront it), is, in my view, a serious lacuna in our approach to the maintenance of standards.

## 8. Recent events: Royal photographs

- 8.1** At the conclusion of the hearings on 24 July 2012, I repeated that I would not hesitate to ventilate anything that happened over the months prior to publication of the Report, which I felt impacted on the work of the Inquiry. In the event, there have been a large number of stories which warrant attention and justify consideration as part of the Terms of Reference. On the basis that I have decided that it is not necessary or appropriate to hold further hearings or seek further submissions (save in response to letters issued under Rule 13 of the Inquiry Rules 2006), I do not intend to refer to most other than to comment that the argument that the Inquiry has had a chilling effect on journalism does not appear to have been borne out.

<sup>112</sup> p113, line 24, Giles Crown, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-26-June-2012.pdf>

There are, however, two stories that are of such importance, or such value to the Terms of Reference of the Inquiry, they must be addressed in some detail even though the latter reveals no impropriety on the part of the UK press.

## HRH Prince Henry of Wales

- 8.2** The first story that requires attention is the recent publicity surrounding the behaviour of HRH Prince Henry of Wales (Prince Harry), a 28 year old army officer and third in line to the throne.
- 8.3** It is unnecessary to rehearse the circumstances in which, following the death of Diana, Princess of Wales in a road traffic accident (which occurred while she was followed by paparazzi photographers), the press agreed to respect the privacy of Prince Harry and his elder brother during their school years. It is equally unnecessary to outline the various stories that have been printed about him thereafter; nobody could suggest that he was not a public figure and there is no doubt that his conduct has and can legitimately generate questions the discussion of which is entirely in the public interest. The issues which recent events have revealed concern the extent to which he is entitled to any private life or privacy and the impact of publication of photographs on the internet.
- 8.4** Having received plaudits for his work during the course of The Queen’s Diamond Jubilee and as an Olympic Ambassador, during August 2012, while on leave, Prince Harry went on holiday to a resort in Las Vegas; as usual, he was accompanied by personal protection officers. During the course of the holiday, on 21 August, he invited a group into the apartment which he occupied and, in their presence, is said to have played a game of “strip billiards”. However it arose, at least two photographs were taken of him naked, one of which showed him shielding a naked girl and another embracing the girl. The photographs are reported to have been taken on a mobile phone.
- 8.5** The photographs were quickly sold to an American website TMZ.com and put on the internet; they were also published by the blogger Paul Staines on his *Guido Fawkes* blog based in Ireland. Equally quickly, contact was made by or on behalf of St James’s Palace (for the Prince) with the PCC; this was followed up by a letter dated 22 August 2012, requesting circulation to managing editors so that the position of the palace was clear. The PCC circulated the letter, quoting the concern expressed but without commenting upon it. In the light of what followed it is important to set out what it says in detail:

*“As we understand the position following a telephone call to St James’s Palace this afternoon, a number of British newspapers have jointly purchased the photographs and have served notice of their intention to publish them both on-line and in their newspapers. They have asked what the reaction of St. James’s Palace would be to such behaviour on their part.*

*As we have already discussed with you, the photographs in question were taken on an entirely private occasion and in those circumstances there was a more than reasonable expectation of privacy. No matter of public interest (as those words are understood in English law) is raised by these photographs. The fact that they have appeared in another jurisdiction is meaningless. The only possible reason for publication of the photographs is prurience and nothing more. As such any publication would be a clear breach of Clause 3 of the PCC Code. We should be grateful if you would circulate this letter to the relevant managing editors of your members so that they are fully aware of St James’s Palace’s position and the fact that they entirely reserve their rights as to any further steps that they may take should publication take place.”*

- 8.6** On 23 August, the entire British press respected the wishes of St James’s Palace and the photographs were not published. However, The Sun created a mock up of one of the photographs, using its picture editor and a 21 year old undertaking work experience on its fashion desk (also described as an intern), both of whom, the caption reported, were “happy to strip” although the image, which had also been placed on its website, was later removed.<sup>113</sup> Many newspapers blamed the effect of this Inquiry when asked why they did not print the photographs. Later that day, The Sun changed its mind and, in a mood described in The Sunday Times as ‘jubilant’, uploaded the images onto its website and published the photographs (one of which was on the front page) the following day.
- 8.7** When the decision had been made David Dinsmore, the interim managing editor of The Sun, wrote to Lord Hunt, the Chairman of the PCC, to the effect that it was becoming “increasingly perverse not to publish the pictures”. The Sun published its own account of its reasons. Other titles joined the debate and were, in the main, supportive of The Sun; it is unnecessary to consider any but The Sunday Times. In the absence of any formal complaint from the Prince, the PCC has chosen to do nothing, explaining why it had taken that course. Each of these arguments repays detailed analysis not least for their failure to deal with the other side of the case which, however partisan the press is entitled to be, raises important issues for debate. The purpose of putting the argument is to ensure that the public have a fuller account of the competing arguments than might be received simply by reading the newspapers.

### *The Editors’ Code of Practice*

- 8.8** Before going to the detailed arguments, it is worth setting out the relevant terms of the Editors’ Code of Practice, drawn up by editors and agreed by those who subscribe to the PCC (including The Sun). Paragraph 3 (headed Privacy) provides:

- i Everyone is entitled to respect for his or her private and family life, home, health and correspondence including digital communications.*
- ii Editors will be expected to justify intrusions into any individual’s private life without consent. Account will be taken of the complainant’s own public disclosures of information.*
- iii It is unacceptable to photograph individuals in private places without their consent.*

*Note: Private places are public or private property where there is a reasonable expectation of privacy.*

*There is an exception to this provision where the publication can be demonstrated to be in the public interest. That is defined in this way:*

- 1. The public interest includes, but is not confined to: (i) detecting or exposing crime or serious impropriety. (ii) Protecting public health and safety. (iii) Preventing the public from being misled by an action or statement of an individual or organisation.*
- 2. There is a public interest in freedom of expression itself.*

<sup>113</sup> Both the picture editor and the work experience intern were perfectly entitled to pose for this photograph if they wished: given the likely anxiety that a 21 year old girl on work experience might have to secure full time employment, the fact that she was asked or permitted to do so raises issues not dissimilar to those discussed in Part F Chapter 6 relating to pressure on staff

3. *Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest and how, and with whom, that was established at the time.*
4. *The PCC will consider the extent to which material is already in the public domain or will become so. ...*

**8.9** The legitimate questions which arise are: (a) Was the photograph taken in circumstances of privacy? (b) Does the Prince lose his right to privacy because he has invited to his hotel suite people whom he does not know? (c) Is there any basis for contending that the Prince consented to the taking of the photograph (there being no suggestion that he did) and, if he did not, is there a difference between taking the photograph (which the Code describes as unacceptable) and publishing it? (c) Accepting that there is a public interest in freedom of expression itself, was there any public interest in the publication of the photographs (rather than the story with the description of the photographs)?

**8.10** A more general question can also be posed about the Code. It is entirely understandable that a public interest can, in certain circumstances, defeat the rights to privacy enshrined in the Code (and, of course, Article 8 of the ECHR) and that freedom of expression is itself in the public interest (although that cannot defeat the privacy right in every case because that would make the provision meaningless). It is more difficult to see why 'the extent to which material is already in the public domain' should itself create a public interest which permits publication. It might be that it ought to be cast as a separate question but, on the basis that the code is a statement of ethical good practice, it is open to question whether the ethical balance should be affected simply because others who do not hold themselves bound by such a code ignore its principles.

### *The Sun's letter*

**8.11** Mr Dinsmore raised seven points, not all of which address the questions set out above, but which it is worthwhile considering in turn. The first concerned the legitimate public debate. He said:

*"The entire UK media including both print, online and television has reported on the fact and existence of these photographs. This has in turn generated a legitimate public debate as to the Prince's behaviour. There is now a debate across the country as to whether such conduct is acceptable from the third in line to the throne who is increasingly taking on a more public and official role ... That debate should not take place in a vacuum."*

**8.12** The argument regarding the legitimacy of public debate is powerful but, in the context of this particular publication, of limited, if any, relevance. There is no doubt that the remit of his protection officers is an important issue with a legitimate public interest. Further, for the purposes of this argument, it is appropriate to assume that whether the Prince's conduct is "acceptable" is also a matter of public interest (although a point made later in the letter about his position in the army appears somewhat specious). Such a debate, however, did not take place in a vacuum: what transpired and what the photographs revealed was graphically described in print. The debate did not need the pictures.

**8.13** The next three points can be taken together. The second and third concern the fact that the media had identified the website on which the photographs could be viewed, making

the point that 77% of the public have access to the internet so that the photographs are in the public domain (which the PCC Code requires to be taken into account). The number of hits to the pictures, it is asserted, rose from 25.8 million to 160 million by 11:00hrs on the morning of 23 August (although how much of that is the consequence of the press coverage is another matter); the photographs were also on Facebook. It was argued that the suggestion (by the Palace) that the fact that the photographs have appeared in another jurisdiction is 'meaningless' was to miss the point that the internet transcends jurisdictions.

- 8.14** The fourth point is the reverse of the third. The fact that the photographs are so widely available on the internet creates an issue for those who do not have access to the internet so that there is "an unfair and inappropriate situation adversely affecting the ongoing debate in this country". Mr Dinsmore goes on:

*"That situation cannot be allowed to continue in a debate of such importance where everybody should have equal access to the photographs in question and not just those who can access the internet."*

- 8.15** These points utterly ignore a number of equally valid arguments. First, it is important to repeat that it is entirely possible to have the debate (however important it is) without seeing the photographs at all. Second, anybody who feels that it is necessary to see them (for whatever reason) is able to do so, for the vast majority of those without internet doubtless will know someone who has access, or could go to a library or to one of any number of places where access to the internet is possible. Third, and of particular importance, it ignores the fact that there may also be a large number of people who do not want to see the photographs or, even more likely, who do not want their children to see the photographs. To some extent, parents can control what their children can access on the internet: if they take their child into a newsagent, garage or supermarket – or past a news stall – the control that they must be entitled to exercise is lost.

- 8.16** The fourth argument resonates across a range of issues. The fact that something is on the internet does not justify its publication in a newspaper. The internet is an uncontrolled space with material upon it which I anticipate The Sun would not wish to publish because it is pornographic, racist or offends one of the many other codes of decency to which most people aspire. Bob Satchwell of the Society of Editors put the point in this way:<sup>114</sup>

*"Of course, freedom of the press is important. But just because you can publish something doesn't mean that you should."*

- 8.17** The fifth argument advanced by Mr Dinsmore is to challenge the assertion that the reason for publication of the photographs would be prurience and nothing more and then to repeat the first argument about the issues that arise while ignoring the ability to have the debate without sight of the photographs. The letter then goes on to assert:

*"For that debate to take place in an informed light these photographs should be published in accordance not only with our Article 10 right to impart information but also in accordance with the general public's right to receive it."*

- 8.18** The Article 8/Article 10 debate again requires an analysis of the public interest although "special considerations attach to photographs in the field of privacy. ... As a means of invading

<sup>114</sup> as reported in The Times, 24 August 2012

privacy, a photograph is particularly intrusive”.<sup>115</sup> In reality, it takes the argument no further forward.

- 8.19** Mr Dinsmore then cites a decision of the PCC from 2010 concerned with the magazine *Loaded* where a photograph had been given a wide circulation on the internet such that it was untenable to rule that it was wrong for it to be used in a magazine. This decision (part of the jurisprudence of the PCC) is itself open to criticism and is further discussed in the light of the response of the PCC and the further Royal story.
- 8.20** Finally, Mr Dinsmore suggests that although the Prince is naked, the photographs do not show him “in any situation of extreme personal embarrassment nor do they reveal any intimate details of his body”. I am not sure of the basis on which Mr Dinsmore makes the assessment (if this is what he is saying) that these photographs are less invasive of the Prince’s privacy than they might have been and therefore justifiable or that they would not cause extreme personal embarrassment: it may not be without interest that the 21-year old who posed for the mock-up is reported to later to have tweeted “lol 5 mins of fame #cringin”.

### *The Sun article*

- 8.21** The full front page headline “HEIR IT IS Pic of naked Harry you’ve already seen on the internet” (inconsistent with the argument that the purpose of publishing the pictures was to show them to those who did not have access to the internet), goes on “HEIR IT IS; WE FIGHT FOR PRESS FREEDOM”, “PRINT HARRY” and “Naked Vegas pics swept the world on web. Now it’s vital you see them here The Sun SAYS”. The article goes on to assert that its readers “have been prevented from seeing” the pictures in print and later that “the Press were still effectively banned from using the pictures” so that “millions of people who get their news in print or have no web access could not take a full part in that national conversation because they could not see the images”. It also argues that the Prince had “compromised his own privacy”. The paper ends:

*“It is absurd in the internet age newspapers like The Sun could be stopped from publishing stories and pictures already seen by millions on the free-for-all that is the web.”*

- 8.22** Quite apart from the merits of the decision, this article raises other issues of concern. The request from the solicitors acting on behalf of St James’s Palace is set out at length above. It does no more than respond to a request for their reaction to the stated intention to publish and state their position. It does not “effectively ban” their use. It does not prevent anyone from seeing them. Neither is the issue one of press freedom: the press (including *The Sun*) were free to do what they wanted and to publish what they wished. The Palace only referred to the Editors’ Code of Practice to which *The Sun* voluntarily subscribes. The only mechanism that could have prevented *The Sun* from publishing the photographs was an injunction obtained from the High Court and there is not the slightest suggestion that such relief was even sought. Yet that is not how the story was told.
- 8.23** Finally, reliance was placed on the fact that the pictures were on “the free-for-all that is the web”. Quite apart from the other material available on the web that *The Sun* would not print, the point of the Editors’ Code is that newspapers subscribe (or are supposed to subscribe) to higher standards than “free-for-all” which does not put a bar in place at all. Further, if that is the answer, it is a real risk that a determined effort could be made to put a story

<sup>115</sup> *Douglas v Hello! Ltd* [2006] QB 125

or a photograph that offends the Code onto the internet through an intermediary in order to demonstrate that it is then in the public domain and, thus, can be printed. It is open to question whether such a “free-for-all” is in the public interest.

### Other Comment

- 8.24** The Sunday Times (owned, of course, also by NI) published an editorial on Sunday 26 August under the headline “THE SUN’S BRAVE LONE STAND FOR PRESS FREEDOM”, saying that Prince Harry had put the issue of press freedom squarely on the agenda and asserting that other newspapers did not publish “because of the atmosphere created” by the Inquiry. It cited many occasions when British newspapers had been deprived of information freely available to counterparts overseas including the abdication crisis and the Spycatcher affair, although it recognised that people in Britain were not being deprived of anything but were “just not allowed to see it in their newspapers”. The leader goes on:

*“Critics said The Sun’s public interest arguments were a convenient mask for commercial motives. It is a spurious criticism. Newspapers are fighting for their lives in the toughest of economic climates combined with technological changes that weigh heavily against traditional print. If they are not commercial they will die and they cannot let the internet become the prime forum for communication. But that was not the sole purpose of publishing. There is a dangerous coalition forming of aggrieved film and television stars, out-of-sorts Labour politicians and bien pensants who would happily bring much greater regulation and censorship to the press. They believe they should decide what is in the public interest and not the millions who buy the red top papers. To publish these pictures was a defiant gesture to those would-be moral arbiters.*

*Of course many images and much content on the internet will rightly never find their way into our newspapers for the good reasons of taste, accuracy and relevance. But this was different. It was of enormous interest to the public and it was in the public interest to know how the third in line to the throne really behaves. The public can then decide how it regards him. The bigger issue is the future of the press. If it is gagged and stifled it will die and the country would be hugely poorer for it. John Wilkes fought long and hard for freedom of expression, including publishing what was regarded as pornography at the time. Lord Justice Leveson, it is hoped, understands that. It was right to publish — and not be damned.”*

- 8.25** This is a remarkable article. On the subject of the story, there is no discussion of the Editors’ Code of Conduct, of any right that Prince Harry might have to privacy or any public interest in publication of the photographs. Given the approach of the Palace to the PCC, there was no question of the press being gagged, of an attack on press freedom or an attempt to hide the story (as in the abdication). The commercial issues facing the press are understood but nobody has ever suggested that the only way the problem can be solved is by abandoning the Code of Conduct. As for the millions who buy red-top papers, The Sunday Times published the result of a poll to the effect that 61% of respondents thought that The Sun was wrong to publish the photographs and 68% thought that the Prince’s behaviour was acceptable.
- 8.26** As for censorship, not a single witness either orally or in writing sought censorship. Everyone recognised the importance of a free press and the benefits of public interest investigative journalism. No one suggested they should be the arbiters of press practice: all wanted the press to follow the letter and spirit of a code for which the editors had responsibility. That is

not to say that they believed in the present operation of the PCC or considered that the Code could not be improved but that is not the criticism that the editorial makes.

- 8.27** It would be possible to examine the coverage of other titles and the selective reporting of opinion from politicians and others. It is a matter of comment that, with the exception of the Independent on Sunday, almost all the national Sunday titles took the same view as The Sunday Times. The press are, of course, entitled to a partisan view but it is difficult to see how it represents its readers if the majority opinion is not even expressed or explained. The inference may be that the agenda it was following was its own.

### *The PCC*

- 8.28** The way in which the PCC generally responds to complaints has already been analysed at length.<sup>116</sup> On the other hand, this very recent example of the approach taken by the PCC, following the conclusion of all the evidence heard by the Inquiry, is extremely illuminative. Furthermore, there are sufficient specific features of its reaction which it is worth considering in detail and which justify (or at least excuse) what might be a measure of repetition.
- 8.29** Following contact from St James's Palace, the story continues with the head of complaints and pre-publication services. She passed the letter from the solicitors on to the editors and invited any discussion about code issues. It is not suggested that she was approached by The Sun for advice pre-publication or at all (although the letter setting out their defence was sent before the photographs were, in fact, published). It has since been reported that the PCC did, in fact, provide advice to other editors, on request, about the relevant issues.
- 8.30** Meanwhile, after The Sun's publication of the photographs, the PCC received around 3,800 complaints that the photographs breached clause 3 of the Code: by the time of their regular meeting, no formal complaint had been made by or on behalf of Prince Harry. In a statement, the PCC goes on to observe:

*"The Commission would be best placed to understand these issues – including the circumstances in which the photographs were taken – with the formal involvement of Prince Harry's representatives. In addition, an investigation by the Commission, without consent, would have the potential itself to pose an intrusion.*

*The Commission is grateful to the many members of the public who have contacted it to express concerns about The Sun's coverage but has concluded that it would be inappropriate for it to open an investigation at this time for the reasons above."*

- 8.31** At the conclusion of its statement, the PCC comment that it would be wrong to preempt the conclusions that it might reach were a complaint to be pursued but it "notes" that the question of how to apply the privacy provisions in relation to material freely available on the internet has been faced on a number of occasions in decided cases, observing that each decision is reached only after a detailed examination of the facts of the case. It then makes the final comment (to which reference is made later) that it will publish guidance for publications on these matters.
- 8.32** The upshot is that although the majority of those polled (as reported in The Sunday Times) felt it wrong to publish the photographs and a substantial number of members of the public felt sufficiently strongly about the matter that they complained to the PCC, the PCC will say nothing about the matter, one way or the other, unless Prince Harry personally complains.

<sup>116</sup> Part D Chapter 2

This is notwithstanding the fact that his views are well known: they are reflected in the letter that solicitors wrote on behalf of St James's Palace prior to publication. The PCC is hardly enhancing its reputation as a definitive arbiter of press standards by taking this course.

- 8.33** It may be the case that the PCC might have been or be better able to understand the issue from the perspective of the Prince if he provided further details of the circumstances in which the photographer came to be in his suite and was not prevented from taking the photographs; however, to ask him to do that would, undeniably, constitute 'further intrusion' by providing information not presently available and which would all then be deployed in public. The PCC argues that investigating without the consent of the Prince would have the potential itself to pose an intrusion but The Sun had to make its decision based on the material then in the public domain. If he were to have complained, it is not difficult to see the paper seeking to put questions to St James's Palace about these matters in order to provide some additional arguments not available at the time. In the context of this case, that would undeniably be 'further intrusion'.
- 8.34** There could be circumstances, perhaps concerned with whether or not the subject of the story has 'set it up', that to investigate without a complaint might constitute an intrusion, but there is no suggestion of that sort of circumstance in this case. Here, the question is not whether there is a public interest in the facts of the story and St James's Palace has not sought to contend to the contrary. The only question relates to the publication of the photographs. In that regard, there is sufficient information available in the public domain and the stance of St James's Palace is quite clear from the letter which was circulated. If the PCC is concerned about standards and the Editors' Code of Conduct, there is nothing to stop it analysing the issue based on the material that was available to The Sun at the time: in doing so, everybody would know where the PCC stood on the matter. As it is, the fact that at least 3,800 members of the public felt that it was appropriate for the PCC to look at this complaint is deemed irrelevant but, in reality, by saying (and doing) nothing, the PCC will be seen as endorsing the approach of The Sun whether or not it does so. The Sun having 'got away' without adverse adjudication (which is what the editors say they most fear) will be taken as a green light and a precedent for the future.
- 8.35** Issuing guidance (which is what the PCC identifies that it intends to do "drawing on its decisions in previous cases")<sup>117</sup> is precisely the effect of considering the facts in this particular case. Indeed, Mr Dinsmore throws the gauntlet down to the PCC in the sixth argument in his letter of 23 August when, in relation to its decision in the case involving the magazine Loaded, it ruled against the complaint "on a situation very similar to this" (where material had already been given a wide circulation) and asked the PCC to distinguish that complaint from this. Because of the further story involving the Duchess of Cambridge, this general point is analysed below.
- 8.36** The purpose of recounting this story is not to reach a view, one way or the other, about the publication of these photographs. In the context of this Inquiry, what this episode illuminates is the adequacy (or otherwise) of the mechanism for maintaining the standards to which the press loudly asserts it adheres. It has since been announced that, in the light of his deployment to Afghanistan, Prince Harry will not pursue a complaint but there was, in truth, no point in St James's Palace making a complaint to the PCC. If such a complaint was rejected, it will signal the very free for all based on what is available on the web; if one had been made and upheld, it is abundantly clear from the various press reports that followed the publication that the adjudication will be rejected and blamed on what is said to be the effect of the Inquiry. In truth, the moment has been lost and the right to publish effectively endorsed without the

<sup>117</sup> On 15 November 2012 the PCC published guidance, <http://pcc.org.uk/news/index.html?article=ODEwNw==>

contrary argument having been analysed. To say that guidance will be issued in the future does not carry the issue any further.

## HRH The Duchess of Cambridge

- 8.37** The story of Prince Harry was quickly overtaken by a different story which evinced a very different reaction. On 14 September 2012, a French magazine, *Closer*, published photographs of HRH The Duchess of Cambridge sunbathing topless taken by a paparazzo with an ultra long lens while she was on holiday in a private chateaux belonging to Viscount Linley in Provence. It is said (and, having regard to the length of the lens required, doubtless entirely accurately) that the photographs can only have been taken from a considerable distance away. The publication was followed by republication in the Irish Daily Star (much to the annoyance of Mr Desmond whose Northern and Shell company is a part owner of the paper) and in other newspapers and magazines. The photographs are on the internet.
- 8.38** The press in the UK universally condemned the publication of these photographs as a gross breach of the privacy to which the Duchess was entitled. The Sunday Times<sup>118</sup> published an editorial identifying a contrast between the photographs of Prince Harry (“*when he invited people into his hotel suite for his naked antics*”) and in respect of which he “*rightly did not complain*”) and these photographs (“*of a young couple on a very private holiday*”) so that “*William and Catherine have rightly resorted to the law*”) although noting that they “*were freely available on the internet within hours*”. The editorial also said:

*“Editors of British newspapers did not need the threat of privacy laws or even Lord Justice Leveson’s inquiry to know not to publish these pictures. When they were hawked around Fleet Street they were met with a cool response. It was a case of self-regulation working; the Editors’ Code specifically prohibits photographing individuals in private places without their consent. Newspapers in Britain in any case knew they would face a readers’ revolt if they dared to publish.”*

- 8.39** The language of this editorial is revealing. The first article talks about press freedom and defiant gestures with the public having the right to know how the third in line to the throne behaves. The latter recognises that photographing individuals in private places without their consent is specifically prohibited and that newspapers would face a revolt if they dared to publish although I am sure that the editorial was not making the point that the decision not to publish was because the ethical and commercial considerations ran in tandem. In the case of Prince Harry, there was a story which, in the public interest could be told; in the case of the Duchess, there was not. In both cases, what is at issue is the publication of photographs by editors bound by a Code of Conduct and the relevance of the fact of their publication on the internet.

### *The relevance of the internet*

- 8.40** It is necessary to return to the reaction from the PCC and the reference in its statement to the internet. Following its decision not to launch any investigation into the publication by The Sun of the photographs of Prince Harry without his consent, the statement went on:

*“It would be wrong to pre-empt the conclusions the Commission might reach were a complaint to be pursued. Nonetheless, the Commission notes that the question of how to apply the terms of Clause 3 (Privacy) in relation to material that is freely*

<sup>118</sup> 16 September 2012

*available on the internet is one that it has faced on a number of occasions in recent years, including in the cases of Mullan, Weir & Campbell v Scottish Sunday Express (2009); A Woman v Loaded (2010); Minogue v Daily Mirror/Daily Record (2010); and Baskerville v Daily Mail/The Independent on Sunday (2011). In each instance it reached a decision only after a detailed examination of the facts of the case.”*

- 8.41** The PCC is not, of course, bound by the system of precedent that operates within the common law. However, it is obviously important that there should be consistency of decisions provided, that the decisions are truly on point, relevant and not clearly distinguishable. Not surprisingly, none of the cited cases are entirely relevant because none concern members of the Royal Family whose activities, however much in keeping with what might reasonably be expected of young people when relaxing in private, will attract attention if likely to titillate the prurient.
- 8.42** Three of the four cases concerned material put onto social networking sites (and, thus, it was argued into the public domain) by the persons affected. In all three (two of which were rejected), the PCC referred to the extent to which it was acceptable to publish information taken from such websites even if intended only for a small group of acquaintances. In the one complaint upheld (*Mullen and others*), three survivors of the Dunblane shooting some 13 years earlier had put material about themselves and their activities onto a website; this information was then published alongside photographs although efforts had been made over the preceding years to shield them from publicity. The PCC held they had done nothing to warrant media scrutiny, images (even if publicly available) were taken out of context and presented in a way designed to humiliate.
- 8.43** The other two cases involving social networking sites can be summarised in this way. The first (*A Woman v Loaded*) concerned photographs of her breasts which she had placed on her Bebo site when she was 15 but which had since been uploaded onto the internet along with her name, having been easily accessed by Google search. The magazine had published a piece discussing the fact that the material was already widely used in this way by others. The PCC considered that the fact that she was then 15 at the time of the photographs raised issues of taste but as she was an adult at the time of this publication, the additional protection available for children no longer applied. Given that the additional public interest required in relation to material covering children is, in part, to protect them against themselves when they are not old enough to appreciate the consequences, it is difficult to see why the fact that she was no longer a child should have prevented the higher standard being applied: that is not to the point in this case. What was decided was that because the information in the same form was widely available, republication did not breach the Code.
- 8.44** The second case (*Baskerville*) concerned material written by a civil servant relating to her employment which she had posted on Twitter anticipating a small circulation to her followers but failing to take account of the ability to retweet and so reaching a far wider audience. Having decided that there was a public interest (the wisdom of civil servants using social media platforms which could give rise to claims of conflict with professional duties), notwithstanding the distress caused, no breach of clause 3 of the Code was established.
- 8.45** The third case is nearer in one sense (because it concerns a famous personality) but further away in another. Dannii Minogue complained that her pregnancy was reported prior to the 12 week scan. The Daily Mirror and the Daily Record sought to justify the breach of the rule forbidding such publication on the basis that the information was available the previous day on a blog and on the Sydney Morning Herald website. It was argued that the news was either ‘in’ or ‘not in’ the public domain and given these reports had ceased to be private. The PCC ruled the references in the blog and the website were speculative and that the purpose of

having regard to “the extent” to which information had previously appeared was common sense for, if it were otherwise, reference on-line would represent automatic justification for publication. This complaint was upheld.

- 8.46** Based upon *A Woman v Loaded*, it might be thought that substantial dissemination of the material is sufficient to trump any other claim to privacy: that is precisely what Mr Dinsmore argued. He would doubtless point to the fact that Prince Harry was not a child; he effectively argued that the fact that there is no basis for suggesting that he had encouraged or consented to the taking or publication of the photographs was more than met, first, by the public interest in his behaviour and, second, by their widespread publication on the internet and elsewhere.
- 8.47** The reality is that these cases are not truly comparable. As is patently clear, anything that any member of the Royal Family does will always attract attention and if widespread publication trumps any right to privacy, then there is no protection at all. Paparazzi will seek to obtain what photographs they can; someone, somewhere will be only too pleased to publish them and, if the Code was construed in that way, the door would be perpetually open to any title then to publish without being in breach.
- 8.48** However, that is not the case that the press mount. Nobody at all has suggested that publishing the photographs of the Duchess of Cambridge would be anything other than a breach of the Code, notwithstanding the widespread availability of the images in other jurisdictions. So, at least for the Royal Family, widespread availability of an image on the internet on its own is not sufficient. There has to be some other public interest in publication of that image in order to justify it. For the Duchess, there clearly is not. But that equally means that playing the card of widespread availability is not good enough in relation to the Prince Harry photographs either, particularly when the public interest points that arise from the Las Vegas holiday do not depend on sight of the photographs.
- 8.49** Nor can a distinction be drawn between the paparazzo who took the long lens photographs and whoever sold the mobile phone photographs in Las Vegas: both did what they did for money. True, the paparazzo was not known about and had not been trusted not to betray the confidence which followed the invitation to visit Prince Harry in his suite, but it is difficult to argue that this is not a distinction without a difference.
- 8.50** It is worth repeating the argument published in The Sun newspaper:
- “It is absurd in the internet age newspapers like The Sun could be stopped from publishing stories and pictures already seen by millions on the free-for-all that is the web.”*
- 8.51** Given that this would apply equally to the photographs of the Duchess, this alone is not good enough. Neither is the argument that it is up to the editor to exercise his judgment.<sup>119</sup> In one sense, that is always true; but such decisions must be taken within the boundaries of a clear and effective code: that is what it is for.
- 8.52** Irrespective of the rhetoric in the press, this is not about censorship or banning anything; it is not about freedom of the press; it is not about statutory regulation. It is not about the editors being forbidden to publish the photographs; St James’s Palace must be entitled to express its own view without being accused of having taken any of these draconian

<sup>119</sup> although it is to be noted that Northern and Shell which is a part owner of the Irish Daily Star issued a statement expressing its disappointment that the decision to publish had been taken without reference to the company or to Richard Desmond. That raises a question about the role of proprietors in editorial decisions but where issues of reputation arise, different considerations may apply

measures. Whatever system of press regulation is in force, ultimately, in this country, any editor will be free to publish what he or she believes should be published. What it is about, however, is maintenance of standards and the requirement that an editor is held to account by someone for the decisions which have been made, based on a Code that has attracted the confidence and general approval of editors and commands the confidence of the public. Even a complaints handling mechanism resolves complaints made by the public when it is not necessary to obtain further details and there is no additional intrusion beyond that which is already in the public domain.

- 8.53** Neither is this a case simply about freedom of expression. The Royal Family are, of course, in the public eye and its members will be held to account for what they do. But if society wants them also to mix with the public and in the real world, they have to be given the space to do so and their right to have a degree of privacy (less than that available to ordinary members of the public but more than at a level that is vanishingly small) must also be recognised. Precisely where the line is to be drawn is not a decision for the Inquiry to make. But decisions such as this have to be made by a body that is prepared to see the entire picture from every perspective. The decision requires balance and, perhaps, rather more balance than has been afforded to the issue in the discussion that the press has initiated and conducted.
- 8.54** This does not mean that photographs will not be available in other jurisdictions across the world, or that information will not be available about what has happened: there is no news blackout and the parallel with the Abdication crisis simply does not withstand examination. To that extent, therefore, the Royal Family and anyone in the public eye will have to be aware of what can happen and take steps accordingly. But if the press in this country do aspire to behave ethically and in accordance with standards that they have agreed, it does mean obeying those standards consistently and not only when it suits them or when it is commercially convenient to do so. Otherwise it is a free for all.

## Other events

- 8.55** These are not the only stories that have been published in the period since the Inquiry has concluded that could be the subject of comment. Watching the press, as it was clear the Inquiry intended to do, there have been other articles and photographs that have attracted attention and raised concerns about breach of privacy without any apparent justification based in the public interest. To start to analyse further stories and further examples is unnecessary although it is worth observing that what has been happening seems, at least in my judgment sufficient to undermine the criticism that the Inquiry has chilled press activity.

# CHAPTER 6

## CRITICISMS OF THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

### 1. Introduction

- 1.1** The case studies set out in the previous Chapter provide examples of unacceptable press practices. The purpose of this Chapter is to set out the broader evidence seen and heard by the Inquiry which illustrates that those case studies do not represent aberrations of the press, but fit within a broader context of a culture (albeit a minority culture) of unethical and unlawful press practices.
- 1.2** Not least given the continuing availability of all of the evidence online, it would not be worthwhile for this Chapter of the Report to approach each witness in sequential fashion, summarising his or her testimony before moving to the next. Such an approach would fail to do justice to the evidence in the context of an Inquiry examining the culture, practices and ethics of the press. Instead, the evidence will be examined thematically, in the search for possible trends and generic issues. Having now heard and carefully considered all the evidence, it is much easier to discern these trends than it was when the evidential picture was unfolding at pace from the start of Module One.
- 1.3** In reaching the conclusions which are set out below, all the evidence that the Inquiry has received (whether presented orally or only in writing) has been considered and taken into account. Furthermore, care has been taken to differentiate between those lapses in standards which should be envisaged as isolated failings which do not exemplify any wider cultural issue, and those which should properly be understood as indicative of a pattern or theme. As previously explained, distinguishing between these two categories depends principally on a qualitative assessment of the evidence (viewed both in its own right and in the context of all the evidence the Inquiry has received), but also, albeit to a lesser extent, on a quantitative one.
- 1.4** The Chapter begins, in Sections 1 – 7, by looking at the evidence heard by the Inquiry of a cultural indifference within parts of the press to individual privacy and dignity. That broad theme encompasses evidence that parts of the press have used unethical and/or unlawful means to access private information, including phone hacking, blagging, email hacking, theft, and covert surveillance. It also encompasses evidence that newspapers have published obviously confidential information without any public interest in doing so, have harassed subjects of stories and their families, have been insensitive in investigating and reporting death or tragedy, and have failed to have regard to the high level of protection appropriate to children.
- 1.5** Section 8 then examines a broader critique: a complaint that the press, or parts of it, fail to represent women and minorities fairly. This critique is not related so much to representations of individuals as the representation of whole classes of people.
- 1.6** Section 9 then considers the extent to which deliberate or reckless inaccuracy is a cultural or systemic problem within parts of the press. Associated with that theme, Section 10 examines the issue of payments for stories, and assesses the extent to which the widespread practice of offering financial incentives for stories might incentivise inaccuracies and/or encourage breaches of privacy.

- 1.7** Sections 11 and 12 examine the way in which the press responds to critics and complainants. Together they consider the evidence that the press, or parts of it, are hostile to complainants, use attack as the best form of defence, and seek to avoid giving justified apologies or corrections due prominence, if they are given at all.
- 1.8** The evidence deployed in this Chapter may be relevant to more than one of the headings or categories set out below, because they overlap. Accordingly, even if one part of the evidence may have been expressly referred to only once, it may well have informed more than one conclusion.

## 2. Lack of respect for privacy and dignity

- 2.1** One of the main complaints advanced by those who testified during the first two weeks of evidence, and subsequently, was that a cultural strand exists within the press betraying an unethical cultural indifference to the consequences of exposing private lives, and a failure to treat individuals with appropriate dignity and respect. This was, in essence, an overarching complaint which encompasses many of the criticisms addressed below. Phone hacking, blagging, the widespread use of covert surveillance, harassment, and the publication of private and confidential information all reflect, to varying extents, this cultural indifference.
- 2.2** The experiences of the McCanns, the Dowlers, Christopher Jefferies and Max Mosley, already discussed in some detail above, also exemplify this indifference. However, these high profile examples were by no means exceptional, nor were all or predominantly concerned with the practices at the News of the World (NoTW). The Inquiry heard evidence from numerous public figures and private individuals alike, who were victims of a tendency within sections of the press to treat people without respect or dignity and to publish private information without regard to the consequences of, or public interest in, doing so.
- 2.3** The singer Charlotte Church gave evidence relating to the exposure of the private lives of her and members of her family over the course of more than a decade. From the age of 12 she was the subject of intense press scrutiny. She spoke of her experiences of being door-stepped and stalked by press and paparazzi,<sup>1</sup> of finding evidence of a secret camera installed in her garden hedge,<sup>2</sup> and of her regular pursuit by press and paparazzi whilst at home and abroad on holiday.<sup>3</sup>
- 2.4** While a child, titles regularly published details about Ms Church that can be described as mere tittle-tattle: reports of her weight gain, drinking, or smoking.<sup>4</sup> But more intimate details of her private life were published as well: when she was 17 years old, a newspaper published details of her sexual experiences with an ex-boyfriend, and paid the ex-boyfriend for the story.<sup>5</sup>

<sup>1</sup> p4, lines 7-12, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>

<sup>2</sup> p12-13, Charlotte Church, *ibid*

<sup>3</sup> pp4-5, lines 17-12, Charlotte Church, *ibid*

<sup>4</sup> p7, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>

<sup>5</sup> pp33-34, lines 19-5, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>; p11, para30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>

- 2.5** After attaining majority, Ms Church continued to suffer from press intrusion. Three examples from the evidence she gave of intrusive and distressing coverage were particularly notable. First, Ms Church’s pregnancy was revealed by The Sun, despite the title’s knowledge that she was still in her first trimester of pregnancy, and notwithstanding a request from Ms Church’s PR agent that the title not publish any details until the end of the first trimester. Ms Church spoke of the upset that publication had caused to her and her family: her parents were unaware that she was pregnant until the article was brought to their attention.<sup>6</sup>
- 2.6** Second, as part of its coverage of an alleged plot to kidnap Ms Church, the NoTW published details sufficient to identify Ms Church’s address, despite express requests to refrain from doing so.<sup>7</sup> The publication of those details caused Ms Church untold anxiety, and potentially placed her at an increased risk from the very plot on which the title was reporting.
- 2.7** The third example was, perhaps, the most egregious, given that the published story related not to Ms Church herself, but to her parents, who were, to all intents and purposes, private people with no public life or persona. On 11 November 2005, the NoTW published a story entitled “Church’s three in a bed cocaine shock” next to a picture of Ms Church. Despite the fact that the juxtaposition of headline and photo gave the (probably deliberate) impression that the allegations in the story related to Ms Church herself, they in fact related to her father. The content of the story was deeply intrusive and contained intimate details of the private lives of both Ms Church’s mother and father. The story began: “Superstar Charlotte Church’s mum tried to kill herself because her husband is a love rat hooked on cocaine and three-in-a-bed orgies.”<sup>8</sup> Whether the substance of the article was true or false, there was no conceivable public interest in the publication of this story which had a profound effect on Ms Church and her family.<sup>9</sup> As Ms Church noted:<sup>10</sup>
- “It was basically just totally sensationalised, and whether partially or wholly true, I just really hated the fact that my parents, who had never been in this industry apart from in looking after me, were being exposed and vilified in this fashion. It just had a massive, massive impact on my family life, on my mother’s health, which the News of the World had reported on before then, on her mental health state and her hospital treatment... So they knew how vulnerable she was and still printed this story, which was horrific. And I just – I can’t think of any justification for printing a story like that.”*
- 2.8** The justification, according to Paul McMullan, was circulation. The story interested the readership and that, for him, was justification enough for publication.<sup>11</sup>
- 2.9** Ms Church has, to some extent, courted press attention. As part of her promotional obligations, she appears in the press, on radio and on television and has spoken about her relationships and private life in this context. In addition, she has chosen to appear in magazines such as OK! and Hello with her children. However, on any construction of the Editors’ Code of Conduct, those facts alone cannot justify the persistent and intrusive level of press interest to which she has been subjected, nor can it justify the publication of private information without regard to the public interest or the consequences of publication.

<sup>6</sup> pp14-17, lines 17-3, Charlotte Church <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>

<sup>7</sup> pp19-20, lines 20-11, *ibid*

<sup>8</sup> p12, para 26 & 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>; pp21-22, lines 6-16, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>

<sup>9</sup> pp22-24, lines 17-20, Charlotte Church, *ibid*

<sup>10</sup> pp22-23, lines 18-7, Charlotte Church, *ibid*

<sup>11</sup> pp42-43, lines 24-12, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

- 2.10** In any case, as Ms Church’s evidence showed, an appearance in a magazine such as OK! or Hello does not necessarily indicate a desire to expose her entire private life or the lives of her family to public view. In her case, her evidence was that her decision to appear in these magazines with her new-born baby was specifically taken to control the release of pictures of her child in a context where up to six paparazzi were camped outside her home during and after the home-birth of her daughter.<sup>12</sup> Moreover, even if it were the case that Ms Church had, by her previous conduct, relinquished any reasonable expectation of privacy, she had not done so on behalf of her parents.
- 2.11** Ms Church’s evidence bore similarities to that given by the writer JK Rowling. She too has been subjected to intense press interest for more than a decade, ever since the publication of the first Harry Potter book. She also complained of door-stepping, pursuit by paparazzi, and the unjustified publication of details of her private life and that of her family.<sup>13</sup> Ms Rowling explained that shortly after the publication of the first Harry Potter book, she was *“literally driven out of the first house [she] had ever owned (which faced almost directly onto the street) because of journalists banging on the door, questioning the neighbours and sitting in parked cars immediately outside the gate”*.<sup>14</sup>
- 2.12** Ms Rowling’s primary complaints related to the privacy of her family and the privacy of her home: an assessment of her evidence shows that parts of the press have shown indifference to, or disrespect for, both.
- 2.13** In respect of her children, Ms Rowling has been consistent and clear since she first came to public attention that she did not want her children exposed to public view. There can be no doubt that the press has been fully aware of her stance. She has refused requests to be photographed with her children for publicity purposes, she has avoided taking her children to any events where photographers are likely to be present, and she has refused to discuss her children in interviews. Where photographs of her children have been published, she and her husband have taken legal and other action to prevent republication.<sup>15</sup>
- 2.14** Nonetheless, Ms Rowling’s evidence suggested that parts of the press have shown a casual disregard of her desire to protect her children’s privacy. Ms Rowling provided numerous examples to illustrate the point. In 1998, after she had refused requests to allow photographs of her daughter, press photographers began to gather outside her home in an attempt to take such photos.<sup>16</sup> Periodically, over the following decade, photographers continued to congregate outside her home and to pursue her, and her family, in the UK and abroad.
- 2.15** In 2001, OK! magazine published a photograph of her eight year old daughter in a bikini, while on a secluded beach in Mauritius. The photograph, taken with a long lens camera, led to a PCC adjudication, in her favour, that Ms Rowling hoped would lead to a change in the behaviour of press photographers.<sup>17</sup> Instead, she recalled no change at all. In 2003, after the birth of her son, Ms Rowling’s house was “besieged” by press photographers. As a consequence she

<sup>12</sup> pp25-26, lines 11-14, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-20111.pdf>

<sup>13</sup> p5, line 11; p38, line 25; pp46-47, lines 24-12; p58, line 21; p26, line 14; p78, lines 4-11; JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

<sup>14</sup> p2, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-JK-Rowling2.pdf>  
<sup>15</sup> p7, para 14-17, *ibid*

<sup>16</sup> p6, para 11, *ibid*

<sup>17</sup> pp49-54, lines 1-12, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>; p7, para 19-22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-JK-Rowling2.pdf>

largely confined herself to her house and, on the occasions where she left the house, would cover her daughter in a blanket to preserve her privacy.<sup>18</sup> Despite her efforts at this time, intrusive photographs of her son and daughter were both taken and published.<sup>19</sup>

**2.16** In 2005, after a photograph of her 18 month old son was taken with a long lens and published in the Sunday Express, Ms Rowling issued proceedings against Express Newspapers Limited and the photo-agency responsible for the photograph, Big Pictures Limited. After lengthy litigation, the Court of Appeal found that the taking and publication of the photographs were an arguable breach of his Ms Rowling's son's right to private life.<sup>20</sup> But in the period between issuing the claim and receiving judgment from the Court of Appeal, other titles continued to take and publish intrusive photographs of her children: the Daily Mirror published a photograph of her daughter as a baby,<sup>21</sup> and The Sun and the Daily Mail published long-lens photographs of her three children, taken while the family were on holiday in the USA.<sup>22</sup>

**2.17** Clause 6 of the PCC Code requires editors not to use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life, but it appears that in the case of Ms Rowling's children, this was the only justification for the pursuit and publication of their photos. In the same way as Ms Church objected, in particular, to her career choice impacting on the privacy of her parents, Ms Rowling objected to her fame impacting on the privacy of her children. She said:<sup>23</sup>

*“Any other 18 month old child can expect to be pushed along the street in their buggy without the paparazzi taking surreptitious photographs of them for the purpose of publication in a national newspaper. I have to question why the position should be any different for my son. The only difference that exists is that my son has a mother who is well known and is of interest to the press.”*

**2.18** Ms Rowling explained the impact on her children of more than a decade's intrusion by press photographers as follows:<sup>24</sup>

*“The actions of the paparazzi have had a real impact on my children. My eldest daughter regularly became upset at being accosted in this way and, as is the way when a child sees his or her parents upset, was also upset because I was upset. The requirement to hide under blankets in cars so as not to be photographed was also very unsettling and stressful for her. As for my son, despite being just less than two years old at the time of the litigation concerning him, he was confused by the constant presence of photographers outside his home and unsettled by the tension of the adults around him, in particular as they tried to shield him from being photographed”.*

**2.19** Ms Rowling's complaints about harassment by paparazzi and other press photographers were echoed by several other witnesses to the Inquiry; their evidence is dealt with in more detail below. However Ms Rowling's complaints were not limited to photographers. Journalists too used intrusive methods to obtain stories about Ms Rowling and her children. In one of the

<sup>18</sup> p47, lines 2-14, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>; p14, para 29a, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-JK-Rowling2.pdf>

<sup>19</sup> p14, para 29a, *ibid*

<sup>20</sup> *Murray v Big Pictures (UK) Ltd* [2008] EWCA Civ 446

<sup>21</sup> p22, para 43 <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-JK-Rowling2.pdf>

<sup>22</sup> p18, para 30a, *ibid*

<sup>23</sup> p16, para 29d *ibid*

<sup>24</sup> p20, para 32, *ibid*

more disconcerting examples provided, a journalist arranged for a letter, addressed to Ms Rowling, to be placed in her five year old daughter's schoolbag.<sup>25</sup> Ms Rowling's response was one of justifiable anger at the invasion of her daughter's privacy.

- 2.20** Ms Rowling's second significant complaint related to the publication of details of her address and private information about her home, with apparently no regard for the consequences of such publication, and no regard for any public interest in doing so. In January 2005, the Scottish Daily Mail published the full address of Ms Rowling's Scottish property.<sup>26</sup> In July 2005, the Daily Mirror published the street names and photographs of three of her properties in England and Scotland, and published the locations, and details, of security features that had been installed.<sup>27</sup> Understandably concerned by the publication of information that was not only private, but which also jeopardised the security of her home, Ms Rowling's representatives complained to the PCC. The complaint was upheld in part.<sup>28</sup>
- 2.21** In 2007, the Daily Mirror, the Daily Record, and the Scottish Mail on Sunday published photographs and information about Ms Rowling's Scottish home, including descriptions of the property, sufficient to identify its precise location.<sup>29</sup> Once again, Ms Rowling complained to the PCC. That complaint was rejected on the grounds that the information published was already available in the public domain.<sup>30</sup> It is not necessary to revisit that ruling here, but it is notable that in considering the complaint, the PCC apparently gave no consideration to the public interest in the further publication of this information, and it is difficult to see what real justification there might be.
- 2.22** In the context of Ms Rowling's clear and unambiguous desire for privacy, and where Ms Rowling had previously had a complaint upheld for the publication of very similar material, the decision of some titles to publish information which revealed her address, demonstrates what appears to be a casual disregard for her privacy, and a carelessness with regard to the consequences of publishing private information. It is consistent with the evidence in relation to her attempts to protect the privacy of her children: with regard to both the privacy of her children and her home, sections of the press chose to ignore the fact that she had consistently and unequivocally sought to protect her privacy.
- 2.23** The evidence provided by the actor Steve Coogan shed further light on a tendency within sections of the press to treat individuals without dignity or respect. Mr Coogan has a personal life which, by his own admission, may not command the moral approval of all.<sup>31</sup> However, his evidence was that he had never sought to set himself up as a "model of morality", nor had he sought fame as such. Instead, he has pursued a career as a comedian, writer, and actor and it is that choice alone which has brought him into the public eye.<sup>32</sup> While it may be correct that some people in the public eye trade on their wholesome image or status as a family man, that is not the case with Mr Coogan.

<sup>25</sup> pp45-46, lines 6-2, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

<sup>26</sup> pp65-66, lines 12-2, *ibid*

<sup>27</sup> pp66-67, lines 14-21 *ibid*

<sup>28</sup> Rowling v Daily Mirror, PCC Report 72

<sup>29</sup> pp69-70, lines 15-3, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

<sup>30</sup> Rowling v Scottish Mail on Sunday, PCC Report 77

<sup>31</sup> p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Steve-Coogan3.pdf>

<sup>32</sup> pp8-10, lines 19-6, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-20111.pdf>

- 2.24** Despite this, sections of the press have treated his private life as fair game for publication. He has been the subject of numerous “kiss and tell” stories and lurid exposes. In 1996, the Daily Mirror published two such stories, having paid a woman with whom he was having an affair to “tell all”. While investigating the stories, journalists door-stepped the pregnant mother of his child and door-stepped, or otherwise harassed, several members of his family. Shortly afterwards, in relation to a similar story, a journalist from the same title called the great-grandmother of his daughter asking her to “spill the beans” about Mr Coogan’s relationship with her granddaughter.<sup>33</sup>
- 2.25** One example provided by Mr Coogan of the methods used to expose these stories was particularly notable. In 2002, Rav Singh, a casual friend of Mr Coogan’s and a journalist at the NoTW phoned Mr Coogan to warn him of a proposed NoTW sting. Mr Coogan was told that he was to receive a phone call from a woman with whom Mr Coogan was acquainted, and the woman would seek to persuade Mr Coogan to disclose intimate details of his life. However, the woman would be calling from the office of the editor of the NoTW with the intention of publishing the details of the conversation. Having been tipped off, Mr Coogan did not disclose any intimate details during that conversation. However, two years later Mr Singh called him to “negotiate” an article to be published the following day about another of Mr Coogan’s intimate relationships. Mr Singh offered to omit certain more embarrassing parts of the story if Mr Coogan admitted and discussed other aspects. Trusting Mr Singh’s integrity after his 2002 experience, Mr Coogan did discuss the relationship in some detail with Mr Singh.
- 2.26** At the end of the conversation, however, the editor of the NoTW called Mr Coogan’s publicist to inform him that the entire conversation had been recorded and all of the details disclosed would be published, including those that Mr Singh had agreed not to publish. As Mr Coogan noted, the promises not to publish certain elements of the story appeared to have been offered simply to induce Mr Coogan to reveal even more about the story.<sup>34</sup> Mr Coogan’s expressed his view of the incident as follows:<sup>35</sup>
- “I don’t think it was a malicious personal vendetta against me. My feeling is that it was a dispassionate sociopathic act by those who operate in an amoral universe where they are never accountable.”*
- 2.27** No clear public interest justification has been offered for the many stories published about Mr Coogan’s sex life. The stories are mere tittle-tattle. But as Mr Coogan noted, such gossip is not necessarily harmless and, even when true, can be extremely damaging to the parties involved, as well as innocent third parties.<sup>36</sup> When untrue, for instance in the case of the Daily Mail’s report that Mr Coogan was responsible for the attempted suicide of another actor, such invasions of private life can be extremely damaging indeed;<sup>37</sup> this is dealt with in more detail below in the section on inaccurate and defamatory reporting.<sup>38</sup>
- 2.28** The evidence to the Inquiry from ex-footballer Garry Flitcroft highlighted the degree to which accurate reporting of private “tittle tattle” can be extremely damaging to innocent third parties, as much as to the subjects of the stories themselves. Mr Flitcroft played football

<sup>33</sup> pp10-12, lines 7-1, Steve Coogan, *ibid*

<sup>34</sup> pp16-19, lines 14-1, Steve Coogan, *ibid*; pp3-4, para 13-15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Steve-Coogan3.pdf>

<sup>35</sup> p4, para 16, *ibid*

<sup>36</sup> pp5-6, para 21-23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Steve-Coogan3.pdf>

<sup>37</sup> pp16-19, lines 14-1, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-20111.pdf>

<sup>38</sup> pp21-23, lines 2-22, Steve Coogan, *ibid*

for Premiership club Blackburn Rovers, but told the Inquiry that he had never sold a story to a celebrity magazine, never endorsed any products in his own name, never attended any celebrity functions, or made public pronouncements about his family life. He was, put simply, an old fashioned footballer, focused solely on football.<sup>39</sup>

- 2.29** Mr Flitcroft was married, but had engaged in two intimate affairs. At some point during 2001, one of the women with whom he had been involved threatened to sell her story of their relationship, unless he paid her a sum of money. In essence, Mr Flitcroft says he was blackmailed, but refused to pay the woman any money and as a consequence she sold her story to the People.<sup>40</sup>
- 2.30** Mr Flitcroft sought an injunction to prevent publication. It is not necessary to review the lengthy litigation which ensued, save to say that the Court of Appeal lifted an injunction initially imposed by the High Court on the grounds that, in all the circumstances of the case, freedom of the press should prevail over Mr Flitcroft's right to private life.<sup>41</sup> It is not for this Inquiry to review the rights or wrongs of that judgment<sup>42</sup> but what is of interest is first, the conduct of the People during the course of the litigation and second, the apparent lack of consideration of the consequences of publication on Mr Flitcroft and his family by those responsible for publication.
- 2.31** As to the first, the People responded to the interim injunction granted by the High Court by conducting what seems to have been an investigative exercise into other aspects of Mr Flitcroft's private life. As Mr Flitcroft noted, *"it seemed that details of my affair... were of huge interest to the paper and they were doing everything they could to add colour to their existing story by trying to dig up more dirt on me."*<sup>43</sup> The paper's investigations uncovered the second affair and, after Mr Flitcroft declined to pay the woman involved £5,000 not to disclose her story, she sold her story to the People.<sup>44</sup> Additionally, although the interim injunction prevented publication of the story, Mr Flitcroft recalled that the People published sufficient details of the original story to spark intense speculation as to which Premiership footballer was the subject of the story. Rumour, and leaks from sports journalists, led many people to conclude the story was about Mr Flitcroft long before the story was published.<sup>45</sup>
- 2.32** Whether the revelation of Mr Flitcroft's identity was deliberate or not, and whether or not the People's further investigations were part of a "dirt digging" exercise as suspected by Mr Flitcroft, the response of the newspaper to Mr Flitcroft's attempt to prevent publication does at least appear to have been consistent with a practice identified later in this Report whereby parts of the press seek to intimidate, attack or punish those who challenge the right of the press to publish what they choose.

<sup>39</sup> pp47-48, lines 7-7, Garry Flitcroft, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-20111.pdf>

<sup>40</sup> pp1-2, para 7-12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Garry-Flitcroft.pdf>; pp48-51, lines 16-6, Garry Flitcroft, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-20111.pdf>

<sup>41</sup> *A v B* [2002] EWCA Civ 337

<sup>42</sup> Submissions were made by the core participant victims to the effect that the law on privacy has moved on since the Court of Appeal gave judgment in 2001, and that the assessment of the merits would not necessarily be the same today: the decision is discussed in the analysis of the civil law which is at Appendix 4

<sup>43</sup> p3, para 15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Garry-Flitcroft.pdf>

<sup>44</sup> p3, para 16, *ibid*

<sup>45</sup> pp52-53, lines 25-16, Garry Flitcroft, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-20111.pdf>; pp3-4, para 20-22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Garry-Flitcroft.pdf>

- 2.33** When the injunction was lifted by the Court of Appeal, publication of the story by the People had a devastating effect on the lives of Mr Flitcroft and his family. Between 20 and 25 journalists and photographers congregated outside Mr and Mrs Flitcroft's home. Other journalists went to the homes of other family members, including that of Mrs Flitcroft's father who was suffering from Parkinson's disease and who found the episode extremely distressing.<sup>46</sup> In the months that followed, Mrs Flitcroft was forced to stop taking her children to school to avoid journalists and photographers while on the school run. Mr and Mrs Flitcroft's marriage broke down.<sup>47</sup> Mr Flitcroft said that, even today, his children suffer teasing and abuse in relation to the stories.<sup>48</sup>
- 2.34** According to Mr Flitcroft, the impact on his father was catastrophic. A long term sufferer of depression, he found it very difficult to deal with the press coverage about his son. Having attended every football match since his son was aged seven, he stopped going to football matches to avoid the humiliation of listening to the chants and mockery from other fans. Mr Flitcroft believed that his failure to attend football matches after the publication of the story was a significant factor in the worsening of his depression, which tragically ended in his suicide in 2008.<sup>49</sup>
- 2.35** These facts are important because they provide an insight into the personal consequences of what is often described as "tittle tattle" and often thought of as "harmless fun". The risk of such personal consequences should not necessarily prevent publication, but it should, at least, require a degree of thought before publication. The evidence provided by former People editor, Neil Wallis, suggested that there was no genuine consideration of the potential consequences of publication on the lives of Mr Flitcroft and his family. When pressed on the factors which were considered prior to publication, Mr Wallis was unable to recall any of the specific factors, other than the fact that Mr Flitcroft was a footballer and therefore a role model. He repeatedly played down the significance of the story, saying that it was "not a big story."<sup>50</sup> But that misses the point.
- 2.36** A run-of-the-mill "kiss and tell" may not be a big story to a newspaper, but it will always be a big story to the subjects of the story and their families. Although Mr Wallis implied that publication had beneficial consequences for Mrs Flitcroft because it resulted in her discovery of her husband's affair,<sup>51</sup> his comment only reinforced the view that no proper consideration had been given, before or after publication, to the real consequences of publishing the story. Mrs Flitcroft did discover her husband's affair, but in the gaze of the tabloid press, hounded by photographers, and forced to hide from public. It is difficult to believe that she would thank the newspaper for its service.
- 2.37** Further examples of this cultural indifference, within sections of the press, to the dignity and privacy of individuals were provided by the actor Hugh Grant. Over almost two decades, Mr Grant's private life has been the subject of intense press scrutiny. He has been a victim of defamation, phone hacking and harassment by journalists and paparazzi, issues which are

<sup>46</sup> pp4-5, para 24-29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Garry-Flitcroft.pdf>; p58, lines 10-25, pp61-62, lines 16-3, Garry Flitcroft, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-20111.pdf>,

<sup>47</sup> pp7-8, para 48 -52, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Garry-Flitcroft.pdf>;

<sup>48</sup> pp60-61, lines 8-2, Garry Flitcroft, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-20111.pdf>

<sup>49</sup> pp71-73, lines 6-16, *ibid*

<sup>50</sup> p67, lines 2-15; pp71-73, lines 9-9, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-20111.pdf>

<sup>51</sup> p73, lines 5-8, *ibid*

dealt with in more detail at various places elsewhere. In addition, newspapers have published his private medical information: in 1996, the Daily Mirror published a report of his visit to Charing Cross hospital, and cited his condition and treatment;<sup>52</sup> in March 2011, both The Sun and the Express published details of Mr Grant's visit to Chelsea and Westminster hospital, and they too reported the treatment he received.<sup>53</sup> In neither case was there any public interest in publishing this private medical information.

- 2.38** Consistent with the complaints made by other witnesses, Mr Grant noted that it is not only him, styled by the press as a celebrity, who is affected by the intrusive attentions of the press: his girlfriends and their children have also been affected.<sup>54</sup> When his then girlfriend's father died in 1996, two journalists who had never met the deceased man turned up at the funeral, presumably looking for a story about Mr Grant but claiming to want to "pay their respects."<sup>55</sup> Most recently, after the birth of his child to Tinglan Hong, the new mother experienced quite extraordinary levels of harassment by press and paparazzi. Ms Hong feared for her own safety and that of her child and, despite Mr Grant's pleas, the harassment continued until the High Court issued an injunction preventing photographers from congregating near her house.
- 2.39** The justification for the press intrusion Mr Grant has experienced over the last two decades is unclear. Gordon Smart, the showbiz editor of The Sun, told the Inquiry that the fact of Mr Grant's celebrity alone justified the publication of his private medical information.<sup>56</sup> It was a surprising approach, which revealed a lack of respect for the privacy of anyone who might be considered a celebrity. Paul Dacre, the editor in chief of the Daily Mail, put it another way in claiming that Mr Grant "*had spent his life invading his own privacy, exposing every intimate detail of his life*".<sup>57</sup> While he did not go so far as to suggest that Mr Grant's private life was therefore "open season", he did imply that, as a consequence of Mr Grant's public disclosures of elements of his private life, the press could, with justification, investigate and report on his private life in significant detail. But there are real problems with that reasoning as well.
- 2.40** First, although Mr Grant is an actor, and is by the nature of his career in the public eye, he does not appear to have courted celebrity or fame as some actors have. Indeed, his evidence was that he had given only two interviews to British newspapers in the last 17 years and did not employ a publicist in the UK.<sup>58</sup> Although he accepted that he had spoken publicly about his desire to have a child, and had made remarks to the effect that he understands the public's interest in the personal lives of actors, the evidence provided to the Inquiry did not, in my view, support the conclusion that Mr Grant had "*spent his life invading his own privacy*".<sup>59</sup>
- 2.41** Instead, the evidence revealed an actor who had, on occasion (mostly, but not entirely, in the course of interviews he was contractually bound to provide in order to satisfy the publicity requirements of the films in which he appeared), spoken about his personal life in a generally flippant or humorous manner, sometimes exposing a little more of himself than on other occasions. Unsurprisingly, he had also attended public events with girlfriends, and

<sup>52</sup> p5, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Hugh-Grant.pdf>

<sup>53</sup> p5, para 15, *ibid*; pp14-16, lines 4-5, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>54</sup> p6, para 18-19, *ibid*

<sup>55</sup> p5, para 16, *ibid*

<sup>56</sup> p67, lines 8-14, Gordon Smart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>57</sup> p19, lines 22-25, Paul Dacre <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

<sup>58</sup> pp65-66, lines 22-5, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>59</sup> See in particular: <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Supplemental-Witness-Statement-of-Paul-Dacre3.pdf>

been photographed with them. But none of the evidence, taken individually or collectively, indicated a man who had spent his life “invading his own privacy”. I do not deny that some so-called ‘celebrities’ could legitimately be accused of that. In Chapter 1 of this Part of the Report, I acknowledged that there is a class of person with a public profile – those who actively engage in the ‘celebrity industry’ – who may enjoy a lower level of protection when it comes to privacy. I also accept, and fully recognise, that a substantial amount of celebrity reporting in the popular press concerns this class of people. However, in my view at least, Mr Grant does not fall within that class.

- 2.42** Second, even if it were true that Mr Grant had previously disclosed a multitude of genuinely private details about his life, or had sold stories of his private life to particular titles, it does not necessarily follow that he would be “fair game” for the press at large to publish further details without consent. As Mr Grant put it:<sup>60</sup>

*“I have heard the defence quite frequently from tabloid papers: “Oh, well, you know, if you have ever talked about your private life, then you have no defence, you have no right to an expectation of privacy”, which I think is absurd. Because anyone – I mean, as I told you earlier, I think I’ve only done two interviews ever with the British press, but when anyone does do an interview, it is, after all, a bargain. The press of that paper gets a boost in sales, they hope, and the person who’s giving the interview gets a bit of noise about their forthcoming project. And like any barter, when it’s over, it’s over. If I sell you a pint of milk for 50p, I would not expect you to come to me forever afterwards, saying, “You slut, you sold me milk once. I can now help myself to your milk forever.” I would think you were mad.”*

- 2.43** Finally, even if Mr Grant can have no reasonable expectation of privacy himself, that does not justify the collateral damage to, or the harassment of, and intrusion into the private lives of, those close to him.

- 2.44** Again, it seems that the intrusive reporting that Mr Grant spoke of is part of a cultural indifference within parts of the press to individual privacy and dignity. That manifests itself most frequently in the celebrity press, where individual private lives are treated, at least to some extent, as commodities. The evidence given by Miss Church, Ms Rowling, Mr Coogan and Mr Grant support this conclusion, as does the similar evidence heard by the Inquiry from Sienna Miller,<sup>61</sup> Sheryl Gascoigne,<sup>62</sup> Anne Diamond<sup>63</sup> and Heather Mills.<sup>64</sup> But the cultural indifference to privacy and dignity does not apply only to celebrities or those in the public eye. In addition to the experiences described by the Dowlers, the McCanns and Christopher Jefferies, the Inquiry heard evidence from, or about, numerous others who were not public figures but who had experienced seriously intrusive coverage and/or treatment from the press.

<sup>60</sup> pp90-91, lines 19-10, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>61</sup> pp26-39, lines 14-2, Sienna Miller, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>; pp2-3, para 3-12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sienna-Miller.pdf>; and see further below

<sup>62</sup> pp70-73, lines 10-19; pp75-76, lines 1-8, Sheryl Gascoigne, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-23-November-2011.pdf>; pp5-6, para 22-24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sheryl-Gascoigne.pdf>

<sup>63</sup> pp62-75, lines 11-25, Anne Diamond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>; pp7-9, para 29-37, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Anne-Diamond1.pdf>

<sup>64</sup> pp86-89, lines 25-23, Heather Mills, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>; pp14-15, para 50-52; p16, para 57, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Supplemental-Witness-Statement-of-Heather-Mills.pdf>

- 2.45** The evidence provided by HJK, discussed in Chapter 3 above, was a prime example of this. So too was the evidence of Baroness Hollins. In 2005, Baroness Hollins' daughter Abigail Witchall, a private individual with no public persona, was stabbed and critically injured: she was a victim of crime, pure and simple. Although the majority of the press covered the story in a compassionate and sensitive way, a section of the press behaved irresponsibly and without regard to the privacy and dignity of the family.
- 2.46** On the first day after the attack, a group of journalists congregated in the family garden, before being required to leave by police. Other journalists camped outside the hospital where Abigail was undergoing treatment, or pretended to be visitors in the waiting room.<sup>65</sup> The intrusion and surveillance continued: a year later, a long lens photograph was published in *The Sun* of the entire family, while on a private pilgrimage to Lourdes;<sup>66</sup> even in 2010, when Abigail had given birth to another baby, *Daily Mail* reporters were stationed outside her house on a shift pattern waiting for sight of Abigail or the baby.<sup>67</sup>
- 2.47** The family also endured the publication of intimate and private details. Reporting on the incident, the NoTW published the headline, "Exclusive: new shock in Abi attack – knife mum was pregnant". While accurate, the truth was that Abigail was only five weeks pregnant and was unaware of the fact. She had certainly not consented to the publication of the fact of her pregnancy and it appears no family member had done so either.<sup>68</sup>
- 2.48** The experience described by Baroness Hollins in relation to the reporting of her daughter's attack was echoed by evidence given to the Inquiry by several other witnesses who complained of a breach of privacy and harassment in the aftermath of a death or attack; that evidence is considered in more detail at Section 6 below.
- 2.49** The Inquiry also received evidence about a series of stories published in the NoTW about Bob and Sue Firth. Their evidence was that they ran a naturist B&B in Dorset, which had been anonymously inspected by the English Tourist Board and rated as highly commended. Shortly after receiving that rating, the NoTW journalist, Neville Thurlbeck, orchestrated an undercover sting operation and reported that the Firths were running not just a naturist B&B, but a brothel at which Sue Firth would have sex with guests while Bob Firth looked on.<sup>69</sup>
- 2.50** The Firths' evidence was that there was no truth in the story. At no stage had Sue Firth engaged in sexual activity with guests, and sexual activity was no part of the naturist element of the B&B.<sup>70</sup> However, they claimed that Mr Thurlbeck had entrapped them: he had cajoled and paid the Firths to perform a sex act while Mr Thurlbeck looked on. On their evidence, that had only happened as a consequence of Mr Thurlbeck's entrapment and had never previously, or subsequently, occurred at the B&B. Nonetheless, as a consequence of the articles published in the NoTW, the Firths were forced to close the B&B.<sup>71</sup>

<sup>65</sup> pp12-16, lines 20-5, Baroness Hollins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-2-February-2012.pdf>; p1, para7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Baroness-Hollins.pdf>

<sup>66</sup> pp26-29, lines 14-1, Baroness Hollins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-2-February-2012.pdf>; p2, para9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Baroness-Hollins.pdf>

<sup>67</sup> pp30-32, lines 25-15, Baroness Hollins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-2-February-2012.pdf>; p2, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Baroness-Hollins.pdf>

<sup>68</sup> pp18-19, lines 19-25, Baroness Hollins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-2-February-2012.pdf>

<sup>69</sup> pp1-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Bob-and-Sue-Firth.pdf>

<sup>70</sup> p3, *ibid*

<sup>71</sup> pp1-2, *ibid*

- 2.51** Mr Thurlbeck was given an opportunity to comment on the Firths' evidence but declined, instead relying on a PCC ruling that had found the story to be "justified" in the public interest.<sup>72</sup> That ruling is available but, to say the least, is opaque at best. No doubt on the basis that the PCC is not set up to resolve issues of fact, it makes no finding on the Firths' core complaint that much of the story was fabricated. Without making that decision, however, the PCC considered itself able to reach a finding on the public interest of the story. But if it was fabricated, it is extremely difficult, if not impossible, to decide that there was any public interest in it. Despite being pressed to explain the public interest in the story, Mr Thurlbeck simply refused to do so.
- 2.52** It was clear from the evidence of Tom Crone, the legal advisor at the NoTW at the time, that Mr Thurlbeck neither requested nor received any advice on the public interest of the story before engaging in the subterfuge, nor did he request or receive such advice prior to publication.<sup>73</sup> Mr Crone's evidence to the Inquiry was that the story was tacky and the breach of privacy involved was not justified.<sup>74</sup> The fact that the newspaper's own lawyer considered that the breach of privacy was not in the public interest is revealing, as is the fact that nobody thought it appropriate to ask him in the first place.
- 2.53** Overall, and notwithstanding the concerns which have been expressed, it would not be right to reach any further conclusions on the Firth story, for a number of reasons. It occurred a considerable time ago now, and the evidence is both murky and heavily disputed. The Inquiry received a witness statement from the Firths but it was not tested in oral evidence. To have done so would have occupied a disproportionate amount of Inquiry time in circumstances where Mr Thurlbeck had already made clear that he would refuse to give his account of this story. Given that he had been arrested in connection with alleged phone hacking offences in the summer of 2011 (and has since been charged), it would have been difficult to compel him to engage with the Inquiry on these issues, and probably unnecessary. Notwithstanding all these caveats, it is possible, at least tentatively, to conclude that prior to publication, the NoTW had insufficient regard to the privacy of the Firths or the consequences of publication on their lives.
- 2.54** Assessed as a whole, the examples referred to so far in this Chapter (including those merely footnoted) suggest a culture of indifference to individual privacy and dignity, at least within parts of the press. But the evidence supporting that conclusion is not limited to this section, and can be seen throughout the Chapter: the evidence of phone hacking, email hacking, blagging, harassment and surveillance all lead to the same conclusion.
- 2.55** Evidence by lawyers who represent victims of privacy intrusion also supported that same conclusion. Graham Shear, a partner at law firm Berwin Leighton Paisner, told the Inquiry that in the last 15 years tabloid newspapers had specifically targeted celebrities and sportsmen to generate front page exposés.<sup>75</sup> The use of surveillance, subterfuge, or the payment of an agent provocateur had increased in what he considered was a response to commercial pressures which required sensationalist exposes to generate sales.<sup>76</sup> His evidence was supported by solicitor Mark Thomson who considered that, since the late 1980s, there had been "*a widespread culture of the illegal obtaining and use of private information by popular*

<sup>72</sup> pp36-38, lines 12-7, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-20111.pdf>

<sup>73</sup> p62, lines 11-16, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-20111.pdf>

<sup>74</sup> p62, lines 5-10, *ibid*

<sup>75</sup> p2, para 6-7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Graham-Shear.pdf>

<sup>76</sup> p1, para 4, *ibid*

*newspapers.*<sup>77</sup> He noted that since that time, his clients had regularly been photographed and/or followed and stories had been published or threatened in circumstances where information as to their movements or private lives could not have been obtained legally.<sup>78</sup>

- 2.56** Mr Shear's evidence was that the increasingly intrusive techniques used by parts of the tabloid press to generate increasingly sensational stories were the result less of an indifference to private lives and reputation, and more the result of a calculation of the financial risk of a privacy or defamation claim against the potential profits that a story might generate. On that basis, he considered that some titles would publish stories likely to result in a substantial increase in circulation, notwithstanding that the story was likely to be an unlawful invasion of privacy, or even defamatory.<sup>79</sup>
- 2.57** There is some further evidence of unethical or unlawful publication based on the calculation of legal risk versus potential profits. For example, Piers Morgan recollected in his book *The Insider* that, prior to publishing a double page spread based on copy unlawfully lifted from another newspaper, he had specifically asked for legal advice on the likely damages to be awarded for the lifting, before concluding "*50 grand would have been well worth paying for a front page and two spreads inside and the bigger sales revenue it would bring.*"<sup>80</sup>
- 2.58** However, although there is material to suggest that financial calculations play a part in the willingness of parts of the press to use intrusive investigative techniques or to publish stories involving egregious breaches of privacy, it is not clear that most of the complaints made by victims of these practices can be explained by a calculated approach to assessing financial risk against potential profit. Instead, it seems more likely that, in the majority of cases of unjustified invasions of privacy, the simple fact is that the privacy and dignity of subjects of stories are not considered at all or, alternatively, are not sufficiently weighed in the balance prior to investigating or publishing the story.
- 2.59** The evidence heard from some editors, journalists and executives supported that view. At its extreme, the cultural indifference to privacy was encapsulated in Paul McMullan's observation that "*privacy is for paedos... no-one else needs it. Privacy is evil.*"<sup>81</sup> While others may not have expressed themselves in the same terms, there seemed to be at least some agreement from other editors and journalists that privacy was not a matter worthy of significant protection.
- 2.60** Kelvin MacKenzie recalled that, as editor of *The Sun*, he did not have any regard to issues of privacy.<sup>82</sup> He said:<sup>83</sup>

*"I didn't spend too much time pondering the ethics of how a story was gained, nor over-worry about whether to publish or not. If we believed the story to be true and we felt Sun readers should know the facts, we published it and left it to them to decide if we had done the right thing."*

<sup>77</sup> p12, para 40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Mark-Thomson.pdf>

<sup>78</sup> p12, para 40, *ibid*

<sup>79</sup> pp3-4, para 12 -13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Graham-Shear.pdf>

<sup>80</sup> Morgan, P, *The Insider*, p229

<sup>81</sup> p91, lines 5-7, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>82</sup> p12, lines 3-5, Kelvin MacKenzie, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>83</sup> p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Kelvin-MacKenzie.pdf>

- 2.61** Although Mr MacKenzie left the Sun in 1994 and his evidence cannot necessarily be taken as reflecting attitudes prevailing today, his views chimed with Mr McMullan’s, and were not dissimilar to some of the views expressed by proprietors, editors and journalists.
- 2.62** As previously noted, the proprietor of the Express Group, Richard Desmond gave evidence that his newspapers “*are in a business to give readers/viewers what they want to read and watch and as long as it is legal that is what we aim to do. We do not talk about ethics or morals because it’s a very fine line, and everybody’s ethics are different.*”<sup>84</sup> Mr Desmond said that the bottom line for whether or not to publish a story was the reputation of his newspapers.<sup>85</sup>
- 2.63** That approach from the proprietor may or may not have influenced the thinking of the editor of the Daily Express, Peter Hill, when considering whether to publish 38 defamatory and intrusive stories about the McCanns. Mr Hill’s evidence to the Inquiry betrayed a distinct lack of consideration for the dignity and privacy of the McCanns, and showed instead a focus on the circulation of his newspaper.<sup>86</sup> Despite his knowledge that his reporters on the ground in Portugal had very real concerns about the truth of the articles they were writing, Mr Hill told the Inquiry that he was not troubled by the decision to publish because, in his view, there was a clamour for information about the Madeleine McCann story and his readers wanted to read about it.<sup>87</sup> His evidence suggested a remarkable elision between what was justified in the public interest, and what would interest his readership. Such elision leaves little room for the protection of privacy if a readership is interested in reading about the private lives of others.
- 2.64** But Mr Hill was not alone in holding a conception of the public interest that was essentially defined by what interested the readership. The then editor of the Sunday Mirror, Tina Weaver, confirmed that her view was that the public interest test was often drawn too narrowly by the courts and the PCC and that the public were ultimately the best barometer of what was in the public interest. She confirmed that her approach came close to equating the public interest with what interested the public, although she denied that there was a complete overlap between the two.<sup>88</sup>
- 2.65** The Daily Express’s Hugh Whittow and the Daily Star’s Dawn Neesom considered the readers’ views to be a primary factor in the consideration of whether to publish private information.<sup>89</sup> Similarly, the Daily Mirror’s then editor Richard Wallace thought the public interest was very strongly influenced by what interests the public. In the context of the Christopher Jefferies story, he said:<sup>90</sup>

*“What the public are interested in is a central tenet of public interest. The public were interested in this story... Acting within the framework of the PCC Code, I considered publishing these stories to be in the public interest because the public wanted to read about the story.”*

<sup>84</sup> p6, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf>

<sup>85</sup> para 22, *ibid*

<sup>86</sup> pp19-26, lines 24-1, Peter Hill, [www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf)

<sup>87</sup> pp29-30, lines 13- 2, *ibid*

<sup>88</sup> pp9-11, lines 24-18, Tina Weaver, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf>

<sup>89</sup> pp48-51, lines 21-2, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>; pp110-115, lines 4-1, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>90</sup> p8, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Second-Witness-Statement-of-Richard-Wallace.pdf>

- 2.66** The story about Mr Jefferies is a prime example of why the elision of the public interest with what interests the public is dangerous. It may well interest the public to read private, scandalous and defamatory material about a suspect to a murder, but it is clearly not in the wider public interest for newspapers to act in contempt of court, let alone erroneously to destroy a man's reputation.
- 2.67** A consideration of what interests a readership must of course form the basis of any editorial decision to publish or not to publish material, but where the material involves private rights, the decision on whether to publish must also include a consideration of the consequences of publication on the subjects of stories and on the wider public interest. Richard Peppiatt provided helpful evidence on this point when he noted:<sup>91</sup>

*"Yesterday, Hugh Whittow, in the Commons Select Committee on Privacy, he said over the Chris Jefferies case, which I thought was really cold – he said, "We make mistakes, we paid out, we move on." Well, Chris Jefferies doesn't move on. His life has been irreparably changed and that is the attitude: "We make mistakes." But no one wants to take responsibility for those mistakes and the reason is because there's not an individual who you can point the finger to and say is responsible, because it's a culture."*

- 2.68** A failure to consider the personal consequences of publishing information about an individual's private life was evident in Mr Dacre's evidence. The Daily Mail's coverage of the attack on Ms Witchall included an article suggesting a spurious link between Ms Witchall's attack and one suffered by her brother some years earlier. Included as part of that article was the name and a photograph of Ms Witchall's brother, an indication that he suffered from learning difficulties and the names of his attackers. Baroness Hollins complained to the Inquiry that the article was an unjustified breach of her vulnerable son's privacy, which also placed him at risk of reprisals from his convicted attackers.<sup>92</sup> Mr Dacre defended the article robustly:<sup>93</sup>

*"Can I say as strongly as I can that this, I believe, shows how the Inquiry doesn't understand how newspapers work. To my mind, this is a story and a feature handled with superb sensitivity. I've been through it. I think it's written with massive compassion. I think the family come out of it wonderfully. The love between the brother and sister is extraordinary. The religious faith of the family comes across. The learning disability – the mother and the son wrote a book about that, on how to handle court cases for people with learning disabilities. I think that's a wonderful message to get out to the public. I think that was an extraordinary story."*

- 2.69** While the story may well have been extraordinary, written sensitively, and may well have contained a wonderful message, those factors do not change the fact that the story involved the disclosure of sensitive information which caused significant upset to the family, and was based in large part on the spurious suggestion of a link between two obviously unlinked attacks. I do not criticise Mr Dacre for the decision to publish the article, which he considered to be justified in the public interest. He is absolutely entitled to his own view on where the balance between private rights and public interests lay in respect of this (and other) stories.

<sup>91</sup> pp46-47, lines 23-7, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>92</sup> pp24-26, lines 8-13, Baroness Hollins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-2-February-2012.pdf>

<sup>93</sup> pp63-64, lines 21-8, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

But Mr Dacre’s robust defence of the article failed to engage with the genuine concerns raised by Baroness Hollins. Indeed, Mr Dacre appeared not to understand why the family would have been upset by the article at all.<sup>94</sup> Given that Mr Dacre did not engage with the *actual* consequences of the story for the family, and their response to it, it seems probable that insufficient consideration was given to the *potential* consequences of the story, or its impact on the family, prior to publication.

- 2.70** Mr Dacre adopted a similarly robust approach in defending the publication of a defamatory story containing erroneous information about alleged drunken behaviour of the actor Neil Morrissey.<sup>95</sup> Mr Dacre accepted that the story was inaccurate and defamatory, but was unwilling to accept Mr Morrissey’s evidence that the story was hurtful to him. Moreover, he argued strongly that, if true, the story would have been in the public interest because Mr Morrissey was a famous actor, because the story interested his readership and because, at the time, the Daily Mail believed that Mr Morrissey had acted irresponsibly.<sup>96</sup> The final element of that justification – irresponsible behaviour – accorded with a more general point which Mr Dacre accepted, that his newspaper felt justified to publish private information about public figures when they “erred” from the traditional virtues of family life, traditional matrimony and traditional values.<sup>97</sup>
- 2.71** What was concerning about Mr Dacre’s evidence on both the Ms Witchall and Mr Morrissey stories was not his editorial judgment on whether the articles should have been published or not. Instead, the concern related to Mr Dacre’s unwillingness to entertain the idea that each of these stories might have been hurtful, upsetting and/or damaging to the individuals involved. If such a possibility is not even recognised post publication, despite evidence to the contrary from the subjects of the stories, then it seems unlikely to have been the subject of any consideration pre-publication.
- 2.72** As part of the body of evidence received from editors and proprietors, Mr Dacre’s evidence supported a more general conclusion that there is a cultural unwillingness in parts of the press to consider the consequences of publication on the individuals involved. Some of the evidence from photo-editors and photo agencies discussed in Section 5 below, also supports that conclusion. To reiterate the point: the fact that a story might be hurtful, damaging or intrusive to the subjects of a story is not necessarily a reason not to publish that story. It may not even be a reason to amend the story. But it is difficult to see why the consequences on the individuals who are likely to be affected by publication should not both be relevant and factored into the overall decision.
- 2.73** In part, this cultural unwillingness stems from inadequate systems for considering and recording public interest decisions. Assessing the evidence as a whole, and as more fully discussed below, it appears that, until recently, in house legal advisors were rarely asked to advise on privacy issues at all, but focused almost exclusively on libel. Although legal advisors are now asked to advise on privacy issues more regularly, the final decision on publication (rightly) rests with the editorial team. It appears that, in the majority of titles, there is no formal system in place for that team to consider, decide and minute the difficult questions of whether publication of private information is in the public interest. Those titles that do have such systems have only introduced them very recently.

<sup>94</sup> pp63-68, lines 21-14, *ibid*

<sup>95</sup> pp1-4, para 3-9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-on-behalf-of-Neil-Morrissey.pdf>

<sup>96</sup> pp103-106, lines 1-1, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

<sup>97</sup> pp10-11, lines 15-21, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>;

<http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-on-behalf-of-Neil-Morrissey.pdf>

- 2.74** Although some witnesses feared the bureaucratic burden that such systems might impose, those fears are surely misplaced. Only a few stories raise issues of this nature and a single page record of the factors weighing against and in favour of publication, along with a record of the reasons for the conclusion reached, would suffice and be no more than many editors said reflected their thought processes. The adoption of such a system for reaching public interest decisions is, however, important for two main reasons. First, such decision-making process focuses the mind and ensures that all relevant factors, including the privacy and dignity of the individual, as well as the potential consequences of, and public interest in, publication are properly considered. The second reason is that a formal, written decision making process can assist titles defending subsequent complaints or litigation, where the absence of any contemporaneous record of decision can result in accusations of ex post facto reasoning to justify what was in reality an unconsidered interference with private life.
- 2.75** This approach may well cause Mr Dacre to consider that his expressed view (that the Inquiry does not understand how newspapers work) is proved, but it is important to make the point that both the approach and the reasons underlying it rely only on the law of privacy as it has been explained by the courts and on the standards identified by the press themselves expressed through the Editors' Code of Practice. Newspapers have to work within the law and if the Code does not represent the way in which newspapers carry out their business, then the high regard which editors have for it is misplaced.
- 2.76** Although significant improvements can and should be made (and in many cases, have already been made) to internal systems for considering and recording public interest decisions, systemic changes alone will not address the real issues identified above. In my view, parts of the press require a cultural, rather than a systemic, change to ensure that the privacy and dignity of individuals is appropriately respected, and to ensure that the public interest in, and consequences of, and publication are considered when titles decide how and whether to investigate, and publish, details of individuals' private lives.
- 2.77** The need for such a change in culture is all the more urgent in a technological age which allows for unprecedented access to private information and unprecedented means to distribute that private information. As the Media Standards Trust noted:<sup>98</sup>

*"In the constrained media environment of the twentieth century there were practical limitations on the press' ability to report on people's private lives. There was, for example, only a limited amount of material the press could access – in terms of photographs, video, phone conversations etc. There were also practical constraints on what the papers could and could not publish. They were not able to publish video or audio, and they could only publish as much as could fit between the front and back pages of the print paper.*

*For the most part these practical constraints no longer exist. The press – or anyone else – can access huge amounts of personal material themselves and through others. A reporter can legitimately find personal information published on the internet or source recorded audio/video from members of the public. Equally, a reporter can illegitimately access private material or illicitly record personal moments or private phone calls. The papers can then publish as much of this material as they like – in text, audio, or video – online. Or anyone else can publish this information, on a website, on a blog, on a social networking site like Facebook, on twitter, on a wiki. The information can then ripple rapidly outwards across the net."*

<sup>98</sup> Fifth submission of the Media and Standards Trust: 'Privacy: Submission to the Joint Committee on Privacy and Injunctions' November 2011, pp 7-8

- 2.78** In this context, it is vital that the press in general develops, and/or maintains, internal cultures in which respect for individual privacy and dignity is central, without impacting adversely on genuine investigative journalism. In the absence of such cultures, the temptation to use the technology that is now available to invade privacy and to publish private information, when not in the public interest, may be irresistible. It is to the evidence on the use of some of those technologies which I now turn.

## 3. Unlawful or unethical acquisition of private information

### Introduction

- 3.1** This Chapter will now explore the evidence heard by the Inquiry in relation to the practices of the press in obtaining private information, the extent to which these practices could properly be described as ‘cultural’ rather than sporadic or isolated incidents, and the extent to which those working in the media industry were aware that these practices were occurring.
- 3.2** The practices under consideration are known colloquially in the industry as the ‘dark arts’, although this term no doubt goes wider than the unlawful and unethical acquisition of private information. The Inquiry received evidence of a general nature about these practices from witnesses such as Nick Davies from the Guardian.<sup>99</sup> The witness statement of Michelle Stanistreet, and her exhibits containing anonymous testimony, included evidence from one journalist who had experienced the practices of the dark arts across a range of mid-market, tabloid and broadsheet newspapers, and had himself worked with a private investigator on a number of stories.
- 3.3** The witness explained to Ms Stanistreet that investigators could provide surveillance services including bugging homes and offices and recording landline phones, Police National Computer (PNC) checks to learn about criminal convictions and cautions, and could find up to date addresses. These services were provided in return for cash delivered in rolled up newspapers by journalists. This evidence recalled that, initially, the use of such techniques was not widespread in newsrooms but was restricted at that time to a few journalists who “had an investigative bent”. However at another title, methods of obtaining information were talked about more openly and, in relation to two titles where the witness had worked, there were “*small coteries of reporters who could and were expected to practice the ‘dark arts’*”.<sup>100</sup>

### Phone

- 3.4** This topic has been addressed in other sections of the Report . However, for reasons of aiding the overall narrative, and because phone hacking amounts to one of the most egregious examples of unethical press practices, a relatively brief recapitulation of the evidence is provided here.
- 3.5** Whilst the precise methods by which phone hacking was perpetrated do not require detailed explanation, the evidence of Detective Inspector Mark Maberly is worth noting at this juncture.<sup>101</sup> One method of obtaining access to voicemails was referred to in Fleet Street

<sup>99</sup> p61, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>100</sup> pp14-21, lines 12-15, Michelle Stanistreet, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-9-February-20121.pdf>;  
<http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/MS-Exhibit-11.pdf>

<sup>101</sup> pp74-94, lines 17-24, Mark Maberly, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-29-February-2012.pdf>

folklore as “*double whacking*”; this worked by one person ringing a mobile phone to engage it, and then another person ringing the phone to be directed to the voicemail. With some telephone companies there was a prospect of then interrupting the voicemail message and being diverted into the voicemail account where a PIN could be entered to listen to the messages. As Mr Maberly observed, it would not be possible to use this method on too many occasions as it would become difficult to justify repeated spurious calls and this would arouse suspicion. The method of voicemail interception used by Glenn Mulcaire, amongst others, was a more sophisticated form of voicemail interception facilitated by calling into service providers through a unique retrieval number and entering a PIN to listen to message, the PIN often having previously been changed or reset to default by the intruder.<sup>102</sup>

- 3.6** Interestingly, the evidence the Inquiry has received from Vodafone indicates that they were apparently unaware of these possibilities until 2006.<sup>103</sup> Vodafone is a large company and its corporate memory may be difficult to pinpoint. Vodafone’s evidence needs to be considered in the context of other material put before the Inquiry, including compelling evidence from Steve Nott, which indicated that as early as 1999 the security flaw within the voicemail system was known about by at least two service providers.<sup>104</sup>

### *News of the World*

- 3.7** Little needs to be said about the NoTW’s involvement in phone hacking, given the preceding sections of this Report, but a short summary of the evidence canvassed previously is helpful.
- 3.8** Taking together the evidence which has emerged from the prosecution of Mr Mulcaire and Mr Goodman, the admissions made by News International in the context of civil claims founded upon allegations of phone hacking and what the Inquiry has been told by former employees, in my view there is clear evidence that voicemail interception was occurring at NoTW from if not slightly before 2000, and probably continued until around 2009.<sup>105</sup> It is equally clear that these practices were not limited to a single journalist. In opening the Inquiry, Robert Jay QC described these activities as amounting to a ‘thriving cottage industry’.<sup>106</sup> Without delving into any of the detail regarding particular journalists or employees of the company, which would plainly be inappropriate given the extant criminal proceedings, it would not be unfair to describe the practice of voicemail interception within a part or parts of the NoTW as cultural.

### *Daily Mirror*

- 3.9** The Inquiry has also heard evidence which suggests that phone hacking may not have been confined to NoTW, and may have been occurring at other tabloid newspapers, including the Daily Mirror. All of this evidence needs to be considered by the Inquiry with great precision, as well as a measure of caution, partly because civil claims have been issued in respect of allegations of phone hacking at the Daily Mirror,<sup>107</sup> but also because it is generally unfair to

<sup>102</sup> pp74-94, lines 17-24, *ibid*

<sup>103</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Vodafone.pdf>

<sup>104</sup> p2, Steve Nott, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-6-December-20111.pdf>;

<sup>105</sup> p88, lines 5-6, Opening of Inquiry, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-14-November-2011.pdf>;

<sup>106</sup> p88, lines 25, *ibid*

<sup>107</sup> On 23 October 2012, it was reported that a number of civil claims had been brought against the Mirror Group alleging the Mirror had engaged in phone hacking: see, for example: <http://www.guardian.co.uk/media/2012/oct/23/phone-hacking-allegations-trinity-mirror-shares>

name and potentially criticise others in relation to illegal or unethical conduct when the need to avoid prejudicing criminal investigations and prosecutions means that I am unable fully to investigate or describe what was happening at the NoTW.

- 3.10** In this context, consideration needs to be given first to the evidence relating to the voicemail of Heather Mills, which may be summarised as follows. In 2001 a number of voicemail messages were left by Sir Paul McCartney on Ms Mills' mobile phone following a disagreement between them. The precise content of the messages is immaterial, save to note that in the messages Sir Paul apologised and sought forgiveness from Ms Mills through song. Ms Mills picked up the voicemail messages the following day, she recalls the messages were treated as "saved" messages, rather than as "new" messages on her voicemail system, which she thought was unusual but did not regard as significant at the time. Later that day she was telephoned by a former employee of Trinity Mirror Group (TMG) who told her they had heard that she had argued with her then partner, who had sung down the phone. Ms Mills responded that the only way this could have been known was to listen to her voicemail, to which the journalist laughed.<sup>108</sup>
- 3.11** In October 2006 it was reported in an article written by Piers Morgan in the Mail Online that he had been played a tape of a voicemail message left for Ms Mills in 2001. The article read "*Stories soon emerged that the marriage was in trouble. At one stage I was played a tape of a message Paul had left for Heather on her mobile phone*".<sup>109</sup>
- 3.12** Mr Morgan confirmed in his evidence to the Inquiry that he had listened to a tape of a voicemail message left for Ms Mills in around 2000 or 2001 when he was editor of the Daily Mirror. Mr Morgan was asked to explain his understanding of how the tape had been obtained. His evidence was that he had no reason to believe that this had been through an unlawful means, and no story had been published by the Daily Mirror based on the tape.<sup>110</sup> Mr Morgan declined to give any evidence to the Inquiry relating to the provenance of the voicemail message, the circumstances in which the tape was played to him, or any evidence to the effect that Ms Mills had consented to or authorised his actions, invoking the confidentiality of his source.<sup>111</sup>
- 3.13** Ms Mills confirmed to the Inquiry that she had never played the message described by Mr Morgan to anyone, never taken a recording of the messages and that the messages were deleted in 2001.<sup>112</sup> Ms Mills has also confirmed that she never authorised Mr Morgan to access her voicemail, listen to her voicemail or played to Mr Morgan or authorised him, or any other person, to listen to a recording of her voicemail messages.<sup>113</sup> Ms Mills further told the Inquiry that evidence obtained during Operation Weeting proved that private voicemail messages of Ms Mills and her sister had been hacked into, albeit that evidence did not relate to the taped voicemail message presently under scrutiny.<sup>114</sup>

<sup>108</sup> pp80-86, lines 13-24, Heather Mills, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>; pp1-3, paras 4-14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Heather-Mills.pdf>

<sup>109</sup> pp69-70, lines 25-8, Piers Morgan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>;

<sup>110</sup> pp7-8, para 32 -33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Second-Witness-Statement-of-Piers-Morgan.pdf>

<sup>111</sup> p70-71, Piers Morgan <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>;

<sup>112</sup> pp1 -3, paras 4 - 18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Heather-Mills.pdf>

<sup>113</sup> pp1-3, para 4 -18, *ibid*

<sup>114</sup> pp15-16, paras 56-57, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Supplemental-Witness-Statement-of-Heather-Mills.pdf>

- 3.14** When subsequently asked to comment on Ms Mills' evidence, Mr Morgan placed in issue her assertion that she had never played her voicemail messages to anyone, and put before the Inquiry a witness statement from John Ferriter (Ms Mill's agent at the time, and now Mr Morgan's agent) dated 29 October 2012 which claimed that, in 2007, Ms Mills played him a recording of a voicemail message left by Sir Paul.<sup>115</sup> It is clear from the context that this particular message was left very much later than the message to which Mr Morgan's evidence relates (although Mr Ferriter is not specific about this), and for that reason alone is irrelevant to the issue the Inquiry is considering. It has been noted that, when asked to comment on extracts of Mr Ferriter's evidence, Ms Mills denied ever having played Mr Ferriter a voicemail message.<sup>116</sup> Ms Mills reiterated her sworn testimony that the voicemail message Mr Morgan described having been left by Sir Paul for Ms Mills in circumstances where "... *the couple had clearly had a tiff, Heather had fled to India and Paul was pleading for her to come back*", was *not* one which she had played to anyone. Insofar as it does relate to issues directly relevant to the Inquiry, I accept the account that Ms Mills has provided.
- 3.15** The evidence relating to this particular episode cannot be considered in isolation. The Inquiry also heard evidence from Jeremy Paxman and Richard Wallace in relation the possibility that the voicemail of Ulrika Jonsson had been hacked by the Mirror. Mr Morgan, in his book *The Insider*, described an incident during the period when he was editor where Mr Wallace, then the showbusiness editor employed by the Daily Mirror, had come into his office with a "wicked grin" on his face and relayed to him a story about the details of Ms Jonsson's private life. Mr Wallace in his evidence explained that this tip off had come from the showbusiness team at the Daily Mirror; he accepted that he could not positively assert what the source of the tip off was, and acknowledged that it was possible the source was phone hacking.<sup>117</sup> Mr Morgan subsequently called Ms Jonsson's agent who had confirmed that the details of the story were true.
- 3.16** As for Mr Paxman, he explained that he attended a lunch at the offices of TMG on or around 20 September 2002; the lunch was hosted by Sir Victor Blank, the then Chairman of TMG, and the then editor of the Sunday Mirror, Mr Morgan. Ms Jonsson, Philip Green and a number of others were also present. In the course of conversation he heard Mr Morgan joke with Ms Jonsson that he knew the content of conversations between Ms Jonsson and Sven Goran Eriksson, with whom Ms Jonsson had had a relationship. Mr Paxman explained that Mr Morgan turned to him and asked him whether he had a mobile phone and whether he had a security setting on the message facility; he then explained that the way to gain access to peoples' messages was to "*go to the factory default setting and press either 0000 or 1234*", and further said that if you did not put on your own code, in Mr Morgan's words, "*You're a fool.*"<sup>118</sup>
- 3.17** This evidence does not establish that Mr Morgan authorised the hacking of voicemails or that journalists employed by TMG were indulging in this practice. What it does, however, clearly prove is that he was aware that it was taking place in the press as a whole and that he was sufficiently unembarrassed by what was criminal behaviour that he was prepared to joke about it. Whatever other inferences might be drawn from Mr Paxman's convincing evidence on this issue, it is sufficient for present purposes to leave the matter there.

<sup>115</sup> Witness Statement of John Ferriter is available on the Inquiry Website

<sup>116</sup> The Third Witness Statement of Heather Mills is available on the Inquiry's website

<sup>117</sup> pp74-76, lines 5-8, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>

<sup>118</sup> pp136-139, lines 9-1, Jeremy Paxman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-23-May-2012.pdf> Mr Morgan denied listening to Ulrika Johnson's voicemail messages in relation to Sven Goran Eriksson

- 3.18** The Inquiry also heard evidence from James Hipwell, who was employed as a journalist at the Daily Mirror from 1998 to 2000 and worked on the City desk. He sat next to the Daily Mirror’s showbiz journalists and explained in his evidence that he was able to see at close hand how they operated. He observed journalists carrying out repeated privacy infringements, by hacking into the voicemail systems of celebrities, their friends, publicists and public relations executives. Mr Hipwell observed that the openness and frequency of their hacking activities gave him the impression that hacking was considered a “*bog-standard journalistic tool for gathering information*”. He explained how he heard showbiz journalists openly discussing what had been heard on voicemails and one of the journalists showed Mr Hipwell how to hack into voicemails. He also observed that, on occasions, the journalists would joke about having deleted a message from a celebrity’s voicemail to ensure no journalist from The Sun would get the same scoop by hacking. Mr Hipwell further explained that he observed this conduct on a daily basis in 1999 and a great number of the Daily Mirror’s showbusiness stories would come from phone hacking.<sup>119</sup>
- 3.19** Although doubts may exist as to Mr Hipwell’s credibility, given his criminal record and the real risk that he bears a grudge towards his former employer, the account he gave to the Inquiry on these matters was clear, firm and convincing.<sup>120</sup> Mr Hipwell did not name any individual journalists, and his evidence cannot do more than serve to demonstrate that phone hacking as a practice may well have been occurring at the Mirror titles when Mr Hipwell was working there. Mr Morgan denied knowing about the activities described by Mr Hipwell,<sup>121</sup> and the latter did not say in terms that the editor knew about them.
- 3.20** The issue for consideration at this stage is exactly what inferences the Inquiry is minded to draw in relation to Mr Morgan. It is right that the Inquiry is explicit about this, given the public concerns which followed the receipt by the Inquiry of Mr Morgan’s oral evidence in December 2011 and the prominence given to the reporting of Mr Paxman’s evidence. There is no evidence that Mr Morgan hacked into any mobile phone and, because of the approach I have adopted, it would be unfair and wrong in principle to reach any conclusion that he expressly authorised the hacking of voicemails at the Mirror titles or was aware that this practice had occurred in any individual case. Further, Mr Morgan has refused to reveal his ‘confidential source’ in Ms Mills’ case and the Inquiry faces the perennial difficulty of not being able to penetrate beneath that refusal.
- 3.21** For the avoidance of doubt, however, the Inquiry does conclude that the practice of phone hacking may well have taken place at the Mirror titles at the time Mr Hipwell was working there, that Ms Mills’ voicemail probably was hacked into by someone (albeit it is unnecessary, if not impossible, to reach a conclusion as to whether he or she was a Mirror journalist), and that it is equally probable that Ms Jonsson’s voicemail was hacked into.
- 3.22** It is a separate issue whether Mr Morgan was aware in broad terms of the general practice of phone hacking. This issue, touched upon above in relation to the evidence of Mr Paxman, will be addressed below under a separate rubric.

<sup>119</sup> pp13-18, lines 13-6, James Hipwell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-December-2011.pdf>

<sup>120</sup> Mr Hipwell also drew attention to the sentencing remarks of Beatson J at his trial (page 6, lines 10-13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-December-2011.pdf>): ‘*There was no guidance from your superiors or from the in-house lawyers, and there was evidence of a culture of advance information about tips and share dealings within the office.*’

<sup>121</sup> p78, lines 9–25, Piers Morgan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>

*Other publications*

- 3.23** It should be noted that the evidence heard by the Inquiry relating to phone hacking is not confined to NoTW and the Mirror titles. However, the evidence in relation to the use of the technique at other titles was limited and problematic. Paul McMullan's belief was that the practice of phone hacking was not limited to the NoTW, but he was unable to provide any firm evidence for this belief. Stuart Hoare recalled that his brother Sean had told him that the practice was widely used at The Sun<sup>122</sup> but, given that this was hearsay evidence, and wholly untested, it is difficult to place any substantial weight on it.
- 3.24** Mark Lewis, a solicitor and partner at law firm Taylor Hampton, told the Inquiry that he received a compact disc which had the recording of a conversation between Mr Mulcaire and a person working for a newspaper owned by Associated Newspapers Ltd, in which Mr Mulcaire was teaching that person how to hack a mobile phone.<sup>123</sup> However, it is difficult to see how far this evidence goes because, on its own, it does not start to establish that phone hacking was practised by anyone at any of these titles. Furthermore, although evidence from Mr Davies<sup>124</sup> and from anonymous journalists whose evidence was related by Ms Stanistreet of the NUJ, suggested that phone hacking was being deployed through a range of mid-market, red top and broadsheet newspapers,<sup>125</sup> this evidence, taken in isolation, is insufficient to establish, on any basis, that these practices occurred.
- 3.25** Overall, the available evidence does not allow me to conclude to the requisite standard of proof that the practice of phone hacking occurred at any specific individual title other than the NoTW and, to the extent already discussed, the Mirror titles. There is, however, another way of examining this issue, which is to consider the evidence of a more general nature which the Inquiry has received to the effect that phone hacking was occurring on a widespread basis within the industry, that many knew of it, and that no one did anything to address it. The significance of this evidence is that it throws light on the culture, practices and ethics of the press at a truly generic level. It does not directly implicate any individual title, but it establishes the potentially broad nature of the practice across an indeterminate number of unnamed titles, as well as a cultural indifference within the industry to its prevalence. It is this evidence which now falls to be analysed.

*Industry knowledge of phone hacking and response to phone hacking*

- 3.26** The Inquiry heard evidence from a number of journalists and editors which supports the conclusion that there were at the very least rumours circulating in Fleet Street that phone hacking was occurring on a systematic basis, and some evidence from travels considerably beyond the limited realm of rumour.
- 3.27** It is convenient to commence this section by returning to the evidence of Mr Morgan. In the first volume of his published diaries, *The Insider*, he records under the entry for 26 January 2001 that he had been told that people might be listening to his mobile phone messages because, if the security code was not changed, then anyone could call his number and if he

<sup>122</sup> pp8-9, lines 3-13; p12, lines 24-25, Stuart Hoare, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-19-December-2011.pdf>

<sup>123</sup> pp26-27, lines 14-4, Mark Lewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-23-November-20111.pdf>

<sup>124</sup> pp111-113, lines 6-10, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>125</sup> pp14-15, lines 12-15, Michelle Stanistreet, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-9-February-20121.pdf>

did not answer, tap in the four digit code and listen to all the voicemail messages. Mr Morgan's diary entry somewhat wryly observed "*it makes me wonder how much public figures and celebrities are aware of this little trick*".<sup>126</sup> Mr Morgan was asked to clarify this statement when he testified to the Inquiry. He said that, as far as he was aware, he had not previously known of this ruse,<sup>127</sup> but could not recall who had made him aware of it.<sup>128</sup>

**3.28** Mr Morgan was then asked about an interview which he gave to the Press Gazette in 2007, in which he said this:<sup>129</sup>

*"As for Clive Goodman, I feel a lot of sympathy for a man who has been the convenient fall guy for an investigative practice that everyone knows was going on at almost every paper in Fleet Street for years."*

**3.29** When asked to clarify that evidence, Mr Morgan's explanation was as follows:<sup>130</sup>

*'Well, that was the rumour mill at the time. I mean, it was exploding around Fleet Street. I wasn't there, I hadn't been there for three years, but everyone you talked to said that he was being made a scapegoat, that this was a widely prevalent thing. I wasn't aware that it was widely prevalent in any specific form. I was hearing these rumours like everybody else. The reality is that it certainly seems to have been much more widespread at one newspaper, and we now know that the Guardian also phone-hacked, so you had two newspapers. So it's certainly wider apparently than just Clive Goodman, but I'm not going to get into rumour-mongering because that's not really the point of this Inquiry, I don't think.*

*Q. But were you rumour-mongering when you had the interview with the Press Gazette in 2007 or were you speaking from your own experience?*

*A. No, I was just passing on rumours that I'd heard.*

*Q. Was this a practice which, if we may add a third newspaper to the mix, was taking place within the Daily Mirror before 2004?*

*A. I do not believe so, no.*

*Q. You don't believe so, or you're sure?*

*A. I don't believe so. To the best of my recollection, I do not believe so.'*

**3.30** This was not, in any sense at all, a convincing answer. Mr Morgan could not even resist a further side-swipe at the Guardian (he had earlier referred to that title as the self-appointed bishops of Fleet Street), perhaps in an attempt to draw attention away from the broader ramifications of the question. When linked with other evidence, his reference to 'the rumour mill' somewhat downplayed the quality of the evidence incriminating the industry as a whole. And Mr Morgan chose his words very carefully when asked to speak about the Daily Mirror. Overall, Mr Morgan's attempt to push back from his own bullish statement to the Press Gazette was utterly unpersuasive.

<sup>126</sup> Morgan, P, *The Insider*, p278.

pp63-64, lines 21-20, Piers Morgan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>

<sup>127</sup> p57, line 17, Piers Morgan, *ibid*

<sup>128</sup> p57, lines 18-20, *ibid*

<sup>129</sup> p58, lines 6-11, Piers Morgan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>

<sup>130</sup> pp58-59, lines 13-1, Piers Morgan, *ibid*

**3.31** Mr Morgan was also asked about what he had appeared to admit in relation to phone hacking during the course of his appearance on Desert Island Discs in June 2009, but he explained that he had misheard Kirsty Young's question.<sup>131</sup> But, in an article originally published in April 2007 in GQ magazine it is clear that Mr Morgan had no difficulty hearing the questions which Naomi Campbell started to put to him about phone hacking.<sup>132</sup>

*'Q. Ms Campbell asked you: "It is an invasion of privacy though." And you say:*

*"It is, yes, but loads of newspaper journalists were doing it. Clive Goodman, the News of the World reporter, has been made the scapegoat for a very widespread practice." So you're making it clear there what your belief was in April 2007; is that correct?*

*A. Yeah, and it seems to have been borne out by events.'*

**3.32** Unsurprisingly, there was little or no material difference between what Mr Morgan told the Press Gazette and Ms Campbell in 2007. On this occasion Mr Morgan's explanation was similar: that there were endless rumours that the practice went much further than Mr Goodman. For obvious reasons, Mr Morgan conceded that these 'rumours' turned out to correct.

**3.33** Max Clifford explained in his evidence that it was common rumour in the media that mobile telephones were being hacked from early 2000 and that this was a topic which various journalists and people working in the industry discussed in his presence.<sup>133</sup> In a similar vein, in 2002, Dominic Mohan, then the showbusiness editor at The Sun, gave a speech to members of the press at the Princess Margaret Awards in which (no doubt with a trace of irony) he thanked Vodafone's 'lack of security' for the Mirror's showbusiness exclusives. Mr Mohan accepted in evidence that this was a reference to the rumour, if not the fact, that one could hack into Vodafone's mobile phones because their PIN system was so easily penetrable, particularly if the default setting had not been changed. He acknowledged that it was well known it was possible to hack voicemails fairly readily and stated there had been a number of articles printed about this, including in the Daily Mirror which, in 1998, had published a piece about the lax security around the Irish cabinet's mobile phones, with part of the investigation being the hacking into voicemails.<sup>134</sup> That said, this Irish example was somewhat stale material in the public domain. It is likely that Mr Mohan's sources were both more recent and closer to home.

**3.34** When Mr Mohan first testified as to these matters, in particular his speech at the Princess Margaret awards, it is interesting quite how close his words of explanation were to Mr Morgan's.<sup>135</sup>

*Q. Wasn't the true position something along these lines: that there were rumours going around in the press, which you well knew about, which were suggesting that phone hacking was occurring on a fairly systematic basis in the Mirror's titles? Is that right or not?*

<sup>131</sup> pp62-63, lines 18-3, Piers Morgan, *ibid*

<sup>132</sup> p65, lines 9-18, Piers Morgan, *ibid*

<sup>133</sup> pp41-42, lines 21-6, Max Clifford, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-9-February-20121.pdf>

<sup>134</sup> pp63-65, lines 1-14, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-9-January-2012.pdf>; pp115-117, lines 6-3, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>135</sup> p64, lines 14-25, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-9-January-2012.pdf>

A. *There were rumours in the industry. There's always rumours in the industry about various methods, but this wasn't based upon any evidence at all. It was just the Fleet Street rumour mill.*

Q. *You weren't concerned about the law of defamation, were you, when you made this statement?*

A. *I don't remember that I was, no.*

**3.35** He also explained that this speech was purely a joke, and a cheap shot at the Daily Mirror, which had had a successful year.<sup>136</sup> Mr Mohan returned to give further evidence on a range of matters towards the end of Module One. On that occasion he was asked to explain the source of a series of articles in the *Bizarre* column of The Sun, because others had suggested that material evidence had been procured by phone hacking. Mr Mohan denied this suggestion, and there is no evidence to contradict him.<sup>137</sup> It was put to him that his joke about Vodafone had raised the biggest laugh of the evening, but he claimed that he could not remember one way or the other.<sup>138</sup> He also denied that he had 'borrowed' Mr Morgan's terminology when previously testifying about phone hacking in order to draw attention away from the fact that he knew that phone hacking had been taking place at the paper,<sup>139</sup> (or it might be added elsewhere). In this context it is notable that Duncan Larcombe, the Royal Editor at The Sun, commented that he would not be surprised that if there were or had been the technology to intercept voicemail, it might have been being abused by some journalists on some papers.<sup>140</sup>

**3.36** A number of editors, former editors and in house lawyers acknowledged in their evidence that phone hacking may have been occurring but suggested that they were not aware of the practice or that it was hidden from them. For example, Mr Wallace explained that when he was showbiz editor at the Daily Mirror, he was not aware of phone hacking being conducted by journalists on the showbiz team but acknowledged that the practice 'might well' have taken place and been hidden from him.<sup>141</sup> He also acknowledged that the tip off in relation to a story on Ms Jonsson, which came from the showbiz team, could have been a result of phone hacking.<sup>142</sup>

**3.37** Drawing these various strands together, in my view the evidence which the Inquiry has received, viewed in the round, strongly suggests that phone hacking was a practice which, over the period from the late 1990s to the arrest of Mr Goodman and Mr Mulcaire in 2006, was occurring within the industry on a more than localised basis. The nature of the evidence currently available does not permit any more robust conclusion. Save for the evidence relating to the Mirror titles which has already been examined, it is not possible, and indeed is unnecessary, to seek to identify particular titles or to quantify the extent of the practice.

**3.38** Equally of interest to the Inquiry is the extent to which this practice was generally known about. The evidence of individual witnesses has been examined in some detail, and the point has already been made that the evidence of Mr Morgan, in particular, has already attracted considerable public interest. I have concluded that Mr Morgan was aware of the use of the

<sup>136</sup> p63, lines 18-21, *ibid*

<sup>137</sup> pp106-114, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>138</sup> p115, lines 10-11, *ibid*

<sup>139</sup> pp116-117, lines 22-2, *ibid*

<sup>140</sup> pp80-81, lines 4-12, Duncan Larcombe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>141</sup> pp7-8, lines 18-12, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>

<sup>142</sup> pp74-76, lines 5-8, *ibid*

technique of phone hacking in the industry, and that articles were likely to have been published on the basis of material obtained by that technique. Here, the Inquiry is referring to the issue at a level of some generality; it is unnecessary to be any more specific. Mr Morgan felt able to discuss the matter quite freely in his diary and when interviewed about it after the arrest of Mr Goodman and Mr Mulcaire. He also felt no compunction about alluding to the matter in specific terms when lunching with Mr Paxman in September 2002. For him, the issue must have been of current interest and worth talking about in that context. It is not plausible that he was making an elaborate joke about things which simply had not occurred: Mr Paxman himself felt that Mr Morgan's tone was bullying,<sup>143</sup> which, in any event, somewhat dispels the joke hypothesis.

- 3.39** It is not possible to reach similar critical conclusions about Mr Mohan's evidence, although aspects of it gave cause for concern. It should be emphasised, however, that in arriving at its overall conclusion relating to the state of the industry over the period which has been identified, I have not simply focused on the evidence of these two individuals: all relevant evidence has been weighed and considered. My conclusion is that knowledge that phone hacking was taking place existed in parts of the industry over the period from around 2000 to 2006, and that to speak only of rumours being rife underplays the extent of the understanding and knowledge.
- 3.40** It is to my mind both striking and of serious concern that despite that knowledge and the rumours circulating through Fleet Street, nothing public was said or done about this issue beyond a series of 'in-jokes' at award ceremonies and unguarded references in memoirs. Further, in the aftermath of convictions which definitively established that phone hacking had occurred within at least one title, minimal steps were taken within the industry to identify whether phone hacking had occurred elsewhere or to investigate the extent of these practices.
- 3.41** For example, in 2007, after the convictions of Mr Mulcaire and Mr Goodman, TMG did not investigate whether or not there had been phone hacking by any of their journalists. Sly Bailey, the then Chief Executive of TMG, explained that there "was no evidence" and she did not see a need to investigate.<sup>144</sup> The extent of her response to the convictions was to call a meeting of the editors of the Daily Mirror, the Sunday Mirror and the People, the Group managing editor and the then head of editorial to emphasise that she would not tolerate unlawful activity.<sup>145</sup>
- 3.42** Even as recently as 2011, a Newsnight investigation alleged that phone hacking had occurred at the Sunday Mirror, that celebrities' voicemails had been hacked and that reporters had listened to phone messages and taken a note of what was said. Although TMG denied the allegations made by Newsnight, it appears that no formal complaint to the BBC was made<sup>146</sup> and Tina Weaver confirmed that no investigation was carried out by the Sunday Mirror

<sup>143</sup> p139, lines 8-11, Jeremy Paxman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-23-May-2012.pdf>;

<sup>144</sup> p109, line 4, Sly Bailey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf>

<sup>145</sup> p18, paragraph 72, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Sly-Bailey.pdf>

<sup>146</sup> Trinity Mirror's response was provided to Newsnight and quoted as part of their report: "*Trinity Mirror's position is clear. Our journalists work within the criminal law and the PCC code of conduct*". In evidence Sly Bailey described the allegations contained within the Newsnight report as "unsubstantiated" and the result of poor journalism: see p111, lines 18, Sly Bailey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-23-May-2012.pdf>

as a result of it.<sup>147</sup> Lloyd Embley, who was appointed acting editor of the People in November 2007, was asked questions of a general nature in relation to phone hacking, and his responses resonated with those given by others:<sup>148</sup>

*Q. In terms of the hacking scandal, as that broke, what was done on your newspaper to deal with that as an industry issue?*

*A. What was done on it?*

*Q. Yes.*

*A. In terms of ...?*

*Q. Can you tell me whether anything was done?*

*A. No. I do not believe any hacking has occurred on my newspaper. I'm certainly not aware of any. I've never asked anyone to hack a telephone. I've never seen anyone hack a telephone. I've never heard anyone else ask anyone else to hack a telephone.*

*Q. That wasn't quite my question. My question was really directed at whether your newspaper did anything to prevent such occurrences.*

*A. No, because I was reassured in myself that it wasn't occurring.*

**3.43** Nicole Patterson, head of legal at Express Newspapers stated that no analysis of the newspaper's financial records had been undertaken to see whether Mr Mulcaire or any of his associated companies had been engaged. The apparent justification of this position was that she had not been told the paper had used any entities connected with Mr Mulcaire.<sup>149</sup> Without directly criticising Ms Patterson, her reasoning tends somewhat to circularity: in my view, some form of investigation could easily have identified whether journalists had used Mr Mulcaire to obtain information. This is not to suggest that phone hacking did take place at any of the Northern & Shell titles; the point being made is that inadequate steps were taken to establish that it had not.

**3.44** After all, by 2007, rumours of phone hacking were well known in the industry. It was also clear, from the ICO's publication of *What Price Privacy?* and *What Price Privacy Now?*, that large parts of the press had engaged private investigators to trade confidential information on an unprecedented scale. In that context, the convictions of Mr Mulcaire and Mr Goodman should have prompted newspapers to conduct proper investigations of the working methods of their journalists. The refrain repeated by a number of titles to this Inquiry that there was no need to launch an investigation because there was no evidence of a problem at their title simply does not wash.

**3.45** The potential seriousness of rumours, allegations and suspicions of phone hacking are self-evident. The Goodman and Mulcaire convictions should have sent out clear warning signals to the industry that phone hacking was a violation of the criminal law. Furthermore, at the very least, it was a grossly unethical practice unless in the pursuit of a story that was demonstrably in the public interest and of such significance that justified risking the hazards of the criminal law. Despite this, the lethargy on the part of the industry to recognise the gravity of this conduct, the reticence in conducting thorough investigations in relation to past

<sup>147</sup> pp99-104, lines 9-6, Tina Weaver, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>

<sup>148</sup> p49, lines 6-22, Lloyd Embley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf>

<sup>149</sup> pp19-20, lines 16-5, Nicole Patterson <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

and present conduct of journalists and the lack of a rather clearer steer from editors than has been evidenced, is disappointing and tends to support the view that phone hacking was simply not taken seriously by the industry. It is not difficult to imagine what the reaction of the press would have been if a similar scandal had been exposed in another industry.

- 3.46** With the exception of the sterling investigative journalism conducted at the Guardian, most other titles were slow to give prominence to the story, that is to say until the Milly Dowler story broke in July 2011. James Harding, editor of The Times, in addressing the point that The Times had been slow to pick up on the phone hacking story, acknowledged that this was potentially due to external pressures, and sought to explain that both NI and the police poured cold water on the story at the time.<sup>150</sup> Other titles may have been concerned that giving publicity to the story might have the undesirable consequence of turning the lens of scrutiny in their direction. But July 2011 represented a sea-change in approach; the story was now too big to leave alone. As Mr Harding put it, once the Milly Dowler revelations occurred, *“the way in which we thought about what was happening or what had happened at the News of the World fundamentally changed, and that was not just about how widespread it was, but about the nature of the journalistic Inquiry there.”*<sup>151</sup>

### *The victims*

- 3.47** Through all this, it is important not to lose sight of the victims of phone hacking. The reason why it matters that large parts of the press failed to take allegations of phone hacking seriously is not simply the fact that phone hacking is illegal; it is also because phone hacking amounted to an egregious breach of personal privacy and dignity which had seriously detrimental consequences on many of its victims. That large parts of the press were so slow in acknowledging this fact adds to the sense that there is, within those parts of the press, a cultural indifference to individual privacy and dignity.
- 3.48** The diversity of the targets of phone hacking is striking. Without engaging in a very detailed analysis, it is not possible to identify any particular class of person who was more likely to be a victim than any other class. Although the targets included a large number of celebrities, sports stars and people in positions of responsibility, they also included many other ordinary individuals who happened to know a celebrity or sports star, or happened to be employed by them. Other victims had no association with anyone in the public eye at all, but were, like the Dowlers, in the wrong place at the wrong time.
- 3.49** The impact of phone hacking on its victims was clear: the experiences of the Dowlers, Ms Miller and Ms Field were referred to elsewhere.<sup>152</sup> Similar evidence was also given by Ms Church,<sup>153</sup> who explained she had been shown information that confirmed that her voicemail had been hacked when she was aged just 17. Ms Church’s evidence as to the impact of phone hacking was striking: she said that she questioned how information was getting into the public

<sup>150</sup> pp3-7, lines 19-23; pp14-16, lines 13-23; Lawrence Abramson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-13-December-2011.pdf>; pp87-89, lines 7-4, James Harding <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>; p35, lines 5-12, Colin Myler <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-2011.pdf>; p42, lines 1-25, Julian Pike, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-13-December-2011.pdf>; pp43-47, lines 14- 8, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-2012.pdf>

<sup>151</sup> p87, lines 15-24, James Harding, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>

<sup>152</sup> Part F, Chapter 3

<sup>153</sup> pp14-16, lines 17-8; pp29-31, lines 20-18; Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>

domain and questioned the loyalty of her friends. Ms Church explained that she tried to cut people out of her life to reduce the number of people who could potentially leak information and she felt a sense of guilt having accused people when it was subsequently revealed that phone hacking was a more likely cause of the information being in the public domain.<sup>154</sup>

- 3.50** HJK gave evidence of the serious professional consequences of phone hacking: he/she had not been aware of an important professional message left on his/her voicemail as it had been hacked into, and as a consequence essentially accused a client of lying when the client (correctly) claimed to have left a voicemail message for him/her.<sup>155</sup> Others, such as journalist Joan Smith, gave evidence of the “*complete shock*” on learning she had been a victim of phone hacking, particularly because the hacking had taken place shortly after her then partner’s daughter had died in a high profile skydiving accident and her belief was that her phone was hacked in relation to that story.<sup>156</sup> Her evidence resonated with that of the Rt Hon Tessa Jowell MP, who described her reaction on hearing of the multiple interceptions of her phone messages as one of shock and stated that “*the invasion of [her] privacy was total during that period.*”<sup>157</sup>
- 3.51** Throughout the Inquiry, not a single witness suggested that any of the specific examples of phone hacking by the NoTW was justified in the public interest, and there is not a shred of evidence to suggest it was. Instead, it appeared to be a practice which, on the whole, was directed at obtaining information about the private lives of those in the public eye – tittle tattle – cheaply. It may well have been cheap for the newspaper titles who utilised the technique, but it cost its victims dearly.

## Email hacking

- 3.52** The Inquiry has heard some evidence of computer and email hacking at both tabloid and broadsheet publications, and undertaken by journalists directly as well as through intermediaries. As with phone hacking, computer and email hacking is a criminal offence<sup>158</sup> to which there is no public interest defence. For the avoidance of doubt, as with phone hacking the Inquiry has seen no evidence to suggest that a public interest defence, even if available, could have been successfully raised in any individual case, save to the very limited extent expressly referred to below. The scale of these activities is even more difficult to assess than phone hacking, in particular because the methods used to obtain the information require a greater degree of technological know-how and may well be harder to detect. I am conscious of the need not to speculate without sufficient evidence as to whether and, if so, to what extent, computer and email hacking has taken place and whether this has been perpetrated by journalists, or by third parties engaged by journalists for this purpose. However, it is important to record the evidence the Inquiry has heard on this issue as an example of conduct which may, and I put it no higher than this, have been more widespread than these examples.
- 3.53** Ian Hurst, a former member of British military intelligence, told the Inquiry he was informed by a BBC journalist working for the Panorama programme that there was evidence that he had been targeted by a private investigator engaged by NoTW; that private investigator had

<sup>154</sup> pp14-16, lines 17-8; pp29-31, lines 20-18 Charlotte Church, *ibid*

<sup>155</sup> pp9-10, lines 10-10, HJK, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-HJK.pdf>

<sup>156</sup> pp31-36, lines 22-25, Joan Smith, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>157</sup> pp58-67, lines 1-17, Tessa Jowell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-21-May-2012.pdf>

<sup>158</sup> See the Computer Misuse Act 1990

then employed a private detective specialising in applying and controlling computer viruses to hack into his computer. He explained he was shown a fax which contained information from his emails, and an extract from specific emails copied into the fax which had been sent to the NoTW offices in Dublin during the time he was working in Northern Ireland in 2006. In this instance, the basis for the email hacking seems unlikely to be related to Mr Hurst's private life, but rather his role in recruiting and running agents in Republican terrorist groups. He further explained that hacking into emails was achieved through the use of a Trojan worm inserted into the computer hard drive, in this case by way of an email being sent and opened.<sup>159</sup> This allowed the hacker to see all emails sent and received by Mr Hurst for a three month period.

- 3.54** Jane Winter of British Irish Rights Watch was told in July 2011 that email communications and documents which had been sent by her to Mr Hurst had been illegally accessed, including attachments to emails of a confidential and sensitive nature. The effect of the hacking was described as “chilling” by Ms Winter because unauthorised access to material has the potential to compromise official investigations and the safety of individuals.<sup>160</sup>
- 3.55** In Ms Miller's amended claim against NGN she alleged that in September 2008, her email account was hacked into using the same password as her mobile phone password, and that private messages were accessed. On 12 May 2011, News International admitted all the causes of action pleaded in her civil claim, including the allegation of email hacking.<sup>161</sup>
- 3.56** The Inquiry also heard evidence in relation to the alleged hacking of an email account at The Times, but for reasons which have already been explained it is inappropriate to explore this issue in detail. John Ryley, Head of Sky News, told the Inquiry that during his 12 years as a senior executive, he was aware of two cases in which Sky News had authorised a journalist to access the email accounts of individuals suspected of criminal activity, on the grounds that this decision was justified in the public interest. In one of these cases, the material that was discovered by the Sky News journalists was of sufficient importance and relevance to criminal investigations that it was handed to the police and used to prosecute an individual.<sup>162</sup>
- 3.57** Overall, it is safe to conclude that email hacking has taken place in recent years. However, particularly in advance of the conclusion of the investigations by the officers on Operation Tuleta, the evidence of email hacking is insufficiently robust to found any conclusions relevant to the culture, practices and ethics of the press. In those circumstances, the matter cannot be taken any further forward.

<sup>159</sup> pp45-48, lines 20-23; pp52-54, lines 3-20, Ian Hurst, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-28-November-2011.pdf>; pp2-4, para 10-15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Ian-Hurst.pdf>

<sup>160</sup> pp67-69, lines 25-18, Jane Winter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-28-November-2011.pdf> and p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Jane-Winter.pdf>

<sup>161</sup> pp3-4, para 10-14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sienna-Miller.pdf>; p35, lines 11-20, Sienna Miller, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>

<sup>162</sup> John Ryley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Exhibit-JHR1.pdf> Mr Ryley further explained that Sky News conducted a review which concluded in July 2011 which found no evidence of illegal or improper conduct on the part of Sky News journalists accessing any third party e-mails, save for the two instances detailed at pp4-6, para 10-14; pp6-21, para 17-52, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-John-Ryley.pdf> ; pp2-4, lines 15-21; p10, lines 2-13; pp21-22, lines 9 -12; p35, lines 6-18; pp36-38, lines 21-10, John Ryley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-23-April-20121.pdf>

## Blagging

- 3.58** The evidence of a number of witnesses has addressed the use of blagging techniques to obtain personal information. The term blagging refers to obtaining information by impersonating someone entitled to the information, either in person, by telephone or through other methods of communications. Usually, but not always, blagging will constitute an offence under s55 of the Data Protection Act 1998 (DPA). In instances where this provision applies, it should not be overlooked that the statute contains a public interest defence. In instances where this provision does not apply, and assuming that no other offence such as one under the Bribery Act 2010 or its predecessor legislation is in play, no issue of potential criminal liability could arise, but ethical considerations obviously would.
- 3.59** The Inquiry has heard that blagging and impersonation techniques were used by journalists directly and by intermediaries engaged by journalists for this purpose. A significant part of the narrative relating to the use of blagging techniques is the evidence revealed by Operation Motorman<sup>163</sup>, which is addressed elsewhere in the Report.<sup>164</sup> However, it is worth recalling in this context that the ICO investigation identified a widespread trade in personal information, driven in significant part by journalists, and uncovered conclusive evidence that Mr Whittamore was regularly engaged personally, or through associates, in the use of blagging techniques to acquire information which was then sold to journalists.
- 3.60** In 2003 Richard Thomas, the then Information Commissioner, wrote to Sir Christopher Meyer, former Chairman of the Press Complaints Commission, identifying the problem in the following terms:<sup>165</sup>

*“It is clear from the very considerable volume of material that our investigations have collected that journalists from most national newspapers and many periodicals are significant ‘customers’ of the enquiry agents concerned. We have obtained extensive and detailed records showing that numerous journalists routinely obtained confidential information they should have no access to. Such information has, for example, been obtained to produce articles on the personal lives of “celebrities” and others currently or prospectively in the public eye, where there appears to be no suggestion of using it to expose wrong-doing We have also obtained extensive records which show payments by newspapers for the confidential information which has been obtained through these channels. Given the sums involved, and the nature of the documentation, it is difficult to believe that senior managers were not aware of what was going on, and were therefore at least tacitly condoning it. In short, the material which has already been collected by my office indicates widespread reliance by the press on information which is obtained by deception or by bribing corrupt employees.”*

- 3.61** The documents retrieved as part of Operation Motorman reveal that in many instances information would be obtained by Mr Whittamore, or through his associates, by blagging techniques. As has already made clear, the Inquiry accepts the evidence of Mr Thomas that any possible public interest justification is likely to have been non-existent save in a few instances.

<sup>163</sup> pp44-71, lines 17-13, Brendan Gilmore, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-9-May-2012.pdf>

<sup>164</sup> Part E, Chapter 3

<sup>165</sup> Richard Thomas, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-3.pdf>

- 3.62** In addition to the evidence heard in relation to Operation Motorman, the Inquiry heard evidence that a number of journalists were themselves responsible for blagging or attempting to blag information for stories.<sup>166</sup> The Inquiry also heard that in some instances specific information would be blagged through the use of intermediaries, possibly in order to facilitate phone hacking which would be conducted by the journalist directly. For example, Mr Davies in his evidence explained that Mr Mulcaire would often not listen to voicemail messages himself, because this was mostly done by the journalists; but Mr Mulcaire would enable this to take place because he, as a “*brilliant blagger*”, would get information and data from a mobile phone company and pass this to journalists.<sup>167</sup> Alex Owens (the ex-police investigator who worked with the Information Commissioner) took a similar view in relation to the activities of Mr Whittamore, namely that he was “*gathering the numbers – he wasn’t hacking, he was definitely not into hacking, we found no evidence of that. But he was then passing them to the papers and possibly those numbers were being passed to people who hacked.*”<sup>168</sup>
- 3.63** As with phone hacking, the practice of blagging was not confined to a handful of “rogue” reporters, nor was it confined to a particular section of the newspaper market. Journalists from across the range of newspaper titles were engaged in using blagging techniques and the Inquiry heard evidence that these techniques were known, or at the very least rumoured, to be occurring widely within the industry. For example, Mr Davies in his book *Flat Earth News*, published in 2008, made reference to the fact that, by the mid-1990s, Fleet Street was employing several dozen different agents to break the law on its behalf, mostly private investigators, and a few were ordinary civilians who developed the knack of blagging confidential information out of banks and phone companies.<sup>169</sup>
- 3.64** Some examples of the practice of blagging provided by Ms Rowling and the anonymous witness HJK were addressed above.<sup>170</sup> Further examples were heard from other likely victims of the practice. The Rt Hon Alex Salmond MSP explained that he believed his bank account was accessed by the Observer newspaper in 1999 after a former Observer journalist gave him a fairly exact account of the contents of his account, that could only be known to somebody who had seen it.<sup>171</sup> Alastair Campbell gave evidence to similar effect, namely that he had received calls from his bank and telephone companies indicating individuals had tried to access his accounts.<sup>172</sup>
- 3.65** Bob Crow, General Secretary of the National Union of Rail Maritime and Transport Workers (RMT), explained how he believed someone had telephoned the DVLA stating (falsely) that a motorbike had broken down and providing the registration mark of the vehicle. That person requested from DVLA the name and address of the owner of the vehicle, and these details were provided. They were then supplied to Mr Whittamore. Howsoever this request was

<sup>166</sup> pp115-117, lines 14-4; pp118-119, lines 1-7; pp121-122, lines 3-14, Sharon Marshall <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-20-December-2011.pdf>

<sup>167</sup> pp93-94, lines 14-5, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>168</sup> pp40-41, lines 12-7, Alex Owens <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-30-November-2011.pdf>

<sup>169</sup> pp111-113, lines 6-10, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>170</sup> Part F, Chapter 3

<sup>171</sup> p16, lines 6-18, Alexander Salmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-13-June-2012.pdf>

<sup>172</sup> pp83-84, lines 25-6, Alastair Campbell <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-30-November-2011.pdf>

commissioned and what explanation was given is unknown but the information was passed on to Associated Newspapers Ltd to produce an article.<sup>173</sup>

- 3.66** Although one cannot be sure, it does not appear that there could have been a public interest justification for obtaining evidence by these means in any of the examples described. Moreover, these were not isolated instances,<sup>174</sup> but tend to illustrate the breadth of information being sought by the press: from bank accounts details, to addresses and to medical records.
- 3.67** A further notable example of the practice was provided to the Inquiry by Matt Driscoll, a journalist formerly employed by NoTW. He explained that he was investigating a story into health problems of a prominent football manager, and his then sports editor had obtained the medical records of the individual concerned. Mr Driscoll said that he was told they had been obtained through blagging techniques, and that it was possible to obtain this information through an investigator sending a fax to a GP or a hospital saying “*I’m his specialist, I need these details*”; apparently many times the information would get sent straight back. Mr Driscoll thought it unlikely the sports editor had carried out the blag himself, but noted that there were “special people” on the news desk or features desk he went to.<sup>175</sup> His evidence was further that specialist actors would be employed to obtain private information.<sup>176</sup>
- 3.68** Although it was clear that no possible public interest defence could have been run in the example provided by Mr Driscoll, it is important to reflect on the extent to which the blagging activities that have formed the evidence received by the Inquiry could generally be justified as being in the public interest. It is appropriate to commence this analysis with a number of examples of blagging which would satisfy the public interest test.
- 3.69** First, Mr Davies recalled that a senior executive at the Guardian was responsible for procuring House of Commons notepaper and writing to a hotel in Paris to obtain a copy of Jonathan Aitken MP’s hotel bill, this becoming a “*famous incident – it’s referred to as the cod fax*”. Mr Davies accepted that this conduct was blagging but, in this instance, there was clearly a public interest justification for it.<sup>177</sup>
- 3.70** Second, journalist David Leigh, at the time a reporter with the Observer, told the Inquiry that, in order to try to prove a connection between Mark Thatcher, Mr Amunyi, an arms company executive, and a defence company. Mr Leigh telephoned Downing Street asking to be put through to Mark Thatcher, impersonating Mr Amunyi. He then had a conversation about a potential arrangement between Mr Thatcher and the arms company, deceiving Mr Thatcher

<sup>173</sup> pp39-41, lines 2-22, Bob Crow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-25-January-20121.pdf>; p2, para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Robert-Crow.pdf>

<sup>174</sup> The Inquiry heard evidence from other individuals who had been victims of blagging, for example: pp20-24, lines 9-3, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>; pp11-12, lines 9-18, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-20111.pdf>; pp2-3, para 9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>; pp31-34, lines 19-5, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-20111.pdf>; pp105-109, lines 11-8, Jacqueline Hames, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-28-February-2012.pdf>

<sup>175</sup> pp13-21, lines 1-5, Matt Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-19-December-2011.pdf>

<sup>176</sup> p1, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Matthew-Driscoll.pdf>

<sup>177</sup> pp16-17, lines 15-20, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

into thinking he was Mr Amunyi. Mr Leigh defended his conduct on the basis that it was in the public interest as he was investigating impropriety of a public figure, and in this instance the defence appears to be well-founded.<sup>178</sup>

- 3.71** Jon Witherow accepted that journalists at The Sunday Times had used blagging in the past, and also impersonation techniques.<sup>179</sup> He gave some examples of cases where blagging and impersonation techniques had been used in investigations undertaken by the newspaper including: in the 1980s, to establish financial links between the striking National Union of Mineworkers and Colonel Gaddafi; in the ‘cash for questions’ articles which revealed that MPs were prepared to take money for asking Parliamentary Questions, a reporter posed as a businessman in order to deceive the MPs; and where a reporter posed as a potential donor to investigate the ‘cash for honours’ scandal.<sup>180</sup> Further, as part of an investigation into whether Labour peers were prepared to propose amendments to legislation in return for cash, reporters went undercover as lobbyists to try to obtain an amendment in return for cash. In all these cases, which have not been thoroughly investigated by the Inquiry, the potential for a public interest justification seems clear. The Inquiry is therefore content to proceed on the basis that the practices in these cases were justified as being in the public interest.
- 3.72** A number of the Core Participants have submitted to the Inquiry that conclusions of a generic nature should not be reached about the practice of blagging, for two principal reasons. First, it is pointed out that a public interest justification for the practice has been shown to exist in a significant number of examples, and might exist in many others. Overall, it is argued that the Inquiry cannot assess the evidence, and the applicability of the potential defence, with sufficient robustness to make any generic or cultural conclusions. Secondly, it is pointed out that the Operation Motorman evidence is now stale, and that the Inquiry should accept the evidence of both the current and the former Information Commissioner that the press had got its house in order and no longer deployed practices of this sort.
- 3.73** As for the first of these arguments, the Inquiry is entitled to adopt a commonsense approach. In relation to the Operation Motorman material, a consideration of the material obtained by Mr Whittamore suggests that, in the vast majority of cases, it would have been extremely difficult to mount a public interest defence. This is also no more than Mr Thomas has pointed out. In respect of what may be called genuine investigative journalism, and in cases where there was some evidence to justify a line of Inquiry which could not have been fruitfully pursued by other means, the use of blagging could have been justified; the Inquiry has provided some instances where such a conclusion would appropriately be reached. In other instances, however, the activity could better be characterised as ‘fishing’ rather than as justifiable in the public interest. And then there is a whole body of cases, indeterminate in size and range but clearly more than isolated instances, well outside the envelope of genuine investigative journalism, in which the practice of blagging is very likely to have been unlawful and almost certainly unethical. The scale of the practice cannot be quantified with precision, but all the available evidence demonstrates that it occurred on a sufficiently prevalent basis to be ‘cultural’, and worthy of adverse comment.

<sup>178</sup> pp71-77, lines 14-4, David Leigh, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-6-December-2011.pdf>

<sup>179</sup> pp11-12, lines 23-8, Jon Witherow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf>

<sup>180</sup> p7, para 28-29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf>

- 3.74** The second argument is more difficult to address for a number of reasons. In the specific context of Operation Motorman, I accept the evidence of the current Information Commissioner, Christopher Graham, that his office has received no recent complaints of breaches of the DPA by journalists.<sup>181</sup> Although he would have expected to receive complaints had relevant victims known of unlawful activity concerning them, it is the nature of the offence under this statute that it will typically be ‘silent’; after all, the evidence in Operation Motorman was only revealed after the police were conducting a criminal investigation in which they involved the Information Commissioner (in the person of Mr Owens) who picked up a thread that led to Mr Whittamore. Thus the absence of evidence does not prove a negative (namely that the practice has ceased), but it is right to point out that there is no evidence which proves that the type of conduct exemplified by the Operation Motorman material has continued in recent years.
- 3.75** Looking at blagging more widely, it is impossible to reach any firm conclusions. Blagging has been a practice of some considerable pedigree and extent. It certainly formed part of the culture, practices and ethics of the press for many years and was frequently not justified by the public interest. Is it plausible that such an ingrained practice has been totally eliminated, except where justified by the public interest? The short answer, notwithstanding the paucity of recent evidence bearing on any particular title, is no.
- 3.76** This is most assuredly not to condemn legitimate investigative journalism in the public interest in which blagging undoubtedly plays its part. This is supported by the evidence of Ian Hislop who stated *“in terms of blagging, I don’t throw my hands up at blagging. There have been some very effective blags.”*<sup>182</sup> I have no doubt that Mr Hislop is correct and that there are many instances that can be identified where blagging techniques had been used to obtain information clearly in the public interest and thus both in accordance with the law and ethical journalism. But that is not a fair portrayal of the picture.
- 3.77** Aside from the breadth and currency of the practice, little of which apparently can be seen to have any legitimate public interest justification, it is appropriate to consider the manner in which the press as a whole responded to the problem when its prevalence and the concern about it was incontestable. By way of specific example, Mr Driscoll explained that he considered the reaction to blagging in the newsroom was one of mirth.<sup>183</sup> Viewing the matter at a somewhat higher level of generality, the industry response to the Operation Motorman revelations, and its approach to the use of private investigators and enquiry agents generally, is itself revealing and is examined below in respect of various titles.

### *Mail on Sunday*

- 3.78** The Inquiry heard evidence from the then editor of the Mail on Sunday, Peter Wright, in relation to the steps taken to investigate the use of Mr Whittamore’s services following his arrest in March 2003 and charge in February 2004. Mr Wright’s evidence was that the managing editor had issued an instruction around February 2004 (although not as a direct consequence of Mr Whittamore being charged) that his services should only be used in

<sup>181</sup> p6, lines 10; p23, Christopher Graham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-26-January-2012.pdf>

<sup>182</sup> p6, lines 12-13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>

<sup>183</sup> p1, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Matthew-Driscoll.pdf>

narrowly defined circumstances, namely with authorisation from departmental heads who had to be satisfied that other means of obtaining information had been exhausted. Save for two payments made to Mr Whittamore in early 2005, Mr Wright told the Inquiry that the Mail on Sunday stopped using Mr Whittamore in September 2004.

- 3.79** It follows from Mr Wright’s evidence that the Mail on Sunday was still using Mr Whittamore, albeit within certain parameters, after he had been charged with offences relating to the unlawful acquisition of private information.<sup>184</sup> It appears from Mr Wright’s evidence that no investigations were undertaken by the Mail on Sunday to identify which journalists were using Mr Whittamore’s services, whether or not they had been procuring the commission of offences, and whether there was a public interest defence for the activities and the information being obtained.
- 3.80** Mr Wright said in his evidence “*why would I go and look for something that hadn’t been suggested to me? I mean, I could begin from the assumption that every single enquiry that we make involves illegal activity of some sort, but I can’t do that*”.<sup>185</sup> Whilst it may have been going too far to assume every enquiry made of Mr Whittamore was unlawful, there was a serious risk that in relation to some types of information, for example seeking friends and family numbers, or criminal record checks, breaches of s55 of the DPA had occurred. Certainly by the time the second report of the Information Commissioner was published in December 2006, it was clear that the types of inquiries being made, for example criminal record checks, were probably unlawful. Mr Wright went on:<sup>186</sup>

*“I was aware by the time “What price privacy?” came out that the appropriate authorities, i.e. the Information Commissioner and the police, had conducted an investigation into this, that in I think two or three cases they had found evidence that they thought warranted a prosecution, which resulted in a conditional discharge. I didn’t see the need to go over ground that they had gone over themselves, bearing in mind also that we didn’t have and weren’t shown the evidence, Whittamore’s log books, on which the Information Commissioner based his research.”*

- 3.81** Without criticising Mr Wright, whereas the Information Commissioner and the police had investigated Mr Whittamore and a number of his associates, those entities had not investigated the activities of any journalists. Had there been any such investigation, the employers of the journalists involved would have been made aware. It follows that an investigation by the Mail on Sunday into the activities of its journalists would not have been going over “old ground” but would have the potential to uncover new ground. The Mail on Sunday accepted the overall findings of the Information Commissioner which included that 33 Mail on Sunday journalists had used Mr Whittamore for 266 transactions. In April 2007 the Mail on Sunday banned the use of all external search agencies.<sup>187</sup>

<sup>184</sup> pp91-110, lines 14-11, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>; pp7-8, lines 10-17, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-11-January-2012.pdf>

<sup>185</sup> p93, lines 13-17, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

<sup>186</sup> p94, lines 14-24, Peter Wright, *ibid*

<sup>187</sup> pp91-110, lines 14-11, Peter Wright, *ibid*; pp7-8, lines 10-17, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-11-January-2012.pdf>

*Daily Mail*

**3.82** Paul Dacre explained in evidence that, whilst he was aware of the use of Mr Whittamore from around 2004/2005, he was not aware of the extent to which his services were being used by journalists at the Daily Mail. Mr Dacre was asked to explain why he did not initiate an investigation at this time into the extent to which Mr Whittamore’s services were being used by the Daily Mail’s journalists. He replied:<sup>188</sup>

*A. I don’t think that’s fair because everybody – everybody, every newspaper – and I see the BBC spent nearly as much on enquiry agents as we did – was using him. We didn’t realise they were illegal. There was a very hazy understanding of how the Data Protection Act worked and this was seen as a very quick way of obtaining phone numbers and addresses to corroborate stories.*

*Q. Regardless of what other bodies might have been doing with search agencies, we’re talking about what the Daily Mail was doing with Mr Whittamore, who, after all, had had his collar –*

*A. Well, I mean – no, but I mean all newspapers were using – virtually all newspapers were using Whittamore.*

*Q. Are you saying that that would be a reason for the Daily Mail not carrying out a proper investigation into the extent of the possible illegality, Mr Dacre?*

*A. Well, it’s very difficult to say that. The story of Operation Motorman barely registered on the consciousness. I don’t think it made much in the papers. One was aware of it, I suspect, that the man had been given a conditional discharge. All newspapers were still using this agency. I repeat: we thought it was – we believed and the journalists believed that it was to get phone numbers quickly. I’m not sure an investigation at that stage was warranted.*

*Q. Regardless of how quick and efficient this might have been as a means of obtaining information, the concern, of course, is that this mode of information-gathering was illegal. Didn’t that cause you greater concern, Mr Dacre?*

*A. We didn’t believe it was illegal. Our journalists were asking for information and I’m not sure that the implications of the Data Protection Act were understood at that stage.”*

**3.83** This was revealing evidence on account of the light it throws on the culture, practices and ethics of the press. The argument that most other national newspapers were also using Mr Whittamore’s services does not tend to demonstrate the legality of the practice. At best, this is a neutral factor which ought not to have engendered any degree of complacency. The fact that no other newspaper carried out an investigation into what their journalists knew as to Mr Whittamore’s methods, despite their obvious wherewithal to do so, is a solid pointer to the ambient culture.

**3.84** Although Mr Dacre does not merit being singled out in this regard, his belief that his journalists were acting lawfully is something of a concern and certainly ought to have been put into question by the Operation Motorman disclosures. Notwithstanding that data protection was somewhat of a Cinderella subject ten years ago, it is somewhat surprising that extensive newspaper operations, which clearly were involved in handling data all the time, had not

<sup>188</sup> pp49-50, lines 11-20, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

ensured that they were sufficiently briefed on the implications of the data protection regime when the Act was passed; and this is to say nothing of what newspaper titles ought to have done to investigate the implications of the Motorman disclosures.

**3.85** The second report published by the Information Commissioner placed the Daily Mail at the top of league table, with some 958 transactions which were claimed to have been identified positively as illegal, involving 58 journalists. In the aftermath of this report, Mr Dacre took a numbers of steps to respond to these revelations, including: writing provisions requiring compliance with the DPA into the contracts of journalists employed by the Daily Mail; holding seminars to give training to journalists on this issue; and contacting all third parties that had been used for research and information, including genealogists, tracing and search agencies, credit reference and information agencies and Inquiry agents by the Daily Mail, and asking each for an assurance in writing that their operations complied with the DPA.<sup>189</sup> Further, in April 2007 Mr Dacre banned the use of search agents by the Daily Mail. Since that time, four named organisations have been approved for use by the newspaper, namely a genealogical research agency, a credit information company for business information and two tracing agencies.<sup>190</sup> The Daily Mail’s actions between December 2006 and April 2007 were entirely appropriate and responsible.

**3.86** Mr Dacre summarised his evidence in the following way:<sup>191</sup>

*“All I am try to tell you is that when I did know the extent of it, I moved decisively and ruthlessly to stamp it out. Other newspapers didn’t and we did”.*

and

*“In 2007 the Daily Mail brought the shutters down and banned absolutely the use of the Whittamore enquiry agencies”.*

**3.87** Mr Dacre’s reference to what other newspapers were not doing will be addressed in due course. In relation to the Mail titles, the issue of whether the shutters have indeed been wholly brought down has been disputed on behalf of the Core Participant Victims.

**3.88** First, it is said that the Whittamore data may still be located in the offices of Associated Newspapers Ltd, because it is common ground that no positive steps have been taken to locate and erase it. That said, given the evidence that such data was not filed electronically but jotted down in journalists’ notebooks, this appears unlikely and, in any event, is very difficult to investigate. Second, it is pointed out that some of the journalists using Mr Whittamore’s services a decade ago are still working for the company in more senior positions. Even so, in fairness to Associated Newspapers Ltd, I accept that it would have been impossible to investigate or discipline employees so many years after the events in question. A fairer criticism of these titles relates to the lack of any investigation at an earlier stage.

### *Northern and Shell*

**3.89** Peter Hill, editor of the Daily Express from December 2003 to February 2011, said in evidence to the Inquiry that he was not aware of the Information Commissioner’s reports, could not recall reading them, nor did he consider they were relevant on the basis that the Daily Express

<sup>189</sup> p14, para 42-45, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf>

<sup>190</sup> p14, para 42-45, *ibid*

<sup>191</sup> p62, lines 19-22; p49, lines 3-5, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

had never used “*anything of that kind*”. This does not precisely tally with the Information Commissioner’s report which identified that a handful of journalists from the Daily Express had sought information from Mr Whittamore on around 20 occasions. Mr Hill accepted that the more accurate position was that he had no idea whether private investigators were ever used by the Daily Express and there was no evidence to suggest that an investigation had taken place.<sup>192</sup>

**3.90** The lack of knowledge of the extent to which private investigators and search agencies had been used at the Daily Express resonated with evidence relating to the Daily Star. Dawn Neesom, current editor of the Daily Star, acknowledged that she had not been aware that search agencies had been used until this had been brought to her attention by her legal team, and acknowledged that it had surprised her that these methods had been deployed.<sup>193</sup> She explained that, at the Daily Star, the lineage sheets showing payments made were signed off by the deputy editor and these did not come to her attention. It was also apparent from Ms Neesom’s evidence that the corporate governance system at the Daily Star essentially consisted of what she described as a financial system and a staff handbook; there were no processes or procedures in place to ensure transparency of conduct and accountability for methods used to obtain information, with the sums paid for this purpose. In answer to a question directed to the adequacy of corporate governance at the paper, Ms Neesom conceded:<sup>194</sup>

*‘I think there might be some truth in that. Our system would throw up things financially, I think, as Nicole discussed earlier on, and on the lineage sheets those things would come up. On the Daily Star, the lineage sheets are always signed by my deputy editor, I don’t sign them, and as I said, the figures seemed to be £50, £70 here and there, so it’s not something that would come to my notice in that way.*

**3.91** Ms Neesom explained that the current system was under review, in particular a proposal to introduce some training for new journalists joining the team.

**3.92** Ms Patterson, explained in her evidence that an internal investigation had been commenced in July 2011 in relation to phone hacking, blagging and associated activities from 2000.<sup>195</sup> Ms Patterson said that she had asked news editors and other editors and deputy editors for names of search agents or private investigators that had been used and these names were searched in the accounts.

**3.93** Whilst Ms Patterson stated she felt she had done what she could, she acknowledged that the internal investigations into the use of search agencies and private investigators had not been straightforward. Ms Patterson explained that she had encountered problems in trying to marry up the payments made, often in the region of £75 or £90, with particular information, noting that whilst the invoices may contain the heading of the article it was not always apparent what information had been the subject of the request. She explained that it was almost impossible to match up the activities of Mr Whittamore’s company with the financial records and any particular journalists. She said that where fixed fees appeared regularly, for example £75, these appeared to relate to searches for the same type of information. However, where fees were higher, sometimes more than £1,000, she understood that this was a different type of search, or subject to negotiation.

<sup>192</sup> pp14-15, lines 3-18, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>193</sup> pp43-45, lines 8-15, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>194</sup> p44, lines 16-23, *ibid*

<sup>195</sup> pp6-20, lines 1-5, Nicole Patterson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

**3.94** Ms Patterson was not aware if JJ Services (one of Mr Whittamore’s companies) was still being used by Northern & Shell at present, although an examination of the records demonstrated that it was being engaged as recently as 2010.<sup>196</sup> When asked to explain why Northern & Shell had still been using the services of Mr Whittamore in recent years, Ms Patterson said:<sup>197</sup>

*‘It’s a matter for the news editor and the editor. It’s not something that is within my remit, I’m afraid, and I can’t speak for them.*

*Q. No, you can’t. Have you drawn these matters to the attention of the news editor and the editor?*

*A. Yes.*

*Q. And what advice – you don’t have to tell us the advice.*

*A. No.*

*Q. But I think what you can tell us is whether this is being pursued with Mr Whittamore?*

*A. I can’t tell you that.*

*Q. Okay. You can’t because you won’t or because –*

*A. No, because I don’t know’*

This was another revealing answer. It speaks for itself.

**3.95** Ms Patterson was not able to assist with the nature of the information that was being obtained by the search agencies, and also highlighted that it was in the circumstances difficult to identify what sums had been paid for precisely what services: for example, a sum was sometimes quoted as a “day rate”, and it remained unclear to what this rate related.<sup>198</sup> In my view, these investigations could have been pursued with more success if the five search agencies that had been used had been contacted with a request to provide a detailed explanation of the work completed for Northern & Shell, the methods deployed in each case and sources used to attain information. However Ms Patterson explained this had not been done.

**3.96** Paul Ashford, group editorial director of the Northern & Shell companies, explained that he was not aware of the Information Commissioner’s reports until around 2010.<sup>199</sup> He explained that he had some concern as to whether any inappropriate action had taken place, but he was informed by the legal department that agencies had been used as a means of finding out contact information, so it was “*fairly low profile stuff*” and he was not overly concerned about this. The fact that the Daily Express was still using Mr Whittamore as late as 2010 was not brought to his attention.

**3.97** In terms of payments, Mr Ashford explained that the invoices primarily showed amounts of £75 or £90, but in some cases there were invoices for £1,000. Surprisingly, there was no mechanism for determining precisely what the £1,000 was purchasing: for example, whether this was the total of the searches conducted on one day, or on a number of days, or simply one request. Mr Ashford accepted that the systems were, rightly, being reviewed and it would be a good idea to have a system where it was possible to see with enough detail what has been purchased.

<sup>196</sup> p14, lines 25, *ibid*

<sup>197</sup> pp15-16, lines 18-5, *ibid*

<sup>198</sup> pp18-19, lines 24-3, *ibid*

<sup>199</sup> pp32-35, lines 22-14, Paul Ashford, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

### *News International*

- 3.98** Mr Witherow, confirmed that one journalist at The Sunday Times had made use of Mr Whittamore for four tasks. Certain investigations had been undertaken which revealed that one such task was to trace the phone number of a former Home Office official who could not be contacted through the Home Office. However, these investigations had not been easy as the individual had left the newspaper.<sup>200</sup>
- 3.99** Two points ought to be made about this. First, the extent of the problem at The Sunday Times had been minor, given that it only related to four cases. Second, this newspaper did more than others to carry out an investigation.
- 3.100** Thomas Mockridge, chief executive officer of NI, explained that the newspapers under his wing did not now employ private investigators (whom he defined as individuals who sought to obtain information not otherwise in the public domain), save in circumstances where a request was made by an editor to Mr Mockridge and consent was given. He explained he had not given approval for the use of private investigators to date. In relation to search agents (whom he defined as agencies obtaining information from publicly available records), these were subject to the general governance of the company and were restricted in the ways they operated, being held to the same standards as employees. Mr Mockridge accepted that the methods being used by search agencies may require positive control by the newspaper and ongoing attention to ensure the methods used were satisfactory.<sup>201</sup>

### *Trinity Mirror*

- 3.101** Mr Embley, who was appointed acting editor of the People in November 2007, some 12 months after the publication of the Information Commissioner's second report, said in evidence that he was unaware whether any investigations had been carried out as to whether or not transactions by People journalists with Mr Whittamore were legal or illegal. Mr Embley accepted that historically there had been a failure on the part of the media generally to respond to warnings; however, in relation to the People specifically, his evidence was to the effect that nothing had been done to react to warnings because he felt that no action was required.<sup>202</sup>

## Conclusion

- 3.102** In reflecting upon what steps have been taken between the publication of the Information Commissioner's Reports in 2006 and the present, both to investigate the use of private investigators and cash payments and improve governance structures to prevent the continued use of unethical practices, it is clear that different newspaper groups have adopted varying responses. That said, it is possible to draw at least two conclusions from the evidence heard by the Inquiry.

<sup>200</sup> pp13-14, lines 19-13, Jon Witherow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf>

<sup>201</sup> pp49-51, lines 5-15, Thomas Mockridge, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>

<sup>202</sup> pp47-50, lines 22-2, Lloyd Embley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf>

- 3.103** First, a number of newspapers were very slow off the mark to respond to the fact that Mr Whittamore was arrested in 2003, and charged in 2004, for offences relating to the unlawful acquisition of private information. The majority of newspapers continued to use Mr Whittamore and his companies after his arrest, and in those circumstances there must have been at least some risk that journalists engaging him might have been receiving information which had been unethically, if not unlawfully, obtained. The Inquiry has received no evidence that newspapers sought express written assurances from Mr Whittamore explaining his new *modus operandi* and confirming that his operation would now be both ethically and lawfully carried out.
- 3.104** The arrest of Mr Whittamore in 2003 and subsequent charge, compounded by the knowledge (in some cases) that his services were being used, merited an investigation by newspapers as to the circumstances in which his services had been commissioned, the nature of the information obtained, the extent to which he continued to be used and the nature of his current methods. Notwithstanding that such investigations should have been conducted earlier, the Information Commissioner's second report was another reminder which should have set in train detailed investigations into these issues.
- 3.105** Second, it is clear that, in relation to those newspaper groups that did undertake belated investigations into the use of private investigators, difficulties were encountered in trying to marry up invoices with the precise information that had been supplied to the journalists, or the methods used. These difficulties point to deficiencies in financial systems and corporate governance which require to be addressed.

## Surveillance

- 3.106** For many celebrities and people in the public eye, being photographed on a daily basis is commonplace. Whilst some of this publicity may be encouraged for the purpose of promoting causes or creating positive publicity, other elements of photography is not welcomed. The Inquiry has heard evidence from a number of witnesses in relation to photographers being a constant presence outside their homes. By way of example Mr Coogan said that over a period of ten years photographers had frequently camped outside his house day and night.<sup>203</sup> The Inquiry has also heard of individuals being pursued by the paparazzi. Ms Miller in her evidence explained:<sup>204</sup>

*"I would often find myself – I was 21 – at midnight running down a dark street on my own with ten big men chasing me and the fact that they had cameras in their hands meant that that was legal, but if you take away the cameras, what have you got? You've got a pack of men chasing a woman and obviously that's a very intimidating situation to be in."*

- 3.107** For the majority of these individuals the presence of photographers is known and obvious, indeed in some cases oppressively so. However, the Inquiry has also heard evidence that covert surveillance of individuals took place by the press, either directly by journalists or indirectly through the use of intermediaries, in particular private investigators. The Inquiry heard evidence from a variety of people to the effect they had been placed under surveillance

<sup>203</sup> Mr Coogan had been told by Mr Paul McMullan, then of the News of the World had that he used to sit outside his house. pp11-12, lines 9-18, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-2011.pdf>

<sup>204</sup> p24, lines 12-18, Sienna Miller, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>

by newspapers; these individuals included celebrities and their friends and family,<sup>205</sup> politicians,<sup>206</sup> but also individuals who were not obviously public figures.

- 3.108** The evidence relating to the NoTW's employment of Derek Webb as a private investigator has been discussed in detail elsewhere.<sup>207</sup> In the period spanning eight years, Mr Webb, a former police officer, placed approximately 150 people under surveillance on instruction from NoTW, including a number of celebrities, MPs, sportsmen and members of the public who were connected with famous individuals but were themselves of no particular interest. He estimated roughly 85% of his time was spent investigating celebrities and MPs, and most of the instructions related to stories on the topic of sexual relationships, affairs and intimate relationships. In some instances, celebrities would be subject to surveillance over a period of up to two weeks by following them by car or on foot, or "*solely watching them day in, day out*". In one case a wife of a footballer was under surveillance for one month. Mr Webb's evidence corresponded with that of Neville Thurlbeck in these respects.<sup>208</sup>
- 3.109** Other examples of surveillance include that described by Mr Shear, a lawyer who was followed by journalists and photographers when attending to a client at a secret meeting place.<sup>209</sup> Similar evidence was given by Jacqueline Hames who together, with her husband David Cook, was a serving police officer placed under surveillance by NI. This surveillance took the form of persons working in two vans, and on one occasion a van followed Mr Cook with his son and daughter to school. The NoTW's alleged justification for this surveillance was that it was suspected they were having an affair together, a position that lacked any credibility given that Ms Hames and Mr Cook had been married for some years and had two children. Ms Hames has suggested other motives for the surveillance,<sup>210</sup> but the Inquiry was unable, in the time available, to come to any firm conclusion on those alternative motives. In any case, the impact on Ms Hames was significant: it provoked considerable anxiety, had significant consequences for her private life and her distress was evident in the course of her evidence to the Inquiry.<sup>211</sup>
- 3.110** The damage that can be occasioned by covert surveillance, particularly where surveillance cuts across police investigations, was also highlighted to the Inquiry. David Harrison was an intelligence officer working for the Serious Organised Crime Agency (SOCA) investigating the

<sup>205</sup> Hugh Grant and Ms Hong (Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf> ; p1 para 6 –p2 para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-Mark-Thomson.pdf>), p12 lines 3 – p13 lines 4, p14 lines 17 – p16 lines 8, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>; p25 lines 11 – p35 lines 10, Sienna Miller, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>; and generally p87 lines 16-19 and p88 lines 17-20, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>206</sup> The Inquiry also heard evidence from Alastair Campbell as that invoices had been discovered as part of police investigations suggesting the Mirror had paid private investigators to place him, a member of his family, and Peter Mandelson under surveillance: p69, lines 2–6, Alastair Campbell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-30-November-2011.pdf>

<sup>207</sup> Part F Chapter 4

<sup>208</sup> pp26-35, lines 25-5, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-12-December-2011.pdf>

<sup>209</sup> pp51-52, lines 4-13, Graham Shear, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>210</sup> pp70-71, lines 23-7; pp97-103, lines 4-11, Jacqueline Hames, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-28-February-2012.pdf> ; pp12-16, para 29-40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Jacqueline-Hames.pdf>

<sup>211</sup> pp12-16, para 29-40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Jacqueline-Hames.pdf>

murder of five young women in Ipswich. SOCA was assisting Suffolk police with surveillance of potential suspects. Mr Harrison was informed that NoTW had deployed a surveillance team to identify the SOCA officers and, on at least two occasions during the course of his surveillance work, observed vehicles undertaking surveillance of the SOCA team. Mr Harrison conveyed his concerns that the activities of NoTW could have jeopardised the police investigation because the efforts of the SOCA team in trying to avoid being subject to surveillance themselves by the newspaper distracted them from trailing a suspect and further weakened their ability to look for evidence.<sup>212</sup>

**3.111** Mr Harrison made other claims about a surveillance team from the Sunday Mirror who were seeking to pick up the suspect and take him to a place where he could be debriefed. However, the evidence in relation to such a team was unclear, and the Inquiry is satisfied on the basis of submissions made by counsel for Trinity Mirror that it did not exist.<sup>213</sup>

**3.112** Inevitably in relation to an issue of this sort, the Inquiry may have received a somewhat one-sided impression. It is quite possible that surveillance has on occasion been justified in the public interest, both in terms of the decision to deploy the technique and the resultant story. That said, the Inquiry received little evidence from newspapers containing concrete examples of what might be described as ‘good practice’ in this regard. What is more likely is that the use of surveillance in individual cases has often led to newspapers deciding not to print stories, either because such surveillance specifically contradicted the story that was being planned, or because it failed to prove the matter one way or the other. The evidence from the photographer Matt Sprake was very much along these lines. One might think that the ethical issues which arise are likely to be more nuanced in these circumstances: the absence of a story means, by definition, that nothing has been placed in the public domain, but questions still fall to be asked about the basis for the decision to use an intrusive technique in circumstances where the ultimate goal may, in many cases, only be a story devoid of a public interest.

**3.113** Mr Sprake’s evidence was alarming in two respects. First, he provided a ‘worklog’, evidencing the fact that he had been commissioned by a number of titles (but predominantly by the People) to carry out covert surveillance and/or photography on over 300 different subjects between July 2010 and June 2012.<sup>214</sup> Consistent with Mr Webb’s worklog, the majority of the jobs appeared to relate to celebrity gossip and therefore the subterfuge was unlikely to have been justified in the public interest. Second, his oral evidence was of particular concern inasmuch as he appeared not to recognise that he had ethical judgments to make in carrying out his tasks. When asked about the ethics of one particular example of covert photography, he said: *“I think it’s an answer for the newspaper, really, rather than us. We’re tasked to provide the evidence.”*<sup>215</sup>

<sup>212</sup> pp3-9, lines 23-16, David Harrison, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>. Simon Ash confirmed his evidence that during the investigation that a newspaper picked up a suspect and took them to a hotel and interviewed him whilst they were under police surveillance. Chief Constable Ash of the Suffolk Police explained in his evidence he was unable to find any information to support the face that News of the World were deploying surveillance teams against police surveillance teams who were following suspect, but there was no evidence to contradict this account. pp31-32, lines 15-4, Simon Ash, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>213</sup> pp104-106, lines 20-6; pp121-123, lines 15-25, Mr Browne, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>214</sup> pp3-10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Matthew-Sprake.pdf>

<sup>215</sup> pp39-40, lines 20-15, Matthew Sprake, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-18-July-2012.pdf>

**3.114** In relation to the evidence which the Inquiry has specifically considered, it does appear that, in respect of the vast majority of the instances in which surveillance has been used, inadequate consideration has been given to whether such surveillance is itself justified in the public interest, let alone whether it is likely to produce any relevant information which goes to a story which is being contemplated. Some of the surveillance appears to have been commenced on a purely speculative basis in the hope that some fragments of interesting material might be obtained if a person is trailed for long enough, and in the many examples the Inquiry saw of surveillance commissioned with a particular purpose in mind, there was in any event no public interest justification for the surveillance in the first place.

## Theft and misappropriation of property consisting of or containing private information

**3.115** Another method at one stage used by the press to obtain private information was misappropriation and theft of property.

**3.116** One practice which appears to have been used frequently was the searching of refuse outside the homes of persons of interests to newspapers, or “binnology” as it has become known. In particular, the Inquiry heard that newspapers engaged the services of Benjamin Pell (known as Benjy the Binman) to search for documents and other information in rubbish bins outside the homes and offices of celebrities, and the offices of their accountants and lawyers.<sup>216</sup>

**3.117** Mr McMullan told the Inquiry *“I think most journalists, me included, would find the contents of people’s bins incredibly interesting .... it gives you such a great starting point, much better, actually, than hacking a phone because that almost tips them off that you’re looking...”*<sup>217</sup> In an article written in 2006 “Scandal on Tap”, Mr Leigh explained that he *“did not turn up [his] nose when the notorious Benjy the binman emptied a bag of stinking rubbish onto [his] carpet. He wanted to show [him] incriminating statements about Saudi arms deals which a City law firm had been too idle to shred before putting out on the street for collection.”*<sup>218</sup> However, Mr Leigh also made it clear that he also had a look at other rubbish which might also have contained material relevant to a public interest story.

**3.118** Mr Morgan explained that he had engaged the services of Benjy the Binman on several occasions, including one where he was presented with sacks which were full of documents relating to Elton John; this included bank statements and had been obtained from the bins of Mr John’s manager. Mr Morgan considered that this conduct was not illegal and was on the cusp of being unethical.<sup>219</sup>

**3.119** The rummaging through bins was practised both in relation to celebrities but also offices of newspapers and magazines. Mr Hislop, for example, explained that the bins outside Private Eye had been searched and that, in due course, an article which probably derived from that rubbish appeared in one magazine.<sup>220</sup> Mr Campbell told the Inquiry that he would wake

<sup>216</sup> pp50-54, lines 25-1, p62, lines 6-14, Piers Morgan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>

<sup>217</sup> pp85-86, lines 17-11, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>218</sup> pp84-88, lines 16-15, David Leigh, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-6-December-2011.pdf>

<sup>219</sup> pp50-54, lines 25-1; p62, lines 6-14, Piers Morgan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>

<sup>220</sup> p7, lines 5-18, Ian Hislop, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>

up in the night with people going through his bins and Mr Coogan had experienced similar instances with people going through his bins early in the morning.<sup>221</sup> The searching of bins has also proven to be a mobile operation, and one that is not defunct. In June 2011, an individual journalist who stated that he was working as a freelancer for The Sunday Times was found going through the bins at the venue holding the AGM for the RMT hoping to acquire information.<sup>222</sup>

- 3.120** The misappropriation of property is not confined to extracting documents out of bins, but includes the theft of photographs and physical items, such as diaries.<sup>223</sup> Mr McMullan explained that he had been involved in the blagging his way into a property in France, stealing a photograph off the mantelpiece, copying it and printing it in the NoTW.<sup>224</sup> The basis for this misappropriation appears to be that it had not been possible to find a photograph in the public domain of the relevant individual. This conduct appears to be a gross invasion of privacy; whether it was a breach of the criminal law has not been investigated. Further, Tom Rowland in his evidence explained that many photographs continued to be stolen today, albeit electronically, where watermarks and copyrights were sliced off the bottom of photographs and used by newspapers.<sup>225</sup>
- 3.121** That said, it is critically necessary to retain a sense of proportion, and consider the extent to which these types of practices still represent part of the culture, practices and ethics of the press. Whereas ‘binnology’ and kindred practices did form part of the culture in the past, it is correct to say that there is insufficient evidence that it still occurs to any significant extent and, equally, insufficient material from which that inference might be drawn.

## Bribery and corruption

- 3.122** The evidence relating to the practice of inducing or seeking to induce public or corporate officials to disclose confidential information in return for payment is considered in detail elsewhere in this report in the context of Operation Elveden.<sup>226</sup> Given the present state of the criminal investigation, it is not possible to reach any conclusions of a generic nature, although the extent of the criminal investigation and the large number of arrests made is undeniably a cause for concern. Further, it is worth noting briefly in this context that a number of journalists

<sup>221</sup> pp13-14, lines 16-2, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-2011.pdf>

<sup>222</sup> pp52-54, lines 12-18, Bob Crow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-25-January-20121.pdf>; p3, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Robert-Crow.pdf>

<sup>223</sup> See the evidence relating to the provenance of the McCann diaries and the theft of diaries of Harold Shipman from his widow: pp49-52, lines 15-1, Kate McCann, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>; pp81-84, lines 14-20, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-14-December-2011.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Third-Witness-Statement-of-Colin-Myler.pdf>; pp74-82, lines 23-4, Daniel Sanderson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-20111.pdf>; pp63-69, lines 19-4, Ian Edmonson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>; pp45-46, lines 21-16, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf>; p43, lines 16-23, Lord Black, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf>

<sup>224</sup> pp69-70, lines 1-23, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>225</sup> pp5-6, lines 14-17, Tom Rowland, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-23-November-2011.pdf>

<sup>226</sup> Part E, Chapter 5

indicated to the Inquiry that they had previously paid officials for information,<sup>227</sup> although in each instance reliance would no doubt have been placed on the public interest.

**3.123** Given the inevitable paucity of the information available which relates to each of these cases, and notwithstanding that neither the Bribery Act 2010, its predecessor legislation, nor aiding and abetting misconduct in public office contain a public interest defence, I make no comment on this evidence; I merely note that it was given. The Inquiry heard evidence of a somewhat historical nature that, at some newspapers, it was expected that crime reporters would pay sums of money to police officers in exchange for information. The evidential picture is incomplete but, again, the current state of the evidence does not enable any conclusions of a generic nature to be reached.

## Conclusion

**3.124** I have concluded that the evidence seen and heard by the Inquiry is inconclusive, or insufficient, to find that bribery and corruption, blagging, theft and/or email hacking are cultural problems within the press today but there is sufficient arising out of what has been said and the present criminal investigation to merit concern. Further, the evidence of these practices, limited though it is, does support a wider conclusion that there is a cultural problem within parts of the press with regard to the use of unethical methods to acquire private information.

**3.125** The slow and often inadequate response by large parts of the press to the widely known practice of phone hacking, considered alongside the inadequate response to the Operation Motorman revelations, indicates an industry which, in general, did not find it noteworthy or particularly problematic that parts of the press were regularly breaching individual privacy, not to mention the criminal law. In addition, the fact that large parts of the press continue to employ private investigators to carry out covert surveillance without any clear public interest supports the conclusion that, notwithstanding the evidence that phone hacking is likely to have ceased as a method employed by journalists, the press retains a casual (or less than robust) attitude to the use of unethical methods of acquiring private information.

## 4. Breach of confidence and misuse of confidential and/or sensitive information

**4.1** In addition to the evidence demonstrating that the press has accessed private information from individuals either unlawfully or unethically, the Inquiry heard significant evidence of *misuse* of that private information. That misuse has taken place in two ways: first, through the unlawful trade in confidential and/or private information, and second, through the unjustified publication of that information.

**4.2** As discussed above, Operation Motorman revealed an extensive trade in confidential data. Although there is evidence to suggest that that trade has significantly diminished, there are reasons to believe that at least a limited trade continues.

<sup>227</sup> pp20-21, lines 5-11, Kelvin Mackenzie, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>; pp62-64, lines 23-8, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>; pp101-102, lines 14-9, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

- 4.3** Notably, during the course of the Inquiry, the Guardian reported on the illegal trade of passenger flight information from an employee at Virgin Atlantic to the picture agency Big Pictures.<sup>228</sup> The article revealed that over the course of some considerable time (which subsequently turned out to be a period of approximately two years),<sup>229</sup> an employee within Virgin Atlantic had regularly disclosed to someone within Big Pictures the personal flight information of over 60 different celebrities. The strong inference was that Big Pictures used that information as an advantage over competitors when arranging for photographers to pursue celebrities on holidays and other trips abroad.
- 4.4** Jillian Anne Brady, on behalf of Virgin Atlantic, told the Inquiry that Virgin’s internal investigation had confirmed the flow of confidential information from Virgin to Big Pictures; she also confirmed that the employee in question had left her employment and that Virgin had reported to the ICO what had happened in its own operations.<sup>230</sup> It must be said that the response by Virgin Atlantic to the revelation was exemplary, and there seems to have been very little more that the company could have done to prevent the disclosure. By contrast, the same cannot be said of Big Pictures: for “legal reasons” they declined to provide the Inquiry with any further evidence of what had taken place.<sup>231</sup>
- 4.5** The disclosure of personal flight information from an airline to a picture agency is both unethical and unlawful and is consistent with the practices identified in Operation Motorman. Notwithstanding the evidence from editors which suggested that the trade in private and confidential information had declined substantially since Operation Motorman, what happened between the Virgin and Big Pictures gives cause for concern and the fact must be that there is a market for pictures taken as a result. I doubt that it is the only recent example of a trade in confidential information in which the press has an interest, and there is an undoubted risk that a picture agency (or the paparazzi) will be used, whether knowingly or not, as surrogates for the press.
- 4.6** Thus, it will not be a journalist who obtains the information that provides the intelligence to lead a photographer to a picture but it will be the photographer who does so, then selling the picture to the press with exactly the same outcome. Although the evidence received by the Inquiry did not establish that the press remain complicit in a trade in private and confidential information, the picture appears to be complex. The evidence did suggest that third parties remain involved in the trade of confidential information, and then sell products based on that trade to the press. Ultimately, the press do remain responsible for the content it publishes and therefore must remain on guard to ensure that information or photographs provided by third parties were obtained ethically.
- 4.7** Although there was no clear evidence that the press remain directly involved in the trade in confidential information, there was ample evidence to suggest that large parts of the press were willing to publish confidential, private or sensitive information, without regard to the impact on the individuals concerned and without consideration of the public interest. The NoTW’s publication of Dr McCann’s diaries is a prime example of this,<sup>232</sup> as is the publication of photographs, and the personal blog, of Sebastian Bowles after his death.<sup>233</sup>

<sup>228</sup> pp4-5, Jillian Brady, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Exhibit-JAB-11.pdf>

<sup>229</sup> p4, para 18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Witness-Statement-of-Jillian-Anne-Brady1.pdf>

<sup>230</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Witness-Statement-of-Jillian-Anne-Brady1.pdf>

<sup>231</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Witness-Statement-of-Nigel-Regan-taken-as-read.pdf>

<sup>232</sup> Part F Chapter 5

<sup>233</sup> Part F Chapter 5

- 4.8** The Inquiry heard many other examples of the publication of confidential material. Mr Clifford gave evidence of the publication, without consent, of private photographs of Rebecca Leighton, the nurse falsely accused of poisoning patients at Stepping Hill Hospital. Photographs of Ms Leighton in fancy dress were allegedly taken from her Facebook account and used in articles to suggest her guilt.<sup>234</sup> Similarly, Ms Mills told of how confidential details of her divorce settlement appeared in the national press.<sup>235</sup> And Ms Rowling gave evidence of the publication of excerpts of a stolen advance copy of one of her novels.<sup>236</sup> None of these examples of the publication of obviously private, confidential, or copyrighted material was justified in the public interest.
- 4.9** Further evidence of a willingness within the press to publish confidential or private information came from the examples of newspapers revealing pregnancies, or rumours of pregnancies, prior to the 12 week period prescribed by the Editors' Code. The first pregnancies of both Ms Diamond and Ms Church were revealed by the tabloid press before they had even informed their families.<sup>237</sup> Ms Witchalls' pregnancy (of only five weeks gestation) was revealed while she was unconscious and before she or anyone other than her medical team and immediate family knew about it.<sup>238</sup> That kind of disclosure in the national press is not only a breach of the Editors' Code but displays a complete disregard for individual privacy, and a lack of respect for inherently private and sensitive information.
- 4.10** A similar type of disclosure which caused significant distress for a number of witnesses was the disclosure by newspapers of a person's address, or of sufficient information to allow a reader to identify the person's address. While an address is not necessarily confidential, it is ordinarily private and is certainly sensitive. For a number of witnesses, the disclosure of their addresses in the national press occurred with no reasonable justification and gave rise to very real concerns for personal safety. Ms Church's address was disclosed at a time when she was the subject of death threats.<sup>239</sup> Ms Rowling's address was revealed along with the details of her the security features which she had deployed.<sup>240</sup> Ms Diamond's address was published, along with a complete layout and description of her home. As Ms Diamond wrote: "*it was a complete burglar's charter*".<sup>241</sup> Chris Bryant MP also had his address published in a national newspaper. In his witness statement, which described the publication of a story revealing his appearance on a gay dating website, he wrote:<sup>242</sup>

*"As the Mail on Sunday had also published my address, I also acquired a stalker who followed me home from the tube and sent me a series of lurid letters. On one occasion he called my landline (which was ex directory) at two in the morning and told me he was standing outside the front door to my flat. I rang the police and had him removed."*

<sup>234</sup> p2, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Max-Clifford.pdf>

<sup>235</sup> p12, para 39-40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Supplemental-Witness-Statement-of-Heather-Mills.pdf>

<sup>236</sup> pp79-82, lines 1-15, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

<sup>237</sup> para25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf> ; para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Anne-Diamond1.pdf>

<sup>238</sup> pp18-19, lines 19-25, Baroness Hollins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-2-February-2012.pdf>

<sup>239</sup> pp19-20, lines 14-17, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-20111.pdf>

<sup>240</sup> pp38-39, lines 12-12; pp65-74, lines 22-16, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20111.pdf>

<sup>241</sup> pp66-67, lines 1-19, Anne Diamond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-20111.pdf>

<sup>242</sup> p7, para 19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-by-Chris-Bryant-MP.pdf>

- 4.11** What is clear from all of these examples – the publication of confidential material without consent, the revelation of pregnancies before individuals had told friends and families, and the publication of individuals’ home addresses – is that the publication of stories which on any reasonable analysis may fairly be described as inconsequential can cause very real harm to the individuals concerned.
- 4.12** Perhaps the most egregious instances of the disclosure of confidential information were the four examples heard by the Inquiry of a willingness of the press to disclose private medical information. This type of information is deserving of the highest protection. The story surrounding the revelation of the condition of the Rt Hon Gordon Brown’s son is discussed in detail above.<sup>243</sup> Second, Mr Grant referred to two episodes in which his private medical information was published. In 1996, the Daily Mirror reported his visit to see a specialist at Charing Cross hospital and included within the story his diagnosis and treatment. More recently, in March 2011, his visit to the A&E department at Chelsea and Westminster hospital was reported in The Sun and the Daily Express.<sup>244</sup> Included in those articles was his exact complaint; Mr Grant’s view was that the information must have come straight from his medical records and, in all likelihood, from a paid source within the hospital.<sup>245</sup> Although there was insufficient information to conclude for certain how the information was obtained, for the purposes of the Inquiry, it does not matter. The simple fact is that private medical information was published without consent and without regard to the public interest (or, at least, any reasonable formulation of the public interest).
- 4.13** Third, and as already referenced in the previous section of the Report, former NoTW journalist Mr Driscoll gave evidence of how the paper blagged the medical records of a Premiership football manager and used that information to bargain with the manager for cooperation on future stories. Notwithstanding the fact that the medical records were likely to have been obtained unlawfully and their disclosure was likely to have been an actionable tort, the newspaper successfully persuaded the manager that, in return for the newspaper keeping the medical records private, he would cooperate with the newspaper by providing stories in future.
- 4.14** The final example of a willingness within parts of the press to obtain and disclose private medical information was the evidence provided by the filmmaker Chris Atkins, in relation to the ‘medical records sting’ in his film *Starsuckers*.<sup>246</sup> Mr Atkins had posed as the boyfriend of a woman who worked in a cosmetic surgery in Harley Street. He called a number of tabloid newspapers to say that he might be willing to sell information about the procedures carried out to various celebrities. A journalist from the Daily Express immediately dismissed the proposal a contrary to the Editors’ Code and ended the conversation. Journalists from the People, the NoTW and the Daily Mirror arranged a meeting to discuss.
- 4.15** The transcripts of the conversations which took place at those meetings are extensive and revealing.<sup>247</sup> During the course of the meeting with a journalist from the People, the journalist expressed some concern about the publication of medical information, but proposed a

<sup>243</sup> Part F, Chapter 5

<sup>244</sup> p5, paras 13-15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Hugh-Grant.pdf>

<sup>245</sup> pp10-17, lines 22-7, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>246</sup> pp6-13, para 30-79, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Chris-Atkins1.pdf>; pp33-53, lines 10-23, Chris Atkins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-6-December-2011.pdf>

<sup>247</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-Annex-1-to-Chris-Atkins-supp..pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-Annex-2-to-Chris-Atkins-Supp.pdf>

number of ways in which the newspaper might make use of the material without necessarily revealing the source and, in so doing, raising concerns around privacy and protection of medical data.<sup>248</sup> It was suggested that the material offered by him, which purported to prove that a member of the pop group Girls Aloud had undergone breast enlargement surgery, could be used as part of “*silhouette spread*” or a “*have they, haven’t they story*”.<sup>249</sup>

- 4.16** Mr Atkin’s meeting with the Daily Mirror’s Nick Owens was equally illuminating and revealed a distinct lack of respect for the dignity of individuals whose medical information was purportedly for sale. During their meeting, Mr Owens asked Mr Atkins to provide as much information as possible on the cosmetic procedures carried out to named celebrities. Although he told Mr Atkins that the publication of medical information was problematic for the newspaper because of the Editors’ Code restrictions, he said that such publication could be justified if the stories were in the public interest. However, the transcript of the meeting revealed his deeply flawed understanding of the public interest. He said, for instance that “*there probably isn’t a public interest in... just reporting that someone had a gastric band operation, unless they are a massively big name then you might make a decision.*”<sup>250</sup> Similarly, when discussing various fictional procedures of which Mr Atkins offered to provide further information, Mr Owens thought that “*we could get away with*” a story of an actress having had a gastric band procedure because, he said, “*that’s massive, good story that... because as you see she does not need it*”.<sup>251</sup> Similarly, in relation to a story about an actor having a tummy tuck, he also thought the paper could “*get away with [it] because it’s so funny*”.<sup>252</sup>
- 4.17** The claim that the revelation of private medical information about a celebrity could be justified in the public interest because the celebrity is particularly famous, or because the story is funny or because the celebrity does not, in the journalist’s opinion, need a procedure, is frankly ludicrous. A sympathetic interpretation of Mr Owens’ comments is that he was merely ‘thinking aloud’ and had given the issue very little thought. But that, perhaps, is the problem. What is clear from the transcript is that Mr Owens, an award winning and senior journalist with considerable experience,<sup>253</sup> was engaged in a conversation directed at eliciting from Mr Atkins as much confidential medical information as possible to see whether the Daily Mirror might be able to use it in some way. What is also clear is that he had decided to engage in that conversation without considering the very many ethical questions that ought to have been contemplated in advance.
- 4.18** Mr Owens sought to avoid that necessary inference from the transcript of the conversation. He appeared to claim that he had arranged the meeting with Mr Atkins with a view to potentially exposing him as an individual willing to sell medical records.<sup>254</sup> However, that explanation is simply not credible. As Mr Barr noted in questioning, prior to the meeting Mr Owens had not discussed it with his news desk; neither had he, in any way, recorded any intention to carry out a sting on Mr Atkins.<sup>255</sup> Further, although he had ample evidence that he was dealing with an individual who was willing to sell medical records, it is not suggested that he wrote up

<sup>248</sup> pp39-40, lines 25-25, Chris Atkins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-6-December-2011.pdf>

<sup>249</sup> pp39-40, lines 25-6, Chris Atkins, *ibid*

<sup>250</sup> p2, para 50, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-Annex-1-to-Chris-Atkins-suppl..pdf>

<sup>251</sup> p9, para 117, *ibid*

<sup>252</sup> p11, para 126, *ibid*

<sup>253</sup> pp3-4, para 10 -11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Nicholas-Owens1.pdf>

<sup>254</sup> pp53-56, lines 21-5, Nick Owens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf>

<sup>255</sup> pp54-56, lines 24-5, Nick Owens, *ibid*

contemporaneous notes (let alone a story), or alerted his news desk about the possibilities. I find it very difficult to conceive that he would have done none of these things had he been genuinely intent on exposing Mr Atkins.

- 4.19** The transcript of the meeting between Mr Atkins and Mr Owens reveals a journalist intent on receiving information which was plainly confidential and obviously private. It may well be the case that Mr Owens had not formed any firm view about whether it would be appropriate to purchase or publish the information; and it appears that after the meeting Mr Owens did not pursue Mr Atkins with any vigour. But that is not the point. An offer to sell private medical information about celebrities should have been rejected outright: the Daily Express got it right, while Sarah Jellema formerly of the People, and Mr Owens got it wrong. Absent an intention to expose, by meeting with Mr Atkins and by encouraging him to access and provide medical records to substantiate his claims, Mr Owens acted in a way which showed no respect for the confidentiality of medical records and inherent privacy of the individuals in question.
- 4.20** The evidence when considered as a whole suggests that there is a cultural willingness in parts of the press to receive and publish confidential and private information. The evidence also suggests that those same parts of the press have done so without consideration of the public interest, or with a conception of the public interest that is fundamentally flawed.

## 5. Harassment

- 5.1** One of the recurring complaints advanced by the Core Participant Victims was that the attention they received from the press and paparazzi amounted, at times, to harassment. Ms Miller gave the most striking description of her harassment as she recalled frequently running down dark streets on her own pursued by ten or more men with cameras. Her evidence is dealt with in more detail above.<sup>256</sup> Similarly, the evidence of Ms Church,<sup>257</sup> Ms Rowling,<sup>258</sup> and Mr Coogan<sup>259</sup> contained further examples of persistent, intrusive and distressing levels of attention by press and paparazzi. Furthermore, the evidence of the McCanns,<sup>260</sup> the Dowlers<sup>261</sup> and Baroness Hollins<sup>262</sup> illustrated that complaints of harassment were not limited to so-called celebrities, but were shared by those with no public persona who, for a variety of reasons, were thrust into the public eye.
- 5.2** Mr Grant described a series of events in the months before and after the birth of his daughter which ultimately led to a High Court injunction to prevent what amounted to egregious harassment.<sup>263</sup> Throughout her pregnancy, Ms Hong, now the mother of Mr Grant's child, was regularly followed by foot and by car and photographed without her consent. At one stage during her pregnancy, when Mr Grant appeared on television discussing the phone hacking scandal, Ms Hong was apparently called on her mobile and told to "*Tell Hugh Grant to shut the fuck up*".<sup>264</sup>

<sup>256</sup> Part F, Chapter 3

<sup>257</sup> Part F, Chapter 6, section 2

<sup>258</sup> Part F, Chapter 6, section 2

<sup>259</sup> Part F, Chapter 6, section 2

<sup>260</sup> Part F, Chapter 6, section 6

<sup>261</sup> Part F, Chapter 6, section 6

<sup>262</sup> Part F, Chapter 6, section 6

<sup>263</sup> *Ting Lan Hong v XYZ and others* [2011] EWHC 2995 QB

<sup>264</sup> p1, paras 3-5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf>

- 5.3** After the birth of her child, Ms Hong received numerous phone calls, text messages and answer-phone messages from journalists.<sup>265</sup> Despite requests for them to leave, up to ten photographers and journalists remained camped outside her house, day and night.<sup>266</sup> The photographers spoke with neighbours and sought to persuade them to call Ms Hong for information about her baby.<sup>267</sup> When Ms Hong left the house, she was pursued by photographers. On one occasion, on 10 November 2011, Ms Hong called her mother for assistance to prevent the pursuit of photographers. Her mother attempted to take photographs of one of them but, in response, he sped his car towards her in a menacing manner, forcing her to jump out of the way.<sup>268</sup>
- 5.4** The harassment experienced by Ms Hong and her family appeared motivated by one thing only: the pursuit of a photograph of, or statement about, Mr Grant's new baby. But the impact on Ms Hong and her family was significant. She told the High Court that she was seriously intimidated and distressed by the experience. She had been unable to look after her daughter in a normal way, had had to cancel appointments and was frightened to drive with her child for fear that pursuit by paparazzi would make it unsafe to do so.<sup>269</sup> She was under virtual house arrest. Whatever one thinks of the justification for publishing information about the private lives of so-called celebrities, there can be no justification for harassing a new mother and her child in this way.
- 5.5** Ms Gascoigne provided evidence of similar levels of harassment. As the ex-wife of footballer Paul Gascoigne, she accepted that, by contracting for coverage of her wedding, appearing on shows such as "I'm a Celebrity Get Me Out of Here!", and by selling a book about her private life, she could only have a limited expectation of privacy. As a consequence she did not complain about the publication of details of her private life,<sup>270</sup> but she did complain of the harassment that she had endured by journalists and photographers. She recalled that in the 1990s, when she was in a relationship with Mr Gascoigne, she was pursued relentlessly by photographers who would often drive dangerously to follow her. In order to end these pursuits, she would drive around roundabouts multiple times or drive into housing estates; on one occasion, concerned for the safety of her children, she was forced to drive to a police station to end the harassment. In 1996, when the curtains in her home would not close properly, she was forced to crawl on her hands and knees to prevent photographs being taken through the windows by multiple photographers camped outside.<sup>271</sup>
- 5.6** Although Ms Gascoigne noted that things improved slightly in the aftermath of the death of Princess Diana,<sup>272</sup> the evidence provided to the Inquiry by others suggests that any improvement may have been limited. Mr Thomson gave evidence of his experience representing clients

<sup>265</sup> p3, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf>

<sup>266</sup> para 11, judgment of Mr Justice Tugendhat, *Ting Lan Hong v XYZ and others* [2011] EWHC 2995 QB, <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/ting-lan-hong.pdf>

<sup>267</sup> p3, para 13; p4 para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf>

<sup>268</sup> p5, para 20, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf>; para 14, judgment of Mr Justice Tugendhat, *Ting Lan Hong v XYZ and others* [2011] EWHC 2995 QB, <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/ting-lan-hong.pdf>

<sup>269</sup> para 16, *ibid*

<sup>270</sup> p90, lines 14-23, Sheryl Gascoigne, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-23-November-2011.pdf>

<sup>271</sup> pp5-6, paras 22-24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sheryl-Gascoigne.pdf>

<sup>272</sup> p6, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sheryl-Gascoigne.pdf>

who were the subject of press interest. He considered that car chases and dangerous driving by paparazzi were still very common. One of his clients, Lily Allen, had recently been involved in an accident where a photographer had driven through a red light and smashed into her car. As she emerged from the car, instead of apologising, the photographer took photographs of the singer in distress.<sup>273</sup>

- 5.7** Darryn Lyons of Big Pictures photo agency confirmed stories from his book ‘Mr Paparazzi’. He recalled using photos of Brad Pitt and Angelina Jolie, taken during a scooter chase in Paris.<sup>274</sup> He also wrote of the widely used technique for getting car shots:<sup>275</sup>

*“You then run at the car crash, bang, wallop with a wide angle lens. Rosie and I used to run up to people driving home past the Portland and practice on them. Must have scared the living crap out of them. Funnily enough, just recently I took a call from the police who were making a complaint about a couple of my big guys. They were outside TV personality Ulrika Jonsson’s house and had been practising their car shots on a family and almost caused a major accident.”*

- 5.8** Ms Mills gave evidence that she had been the subject of many car chases and ‘stalkings’ by the paparazzi.<sup>276</sup> She had been advised by police to keep a video diary of paparazzi intrusion and she submitted that video to the Inquiry.<sup>277</sup> Although the video is edited and it is sometimes difficult to be sure what is happening, it certainly appears to show evidence of photographers stalking, pursuing and chasing Ms Mills in a variety of situations, some of which are obviously private, and some of which appear to show photographers driving dangerously. Ms Mills complained of journalists sitting outside her home with scanning equipment, paparazzi hiding and jumping out at her daughter and her without notice, and chasing her in her car. The impact of such harassment on Ms Mills and her daughter was clear: she found the behaviour intrusive and abusive.<sup>278</sup>
- 5.9** The Inquiry heard further evidence of harassment from other witnesses. The Daily Mail’s picture editor Paul Silva noted the daily harassment suffered by the sister of the Duchess of Cambridge, Pippa Middleton. He said: *“there are nine or ten agencies outside her door every day. She goes to get a coffee or she goes back into her house, you get about 3 to 400 pictures on that day.”*<sup>279</sup> The recent publication of images of Prince Harry and the Duchess of Cambridge<sup>280</sup> (the latter, insofar as the print media is concerned, solely in foreign jurisdictions) illustrates the continuing intrusion into the private lives of young royals.
- 5.10** The phenomenon of press and paparazzi harassment is not new: Ms Diamond’s evidence of the behaviour of journalists and photographers in the aftermath of her son’s death was an example heard by the Inquiry of seriously harassing behaviour from the early 1990s.<sup>281</sup>

<sup>273</sup> pp54-55, lines 2-14, Mark Thomson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>

<sup>274</sup> pp11-12, lines 1-7, Darryn Lyons, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>275</sup> Lyons, D, *Mr Paparazzi*, p33

<sup>276</sup> pp14-15, paras 50-52, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Supplemental-Witness-Statement-of-Heather-Mills.pdf>

<sup>277</sup> <http://www.levesoninquiry.org.uk/video/video-evidence-from-heather-mills/>

<sup>278</sup> p16, para 57, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Supplemental-Witness-Statement-of-Heather-Mills.pdf>

<sup>279</sup> pp37-38, lines 22-2, Paul Silva, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

<sup>280</sup> Part F, Chapter 5

<sup>281</sup> pp7-9, paras 29-37, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Anne-Diamond1.pdf>

However, technological developments in the last 20 years have limited the space in which subjects of stories are “safe” from intrusion. The evidence showing a corrupt flow of private flight information from Virgin Airways to the picture agency Big Pictures<sup>282</sup> illustrates the difficulties experienced by public figures in seeking to escape the attentions of the press and photographers, even while abroad. Moreover, the growth of ‘citizen journalists’ and the development of websites, and newspapers, encouraging amateur photographers to upload and sell their own celebrity pictures<sup>283</sup> means that anyone armed with a keyboard or a camera can now be part of the wider press and paparazzi and can contribute to the harassment experienced by those in the public eye.<sup>284</sup> The picture editor of the People noted that “*nowadays, nearly everyone has a camera with them at all times contained within their mobile phone, so often we will get photos sent in this way by members of the public.*”<sup>285</sup>

**5.11** Neil Turner of the British Press Photographers’ Association said that the industry faced a real problem from “*amateur celebrity chasing paparazzi, or ‘stalkerazzi’*”. He said:<sup>286</sup>

*“they do involve chasing people down the road, driving dangerously/illegally. They do involve initiating a reaction and a response from people to get different facial expressions, you know, in a kind of completely over-the-top way. They do involve the trying to photograph women in compromising ways to show you either – what they’re wearing under their skirts.*

*...Working in packs deliberately. Deliberately running in front of people. I mean, you know, hearsay, I’m afraid, but I’ve heard it second-hand that they’ve seen one photographer deliberately get into a fight with a celebrity so a second photographer, with whom they were working as a team, could get the picture of the fight and split the money.”*

**5.12** When asked whether he doubted the truth of the evidence given by some of the Core Participant Victims of paparazzi harassment, Mr Turner confirmed that he did not doubt any of it.<sup>287</sup> His explanation for this kind of behaviour was simple: there was demand in the marketplace for the images resulting from the harassment.<sup>288</sup>

**5.13** That appeared to reflect the evidence given by witnesses representing picture agencies. Gary Morgan, from Splash picture agency, confirmed that the market places a premium on exclusive photographs of individuals in the public eye. Photographs taken at press events or organised functions, where many photographers will be present, are inevitably worth less than photographs taken in more private situations, where there are fewer other photographers present.<sup>289</sup> As such, there is an incentive on photographers to push the boundaries of what is an acceptable level of intrusion in order to get exclusive, and often private, images.

<sup>282</sup> Section 4

<sup>283</sup> See, for instance, [www.peoplepaparazzi.com](http://www.peoplepaparazzi.com), run by Splash News and Picture Agency and [www.mrpaparazzi.com](http://www.mrpaparazzi.com), run by Big Pictures

<sup>284</sup> The taking and publication of photographs of Prince Harry, discussed at Part F, Chapter 7, section 8 below, is a prime example of this.

<sup>285</sup> p3, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Mark-Moylan.pdf>

<sup>286</sup> p15, lines 9-23, Neil Turner, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>287</sup> p16, lines 15-21, *ibid*

<sup>288</sup> pp7-10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-The-BPPA1.pdf>

<sup>289</sup> pp86-87, lines 12-10, Neil Turner, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

- 5.14** Mr Lyons confirmed that in order to get valuable photographs his photographers, or freelancers, would pursue individuals by car or scooter, and would use the aggressive car shot technique described above.<sup>290</sup> Matthew Sprake, of Newspics, confirmed that he happily used hidden cameras to photograph subjects.<sup>291</sup>
- 5.15** What was striking about the evidence received from Mr Morgan, Mr Lyons and Mr Sprake was that apparently Splash, Big Pictures and Newspics did not have any code of practice or guidance to identify acceptable or unacceptable behaviour for staff or freelance photographers. All three witnesses noted that they sought to comply with the Editors' Code (despite the fact they are not bound by it) but, as Mr Morgan noted, the Editors' Code is "*not comprehensive enough for photographers generally*" as it is "*directed mainly towards the print side of journalism rather than the digital age or photographers generally*".<sup>292</sup> It was also clear that each photo agency had very limited control or oversight over the behaviour of the freelance photographers from whom they purchased photographs. Mr Lyons said expressly that freelance photographers were not the responsibility of Big Pictures.<sup>293</sup>
- 5.16** Of greater concern was the evidence from Mr Sprake and Mr Lyons which demonstrated a lack of consideration for the privacy and dignity of the subjects of their photographers. Mr Sprake's evidence revealed that ethical considerations about privacy and harassment played a very limited role in the planning and execution of photographic assignments: if a newspaper commissioned his agency to get photographs proving rumours of a new relationship or affair, proving the accuracy or otherwise of the rumour was the primary consideration, and the avoidance of harassment or breaches of privacy appeared to be very much secondary in his thinking.<sup>294</sup> Mr Lyons' evidence indicated a general disregard for the dignity of individuals in the public eye. In his book 'Mr Paparazzi', he had said:<sup>295</sup>

*"All these truths about the nature of celebrity mean that when Big Pictures is out there papping the stars, some will claim that to an extent we're imposing on their privacy and causing them some kind of distress. My answer to that is simple: if you can't hack the job, don't wear the hat."*

- 5.17** His evidence to the Inquiry largely confirmed that view. Asked about a series of privacy and/or harassment judgments made against Big Pictures, Mr Lyons was either unable to recall the details, gave inaccurate details,<sup>296</sup> or was unwilling to accept that Big Pictures had acted unethically.<sup>297</sup> He considered that "*we live in a world of voyeurism*".<sup>298</sup> His view appeared to be that because "*50 per cent of celebrities want to be photographed and they love it for their own self gain in terms of financial back pocket and to make them more famous*",<sup>299</sup> then the other 50 per cent who might also be styled as celebrities should accept the intrusion

<sup>290</sup> pp11-20, Darryn Lyons, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>291</sup> pp39-40, pp69-70, Matthew Sprake, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-18-July-2012.pdf>

<sup>292</sup> pp89-90, lines 4-2, Nei Turner, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>293</sup> p1, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Darryn-Lyons.pdf>

<sup>294</sup> pp38-41, lines 7-18, Matthew Sprake, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Afternoon-Hearing-18-July-2012.pdf>

<sup>295</sup> Lyons D, *Mr Paparazzi*, p149

<sup>296</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Second-ws-of-JK-Rowling.pdf>

<sup>297</sup> pp13-35, Darryn Lyons, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>298</sup> p34, lines 2-3, *ibid*

<sup>299</sup> p34, lines 14-17, *ibid*

of photographers on whatever terms the photographers chose. The only time he would choose not to photograph a celebrity was where the litigation risk would be too high: *“it’s a purely commercial decision”*, he said, and therefore not one based on any ethical principle or personal sensitivity.<sup>300</sup>

- 5.18** A number of witnesses suggested that it was often difficult to tell whether an individual photograph taken by a freelance paparazzo amounted to a breach of privacy and/or harassment of the subject. Although this may sometimes be so in relation to an individual photograph viewed in isolation, I suspect that very often the press are supplied with a series of photographs taken on the same occasion, and that it may not be overly difficult for an experienced picture editor to make informed judgments based on an overall impression.
- 5.19** Assessed in the round, the evidence indicated a significant regulatory gap in relation to independent or freelance paparazzi and press photographers. It is important to recognise the symbiotic relationship between the press and paparazzi. As Mr Turner noted, it is the press that creates much of the market for paparazzi photographs. Clause 4 of the Editors’ Code requires editors to ensure they do not use material which derives from intimidation, harassment or persistent pursuit. If that principle were applied properly, and newspapers refused to purchase or publish those images taken in situations of harassment, one might expect a substantial reduction in harassing behaviour from independent and freelance photographers. As witnesses such as Sir John Major suggested to the Inquiry, newspapers should be held strictly accountable in the context of the Editors’ Code for the photographs they chose to publish, regardless of their source. Furthermore, it should be standard practice to require newspapers to print the name of the photographer or the agency against any published photograph.
- 5.20** That said, the preponderance of the evidence provided by newspaper photo-editors suggested that most newspaper titles do scrutinise the photographs submitted to them by agencies and freelancers, do reject those photographs which appear to have been taken in breach of the Editors’ Code, and do seek to regulate the behaviour of their employed photographers. The problem which the evidence has identified is therefore one which demands careful consideration.
- 5.21** Mr Silva gave evidence of one of the more comprehensive systems for managing and monitoring the behaviour of photographers. His employed and freelance photographers are given strict guidelines on how to conduct themselves, often tailored to the specific tasks allocated.<sup>301</sup> In relation to photographs submitted by freelancers, he identified 11 different factors that were considered before deciding to publish.<sup>302</sup> Most of these considerations were sensible and praiseworthy: for how long was the photographer taking photographs; was the subject aware they were being photographed; was the subject harassed in any way? One was more problematic. Mr Silva would consider whether the subject of the photograph was in a public or private place but his view, which he had not discussed with his editor or with the PCC, was that there would be no reasonable expectation of privacy on a public street.<sup>303</sup> The natural consequence of that approach is that those in the public eye are unable to exit their homes without the threat of intrusion by photographers. Nonetheless, overall, the factors considered by Mr Silva were exemplary and, applied consistently, ought to prevent much of the harassment complained of.

<sup>300</sup> pp35-36, lines 24-7, *ibid*

<sup>301</sup> p6, paras 25-26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Paul-Silva.pdf>

<sup>302</sup> p3, para 12, *ibid*

<sup>303</sup> pp10-13, lines 7-9, Paul Silva, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

- 5.22** Mr Silva gave examples of how the application of these principles had often led to the rejection of photographs submitted to the Daily Mail, including: photographs of a member of the Royal Family and a celebrity were rejected because the subjects may have been followed prior to the photograph; a photograph of a celebrity entering another celebrity's home was rejected because Mr Silva was unhappy that a photographer was outside the celebrity's home; pictures of a celebrity holding a baby were rejected because they were shot through a second floor window and were clearly intrusive.<sup>304</sup> Those examples suggested an effective system in place to discourage or prevent harassment.
- 5.23** The Sun's picture editor John Edwards was not able clearly to identify the list of factors taken into account when deciding whether to publish photographs, but his evidence was that he too took care to review photographs prior to publication to ensure they did not breach privacy and were not taken in situations of harassment. He had rejected photographs of, for example, a well-known singer attending cancer treatment, photographs of a TV presenter taking her children to school, and a photograph of a heavily pregnant Ms Allen in a public street.<sup>305</sup>
- 5.24** Michael Lidbury of the Daily Express,<sup>306</sup> Liz Cocks of the Mail on Sunday,<sup>307</sup> and Mark Moylan of the People<sup>308</sup> gave evidence of slightly different approaches to managing staff photographers and assessing photographs sent in by freelancers, but all three shared a general approach which suggested that care was taken to avoid harassment, and/or to avoid the publication of photographs taken in situations of harassment.
- 5.25** The evidence of picture editors was nonetheless concerning. There appears to be a gap between the in-principle approach discussed by the picture editors and the experiences of those who have been subjected to harassment, as described above. From the oral evidence of Mr Silva and Mr Edwards,<sup>309</sup> it appeared that the Editors' Code and/or the self-imposed principles for preventing harassment are not applied as consistently as all the evidence from the picture editors might have suggested.
- 5.26** In relation to the harassment of Ms Hong, Mr Edwards accepted that there was no rational difference between photographs of a heavily pregnant Ms Hong on a public street and a heavily pregnant Ms Allen on a public street. In his written evidence, Mr Edwards highlighted that he had chosen not to publish the photograph of Ms Allen because he was sensitive to her privacy given her advanced stage of pregnancy and, having checked with her PR representative, discovered that she did not want the photographs published.<sup>310</sup> However, he defended The Sun's publication of photographs of Ms Hong in an advanced stage of pregnancy, at a time when she was regularly pursued by photographers, without reference to her and without consideration of her privacy or concerns for harassment. He could not adequately explain why he had adopted a different approach in each case.<sup>311</sup>

<sup>304</sup> p5, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Paul-Silva.pdf>

<sup>305</sup> pp2-3, paras 4-6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Edwards.pdf>

<sup>306</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Michael-Lidbury.pdf>

<sup>307</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Liz-Cocks.pdf>

<sup>308</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Mark-Moylan.pdf>

<sup>309</sup> Mr Silva and Mr Edwards were the only picture editors to give oral evidence. The following discussion therefore focuses on their evidence, but it should not be read as identifying any particular criticism of the two of them above any other. It is the principles that are important

<sup>310</sup> In a letter to the Inquiry after the evidence gathering phase had been concluded, Mr Edwards said in the case of Ms Allen there was a need for increased sensitivity on account of Ms Allen's previous miscarriages. However, although this was no doubt an additional consideration, it still does not adequately explain the treatment of Ms Hong

<sup>311</sup> pp117-119, lines 14-3, John Edwards, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

- 5.27** Similarly, in Mr Silva’s written evidence he had highlighted the fact that he had previously rejected photographs taken outside a celebrity’s home on the basis that he was unhappy that the photographer was stationed outside their home.<sup>312</sup> However, in the case of Ms Hong, Mr Silva saw no objection to what he considered was the ‘normal response’ of sending a photographer to the home of Ms Hong after hearing of the birth of her child.<sup>313</sup> In what might be seen as a conflation of the public interest with what interests the public, Mr Silva denied that the birth of Mr Grant’s child was a private matter and noted that *“it was a major showbiz story which was of great interest to our readers and that’s the reason why we sent”*.<sup>314</sup> That justification was echoed by Mr Edwards who, when asked whether he agreed that it was clear that it was a private situation, said: *“It’s a difficult call. Mr Grant is of huge interest to our readers, and I think – you know, he’s an A list Hollywood actor who everyone’s very interested in.”*<sup>315</sup>
- 5.28** Neither Mr Silva nor Mr Edwards had considered calling Mr Grant’s PR in advance to inquire whether photographers would be welcomed. Although Mr Silva claimed that his photographer would have left immediately if he had been told he was not welcome,<sup>316</sup> Mr Grant’s evidence was that when he arrived at the house he made it very clear that photographers were not welcome.<sup>317</sup> However, despite this, the photographers (including the Daily Mail’s photographer) remained and did not leave until asked to do so by the PCC. This somewhat undermines the claims of a number of newspapers that the photographers were simply waiting to see if Ms Hong would willingly pose for a photograph with the child. If there were any doubt about that, Mr Grant made clear that she would not do so but the photographers remained nonetheless.
- 5.29** The individual decisions of the Daily Mail and The Sun to publish a photograph of a heavily pregnant Ms Hong on a public street, or like the other newspapers who did the same, to send a single photographer to her house shortly after she had given birth, may not have led inevitably to harassment. But the collective decisions of numerous photo-editors, photo-agencies and freelance paparazzi, certainly did. And it is this collective responsibility which often gives rise to the problem.
- 5.30** In relation to the publication of photographs of Ms Hong, Mr Edwards argued that there could be no reasonable objection to the publication of a single photograph of an individual taken in a public place which did not appear to be taken in circumstances of harassment. In the abstract, that must be correct. But, very often, for the subject of the photograph, that single photograph taken in a single public place will be one of many photographs taken in many public places by many photographers, over a course of many weeks, months or years. In those circumstances the “single” photograph in a “single” public place may not evidence any harassment precisely because the harassment is evidenced by the cumulative experience. I recognise that this makes it very difficult for editors and photo-editors to assess the ethics

<sup>312</sup> In a subsequent letter to the Inquiry, sent after Inquiry had concluded its evidence gathering phase, Mr Silva claimed that he had different reasons for rejecting that particular photograph, namely that there was evidence that the celebrity had been followed. This may be so, but it was not the reason put forward in his written evidence: para 21.6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Paul-Silva.pdf>

<sup>313</sup> pp41-46, lines 16-25, John Edwards, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>314</sup> p41, lines 20-22, *ibid*

<sup>315</sup> p110, lines 5-8, John Edwards. <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>316</sup> p46, lines 20-25, Paul Silva, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

<sup>317</sup> p3, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf>

of publishing a particular photograph, but assess these they must. And, in doing so, one of the important considerations is the collective and/or cumulative impact of the decisions of numerous titles to take or publish photographs of the same subject. If that is in doubt, a phone call to the representative of the subject, much like the phone call Mr Edwards made to Ms Allen's PR, may provide an answer.

- 5.31** With regard to the presence of multiple photographers outside Ms Hong's home, all competing for a photograph, and unwilling to leave when requested, it is difficult to see how that can be justified as ethical or Code-compliant behaviour. All photo-editors responsible for sending photographers to Ms Hong's home must have been aware that it was highly likely that there would be a pack of photographers outside her house, and that the situation could be oppressive for the new mother.<sup>318</sup> In that context, and when Mr Grant made it clear that photographers were not welcome, it is difficult to understand why, applying the general principles contained in all of the picture editors' evidence, the photographers present remained at the house until the PCC issued a desist request to all newspaper editors.
- 5.32** Although Colin Myler praised the effectiveness of PCC desist notices in circumstances like those endured by Ms Hong,<sup>319</sup> the need to issue such a notice reflects a failure on the part of editors to ensure that their photographers comply with the code of conduct to which the titles are committed. If the PCC can see that a situation of harassment has developed, responsible editors should recognise that fact too.
- 5.33** The harassment experienced by the McCanns on their return from Portugal, discussed above<sup>320</sup> is another prime example of where responsible editors and photo-editors could not reasonably claim to have been unaware of the harassment experienced, but where employed and freelance photographers, as well as journalists, were sent to pursue the McCanns nonetheless. Mr Edwards could see in retrospect that the situation they faced was unacceptable<sup>321</sup> but, at the time, he had sent his photographer to join the pack who had gathered outside their house. Mr Silva also acknowledged that, with hindsight, "possibly" some of the photographs (in particular those featuring unpixellated images of the McCann children) should not have been used,<sup>322</sup> but noted that the story was "unique", "intense" and one of the most difficult he had had to work on.<sup>323</sup>
- 5.34** In my view, there are a number of reasons why there is such a disjunction between the general principles articulated by photo-editors to prevent harassment and the specific examples of harassment heard by the Inquiry. I accept that a good deal of the harassment experienced by those in the public eye is caused by unregulated freelancers. I also accept that the British press has only limited influence over those freelancers: although the British press can reduce the market for photographs obtained in situations of harassment, the harassers can still sell into the international market.

<sup>318</sup> In addition, whether Mr Silva, in particular, knew it or not, Daily Mail journalists had been calling Ms Hong repeatedly and leaving messages on her answer-phone; in consequence she already felt pressured by journalists. Mr Silva's evidence and subsequent letter to the Inquiry did not address this broader context, but it is another example of how the experience of harassment may be cumulative and cannot be considered without regard to that wider context

<sup>319</sup> p68, lines 3-17, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-2011.pdf>

<sup>320</sup> Part F, Chapter 5

<sup>321</sup> pp115-117, lines 25-10, John Edwards, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>322</sup> It seems clear that at least some of the photographs showing the McCann children were taken with the consent of the McCann family

<sup>323</sup> pp54-57, lines 8-15, Paul Silva, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

- 5.35** However, it is clear from the evidence provided to the Inquiry that not all of the blame for harassment of those in the public eye can be levelled at the unregulated freelance paparazzi. The British press has been guilty of publishing photographs clearly taken in circumstances of harassment, and employed photographers and journalists have been guilty of harassing behaviour. It is possible that, contrary to the evidence given to the Inquiry, editors and photo-editors do not, in general, take care to avoid harassment.
- 5.36** Taking this in the round, I believe that the evidence provided to the Inquiry by photo-editors was essentially genuine, and that photo-editors and editors alike do, in general, try to take care to avoid situations of harassment. However, there appear to be two general factors which conspire against that care which means that the harassment of individuals continues. First, some of the harassment experienced by witnesses to the Inquiry is the consequence of collective and cumulative decisions by photo-editors and editors, rather than single obvious breaches of the Editors' Code: each individual publication's decision might appear justified, but the collective and cumulative decisions of many editors over a period of time are not. Editors must face up to this problem.
- 5.37** In a letter to the Inquiry, Mr Edwards referred to the treatment of the McCanns on their return from Portugal, acknowledging again that the situation was unacceptable. He blamed it on a "collective" problem for which television crews and international press were also responsible, but defended The Sun, denying that it had made any inappropriate publication decision. That cannot be right in circumstances where The Sun had a photographer within the pack outside the McCanns' home. It is one thing to say that there is a collective problem and we are all responsible. It is another thing entirely to say that there is a collective problem, and therefore we cannot be held responsible individually.
- 5.38** Second, it seems that where a story is too big, as in the case of the McCanns, or where a readership's interest in a celebrity is too great, as in the case of Mr Grant, the general principles applied to avoid harassment are relaxed, or even set to one side. That is consistent with Piers Morgan's observation in a note to Assistant Chief Constable Jeremy Kirkby that "*Fame and crime sends most of the usual rules out of the window*".<sup>324</sup> It is also consistent with two observations made in other parts of this Report: first, that where the perceived imperatives of very big stories are concerned, there is a tendency to disregard the rule book, and second, that there has been, within parts of the press, a conflation of the public interest with what interests the public, such that individual privacy and dignity is ignored to satisfy the demands of a readership.<sup>325</sup>
- 5.39** Mr Peppiatt's evidence appeared to support this conclusion. He told of his pursuit of the *Britain's Got Talent* star Susan Boyle, at a time when there was huge international interest in her story. Under enormous pressure after her sudden rise to fame, Ms Boyle had been acting unpredictably and "lashing out". The producers of *Britain's Got Talent* had sent her to Scotland for some time out to relax and recover and the press were expressly asked to leave her alone. Mr Peppiatt recalled that this request was "like a red rag to a bull" for the Daily Star, which sent him to Scotland to pursue her and to make a mock marriage proposal. Mr Peppiatt spent a week pursuing Ms Boyle around Scotland before making the mock proposal, undoubtedly adding to the stress she was under. Mr Peppiatt said:<sup>326</sup>

<sup>324</sup> pp28-29, lines 2-17, Jeremy Kirkby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>325</sup> See paragraph 5.27 above and Section 2 above

<sup>326</sup> pp23-25, lines 25-25, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

*“I think you caricature people and you make them not so much human beings as just your target on a story, and certainly it hammers home – I think it’s a very hard-nosed reporter on Fleet Street who can’t recognise that sometimes the treatment is not humane, and I think that Susan Boyle is a good example of probably when I overstepped the mark with harassment.”*

## 6. Intrusion into grief and shock

- 6.1** Partly a subset of harassment, a further complaint that has been levelled at the press is that it has shown insufficient respect for the special sensitivity of those grieving the death of those close to them, or in shock from tragic events. The press intrusion experienced by the McCanns, the Dowlers, and the Bowles family,<sup>327</sup> are some of the more high profile examples of this complaint. But the Inquiry heard evidence of many more examples.
- 6.2** As historic context, Disaster Action, a charity founded by the survivors and bereaved of disasters reminded the Inquiry of The Sun’s coverage of the Hillsborough Disaster, in which 96 Liverpool FC fans lost their lives, as an example of the appalling impact that insensitive and irresponsible reporting of death and disaster can have.<sup>328</sup> Under the headline “THE TRUTH”, The Sun published a story containing assertions that some fans picked the pockets of victims, urinated on police officers (‘brave cops’) and ‘beat up PC giving kiss of life’. Although this report has long been undermined, the myth has persisted.<sup>329</sup> The reality has now been very substantially exposed in the publication of the report of the Hillsborough Independent Panel.<sup>330</sup>
- 6.3** In a statement issued after the publication of the report of the Panel, Mr MacKenzie (then editor of The Sun) asserted that he was misled when *“handed a piece of copy from a reputable news agency in Sheffield in which a senior police officer and senior local MP were making serious allegations against fans in the stadium”* and that he had *“absolutely no reason to believe that these authority figures would lie and deceive over such a disaster”*. He said he published in good faith. A contrary account comes from Harry Arnold, the reporter who had drafted the story; he told the BBC that he was *“aghast”* when he saw the headline, saying that the story he had prepared had been written in *“a fair and balanced way”* because he appreciated that they were no more than allegations.<sup>331</sup> He challenged Mr MacKenzie at the time saying that he could not say what was written in the article because *“we don’t know it’s the truth”*; Mr MacKenzie brushed the point aside responding *“Oh, don’t worry. I’m going to make it clear that this is what some people are saying”*.
- 6.4** The relevance of the story to this Inquiry shines out of the editorial in The Sun on 13 September 2012 which was in these terms:<sup>332</sup>

*“The Sun’s reporting of the Hillsborough tragedy 23 years ago is without doubt the blackest day in this newspaper’s history. ... It highlights a concerted campaign ... to smear the innocent by fabricating lurid allegations about Liverpool fans – and then feeding them to the media.”*

<sup>327</sup> Part F, Chapter 5

<sup>328</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Disaster-Action.pdf>

<sup>329</sup> See, for example, the way in which the former Liverpool footballer, Alan Hansen, ‘on many occasions’ has had to rebut the allegation: <http://www.telegraph.co.uk/sport/football/teams/liverpool/9539741/Hillsborough-report-this-was-the-most-important-day-in-Liverpools-history-says-Alan-Hansen.html>

<sup>330</sup> To be found at <http://hillsborough.independent.gov.uk/report/> published on 12 September 2012

<sup>331</sup> ‘Hillsborough: searching for the truth’, BBC1 Yorkshire and North West 9 September 2012

<sup>332</sup> <http://www.thesun.co.uk/sol/homepage/news/article4535743.ece>

*But it is to the eternal discredit of The Sun that we reported as fact this misinformation which tarnished the reputation of Liverpool fans including the 96 victims. ...*

*The role of a newspaper is to uncover injustice. To forensically examine the claims made by those who are in positions of power. In the aftermath of the Hillsborough tragedy we failed. And by failing in our duty we heaped more misery on the families of those who lost their lives and the people of Liverpool.*

*Nothing can excuse The Sun's Page One presentation, under the heading The Truth. It was inaccurate, grossly insensitive and offensive. This version of events was NOT the truth."*

- 6.5** The extent of this egregious failure, now fully recognised (but not previously in the 23 years that have elapsed), exemplifies many of the concerns which have been ventilated in the Inquiry, not the least in relation to the intrusion into grief and shock, but also in relation to accuracy (discussed below). It also underlines the enormous power of the press and, as a consequence, its absolute obligation to exercise that power responsibly. The press has real influence in our society and is given privileges in law in order to fulfil its function. The story underlines the need for a regulatory mechanism to challenge the press and to require it to justify itself.
- 6.6** If the Hillsborough reporting represented large scale intrusion into grief and shock, the Inquiry heard extensive evidence of smaller scale, but equally distressing coverage of death and tragedy. Margaret and James Watson told the Inquiry of the insensitive reporting of their daughter's murder by a fellow student in the 1980s. The articles published in the Glasgow Herald and in Marie Claire magazine, which, contrary to the clear conclusions expressed at the trial, sought to portray their daughter's murderer as a victim and their daughter as involved in a feud with the murderer, caused the couple and their son immense anguish which was still clearly felt when they gave evidence.<sup>333</sup>
- 6.7** Similar anguish was caused by the reporting of the death of Ms Diamond's son in 1991. Only an hour after Ms Diamond found her son dead, photographers and journalists began to knock at her door. The pack that arrived was so large that the family priest was too intimidated to enter the house. A photographer was seen sitting on Ms Diamond's back wall, trying to photograph the grieving family in their garden; a journalist tried to force her way into the house on the pretence of delivering flowers. Despite the family's express requests for the funeral to be private, a freelance photographer took photos of Ms Diamond and her husband with their son's coffin. Further, despite express requests not to do so, The Sun ran the photograph on its front page the following day. Ms Diamond recalled the series of events as a great violation of her privacy and an enormous intrusion into her private grief.<sup>334</sup>
- 6.8** It might be said that the evidence of Ms Diamond, along with that of the Watsons and the Hillsborough example, are of purely historical interest, given that they each relate to publications more than 20 years ago. But the evidence heard by the Inquiry does not support that view. The experiences of the McCanns, the Dowlers and the Bowles family, all of which occurred much more recently, suggest that parts of the press can continue, on occasion, to display a cavalier attitude to intrusions into shock or grief.

<sup>333</sup> pp82-102, lines 19-2, Margaret Watson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-20111.pdf>; pp1-4, paras 1-13; p5, paras 15-16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Margaret-Watson.pdf>

<sup>334</sup> pp7-9, paras 29-37, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Anne-Diamond1.pdf>

- 6.9** Evidence from other witnesses supports that view as well. Shortly after Mr Mosley's son died in 2009, up to 15 journalists and/or photographers camped outside his son's home, hoping to snap a photograph of Mr Mosley exiting the house. Only after his solicitors threatened to bring an action for harassment did the journalists leave.<sup>335</sup> Similar evidence was given to the Culture Media and Sport (CMS) Select Committee by Tim Fuller, the father of a girl who had committed suicide in 2008 and who had been unable to go to his daughter's house for days after her death because it was surrounded by press.<sup>336</sup> Likewise, in the aftermath of her daughter's stabbing, Baroness Hollins was door-stepped by journalists and photographers, subject to subterfuge by journalists pretending to be doctors, and photographed with long lens cameras while on private family outings.<sup>337</sup>
- 6.10** The harassment and intrusion of which these witnesses complained appears to be borne from a culture of indifference, within parts of the press, to the sensitivities of those who are grieving or in shock; that indifference is doubtless borne out of an anxiety to capture the 'big' story. Mr Peppiatt gave evidence of a story he had written immediately after the suicide of Kevin McGee, the ex-partner of television personality Matt Lucas. On the day of Mr McGee's death, the Daily Star was telephoned by a source who made sensational claims about the drug and alcohol abuse that had caused Mr McGee's death. The source also alleged that Mr Lucas was on suicide watch himself. Although Mr Peppiatt was keen to meet the source to verify the claims, he was told to write and publish the story immediately without further checking. Prior to publication, no consideration was given to the sensitivity of those close to Mr McGee, nor apparently to the truth of the story. Mr Peppiatt noted that within the newspaper "*there was certainly the consideration that the man is dead, therefore you can't really libel him.*"<sup>338</sup> Mr Lucas successfully sued the newspaper and was awarded damages for breach of privacy and for libel (insofar as the libel related to him rather than Mr McGee).<sup>339</sup>
- 6.11** Mr Peppiatt recalled that he expected to be disciplined in some way in the aftermath of the litigation for his part in the story. But no internal inquiries were made and no disciplinary action taken. Mr Peppiatt considered that the attitude of the newspaper was that the damages award was simply part of the cost of doing business.<sup>340</sup>
- 6.12** The Daily Mail's Mr Dacre was asked about an article on the death of Boyzone singer, Stephen Gately, which had given rise to over 25,000 PCC complaints. A post-mortem examination had found Mr Gately to have died of natural causes. The article speculated, with some conviction but no factual basis, that his death could not have been natural, but must have been linked to a "dangerous" homosexual lifestyle. His death was associated with the death of Mr McGee and was said to "*strike a blow to the happy-ever-after myth of civil partnerships.*"<sup>341</sup> In his evidence to the Inquiry, Mr Dacre said that he wished that the article had been subject to more judicious sub-editing, but he defended the journalist's right to express her view in the newspaper.<sup>342</sup> The PCC adopted the same approach, criticising parts of the article but deciding

<sup>335</sup> p13, paras 57-60, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Max-Mosley.pdf>

<sup>336</sup> paras 377-398: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcmmeds/362/362i.pdf>

<sup>337</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Baroness-Hollins.pdf>

<sup>338</sup> pp21-22, lines 3 –18, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>339</sup> <http://www.guardian.co.uk/media/2010/may/25/daily-star-matt-lucas>

<sup>340</sup> p52, lines 8-14, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>; p3; para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Peppiatt.pdf>

<sup>341</sup> <http://www.dailymail.co.uk/debate/article-1220756/A-strange-lonely-troubling-death-.html>

<sup>342</sup> pp68-73, lines 15-19, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

that it did not amount to a breach of the Editors' Code because *"it would not be proportionate to rule against the columnist's right to offer freely expressed views about something that was the focus of public attention"*.<sup>343</sup>

- 6.13** The conclusion of the PCC is surprising. A columnist is, of course, entitled freely to express his or her views. But where those views had no factual basis, were expressed very shortly after Mr Gately's death, and intruded into the grief of those who loved him, it is difficult to see how that did not amount to a breach of the requirements of the Editors' Code that newspapers should handle sensitively stories which intrude on personal grief or shock. In any case, the publication of the story, which the PCC recognised was in poor taste, displayed a disregard for the grief of the friends and family of Mr Gately.
- 6.14** There may be some truth in the old chestnut that "if it bleeds, it leads". The reporting of crime, and the reporting of the death of those in the public eye, will always be an important and valuable part of the press. As noted by Baroness Hollins, the majority of the press achieve this with sensitivity and care.<sup>344</sup> But it is clear to me that a significant minority does not. To that minority, death or tragedy is treated as just another news story, to be reported without regard to the special considerations that ought to apply to protect the friends and family of the subjects of the stories.
- 6.15** To address the failings of this minority, Mr and Mrs Watson proposed a change in the law to allow the family of the dead to sue for libel.<sup>345</sup> It is an interesting idea and one which may well have positive effects in some cases, although it would cause real complications and difficulties in others: would, say, the family of Sir Winston Churchill be able to sue if a published book was defamatory of him? Furthermore, it is a change that would not address the wider problems of the harassment by journalists and photographers of those grieving the loss of loved ones, and truthful but insensitive reporting in the aftermath of death or tragedy. To address those wider issues, it is not a change in the law but a change in culture that is required, to ensure that those who are responsible for reporting, photographing, and editing stories of death and tragedy treat those who may be grieving or in shock with the dignity they deserve. It is clearly not impossible to do so because so many, much of the time, do so. It is difficult, therefore, to see why it should not be the practice of all.

## 7. Treatment of children

- 7.1** A further criticism made by some Core Participants to the Inquiry was the failure of parts of the press to treat children with dignity and respect. As noted in the evidence of Stephen Abell, then Director of the PCC, the Editors' Code imposes tight restrictions to safeguard the interests of children, and its terms are interpreted broadly to provide a high level of protection to children. Although a public interest exception may allow for the publication of private information about children, the public interest justification must be "exceptional" to outweigh the "paramount interests" of children.<sup>346</sup> No-one who gave evidence to the Inquiry suggested that the Code was in any way defective in providing this higher level of protection to children, but the evidence suggested that it was not always observed by parts of the press.

<sup>343</sup> <http://www.pcc.org.uk/news/index.html?article=NjlyOQ>; <http://www.pcc.org.uk/news/index.html?article=NjlyOA>

<sup>344</sup> p1, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Baroness-Hollins.pdf>

<sup>345</sup> p10, paras 31-34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Margaret-Watson.pdf>

<sup>346</sup> pp125-126, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf>

- 7.2** In her evidence, Ms Church revealed a disrespect from photographers, journalists and editors for her own privacy when a child, and subsequently a disregard for her children's privacy once she was a mother. As noted above, Ms Church told the Inquiry that, after the birth of her daughter, when six paparazzi were waiting outside her house for a photograph of the baby, she chose to sell managed photographs to OK! Magazine rather than face the pack of photographers: the idea was to allow the photographs to be taken in the hope that she would then be left alone. Rosie Nixon, the editor of Hello! Magazine, told the Inquiry of the pressure experienced by new mothers in Ms Church's position, as there was a "*sort of bounty on the head of that child for the first photos. They can make a paparazzo a lot of money*".<sup>347</sup> The harassment experienced by Ms Church after the birth of her child was shared by Ms Hong after giving birth to Mr Grant's child,<sup>348</sup> and by Ms Rowling after the birth of her children.<sup>349</sup>
- 7.3** The Inquiry was told that the demand for photographs and information about the children of those in the public eye continued well beyond the early days of the children's lives. Mr Coogan spoke of the publication, without consent, of a photograph of his seven year old and five year old children.<sup>350</sup> In addition to the many examples given by Ms Rowling of photographers seeking to take (and newspaper titles publishing) photographs of her children without consent, she told the Inquiry of a journalist placing a note in her five year old daughter's schoolbag,<sup>351</sup> and another journalist contacting the headmaster at her 15 year old daughter's school to discuss private (and fabricated) information about her daughter.<sup>352</sup> The intolerable levels of press and paparazzi harassment experienced by the McCanns on their return to Portugal was suffered not only by Drs Kate and Gerry McCann, but also by their two and a half year old twins who were with them throughout and who found the experience very upsetting. Photographs of the twins were published in numerous newspapers, without pixellation, and without any clear justification except for the fact that the story was "unique" and "intense".<sup>353</sup>
- 7.4** A further, high profile example of this failure was the decision of The Sun newspaper, in 2006, to publish private medical information about the son of the then Chancellor of the Exchequer, the Mr Brown, discussed above.<sup>354</sup>
- 7.5** All of these examples suggested that parts of the press failed to abide by the Editors' Code generally, but specifically failed to abide by the requirement not to use the fame or notoriety of a parent as sole justification for publishing private details of a child.
- 7.6** When considering the evidence in the round, it is fair to say that the press tends to be more respectful of the privacy of children than that of adults: there were substantially fewer complaints heard by the Inquiry in relation to children than in relation to adults, and even the Browns noted that, since The Sun's publication of medical information about their child, the press has generally refrained from publishing photographs of, or information about, their children. However, the fact that unethical press practices in relation to children are less frequent, or limited to a smaller section of the press, does not mean that there is less urgency

<sup>347</sup> pp37-38, lines 16 – 9, Rosie Nixon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf>

<sup>348</sup> above at section 2

<sup>349</sup> above at section 2

<sup>350</sup> pp34-36, lines 2-10, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-2011.pdf>

<sup>351</sup> pp45-46, lines 6-2, JK Rowling <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

<sup>352</sup> pp62-63, lines 10-21, *ibid*

<sup>353</sup> pp54-57, lines 8-15, Paul Silva, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

<sup>354</sup> Part F, Chapter 5

in addressing them: the publication of the photograph of the sister of Sebastian Bowles,<sup>355</sup> suggests that the Editors' Code continues to be breached in relation to children. The reason for the Editors' Code is obvious: to those whose children have been unjustifiably exposed to the public gaze, and to the children themselves, the damage caused can be significant.

## 8. Representation of women and minorities

### Introduction

- 8.1** A different kind of criticism made by those who submitted evidence to the Inquiry was that the representation of women and minorities (such as immigrants or asylum seekers), at least in parts of the press, is discriminatory and ill-considered. What makes these complaints different from those which precede them is that they are complaints on behalf of classes of people, rather than a series of individuals. Under the complaints system operated by the PCC, which normally requires an individual complainant who was individually affected by a story, this kind of complaint was not ordinarily admissible.<sup>356</sup> Accordingly, the Inquiry provided a first opportunity for a number of representative groups to express their concerns about discriminatory press reporting.
- 8.2** The starting point for an accurate examination of this topic is the Editors' Code of Practice, the relevant provisions of which specify as follows:<sup>357</sup>

*'It is essential that an agreed code should be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect for the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.*

...

#### **1. Accuracy**

*The press must take care not to publish inaccurate, misleading or distorted information, including pictures.*

...

#### **12. Discrimination**

- (i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any form of physical or mental illness or disability.*
- (ii) Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.'*

<sup>355</sup> Part F, Chapter 7

<sup>356</sup> However, the evidence suggested that exceptions were made to allow representative complaints in certain undefined circumstances: see, for example, the evidence of Stephen Abell at pp109-111, lines 17-15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-30-January-2012.pdf>

<sup>357</sup> [http://www.pcc.org.uk/assets/696/Code\\_of\\_Practice\\_2012\\_A4.pdf](http://www.pcc.org.uk/assets/696/Code_of_Practice_2012_A4.pdf)

- 8.3** In the context of this section of the Report, in theory, it is possible to envisage three types of complaint to the PCC arising out of these provisions. First, a complaint brought by an individual of inaccurate, discriminatory and/or pejorative reporting directly relating to him or her. The vast majority of complaints of discrimination do not fall within this category. Second, a complaint brought by a group relating to an individual directly identified in the offending article, where that individual does not wish to bring his or her own complaint. Here, no issue arises on the Code as such, because the case clearly falls within the language of clause 12; the issue is the PCC's policy. Third, a complaint brought by a group, relating to alleged discriminatory treatment of the group as a whole, rather than any one individual. This type of complaint does raise an issue on the terminology of the Code because clause 12 refers in terms to an individual's personal characteristics, not to those of a group. Put simply, the Code would clearly be breached if an article attacked Mr Y on the basis that he was a member of a particular religious group, but it is far less clear that the same breach would occur if there were no mention, either express or implied, of Mr Y in the article and the attack were directed at the religious group in general.
- 8.4** A reading of the Code which takes on board its spirit rather than simply the letter probably does not surmount this difficulty. The only route to finding a violation of the Code in such a case would be by invoking clause 1, the requirement to be accurate. Some discriminatory reporting is too subjective and loosely worded to fall foul of this provision, but it is not too difficult to envisage examples of reporting which would engage it.
- 8.5** Those representing women's and minority groups would be entitled to retort that if the Code as currently worded creates the kind of legalistic difficulties which have just been outlined, then the solution is a straightforward one: simply amend the Code. The force of this point is noted, but it should be considered in depth by any future regulator, rather than by this Inquiry.
- 8.6** The argument has also been put that there is an important issue of free speech in play here, and that the press is entitled to be partisan. Furthermore, matters of taste and decency are outside the Code, and properly should be. The force of these arguments needs to be recognised, but only in their proper context. For example, putting to one side issues concerned with domestic violence, material which is pornographic and demeaning to women does not violate clauses 1 and 12 of the Code, and is readily available in pornographic magazines subject to the general law. This material is offensive to many, but an issue does arise for consideration as to whether a regulator of a free press which is entitled to be tasteless and indecent should be intervening in this sort of area.
- 8.7** On the other hand, most people would argue that obviously racially offensive material, which on one level might be said to be partisan in tone and content and therefore defensible as falling within the prerogative of a free press, should be capable of being the subject of regulatory comment notwithstanding the absence of an obvious first party complainant. It must be recognised, however, that there are many cases along the spectrum where reasonable people will disagree.
- 8.8** At the very least, the issue is both complex and sensitive. The Inquiry heard from a number of groups who advanced powerful arguments in favour of greater regulation, in particular for greater balance. Although the Inquiry received much evidence and submission devoted to the issue of the value of a free press in general terms, few came forward to advance the contrary case to that put forward by the groups I have mentioned. Sunday Sport (2011) Ltd has recently filed a series of well-argued and sustained submissions emphasising the free speech issues and drawing attention to the fact that, in its view, the Inquiry has not received

a representative spread of the available factual and opinion evidence. Dominic Mohan, the editor of The Sun, made a spirited defence of Page 3. He is not to be criticised for doing so, and many will feel that Page 3 of The Sun raises a taste and decency issue and none other. The point I am seeking to make at this stage is that I am alive to all the arguments and to the fact that, on what might be called the central ground, there is room for reasonable, opposing points of view.

## Representation of women

- 8.9** Object, the human rights organisation, gave comprehensive evidence to the Inquiry of what it described as *“the sexual objectification of women and girls, and the mainstreaming of the sex and porn industries in the media and popular culture”*.<sup>358</sup> Its evidence focused on *“Page 3 imagery”*, namely imagery found in The Sun, the Midweek and Sunday Sport, and the Daily and Sunday Star, of young (almost always white) women with bare breasts, sometimes entirely nude and in sexualised poses. Anna Van Heeswijk, representing Object, described *“a gradient of extremity running from the Sun to the Daily Star to the Sport”*:<sup>359</sup> although Page 3 imagery is limited to page 3 of The Sun, it is found on many more pages in the Daily Star and yet more still in the Sport. Indeed, The Sport contains a self-explanatory *“nipple count”* which often numbers over 100.<sup>360</sup> In each of these titles, the posed photographs of topless women may be accompanied by stories including ‘up-skirt’ photographs, and extensive advertising for sex web cams, pornographic DVDs and ‘escort agencies’.<sup>361</sup>
- 8.10** Ms Van Heeswijk considered there was *“no marked difference between the content which exists within... classified pornographic materials and the contents within some of these mainstream Page 3 tabloids”*.<sup>362</sup> This may be putting it high with regard to The Sun, but it would be hard to disagree when looking at the coverage in the other titles. The front page of the Midweek Sport from 16 November 2011, for example, contained a full page photograph of a glamour model in a small red bikini, with her legs akimbo. Beside that photograph was a headline, *“Top 50 Glamour Babes Ever – 8 page topless pullout”*. To the top right of the page was a headline, *“Pippa’s Amazing Bum Pic – Shock New Photo Inside”*. To the bottom left was a censored photograph with the headline *“Jess Goes Topless – Jungle Babe Bares Boobs – Uncensored”*. At the very bottom of the page was the headline, *“Two Free XXX Sex DVDs for every reader”*.<sup>363</sup>
- 8.11** Ms Van Heeswijk argued that this type of material should not be on sale alongside other daily newspapers, but should be limited to the ‘top shelf’ alongside pornographic material. She noted:<sup>364</sup>

*“Page 3 imagery is already prohibited in the workplace under sexual harassment legislation (set out most recently in the Equalities Act 2010), and it is restricted from broadcast media before the 9pm watershed. It would therefore be logical to recommend that Page 3 images which are considered unacceptable in the workplace,*

<sup>358</sup> p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-statement-of-Anna-van-Heeswijk.pdf>

<sup>359</sup> p1, para 5, *ibid*

<sup>360</sup> p1, para 8, *ibid*

<sup>361</sup> p2, para 9 and 14, *ibid*

<sup>362</sup> p17, lines 17-25, Anna Van Heeswijk, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-24-January-2012.pdf>

<sup>363</sup> <http://www.object.org.uk/files/Exhibit%201a.pdf>

<sup>364</sup> p3, para 18-19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-statement-of-Anna-van-Heeswijk.pdf>

*and which would not pass the pre-watershed test for television, should not be displayed in newspapers which are sold at child's eye level with no age-restriction. These recommendations would allow for consistency in media regulation when it comes to keeping harmful materials out of the mainstream and away from children."*

- 8.12** It is hard to argue against that in respect of some of the material contained in the Sport at least, but the regulation of the sale of explicit print material does not fall directly within the scope of this Inquiry. Of greater potential concern to the Inquiry is the degree to which the images may reflect a wider cultural failure to treat women with dignity and respect and/or a practice which, intentionally or not, has the effect of demeaning and degrading women.
- 8.13** In respect of Page 3 imagery, there are a range of arguments. There are those, like Object and the recently formed internet group "No More Page 3", who argue that the persistent representation of topless young women on the pages of national newspapers is inherently degrading and demeaning. By contrast, there are those like Mr Mohan, who argue that Page 3 is "neither harmful nor offensive", and satisfies the demands of a readership.<sup>365</sup> Somewhere in between are those who argue that Page 3 is simply an anomaly: out of place in the 21<sup>st</sup> century where a woman is just as likely as a man to purchase (or edit) a tabloid newspaper, or lead the country.
- 8.14** The arguments between those who adopt each viewpoint will continue. But for the purposes of this Inquiry, the interesting point is that it was not Page 3 *per se* which gave rise to the core complaints made by women's groups. Instead, it was a general attitude which was found throughout the pages of those tabloids which contained images of semi-naked women (referred to as 'Page 3 tabloids'), and of which Page 3 was only one example. Object, along with other organisations such as Turn Your Back on Page 3, Eaves Housing for Women, and the End Violence Against Women Coalition argued that Page 3 imagery was part of a broader culture of objectification and sexualisation of women in those newspapers. Ms Van Heeswijk wrote:

*"This pervasive objectification and sexualisation of women is not restricted to the portrayal of the Page 3 models or to the Page 3 type feature. Rather, to varying extents, it influences the way that almost all women are portrayed in Page 3 tabloids, including female celebrities. Examples include an article in the Daily Star on the size of "15 year old" Charlotte Church's breasts ("She's a big girl now... Child singing sensation showed just how quickly she's grown up after turning up at a Hollywood bash looking chest swell"). This is juxtaposed with commentary of outrage against the satirical "sting" Brass Eye documentary's "Paedophile special" (Exhibit 4). More recent examples include a feature in the Sport commenting on the genitalia of a female newsreader which it describes in derogatory terms. (Exhibit 5)"<sup>366</sup>*

- 8.15** Both of the examples given in that passage support the broader points made by Ms Van Heeswijk and others. First, the unfortunate juxtaposition of the article expressing outrage at a satirical programme on paedophilia and an article commenting on a 15 year-old's breasts exposes a hypocrisy in relation to the sexualisation of young girls and women that is seen beyond the Page 3 tabloids: some have commented on the awkward co-existence of the Daily Mail's support for "traditional values" with the Mail Online's "sidebar of shame". Second, the article commenting on the genitalia of a female newsreader supports the view that some

<sup>365</sup> pp1-2, paras 2-11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-Dominic-Mohan1.pdf>

<sup>366</sup> p1, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-statement-of-Anna-van-Heeswijk.pdf>

Page 3 tabloids apply a demeaning and sexualising lens beyond those who choose to appear in their pages with breasts exposed: even the most accomplished and professional women are reduced to the sum of their body parts.

- 8.16** Object's submission to the Inquiry gave examples of the sexualisation or demeaning of women from articles in *The Sun*, the *Daily Star*, and the *Sport* over a single week in November 2011. The articles exhibited demonstrated the “*gradient of extremity*” from *The Sun* through the *Daily Star* to the *Sport*, but all three titles contained what can only be described as objectifying material.<sup>367</sup> All three included numerous articles with no other purpose except to show an image of a scantily clad or topless woman: see, for instance, *The Sun*'s articles ‘*Jess takes the plunge*’ and ‘*Celeb beauty gets ‘em out*’. All three titles included articles with no purpose other than to attach a photograph of, and describe in derogatory language, a woman's breasts or bottom: see the *Daily Star*'s article about “*getting a massive pervy eyeful of [a celebrity's] pert ass*”, or the *Sport*'s article ‘*Jugs and Jury*’. All three contained large scale advertisements for pornography and/or escort services. And all three included articles which appeared to eroticise violence against women.
- 8.17** This final category of article was forcefully criticised by the End Violence Against Women Coalition and Eaves Housing who both argued that there was a tendency in parts of the press to trivialise and/or sexualise violence against women.<sup>368</sup> One of the examples identified from *The Sun* was an article entitled ‘*Bodyguards for battered Towie sisters*’ reporting acts of serious violence upon two sisters, accompanied by a picture of one of them in an erotic pose in her underwear.<sup>369</sup> A similar example from the *Sport* was an article, adjacent to a photograph of a large breasted, topless model, about a man who had committed a sexual offence by groping a woman's breasts.<sup>370</sup> A further example from the *Sport* involved a comment piece expressing the writer's desire to have sex with a celebrity, but joking that the only way that would happen was if he raped her.<sup>371</sup> Many more examples were made available to the Inquiry.<sup>372</sup>
- 8.18** The evidence as a whole suggested that there is force in the trenchant views expressed by the groups and organisations who testified to the Inquiry that the Page 3 tabloid press often failed to show consistent respect for the dignity and equality of women generally, and that there was a tendency to sexualise and demean women. That failure is particularly clear in the pages of the *Sport*, which is, in my view, hardly distinguishable from the admittedly ‘softer’ end of top-shelf pornography. But it exists to a lesser degree in the *Daily Star* and *The Sun*. For *The Sun*, at least, it is a failure of consistency, rather than a general failure to show respect for women. *The Sun* has campaigned admirably against domestic violence, rape, and size zero models.<sup>373</sup> But it is clear that those campaigns have, perhaps uncomfortably, sat alongside demeaning and sexualising representations of women.

<sup>367</sup> pp 5-19, [http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission\(3\).pdf](http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission(3).pdf)

<sup>368</sup> The Inquiry noted that the evidence suggested that this tendency was not limited to the Page 3 tabloids, but on the evidence as a whole concluded that a broad criticism relating to the representation of women could not be sustained against other newspapers

<sup>369</sup> *The Sun*, example 12, [http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission\(3\).pdf](http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission(3).pdf)

<sup>370</sup> *The Sport*, example 17, [http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission\(3\).pdf](http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission(3).pdf)

<sup>371</sup> *The Sport*, example 8, [http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission\(3\).pdf](http://www.object.org.uk/files/The%20Leveson%20inquiry%20-%20OBJECT%20and%20Turn%20Your%20Back%20on%20Page%203%20Joint%20Submission(3).pdf)

<sup>372</sup> See <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Heather-Harvey.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/End-Violence-Against-Women-Coalition-Submission.pdf>

<sup>373</sup> pp1-2, paras 12-19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-Dominic-Mohan1.pdf>

- 8.19** Importantly, these criticisms of the Page 3 tabloids do not derive from the fact those newspapers contain an image of a topless woman on Page 3 (or not only from that fact). They are criticisms for which evidence can be found on a reading of all the pages in those newspapers as a whole. They are also supported by the response that the tabloids have made to those who have criticised Page 3.
- 8.20** When Clare Short MP campaigned against Page 3 in the 1980s she was described by The Sun as “fat”, “ugly” and “jealous of beautiful women”.<sup>374</sup> When the Rt Hon Harriet Harman proposed legislation to ban Page 3 in 2010, she was described as a “harridan” and a “feminist fanatic” on a “furious rant”.<sup>375</sup> Similarly, when ex-Equalities Minister Lynne Featherstone MP raised the issue in Government, she was described as a “battleaxe” and her proposal to limit children’s ability to purchase newspapers containing topless women was described as a “potty plan”.<sup>376</sup> Describing the female critics of Page 3 as fat, ugly, jealous, feminist fanatics, harridans, and battleaxes goes some way to proving their point.
- 8.21** Thus far, these criticisms have been considered at a level of some abstraction; it remains necessary to bring the debate back to the terms of the Code, and to the considerations foreshadowed in the introductory observations to this section. The article, *‘Bodyguards for Battered Towie Sisters’* may well infringe clause 12 of the Code as currently drafted, but the majority of the material discussed under this sub-heading probably does not. The impact of discriminatory or prejudicial representations of women in the Page 3 tabloids is difficult to judge. There is credible evidence that it has a broader impact on the perception and role of women in society, and the sexualisation of society generally,<sup>377</sup> although submissions from Sunday Sport (2011) Ltd refer to the range of academic opinion on the issue. Suffice to say, that this Inquiry is not the place to analyse, let alone reach conclusions on these matters.
- 8.22** That said, these are important and sensitive issues which merit further consideration by any new regulator. What is clearly required is that any such regulator has the power to take complaints from representative women’s groups. Consideration should also be given to Code amendments which, while protecting freedom of speech and the freedom of the press, would equip that body with the power to intervene in cases of allegedly discriminatory reporting and in so doing reflect the spirit of equalities legislation.

## Representation of minorities

- 8.23** The Inquiry received a range of submissions from minority groups, as well as individuals raising similar points on behalf of groups; the full range of these submissions is available on the Inquiry website. Of necessity, the summary below draws on a selection of the submissions that were received, but the points will be equally relevant to many of the others who wrote in and, indeed, many other groups who did not take the opportunity to do so.

<sup>374</sup> <http://www.object.org.uk/files/Exhibit%2011a.pdf>

<sup>375</sup> <http://www.object.org.uk/files/Exhibit%2012.pdf>

<sup>376</sup> <http://www.object.org.uk/files/Exhibit%2014.pdf>

<sup>377</sup> See Theme 1 of the Bailey Review: *‘Letting Children Be Children: the Report of an Independent Review of the Commercialisation and Sexualisation of Childhood’*, <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%208078>

*Transgender*

- 8.24** Trans Media Watch (TMW) provided evidence to the Inquiry of disturbing and intrusive reporting of transgender and intersex issues by parts of the press.<sup>378</sup> They wrote:<sup>379</sup>

*“The media – and the tabloid press in particular – has played a powerful role in creating and sustaining a climate of prejudice against transgender people. Worse... instances in which the tabloid press has created situations in which very vulnerable people (including transgender children) are “monstered” and face public abuse or the threat of violence are not hard to find. Nor is it difficult to discover stories in which transgender people have had their privacy shamelessly invaded, personal details that could place them in grave danger revealed (either unethically or even illegally), or lies circulated about them by the press. Entirely innocent individuals have been forced out of jobs and homes, even received death threats, on the basis of coverage in the British press.*

*Whilst an occasionally more sympathetic piece might appear, in a “human interest” setting, the tabloid press (especially) has consistently expressed almost no interest in behaving with human decency towards transgender people.”*

- 8.25** The organisation said that the tabloid press in particular tended to fit stories about transgender issues within one of three categories: “trans as fraud”, “trans as undeserving” and “trans as deviant and deserving of parody”. To that list might be added “the outing of transgender people”. TMW provided to the Inquiry many examples of these kinds of stories. Within this report it is possible to refer to only a few, but the examples which follow are by no means aberrations.

- 8.26** Within the categories “trans as fraud” and “trans as undeserving” was an article published in the Daily Express and titled *‘Half Man Gets New Breasts (and guess who’s paying £78k)’*. TMW said the article was not only inaccurate (the cost of gender reconstruction surgery is nowhere near as high as £78k), but it was also part of a narrative adopted by much of the tabloid press presenting transgender people as undeserving frauds using public money for illegitimate means.<sup>380</sup> An article with a similar theme was exhibited from The Sun entitled *‘Operation Sex Swap: MOD paying for troops’ gender surgery’*.<sup>381</sup>

- 8.27** Within the category “trans as deviant and deserving of parody”, TMW highlighted The Sun’s *‘Tran or Woman’* quiz, where readers were provided with a series of photographs and asked to guess whether the subject was transgender or not.<sup>382</sup> It further highlighted a tendency for the tabloid press to use comedic, demeaning or ridiculing language in stories about transgender people. Examples were The Sun’s use of genital-based puns in the headlines *‘Dad of two driver changes gear in sex swap’*,<sup>383</sup> and The Scottish Sun’s *‘Sex swap mechanic goes nuts at medics’*<sup>384</sup> or the use of derogatory words such as “tranny”. In respect of the Daily Mail, TMW noted its tendency to report on transgender people as though the category were false or unreal: it frequently used inverted commas around the words ‘transgender people’, and referred to transgender women as “men” and transgender men as “women”.<sup>385</sup>

<sup>378</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Trans-Media-Watch.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Supplemental-Submission-by-Transmedia-Watch1.pdf>

<sup>379</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Trans-Media-Watch.pdf>

<sup>380</sup> pp15-16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Trans-Media-Watch.pdf>

<sup>381</sup> p21, *ibid*

<sup>382</sup> p14, *ibid*

<sup>383</sup> p12, *ibid*

<sup>384</sup> p13, *ibid*

<sup>385</sup> p17, *ibid*

**8.28** The final category – the outing of transgender people – was perhaps the most disturbing, given the very damaging effect this can have on individuals. Helen Belcher of TMW told the Inquiry that The Sun’s ‘*Dad of two driver changes gear in sex swap*’ story was written without permission and without reference to the subject of the story. The photograph was similarly published without permission. Ms Belcher said:<sup>386</sup>

*“The piece was 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.”*

**8.29** Two further examples were referred to in TMW’s second submission. First, on 12 February 2012, The Sun had revealed the story of (allegedly) the UK’s first transgender male to give birth.<sup>387</sup> Faced with an unwillingness (or inability) of transgender groups to identify the man, The Sun chose to publish a call for the public to identify the person concerned and offered a reward for information. Eventually, once identified, the individual was door-stepped by a journalist.<sup>388</sup> The Sun published stories revealing his identity, and other newspapers, including the Daily Mail, published comment pieces about the “freakish” and “revolting” thought of a man giving birth.<sup>389</sup>

**8.30** Second, on 20 February 2012, the Daily Mail published a story about a five year old child who had been diagnosed with Gender Identity Disorder. There was perhaps a public interest in the story itself, but included within the story was also the child’s name, date and place of birth, birth certificate, photographs of the child and the name of the school and hospital she attended.<sup>390</sup> It was unclear what form of consent was received to publish the story, but it seems inconceivable that the child’s parents would have granted consent for what followed. In several follow-up articles, the Daily Mail criticised the child’s “misguided” parents for their “nonsense” in allowing the child to be diagnosed with a disorder, criticised the school for profligate spending of resources to provide a gender neutral toilet in the child’s school, and used the child’s case (and photographs) as an example to debunk the politically correct rise of an “industry” which encourages trans-sexualism.<sup>391</sup>

**8.31** The critical comments made in the follow-up pieces, although on occasion uninformed and potentially misleading, might well have been justified as fair comment on a matter of public interest. However, in the context, they were comment pieces which were directly related to an identified, photographed and vulnerable child. Each piece republished the same large photographs of the five year old as part of the article, and the impact of the reporting as a whole may well have been tremendously damaging. As TMW noted:<sup>392</sup>

<sup>386</sup> pp47-48, lines 20-10, Helen Belcher, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-8-February-2012.pdf>

<sup>387</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Supplemental-Submission-by-Transmedia-Watch1.pdf>

<sup>388</sup> p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Supplemental-Submission-by-Transmedia-Watch1.pdf>

<sup>389</sup> pp9-11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Supplemental-Submission-by-Transmedia-Watch1.pdf>

<sup>390</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Supplemental-Submission-by-Transmedia-Watch1.pdf>

<sup>391</sup> pp16-24, *ibid*

<sup>392</sup> pp4-5, *ibid*

*“TMW recognises that many more children report gender variant episodes than turn out to be trans. However, when a child expresses a strong level of distress about their gender, severe psychological issues can result if left untreated. It is entirely possible that Z may decide as she grows older that she wishes to revert to being a boy. If that scenario does arise, the level of press exposure is likely to make that decision far harder to take. There is significant concern about giving someone like this so much exposure, especially when they are vulnerable. Paradoxically this is a concern that the press has also expressed, but their rush to publish seems to be paramount.”*

**8.32** On the basis of the evidence seen by the Inquiry, it is clear that there is a marked tendency in a section of the press to fail to treat members of the transgender and intersex communities with sufficient dignity and respect; and in instances where individuals are identified either expressly or by necessary implication perpetrate breaches of clause 12 of the Code. Parts of the tabloid press continue to seek to ‘out’ transgender people notwithstanding its prohibition in the Editors’ Code. And parts of the tabloid press continue to refer to the transgender community in derogatory terms, holding transgender people up for ridicule, or denying the legitimacy of their condition. Although the Inquiry heard evidence that parts of the tabloid press had “raised [its] game in terms of transgender reporting”,<sup>393</sup> the examples provided by TMW of stories from the last year demonstrate that the game needs to be raised significantly higher.

**8.33** The press has shown itself quite capable of doing so: 30 years ago, an Inquiry into the culture practices and ethics of the press was likely to have seen a deluge of complaints relating to the representation of homosexuals in the press.<sup>394</sup> The fact that only a very few such complaints were received by this Inquiry may reflect the press’s ability to put its own house in order. Alternatively, it may simply reflect that society had changed and the press has been forced to keep up.

#### *Ethnic minorities, immigrants and asylum seekers*

**8.34** It seems that a raising of the game is also required in relation to the representation of some ethnic minorities, immigrants and asylum seekers. The Joint Council for the Welfare of Immigrants drew the Inquiry’s attention to a recent report from the Council of Europe’s Commission on Racism and Intolerance, which stated:<sup>395</sup>

*“[ECRI] notes with concern that Muslims, migrants and asylum seekers Gypsies/ Travellers are regularly presented in a negative light in the mainstream media, and in particular the tabloid press, where they are frequently portrayed, for example, as being by definition associated with terrorism, sponging off British society, making bogus claims for protection or being troublemakers. ECRI is concerned... [about] the racist and xenophobic messages themselves that are thus propagated in the media...”*

**8.35** This conclusion, and in particular, the identification of Muslims, migrants, asylum seekers and gypsies/travellers as the targets of press hostility and/or xenophobia in the press, was supported by the evidence seen by the Inquiry.

<sup>393</sup> pp128-129, lines 11-11, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-7-February-2012.pdf>

<sup>394</sup> p27, lines 12-25, Tony Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-28-May-2012.pdf>;

<sup>395</sup> The Treatment of Asylum Seekers – Tenth Report of Session 2006-07, quoted at para 1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Joint-Council-for-the-Welfare-of-Immigrants.pdf>

- 8.36** In relation to alleged discrimination of Muslims, the Muslim advocacy group ENGAGE shared its concern that the last decade had seen, within parts of the tabloid press, an increase in Islamophobic and discriminatory coverage of Muslim issues. It drew the Inquiry's attention to numerous headlines referring to Muslims, or Muslim practices, in alarmist and sensational terms. It noted, amongst others, the following headlines, which appeared to have little factual basis but which may have contributed to a negative perception of Muslims in the UK: *'Muslim Schools Ban Our Culture'*; *'BBC Puts Muslims Before You!'*; *'Christmas is Banned: It Offends Muslims'*; *'Brit Kids Forced to Eat Halal School Dinners!'*; *'Muslims Tell Us How To Run Our Schools'*.<sup>396</sup>
- 8.37** The organisation submitted to the Inquiry a summary of some of its complaints to the PCC since December 2007 relating to inflammatory and inaccurate reporting. The articles of which Engage had complained included:
- (a) a Daily Star article entitled *'Poppies banned in Terror Hotspots'*, which suggested that a ban on the sale of Remembrance Day poppies had been imposed in certain Muslim populated areas, where no such ban existed.<sup>397</sup>
  - (b) A Daily Star article entitled *'Muslim only public loos'*, which suggested that a local authority planned to build new public toilets, with taxpayer money, for the exclusive use of Muslims, when this was a simple fiction.<sup>398</sup>
  - (c) A Daily Express article entitled *'Muslim plot to kill the pope'*, which reported on a non-existent plot.<sup>399</sup>
  - (d) A Daily Mail article entitled *'Cafe wins fight to fry bacon after Muslim complaints'* which implied that complaints to a local authority which had sparked enforcement action by planning officers had been made by Muslims, when that was not the case.<sup>400</sup>
- 8.38** ENGAGE also drew the Inquiry's attention to complaints made by others to the PCC in relation to articles alleged to be discriminatory or inaccurate in their reporting of Muslim issues. Those complaints included:
- (a) A complaint from ummah.com in relation to an article in The Sun alleging a Muslim plot to kill prominent British Jews. The basis of the article was an apparently extremist posting on the ummah.com website. Investigations revealed that the posting had in fact been fabricated by The Sun's "anti-terror expert" and the story had no basis whatsoever.<sup>401</sup>
  - (b) A complaint from the Ummah Welfare Trust, an international relief and development charity, in relation to a Daily Express article alleging connections between the charity and terrorist organisations on the UN's proscribed list. There were no such connections.<sup>402</sup>

<sup>396</sup> pp33-34, para 36, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Engage.pdf>

<sup>397</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/First-Submission-by-Engage.pdf>. The editor of the Daily Star was asked about a similar article which related to the burning of poppies; p65, lines 6-13, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>; and other articles in a similar tone. She denied that the paper had an anti-Muslim agenda.

<sup>398</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/First-Submission-by-Engage.pdf>. The PCC upheld a complaint in relation to this article.

<sup>399</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/First-Submission-by-Engage.pdf>

<sup>400</sup> pp3-4, *ibid*

<sup>401</sup> pp4-5 *ibid*

<sup>402</sup> p4, *ibid*

**8.39** ENGAGE’s representative, Inayat Bunglawala, was of the view that the articles complained of had the cumulative effect of increasing prejudice against Muslims. However, he went further: his view was that the headlines identified, and the decisions to place those articles on the front page of the newspapers, were deliberate, and were intended deliberately to increase such prejudice.<sup>403</sup> He indicated that many of the headlines had been used by the far right to further its racist propaganda.<sup>404</sup>

**8.40** The Daily Telegraph’s Peter Osborne shared some of these concerns. His pamphlet *‘Muslims Under Siege’* was instructive.<sup>405</sup> It recalled a story published in The Sun with the headline *‘Brave Heroes Hounded Out’* which told how “Muslim yobs” had wrecked a house to prevent British soldiers returning from Afghanistan from moving in. In his pamphlet, Mr Osborne noted that millions of Sun readers reading the article would have felt justified anger and contempt for “the violent and treacherous Muslims who had carried out such a disloyal act against brave British soldiers. But there was one very big problem with the Sun story... there was no Muslim involvement of any kind.” The pamphlet continued:<sup>406</sup>

*“What the Sun had done was to take a local story about a piece of vandalism, probably caused by local snobbery about the presence of soldiers – and convert it into another kind of story altogether about evil Muslims. This case is far from unique. As we discovered while researching this pamphlet, is in fact typical of reporting of the Muslim communities across large parts of the mainstream British media.”*

**8.41** Suleman Nagdi MBE, representing the Federation of Muslim Organisations, considered that “certain tabloid papers have reported on issues concerning Muslims with a lack of accountability which has resulted in a climate of hostility in both the reporters and the readership”.<sup>407</sup> He thought that some articles were explicitly discriminatory, but drew the Inquiry’s attention to the conclusions of a study published by Paul Baker of Lancaster University entitled *‘The Representation of Muslims in the British Press 1998-2009’*. This concluded:<sup>408</sup>

*“More common than the expressly negative representation of Muslims, was a more subtle set of implicitly negative representations, with Muslims often being “collectivised” via homogenising terms like “Muslim world” and written about predominantly in contexts to do with conflict, terrorism and extremism.”*

**8.42** Other academic research seen by the Inquiry supports that view. In its briefing note for the All Party Parliamentary Group on Islamophobia, ENGAGE drew attention to a report by the Cardiff School of Journalism, Media and Cultural Studies which had reviewed the representation of British Muslims in the press between 2000 – 2008.<sup>409</sup> That report concluded:<sup>410</sup>

*“In sum, we found that the bulk of coverage of British Muslims – around two thirds – focuses on Muslims as a threat (in relation to terrorism), a problem (in terms of differences in values) or both (Muslim extremism in general).”*

<sup>403</sup> p34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Engage.pdf>

<sup>404</sup> pp2-3, lines 21-10, Inayat Bunglawala, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>

<sup>405</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-PO1-to-Witness-Statement-of-Peter-Oborne.pdf>

<sup>406</sup> p13, *ibid*

<sup>407</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Suleman-Nagdi-MBE-DIL.pdf>

<sup>408</sup> p2, *ibid*

<sup>409</sup> Moore K, Lewis P, Lewis J, *‘Images of Islam in the UK: The Representation of British Muslims in the National Print News Media 2000-2008’*: [http://www.irr.org.uk/pdf/media\\_muslims.pdf](http://www.irr.org.uk/pdf/media_muslims.pdf)

<sup>410</sup> p3, [http://www.irr.org.uk/pdf/media\\_muslims.pdf](http://www.irr.org.uk/pdf/media_muslims.pdf)

*The language used about British Muslims reflects the negative or problematic contexts in which they tend to appear. Four of the five most common discourses used about Muslims in the British press associate Islam/Muslims with threats, problems or in opposition to dominant British values. So, for example, the idea that Islam is dangerous, backward or irrational is present in 26% of stories. By contrast, only 2% of stories contained the proposition that Muslims supported dominant moral values.*

*Similarly, we found that the most common nouns used in relation to British Muslims were terrorist, extremist, Islamist, suicide bomber and militant, with very few positive nouns (such as 'scholar') used. The most common adjectives used were radical, fanatical, fundamentalist, extremist and militant. Indeed, references to radical Muslims outnumber references to moderate Muslims by 17 to one."*

- 8.43** Mr Peppiatt suggested that this type of unbalanced reporting was motivated by circulation. One of the key reasons he cited for resigning from the Daily Star was what he perceived as its Islamophobic agenda. He said that he experienced a top down pressure to unearth stories which fit within what was described as the Daily Star's "narrative" ("*immigrants are taking over, Muslims are a threat to security*"); the factual basis for a story was less important than that narrative. Mr Peppiatt said he was personally responsible for writing the fictional "Muslim only public loos" story. Although the newspaper was aware that the story was not true, an editorial decision was taken to publish anyway. Similarly, Mr Peppiatt described an article he wrote on plans to require Sikhs to remove their turbans at airport security, for fear that Islamic terrorists might disguise themselves as Sikhs. There was no factual basis for that story either, but Mr Peppiatt invented quotes from a "security source" to lend an air of credibility.<sup>411</sup>
- 8.44** The overall picture is more nuanced than witnesses such as Mr Peppiatt have been prepared to accept. The Daily Star submitted a lever arch file containing a bundle of what it described were 'pro-Muslim' articles; although I would not necessarily agree with that precise designation, the broad sentiment is wholly accurate. Here, a quantitative assessment is inappropriate; the Inquiry could not begin to reach judgments as to the proportion of 'pro-Muslim' against 'anti-Muslim' pieces.
- 8.45** In any event, that would be to miss the point. It is not as if the 'pro' articles somehow cancel out or fall to be weighed in the balance against the 'anti': the real point is whether articles unfairly representing Muslims in a negative light are appropriate in a mature democracy which respects both freedom of expression and the right of individuals not to face discrimination. The evidence demonstrates that sections of the press betray a tendency, which is far from being universal or even preponderant, to portray Muslims in a negative light. As with the case of discrimination against women discussed above, issues arise in relation to the interpretation and application of clause 12 of the Editors' Code, and the arguable need to identify an individual target of discrimination, but the key point which falls to be made in the present context is the need for a regulator with the ability and power to grapple with these issues and set appropriate standards.
- 8.46** The tendency identified in the preceding paragraph is not limited to the representation of Muslims and applies in a similar way to some other minority ethnic groups. The Joint Council on the Welfare of Immigrants, the Migrant and Refugee Communities Forum, and the Federation of Poles in Great Britain gave evidence that supported and complemented each other. Together, their evidence suggested that the approach of parts of the press to

<sup>411</sup> pp17-20, lines 25-4 & pp32-38, lines 7-20; Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

migrants and asylum seekers was one of advocacy rather than reporting: some newspapers expressed a consistently clear view on the harm caused by migrants and/or asylum seekers (often conflating the two) and ensured that any coverage of the issue fit within that narrative.

**8.47** It is unquestionably right that, in relation to inherently political questions like immigration and asylum, editors and journalists are entitled to express their strongly held views in their newspapers. However, the concerns raised by the various witnesses were not limited to the expression of views, but included allegations of wilful blindness to the (lack of) truth of stories which fit with a newspaper's adopted viewpoint. Stories which are factually incorrect clearly raise issues under clause 1 of the Code regardless of clause 12. The organisations drew the Inquiry's attention to the follow as examples:

- (a) The Sun's story headlined "Swan Bake", which alleged that gangs of Eastern European asylum seekers were killing and eating swans from ponds and lakes in London. Unidentified people were cited as witnesses to the phenomenon, but it seemed there was no basis to the story: the Sun was unable to defend the article against a PCC complaint.<sup>412</sup>
- (b) The Daily Star's article headlined "Asylum seekers eat our donkeys." The story told of the disappearance of nine donkeys from Greenwich Royal Park. The police were reported as having no idea what had happened to the donkeys but, in a piece of total speculation, the story went on to claim that donkey meat was a speciality in Somalia and Eastern Europe, that there were "large numbers of Somalian asylum-seekers" in the area and some Albanians nearby, and concluded that asylum seekers had eaten the donkeys.<sup>413</sup>
- (c) The Daily Mail's erroneous report that a judge had allowed an immigrant to remain in the UK because "the right to family life" protected his relationship with his cat.<sup>414</sup>

**8.48** It is one thing for a newspaper to take the view that immigration should be reduced, or that the asylum and/or human rights system should be reformed, and to report on true stories which support those political views. It is another thing to misreport stories either wilfully or recklessly as to their truth or accuracy, in order to ensure that they support those political views. And it does appear that certain parts of the press do, on occasion, prioritise the political stance of the title over the accuracy of the story. Ms Stanistreet, on behalf of the NUJ, gave evidence as follows:<sup>415</sup>

*"Journalists that I spoke to in the course of collating this testimony painted a disturbing picture of the nature of the day to day sentiments expressed by senior editorial staff—such comments give an insight into the approach taken on coverage of race and ethnicity. These included a reporter being told by the news editor to "write a story about Britain being flooded by asylum-seeking bums"; instructions to "make stories as right wing as you can"; a reporter being told to go out and find Muslim women to photograph with the instruction: "Just fucking do it. Wrap yourself around a group of women in burkas for a photo".*

<sup>412</sup> p7, *ibid*

<sup>413</sup> p7, *ibid*

<sup>414</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Joint-Council-for-the-Welfare-of-Immigrants.pdf>

<sup>415</sup> p7, para 19-20, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-Michelle-Stanistreet.pdf>

- 8.49** Although the weight to be given to this anonymous evidence is necessarily limited, it coheres with the evidence given by Mr Peppiatt and Mr Osborne, and is consistent with the kinds of complaints made by the Joint Council on the Welfare of Immigrants, the Migrant and Refugee Communities Forum, the Federation of Poles in Great Britain, ENGAGE and Mr Nagdi. That evidence suggested that, in relation to reporting on Muslims, immigrants and asylum seekers, there was a tendency for some titles to adopt a sensationalist mode of reporting intended to support a world-view rather than to report a story. The evidence given by the Irish Traveller Movement in Britain suggested a similar approach to gypsy and traveller issues.<sup>416</sup>
- 8.50** It is important to reiterate that the evidence was not all bad: there were many examples of titles with responsible and positive reporting on these issues, and even within the section of the press identified for criticism, there was evidence showing a complicated picture. For example, although the Daily Mail has been criticised for its reporting of some minority issues, its Stephen Lawrence campaign demonstrated a newspaper committed to tackling and condemning racism.
- 8.51** Nonetheless, when assessed as a whole, the evidence of discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers, is concerning. The press can have significant influence over community relations and the way in which parts of society perceive other parts. While newspapers are entitled to express strong views on minority issues, immigration and asylum, it is important that stories on those issues are accurate, and are not calculated to exacerbate community divisions or increase resentment. Although the majority of the press appear to discharge this responsibility with care, there are enough examples of careless or reckless reporting to conclude that discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers is a feature of journalistic practice in parts of the press, rather than an aberration.
- 8.52** Overall, the evidence in relation to the representation of women and minorities suggests that there has been a significant tendency within the press which leads to the publication of prejudicial or pejorative references to race, religion, gender, sexual orientation or physical or mental illness or disability. Whether these publications have also amounted to breaches of the Editors' Code in every case is debatable, but in the ultimate analysis is little to the point. That failure has, in the main, been limited to a section of the press and may well stem from an undue focus on seeking to reflect the views (even if unsuccessfully) of a particular readership. A new regulator will need to address these issues as a matter of priority, the first steps being to amend practice and the Code to permit third party complaints.

## 9. Inaccuracy

- 9.1** It is not by accident that the Editors' Code begins with a requirement for accuracy:<sup>417</sup> it is the foundation stone on which journalism depends. For that reason, the extensive evidence heard by the Inquiry of problems with basic accuracy in parts of the press caused significant concern. In what follows, that evidence is considered in five parts. These are:
- (a) evidence of deliberate invention and fabrication of stories by sections of the press, and/or a failure to check the truth of invented stories;

<sup>416</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-from-The-Irish-Traveller-Movement-March-2012.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Submission-from-The-Irish-Traveller-Movement-April-20121.pdf>

<sup>417</sup> Clause 1(i) of the PCC Code requires the press to take care not to publish inaccurate, misleading or distorted information, including pictures.

- (b) evidence of deliberately misleading headlines;
- (c) evidence of careless or reckless inaccuracy in particular when reporting fast moving and high profile stories;
- (d) evidence of a tendency for sections of the press to report political and social issues inaccurately in order to fit into the worldview of the title; and
- (e) evidence that scientific stories are reported poorly and often inaccurately by much of the press.

**9.2** It is important to note that it is inevitable that inaccuracies will appear in newspapers, given the quantity of stories published and the speed at which they need to be written. It is also inevitable that some stories will be defamatory. But what is not inevitable is that the inaccuracies or defamations will be deliberate or the result of reckless or careless journalism. The Inquiry heard many examples of inaccuracies in the press, and sometimes damaging inaccuracies which had led to successful defamation claims and serious criticism of the newspapers involved.<sup>418</sup> Although consideration was given to basing criticisms in this Report upon some of those examples, I decided that it would be unjustified to do so. Unless the examples of inaccuracy manifestly fell into the categories of deliberate, reckless or careless inaccuracy, they have not been included in what follows.

**9.3** The Inquiry has been told by a number of witnesses that the majority of inaccuracy complaints to the PCC emanate from the regional press. As has been explained elsewhere, that section of the press has been expressly excluded from the generic criticisms which form this lengthy Chapter of the Report. But there is no inconsistency here: the point has already been made that mistakes are inevitable in any industry which depends on the judgments of human beings, and the problems deriving from the regional press are not in my view cultural or systemic. No one has suggested to the Inquiry that they are – indeed, many have suggested affirmatively that they are not – and on the available evidence I am happy to endorse that conclusion.

## Fabrication or deliberate embellishment of stories

**9.4** The Inquiry heard sufficient evidence to conclude that some sections of the press have deliberately invented stories with no factual basis in order to satisfy the demands of a readership. Mr Peppiatt spoke of his experience while a journalist at the Daily Star of a top-down pressure to fabricate stories. As noted above, he gave numerous examples of Daily Star stories about celebrities and about Muslim issues that were published despite the knowledge that they were untrue.<sup>419</sup> In his resignation letter, he had written:<sup>420</sup>

*“Daily Star favourite Kelly Brook recently said in an interview: “I do Google myself. Not that often, though, and the stories are always rubbish. “There was a story that I’d seen a hypnotherapist to help me cut down on the time I take to get ready to go out. Where do they get it from?”*

<sup>418</sup> p7, para 24-25, p12, para 41, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Supplemental-Witness-Statement-of-Heather-Mills.pdf>; p2, para 10–12, p4, para 16-20, p6, para 25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Sheryl-Gascoigne.pdf>; p5, para 18-20, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Steve-Coogan3.pdf>; pp5-9, lines 25-24, Jon Snow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-25-June-2012.pdf>; p24, lines 15-25, Peter Burden, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-5-December-2011.pdf>;

<sup>419</sup> p1, para 4–9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Peppiatt.pdf>

<sup>420</sup> <http://www.guardian.co.uk/media/2011/mar/04/daily-star-reporter-letter-full>

*Maybe I should answer that one. I made it up. Not that it was my choice; I was told to. At 6pm and staring at a blank page I simply plucked it from my arse. Not that it was all bad. I pocketed a £150 bonus. You may have read some of my other earth-shattering exclusives.*

*'Michael Jackson to attend Jade Goody's funeral'. (He didn't.) 'Robbie pops 'pill at heroes concert'. (He didn't either.) 'Matt Lucas on suicide watch'. (He wasn't.) 'Jordan turns to Buddha.' (She might have, but I doubt it.)'*

- 9.5** In his evidence to the Inquiry he confirmed his view that much of tabloid journalism was “not a truth seeking enterprise”, but was instead “ideologically driven and... impact-driven.”<sup>421</sup> In that context, fictional stories were not only relatively commonplace, but were actively encouraged by senior staff within the title. In oral evidence Mr Peppiatt gave further examples of fictional stories published by the Daily Star as follows:<sup>422</sup>

*“‘Chile mine to open as theme park’, ‘Angelina Jolie to play Susan Boyle in film’, ‘Bubbles to give evidence at Jacko trial’ – that’s his monkey – ‘Jade’s back in Big Brother’ – she was dead at the time. Obviously we have the likes of ‘Maddie’s body stored in freezer’, which we’ve heard already. ‘Grand Theft Auto Rothbury’ – that was the Raoul Moat killing. There was going to be a computer game based around it. Completely untrue. ‘Brittany Murphy killed by swine flu’ – wasn’t the case. ‘Macca versus Mucka on ice’, which was Paul McCartney and his ex-wife were apparently going to showdown on Dancing on Ice. Never transpired. Then we have the likes of ‘Muslim-only public loos’, which in my letter I raise. Completely untrue as well.”*

- 9.6** Although Mr Peppiatt’s evidence was challenged by the Daily Star and a number of witnesses said that they did not recognise what he had described, it was consistent with the anonymous evidence reported by Steve Turner of the British Association of Journalists: he had received complaints from a number of other journalists who had reported similar editorial pressure to fabricate stories, sometimes under threat of dismissal.<sup>423</sup> The evidence of Sharon Marshall is consistent with that of Mr Peppiatt. Not only did she suggest that quotations were routinely made up but also that it was common practice in some of the papers on which she worked for journalists to fabricate quotations to push a particular line with regard to a story and then find a willing contact to ‘own’ the quote. She provides the specific example of the model and TV presenter, Abi Titmuss, who was one of a number of celebrities called to see if they would ‘own’ a quotation that had been written to push a particular point of view or story.<sup>424</sup> Further, a willingness by parts of the press to fabricate in order to tell an ‘impactful’ story was also evidenced by Piers Morgan’s admission to have altered a photograph digitally to show Princess Diana and Dodi al-Fayed kissing, when the original showed nothing of the sort.<sup>425</sup>
- 9.7** The Inquiry heard evidence from a number of witnesses who had been victims of fabricated stories. Mr Grant exhibited an article in the Sunday Express, apparently written by Mr Grant himself. In fact, it was entirely fabricated: Mr Grant had not only not written the article, but

<sup>421</sup> p11, lines 1-5, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>422</sup> p17, lines 9-22, *ibid*

<sup>423</sup> para 33, 36, 39, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Steve-Turner.pdf>

<sup>424</sup> p112-113, Sharon Marshall, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-20-December-2011.pdf> [NB: Miss Titmuss was not named in the course of the hearing]

<sup>425</sup> p94, lines 5-17, Sharon Marshall, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-20-December-2011.pdf>

he had given no interview to the Sunday Express.<sup>426</sup> In a similar example, Hello! Magazine published an “exclusive” interview with Ms Rowling, when no such interview had been given and when in fact Ms Rowling had expressly refused to give an interview to them.<sup>427</sup> Unsurprisingly, in each example the relevant title was forced to apologise in open court.

- 9.8** Mr Campbell complained of numerous fabricated stories about him and about matters in Government generally. In respect of one particular example he said:<sup>428</sup>

*“I can recall one weekend being interrupted by persistent calls from reporters following up a story in the Sunday Express that I was leaving Downing Street to take up a position at Manchester United. This was based on so-called quotes from so-called friends and colleagues. I called the newspaper – which had not put the story to me in advance – to complain and to issue a strong denial. I said there was no truth in it whatsoever. ‘I know,’ came the response. ‘But it’s a good story.’ ...They knew the story was untrue, so did not put it to me because a denial would weaken it”*

- 9.9** The erroneous report in the Mail Online of the Amanda Knox guilty verdict is a different example. Prior to the verdict being read out, the Mail had prepared two “set and hold” versions of a story, to prepare for both a guilty and not guilty verdict; that much is not surprising. Through human error, the guilty verdict story was published online. That error was also made by The Sun online and the Guardian online and, again, such error is, at times, unavoidable. The Mail’s story, however, was unique in that it described, in detail, events that simply did not happen. Full Fact, an organisation dedicated to monitoring accuracy in the press, explained to the Inquiry:<sup>429</sup>

*“Amanda Knox was found not guilty of murder. Before that was announced, though, a verdict of guilty was given in relation to a charge of slander. As soon as the first guilty was pronounced, the Daily Mail published an online article headlined: “Guilty: Amanda Knox looks stunned as appeal against murder conviction is rejected.” The first part was mistaken; the second part was fiction.*

*The fiction continued in the text, including: “As Knox realized the enormity of what Judge Hellman was saying she sank into her chair sobbing uncontrollably while her family and friends hugged each other in tears” and “Prosecutors were delighted with the verdict and said that ‘justice has been done’ although they said on a ‘human factor it was sad two young people would be spending years in jail’.”*

- 9.10** The Mail’s explanation given by counsel during the course of the Inquiry was that that the story was not fabricated; it claimed to have obtained alternative quotes from the Italian prosecutors in advance to cover guilty or not guilty verdicts. Whether prosecutors provided ‘quotes for publication’ in advance or not, there can be no argument that the description of events in the courtroom when the guilty verdict was read out was anything other than fictitious licence. True it is that the fabrication only added colour and emotion to the story, but the example raises questions of how widespread that practice is, and how frequently the ‘adding of colour’ goes unnoticed.

<sup>426</sup> pp9-10, lines 25 – 18, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>427</sup> p29, para 63, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-JK-Rowling2.pdf>

<sup>428</sup> p27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alastair-Campbell.pdf>

<sup>429</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Third-Submission-by-Full-Fact.pdf>

**9.11** Mr Campbell, along with Mr Grant and others, expressed their concerns of a growing reliance, within parts of the press, on anonymous quotes, many of which they believed to be entirely fabricated.<sup>430</sup> That there has been regular misuse of attribution to anonymous sources seems clear in light of the phone hacking revelations. Many of the stories published by the NoTW, now known to be based on phone hacking, were attributed to anonymous sources such as “friends” or “pals” or “sources”. Mr Peppiatt confirmed that in his experience, many quotes attributed to “a source”, “a friend”, “a pal” were indeed invented. He gave examples of quotes he had invented to support fictional stories about Katie Price, and said:<sup>431</sup>

*“Although unnamed sources are a valuable journalistic tool to protect sources, often in my experience of tabloids they are simply made up by the reporter to increase the word count and add a veneer of legitimacy to something that is speculation, at best.”*

**9.12** There is no easy-fix for this problem. The anonymity of confidential sources is a vital aspect of journalism and must be protected. But the use of anonymous sources can lead to an inability to assess whether the source is reliable, or even exists. Solicitor Magnus Boyd raised this concern in relation to a Daily Mail story about one of his clients, the Tamil hunger striker Parameswaran Subramanyam. The Mail’s story alleged that Mr Subramanyam had sustained himself with McDonalds hamburgers during his hunger strike and quoted an anonymous ‘police insider’ and ‘a source’ saying that police surveillance cameras had captured him eating the hamburgers. The story, it transpired, was entirely untrue: there was no police surveillance, there was no consumption of hamburgers and the Mail paid substantial damages for defamation.<sup>432</sup> In relation to the police sources quoted in the article, Mr Boyd noted:<sup>433</sup>

*“As a matter of logic there are only two possibilities which are either that:*

- i a police source simply made up these allegations and communicated them to The Daily Mail; or*
- ii The Daily Mail made up the police sources.”*

**9.13** To that, one might add a third possibility, that there was a source, but it was not a ‘police insider’, as claimed, and that description of the source was given to lend greater credibility to the story. The reality is that it is impossible to know which of those three possibilities is correct. The journalist responsible, Stephen Wright, insisted that there was a source for each of the quotations in the article,<sup>434</sup> but given the evidence seen by the Inquiry of invented sources and fabricated quotations, it is simply a question of having to be prepared to take his word for it.<sup>435</sup>

**9.14** The very nature of this problem renders it close to impossible to express any generic conclusions about it; or, more precisely, conclusions based on evidence as opposed to informed speculation. There will be many instances where for very good reason a journalist

<sup>430</sup> p26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alastair-Campbell.pdf>

<sup>431</sup> p69, lines 13-22, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>432</sup> p1, para 1-5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Magnus-Boyd-taken-as-read.pdf>

<sup>433</sup> p3, para 6, *ibid*

<sup>434</sup> pp30-31, lines 19-20, Stephen Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-15-March-20121.pdf>

<sup>435</sup> Mr Wright has indicated to the Inquiry in correspondence subsequent to the conclusion of the Inquiry’s evidence gathering phase that the story was based on conversations with one police source and one source from the London Ambulance Service.

will not wish to reveal the identity of his or her source. Indeed, it is possible to go further: to do so would break a confidence. But in many other instances, it is inevitable that there should be real concern that the invocation of an anonymous or confidential source is likely to be a camouflage for a source who does not exist, or one who is known or suspected to be unreliable, or one in respect of whom inadequate enquiry is made by the journalist.

- 9.15** An informed member of the public may harbour his or her suspicions or concerns about these matters, but will never know the true position if the journalist does not choose to disclose the very information which would enable a judgment to be made about it. The very substantial privileges accorded to journalists in this regard by the European Convention and the common law are such that immense trust is being placed on the press to deploy their sources in the public interest rather than against it.
- 9.16** There is a powerful public interest in readers being able to assess for themselves the evidence base for any assertion of fact or expression of opinion in a newspaper. Overall, the identification of the source or sources would go a long way to meeting what Professor Baroness O’Neill has described as the public interest in ‘assessability’; and that should be the default position, only to be displaced if the public interest in confidentiality requires it.
- 9.17** It is likely, of course, that many of the fabricated stories published by parts of the press do come from genuine sources, but there is evidence that, in certain circumstances and at certain titles, checking the facts provided by a source is limited (if not slapdash) at best. Mr Peppiatt’s view was that some newspapers adopted a cavalier approach to checking facts provided by a source where the risk of litigation was assessed to be low, particularly in celebrity stories that were not damaging to reputations.<sup>436</sup>
- 9.18** Examples of that approach to celebrity reporting were provided by Mr Atkins, who had sold numerous fictional stories to newspapers during the making of his documentary ‘*Starsuckers*’. The stories, published by various tabloid newspapers despite the fact that the core of each story was fabricated, included: Avril Lavigne falling asleep and snoring in a nightclub; Amy Winehouse setting her hair on fire at a party; Guy Ritchie injuring himself while juggling cutlery in a restaurant; Pixie Geldof padding her bra out with sweets; and Sarah Harding owning a number of books on quantum physics.<sup>437</sup>
- 9.19** Two aspects of the evidence in relation to the stories stood out. First, two newspapers added their own fabrications to the already fabricated stories: in the Amy Winehouse story, the Daily Star added its own twist that “*a friend was called in and ended up punching Flamey Amy’s head to put out the blaze*”; in the Sarah Harding story, The Sun appeared to have invented a quote from a source that “*there’s a lot more going on under that blonde barnet than Sarah’s given credit for. She’s a smart cookie and does read an awful lot.*”<sup>438</sup>
- 9.20** Second, when The Sun’s Gordon Smart gave evidence in relation to two of the stories published by The Sun (the Guy Ritchie and Sarah Harding stories) he appeared unwilling to accept that The Sun had, in fact, published fiction. He seemed to suggest that the stories, invented by Mr Atkins in key respects, might have coincidentally been true. In addition, he seemed not to think that there was anything wrong with publishing fiction in a newspaper which purported

<sup>436</sup> p27, lines 16-24, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>437</sup> p4, paras 19-22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Chris-Atkins1.pdf>

<sup>438</sup> paras 19-22, *ibid*

to be publishing fact. He appeared to suggest that it did not matter because the stories were “insignificant” and “trivial”.<sup>439</sup> Perhaps that explains why the story about Ms Harding remains on The Sun’s website notwithstanding the clear evidence that it was fictional.<sup>440</sup>

- 9.21** It is of course correct that the stories were insignificant and were trivial. But that does not change the fact that they were fictional, while purporting to be true. Furthermore, although newspaper readers will accept that not every story they read is accurate (because mistakes can be made), that is not the same as saying that they would be as sanguine about stories that were known by those responsible for writing and publishing them to have been made up or deliberately exaggerated.
- 9.22** In addition to the fact that fictional stories undermine the trust on which newspapers depend, part of their problem is that they very quickly become “popular truth” by virtue of repetition in other newspapers, blogs and websites. Ms Church gave an example of this. The People published an entirely fictional story about Ms Church drunkenly proposing marriage to her boyfriend while singing karaoke in a pub. Allegedly the story was provided to the People by a source, but the People chose to rely on that source alone without putting the story directly to Ms Church or her representatives<sup>441</sup> and without even the most basic fact checking. In fact, Ms Church was, at the relevant time, performing in a completely different town with a large public audience and there was not even karaoke at the pub she was reported to have been in. Nonetheless, once published, the story was republished and rehashed in more than 70 outlets internationally and became “true” in the public mind at least.<sup>442</sup>
- 9.23** Mr Peppiatt described how an inaccurate article in one title can spread virally through others. In his experience fact checking was rarely carried out in relation to stories published in “reputable” titles or news agencies. In his written evidence he wrote:<sup>443</sup>

*“The majority of stories appearing in the Daily Star are sourced from the news wires or plagiarised from other newspapers, in particular the Daily Mail, which is such a heavy influence that for the most part it dictated the Daily Star’s news agenda. In addition to the major news agencies such as Reuters, PA and Associated Press there are dozens of local agencies dotted around the country supplying content to the national press. Some of this content is lifted from local newspapers, or sourced from agency reporters’ own contacts... One obvious consequence of reporters cannibalising the work of other journalists is that the former is often wholly unaware of the veracity of their information. Sometimes the maxim that a story is “too good to check” comes into play, and in this manner falsehoods can easily become propagated across the media.”*

- 9.24** He developed this in oral evidence, saying:<sup>444</sup>

<sup>439</sup> pp68-71, lines 4-10, Chris Atkins, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>440</sup> <http://www.thesun.co.uk/sol/homepage/showbiz/bizarre/2355241/Girls-Aloud-star-Sarah-Harding-reads-books-on-astronomy-and-quantum-physics.html>; <http://www.thesun.co.uk/sol/homepage/showbiz/bizarre/2338619/Geri-Halliwell-steps-out-with-an-old-flame-Nick-House.html> – is this right?

<sup>441</sup> Although her representatives were approached to comment on the ‘nature’ of Ms Church’s relationship with her boyfriend, the specifics of the story were not put to them

<sup>442</sup> p4, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Charlotte-Church.pdf>; pp40-41, lines 10-19, Lloyd Embley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf>

<sup>443</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Peppiatt.pdf>

<sup>444</sup> pp10-11, lines 14-5, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

*“So as a journalist, you know, if I see a Daily Mail story I’ve been given to rewrite in Daily Star style, you know, for me to then research where they’ve got their information, and if I find out that in fact that information has been distorted or is inaccurate, for me to then approach the news desk and say, “Actually, I’ve found out this Daily Mail story is just not standing up”, you’d be sort of kicked back to your seat fairly robustly. You know, that’s not the point. This is, you know: the Daily Mail said it; write it.”*

- 9.25** Again, I recognise that much of what Mr Peppiatt said was challenged and said to be unrecognisable. It is undeniable, however, that many of the allegations that he made have been exemplified in other evidence provided to the Inquiry.

## Deliberately misleading headlines

- 9.26** A particular problem of inaccuracy identified in the evidence was the use of misleading headlines that misrepresented the content of the actual story. Mr Peppiatt described his experience at the Daily Star:<sup>445</sup>

*“Another ethically dubious technique used by the Daily Star (and other tabloids, if not to the same ridiculous degree) is the overplayed headlines that misrepresent the truth of the story beyond. It is such an endemic problem at the Daily Star that most days a comparison of the front page with the story inside is bordering on the comedic. One recent example claimed TV KING COWELL IS ‘DEAD’. The story inside was about him leaving X Factor. This behaviour is purely a cynical ploy to encourage consumers to purchase the Daily Star over rivals. Often lacking a real scoop to encourage this, they simply pretend to have one. It’s a con, plain and simple. The Daily Express is no better at this. Particularly distasteful are their front page claims of “miracle cures” for cancer/Alzheimer’s/Parkinson’s, which upon closer analysis are simply initial trials on mice, with many years of research ahead before they can even be considered medically sound. This type of misleading sensationalism deliberately plays on offering false hope to people whose lives have been affected by such illnesses, all in order to sell their papers”*

- 9.27** In addition to the “Telly King Cowell is Dead” story, the Inquiry saw further examples from the Daily Star. One story headed “Terror As Plane Hits Ash Cloud” was accompanied by an image of a burning jumbo jet. The story was in fact about a television programme which had simulated what might happen if a plane flew into a volcanic ash cloud, but the headline and picture were so alarming that copies of that edition of the Daily Star were removed from airports.<sup>446</sup> Another example was an article headed, “English Defence League to become political party”. The story in fact included an interview with the leader of the EDL who was quoted as “not ruling out” becoming a political party, but expressed a clear preference not to do so.<sup>447</sup>
- 9.28** Other newspapers were also guilty of misleading headlines. The Daily Express headlined a report of a poll showing that 28 per cent of people supported quitting the EU with the headline “75 per cent say quit the EU now!” Similarly, the Mail on Sunday published an article under the headline “BBC turns its back on Year of Our Lord: 2,000 years of Christianity jettisoned

<sup>445</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Peppiatt.pdf>

<sup>446</sup> pp51-57, lines 1-2, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>447</sup> pp57-59, lines 3-1, *ibid*

for politically correct ‘Common Era’”, which noted, only in the final paragraph, that the BBC had in fact made no decision on the use of the terms BC, AD, BCE and CE, and had issued no guidelines on the matter.<sup>448 449</sup>

**9.29** Evidence of the embellishment of headlines was not limited to the tabloid press: some broadsheets and celebrity magazines were shown to have adopted the practice as well. From the broadsheets, the Inquiry was shown a Daily Telegraph headline “*Children to be banned from blowing up balloons, under EU safety rules*”. Notwithstanding the headline, the article reported that there was to be no ban on balloons, merely the introduction of a requirement for balloons to carry a warning.<sup>450</sup>

**9.30** In relation to celebrity magazines, the Inquiry was shown a ruling from the PCC in 2008 which highlighted the issue and provided the following summary:<sup>451</sup>

*“Readers Misled by Front Page Teasers*

*The Commission has recently resolved a number of separate complaints from concerned readers complaining that magazine covers have promised content that does not correspond to the inside articles.*

*There was the cover of Reveal magazine suggesting that an article contained comments from Victoria Beckham about her fitness regime. The story actually contained quotes from Melanie Brown, who had briefly referred to Mrs Beckham. In order to resolve the complaint, the editor telephoned the complainant, apologising for the confusion and offering her a subscription.*

*Look magazine provoked a complaint about a front-cover image of Jennifer Aniston with the caption ‘I’m having a baby!’. The subsequent article contained the claims that Ms Aniston was thinking about – rather than confirmation that she was – having a baby with her partner. The editor apologised to the complainant, undertaking to bear her comments in mind for future reference, and refunded the cost of the magazine.*

*OK Magazine ran a front-page headline referring to the “Star-studded wedding” of “Wayne and Coleen”. Inside, there was just a full page advertisement for the wedding which was to be covered in the following week’s edition. The magazine indicated that it had not intended to mislead readers, and offered the complainant a six-month subscription.*

*This issue does not only relate to celebrity articles. A problem occurred with Love It magazine, which used the following front-page headline to summarise an article: “Locked up by my hubby and forced to eat”. The husband complained, making clear that his wife was sectioned under the Mental Health Act via a process that was controlled by a consultant, a GP and other medical staff. The magazine settled the complaint, including by apologising to the complainant.*

*Clearly, there is growing concern about the use of material on front covers. Magazine editors should be aware of this issue and act to ensure that readers are not misled by headline references to inside articles. The Commission may be asked to adjudicate on the matter, where it would be asked to consider whether the brief reference on the cover is justified by the content of the story itself.”*

<sup>448</sup> p51, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>449</sup> See also the submission by Full Fact, which includes several other examples from other titles in which the headlines do not reflect the content of the article: <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>450</sup> pp53-54, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>451</sup> <http://www.pcc.org.uk/news/newsletter/november/readersmisled.html>

- 9.31** Notwithstanding the fact that the PCC issued this warning in 2008, the Inquiry heard evidence of a continuing problem. In 2010, OK! Magazine advertised an “exclusive” interview with Ms Miller on its website, despite the fact that there was no exclusive interview in the magazine. Further, during the Inquiry, OK! Magazine published a teaser entitled, “*Catherine’s royal birthday, the intimate party, gifts, star guests and delicious menu*” despite the fact that inside the magazine there was no information on the gifts, guests or menu at the party.<sup>452</sup>
- 9.32** It cannot be the case that the majority of the misleading headlines and teasers identified during the course of the Inquiry were accidental. Although there was clear evidence (emphasised by journalists whose stories were criticised because of the headline) that headline writers were generally not the journalists who wrote the stories, those sub-editors or headline writers must have read the articles or piece in question before composing their headlines. And they must have written the headlines in the knowledge, first, that they did not fully reflect the contents of the article or magazine and, second, that if the rebuttal which undermined the headline was included in the piece, it was almost inevitably buried at the end.
- 9.33** The Daily Star’s editor Dawn Neesom agreed that the Daily Star’s headlines were intended to create as much impact as possible in order that the person passing the newspaper stand might say, “I’ll buy the Star today”. In respect of at least some of the headlines put to her from the pages of the Star, she accepted that the consequence was that they were misleading.<sup>453</sup> Daily Express editor Hugh Whittow agreed that some of his headlines were designed to strike a resonance with the attitudes of his readers, but he too accepted that, in the “*75 per cent say quit the EU*” example at least, that meant the headline was misleading.<sup>454</sup> OK! Magazine’s Lisa Byrne noted a tension between the need to sell the magazine and the need for accuracy in teasers, but thought that, except in limited examples (a story about Wayne and Coleen Rooney and Sienna Miller example) OK! had not crossed the line into being misleading.<sup>455</sup>
- 9.34** What seems clear is that, faced with a fiercely competitive market, some titles have found themselves on the wrong side of the line between an attention-grabbing but accurate headline and an embellished and inaccurate headline.<sup>456</sup>

## Deliberate or reckless inaccuracy in respect of big stories

- 9.35** A third category of inaccurate reporting of which the Inquiry heard substantial evidence was a tendency in parts of the press to set aside the need for rigorous fact checking in the context of fast moving and high profile stories. The clearest examples of this practice are the highest profile: the defamatory and reckless reporting of the McCanns and Mr Jefferies, dealt with above<sup>457</sup>.

<sup>452</sup> pp81-87, lines 15-2, Lisa Byrne, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf>

<sup>453</sup> pp52-58, lines 16-22, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>454</sup> pp121-124, lines 13-11, Hugh Wittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>455</sup> pp86-87, lines 11-2, Lisa Byrne, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-18-January-2012.pdf>

<sup>456</sup> See also the section on inaccurate reporting of political issues at para 9.38 below

<sup>457</sup> Part F, Chapter 5

**9.36** Notably, this tendency was not limited to tabloid newspapers: in respect of Mr Jefferies in particular the broadsheets were not blameless. In addition, Mr Davies gave an example of the Guardian’s reporting of the Haut de la Garenne children’s home story as an example of where the Guardian, amongst others, had published inaccurate articles in circumstances where greater care would have led to the conclusion that there was no basis for the story. Consistent with the McCann and Jefferies examples, there was limited information available at the time of the reports of the alleged murders, torture and burials at the Jersey children’s home, but a significant public demand for information. Mr Davies said:<sup>458</sup>

*“We want the story that will sell papers, so therefore you pick the sexiest possible way of telling it.*

*The problems that are associated with that I think spread across the spectrum. I’m not exempting the Guardian from problems. We have run stories which were clearly false. The Jersey children’s home – do you remember that, a couple of years ago – where the idea was that the police had evidence that children had been killed and buried in the ruins of an old children’s home on the isle of Jersey. That’s a classic of what Richard [Peppiatt] was trying to describe earlier. The evidence for the truth of that proposition is screaming its falsehood. So, for example, the police said, “We have been looking into the ruins of this building and we have found a cellar which is exactly like the cellar which is described by our survivor witnesses.” It’s “very dark”. Cellars are dark. It means nothing. Then they said, “And in this cellar we found a bath”, and it’s quite alarming, this, the sort of hints of torturing. “It’s actually bolted to the floor”, as though everybody’s bath was mobile. It’s silly. It doesn’t make any sense.*

*So then the problem that occurred on all newspapers across the whole spectrum is it’s too good a story to knock down. So it’s exactly what Richard was saying. A reporter from any paper is sent out to Jersey to follow up on this story. The reporter who rings up and says, “Actually, this is crap, there’s just no evidence for this at all”, they will not be thanked. It’s a great story.”*

**9.37** These examples, along with some others, are part of the evidence base for a broader conclusion, that in respect of stories that become “big stories” followed by all the press, and generally involving crime or a very high profile individual, there is a tendency amongst large parts of the press to disregard the rule book.

## Inaccurate reporting of political issues to fit the world view of a title

**9.38** The Inquiry heard a great deal of evidence on the extent to which newspapers ought to distinguish between fact and comment in reporting; a requirement to do so is contained in the Editors’ Code.<sup>459</sup> It was almost universally accepted by the witnesses who appeared at the Inquiry that the distinction between fact and comment, particularly in respect of the reporting of political issues, had been substantially blurred in recent years. Former Prime Ministers the Rt Hon Tony Blair and the Rt Hon Gordon Brown gave evidence of the corrosive effect that

<sup>458</sup> pp85-86, lines 13–18, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>459</sup> Clause 1(iii) of the Code states: “The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact”

this blurring of news and comment could have on political life.<sup>460</sup> To varying extents, others, including the Rt Hon Kenneth Clarke<sup>461</sup> and the broadcaster Jon Snow,<sup>462</sup> agreed.

- 9.39** Although some consideration was given to whether this development justified criticism, it seems to me that the blurring of fact and comment, although prohibited in the Editors' Code, is an inevitable part of press reporting in the 21<sup>st</sup> century. That is so for two reasons. First, because purely factual reporting devoid of all opinion is, to all practical purposes, impossible: the choice of stories to publish in a newspaper, and the facts chosen to include in a particular story, will necessarily be influenced by a newspaper's agenda and opinions. Secondly, because in a world of 24 hour television and online news, readers expect newspapers to provide something more than pure news: campaigns, opinions and comment are what a readership demands and it is not always possible or indeed desirable to divorce these from pure reporting of the news. That is not to say that newspapers should not seek to identify, where possible, what is primarily news and what is primarily commentary. But it is to say that that the fusion of news and comment in the press is not necessarily a practice that is harmful or worthy of criticism.
- 9.40** However, what *is* harmful and what *is* worthy of criticism is a practice identified in sections of the press of prioritising the worldview of a title over the accuracy of a story. Mr Campbell, a supporter of what he called "agenda journalism" (where news and comment are necessarily fused), nonetheless argued that sections of the press had taken agenda journalism to a point where it transgressed into the realms of invention and/or reckless inaccuracy.<sup>463</sup> Mr Peppiatt's evidence in relation to the top-down pressure experienced at the Daily Star to uncover stories that fit within a particular "narrative" is a prime example of this and is discussed above..
- 9.41** Full Fact has monitored press accuracy since April 2010. It provided a comprehensive and extremely helpful submission<sup>464</sup> to the Inquiry which identified a range of inaccurate articles, including many where the inaccuracy appears to be the result of the title's agenda taking precedence or assuming too great a significance over and beyond the facts of the underlying story. It seems that stories on political issues are most likely to suffer from this form of inaccuracy; examples are considered within the following categories: (i) disability and social welfare benefits; (ii) criminal justice issues; (iii) immigration; and (iv) Europe and Britain's role within it.
- 9.42** In relation to articles on disability and social welfare benefits, Full Fact provided numerous examples of misleading articles about the transition from the old Incapacity Benefit (IB) to the new Employment Support Allowance (ESA). Each article appeared to support an agenda of exposing benefit frauds and getting the 'work-shy' back into work. Full Fact provided many examples, all of which could have been included in this Report: by way of illustration only, three are referred to.

<sup>460</sup> p6, lines 4-24, p12, lines 1-23, p16, lines 9-14, p18, lines 1-25, pp24-28, lines 12-23, Tony Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-28-May-2012.pdf>; pp26-32, lines 16-4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-28-May-2012.pdf> [http://news.bbc.co.uk/1/hi/uk\\_politics/6744581.stm](http://news.bbc.co.uk/1/hi/uk_politics/6744581.stm); para 4 – 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Tony-Blair1.pdf>; pp15-21, lines 24 –14, Gordon Brown, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-11-June-2012.pdf>

<sup>461</sup> pp83-85, lines 1-1, Kenneth Clarke, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-30-May-2012.pdf>

<sup>462</sup> pp5-9, lines 25-24, Jon Snow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-25-June-2012.pdf>

<sup>463</sup> pp12-13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alastair-Campbell.pdf>

<sup>464</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

- 9.43** First, the Daily Mail published an article under the headline ‘400,000 ‘were trying it on’ to get sickness benefits: 94% of incapacity benefits [sic] can work’. In fact the report on which the article was based had reported that, in the transition from IB to ESA, only 6% of sickness benefit claimants had been assessed as unsuitable for any kind of work related activity. However, many of the 94% of people described in the headline as “trying it on” and “fit for work” were those assessed as falling with the ‘Work Related Activity Group’ (WRAG) for the purposes of ESA; that is, they were eligible to claim ESA, considered *unsuitable* for immediate work, but potentially suitable for work in the future. That included people undergoing chemotherapy or dialysis treatment, hospital in-patients, and those suffering from uncontrollable and life threatening diseases, none of whom would ordinarily be thought of as “trying it on” to claim sickness benefit.<sup>465</sup>
- 9.44** Second, The Sun’s article, ‘Fit as a Fiddler: ‘Sick’ spongers could start work right now’ suggested 1.8 million people on sickness benefit were fit for work, or would be fit for work within “a few weeks”. The 1.8 million “spongers” described in the headline included the same group as those described as “trying it on” by the Daily Mail: those placed in the WRAG who were assessed as unsuitable for immediate work, but potentially suitable for work in the future, including cancer patients, those with renal failure, hospital in-patients and others suffering from serious diseases. The suggestion that this group would be fit for work within a few weeks had no factual basis.<sup>466</sup>
- 9.45** Third, the Daily Telegraph published an article reporting ‘Nine out of 10 sickness benefit claimants are judged fit to work’. That ‘nine out of 10’ judged “fit to work” included not only those in the WRAG, but also those who had withdrawn their claims because their condition had improved between application and assessment. In that context, it was not only misleading to refer to the ‘nine out of 10’ as “fit to work”, but it was also misleading to include within the figures the category of people who had withdrawn their claims and were therefore no longer “claimants”.<sup>467</sup>
- 9.46** The House of Commons Work and Pensions Select Committee was critical of the press coverage of welfare reform in its 6<sup>th</sup> Report. It noted:<sup>468</sup>

*“Sections of the media routinely use pejorative language, such as “work-shy” or “scrounger”, when referring to incapacity benefit claimants. We strongly deprecate this and believe that it is irresponsible and inaccurate. The duty on the state to provide adequate support through the benefits system for people who are unable to work because of a serious health condition or illness is a fundamental principle of British society. Portraying the reassessment of incapacity benefit claimants as some sort of scheme to “weed out benefit cheats” shows a fundamental misunderstanding of the Government’s objectives.*

*41. ... In the end, the media will choose its own angle, but the Government should take great care with the language it itself uses and take all possible steps to ensure that context is provided when information about IB claimants found fit for work is released, so that unhelpful and inaccurate stories can be shown to have no basis.”*

- 9.47** The Select Committee is right to acknowledge that the media is entitled to choose whatever angle on a story it wishes, particularly on matters of political importance. Nonetheless, there is an important distinction to be made between “taking an angle” and plain inaccuracy. It is vital that the press is cautious not allow the former to lead to the latter.

<sup>465</sup> p15, *ibid*

<sup>466</sup> p41, *ibid*

<sup>467</sup> p55, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>468</sup> paras 40-41, <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworpen/1015/101505.htm>

**9.48** Full Fact identified a number of examples of misreporting on criminal justice issues where it also appears that this line was transgressed. In March 2011, both the Daily Mail and the Daily Express published articles reporting that new sentencing guidelines would allow those supplying class A drugs to avoid a custodial sentence if they were playing a ‘subordinate’ role in a criminal gang. The Daily Mail’s piece was headlined, *“Heroin Dealers to Escape Jail: new sentencing proposals mean pushers would go free”*; the Express headline was *“It’s madness to let drug dealers escape prison”*. The reality is that the new sentencing guidelines made no change at all to the approach to sentencing those involved in the supply of drugs, but broadly instead preserved the status quo.<sup>469</sup> Nonetheless, the stories fit within an established agenda to resist a general “softening” in criminal sentencing.

**9.49** Full Fact noted these articles as part of a general trend within parts of the press to misreport stories on criminal sentencing to give an impression of a judiciary soft on crime and criminals. Retired Court of Appeal judge Sir Stephen Sedley recently spoke about this narrative in parts of the press and expressed his concerns as to its effect. He said to the Joint Committee on Privacy and Injunctions that:<sup>470</sup>

*“over the 20 years or so since I first became a judge a relentless campaign of accusing judges of being soft on crime and under-sentencing has led to the escalation of sentencing, which has now filled our prisons to bursting, about which it is recognised something needs to be done. That is insidious; it is very difficult to put your finger on any one newspaper article or case in which it has happened, but as a trend it undoubtedly has happened.”*

**9.50** The Howard League for Penal Reform also gave evidence in relation to the misrepresentation of criminal sentencing. It noted The Sun’s article on the sentencing of the mother of Baby Peter (formerly known as Baby P), and its expression of outrage that she could “walk free in just over 3 years”. The reality is that she had been given an indeterminate sentence for public protection (IPP), with a minimum tariff of five years. Under that sentence, the woman in question would only be released if she were deemed to pose no risk to the public, failing which she would remain in prison indefinitely and potentially for life. While it was technically true that, having served almost two years of her sentence on remand, she was eligible to be considered for parole after a further three years, the failure to mention that she had been given an IPP sentence, would not be released if she was considered a danger to the public and could remain in prison for life rendered the article significantly misleading.<sup>471</sup>

**9.51** Similarly misleading reporting was noted in relation to immigration issues (some of which is discussed above). Further evidence included, for instance, a Daily Mail article alleging that a failed asylum seeker who had challenged deportation from Britain, was told he could stay “because he goes to the gym”. The article was erroneous on several bases. First, the judge had not granted the failed asylum seeker any leave to remain in the UK, but had simply required the Home Office to reconsider his application because of flaws in the decision making process. Second, at no stage in the judgment did the judge indicate that the individual’s membership of a gym was in any way a factor in his favour. Although one sentence of the judgment referred to the fact that the individual had made friends at a gym, that sentence was a summary of the failed asylum seeker’s submissions to the court, rather than any part of the judge’s

<sup>469</sup> p15, *ibid*. The only proposed alteration to the sentencing approach to class A drugs concerned drugs mules although they also would continue to receive substantial custodial sentences

<sup>470</sup> pp7-8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>471</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Howard-League-for-Penal-Reform1.pdf>

reasoning.<sup>472</sup> It is unclear if the misunderstanding of the judgment in the article was careless or deliberate. Nonetheless, the story fits neatly within a campaign pursued by the newspaper against Article 8 of the European Convention on Human Rights, or what the Daily Mail has called the “human right to sponge off the UK”.<sup>473</sup>

**9.52** A further Daily Mail story headlined “*Immigration soars 20 per cent last year making a mockery of government pledge to bring it down*”, was mirrored by the Daily Express with its headline “*Immigration soars 20%*”. In fact, the report on which both articles were based made clear that immigration had remained stable, but net migration had increased by 20% because emigration had fallen.<sup>474</sup> Another article in the Daily Express, headlined “*Migrants more likely to claim jobless benefit*”, reported that a study had shown that migrants to the UK were more likely to claim unemployment benefit than people from the UK. In fact the report on which the article was based concluded that migrants, who were claiming benefits, were more likely than non-migrants, who were claiming benefits, to be claiming job seekers allowance, but migrants as a whole were less likely to claim benefits than the UK born population.<sup>475</sup> Once again, it is unclear whether the errors were careless or deliberate, but they did fit within consistent agendas pursued by each newspaper.

**9.53** Articles relating to the European Union, and Britain’s role within it, accounted for a further category of story where parts of the press appeared to prioritise the title’s agenda over factual accuracy. On Europe, Mr Campbell said:<sup>476</sup>

*“Several of our national daily titles – The Sun, The Express, The Star, The Mail, The Telegraph in particular- are broadly anti-European. At various times, readers of these and other newspapers may have read that ‘Europe’ or ‘Brussels’ or ‘the EU superstate’ has banned, or is intending to ban kilts, curries, mushy peas, paper rounds, Caerphilly cheese, charity shops, bulldogs, bent sausages and cucumbers, the British Army, lollipop ladies, British loaves, British made lavatories, the passport crest, lorry drivers who wear glasses, and many more. In addition, if the Eurosceptic press is to be believed, Britain is going to-be, forced to unite as a single country with France, Church schools are being forced to hire atheist teachers, Scotch whisky is being-classified as an inflammable liquid, British soldiers must take orders in French, the price of chips is being raised by Brussels, Europe is insisting on one size fits all condoms, new laws are being proposed on how to climb, a ladder, it will be a criminal offence to criticise Europe, Number 10 must fly the European flag, and finally, Europe is brainwashing our children with pro-European propaganda! Of the UK press and the European institutions – I speak as something of a Eurosceptic by Blairite standards – it is clear who does more brainwashing. Some of the examples, may appear trivial, comic even. But there is a serious point: that once some of our newspapers decide to campaign on a certain issue, they do so with scant regard for fact. These stories are written by reporters, rewritten by subs, and edited by editors who frankly must know them to be untrue. This goes beyond the fusion of news and comment, to the area of invention.”*

<sup>472</sup> pp28-29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>473</sup> <http://www.dailymail.co.uk/news/article-2004501/3-200-foreign-criminals-kicked-right-family-life.html>

<sup>474</sup> p21, p35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>475</sup> p33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>476</sup> pp13-14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Alastair-Campbell.pdf>

- 9.54** Although Mr Campbell’s evidence may have been exaggerated for effect, there is certainly clear evidence of misreporting on European issues. Mr Campbell drew attention to a Daily Mail story claiming that “the EU” was going to ban grocers from selling eggs by the dozen, followed by a story that there had been a U-turn and the ban would no longer take place. The reality is that there had never been a ban proposed and the original story was based on a deliberate or careless misinterpretation of EU proposals.<sup>477</sup> Full Fact drew attention to a number of further ‘anti-EU’ stories which misrepresented facts, including a Daily Express report on EU plans to ‘ban’ plastic shopping bags, when the reality was that a consultation had been launched to explore a variety of options, including a potential ban, for reducing waste from plastic bags.<sup>478</sup>
- 9.55** The factual errors in the examples above are, in certain respects, trivial. But the cumulative impact can have serious consequences. Mr Blair explained that the misinformation published about Europe by some parts of the press made it difficult for him to adopt particular policies or achieve certain political ends in Europe that he might otherwise have done. He said:<sup>479</sup>

*“My distinction is between that and how you actually report the story as a piece of journalism. So if you take the issue to do with Europe, what I would say is that those papers who are Eurosceptic are perfectly entitled to be Eurosceptic. They’re perfectly entitled to highlight things in Europe that are wrong. What they shouldn’t do is, frankly, make up a whole lot of nonsense about Europe and dish that up to the readers, because that’s – I mean, how does the reader know that’s not correct?”*

- 9.56** That, ultimately, is the foundation of the criticism made in this section: there can be no objection to agenda journalism (which necessarily involves the fusion of fact and comment), but that cannot trump a requirement to report stories accurately. Clause 1 of the Editors’ Code explicitly, and in my view rightly, recognises the right of a free press to be partisan; strong, even very strong, opinions can legitimately influence the choice of story, placement of story and angle from which a story is reported. But that must not lead to fabrication, or deliberate or careless misrepresentation of facts. Particularly in the context of reporting on issues of political interest, the press have a responsibility to ensure that the public are accurately informed so that they can engage in the democratic process. The evidence of inaccurate and misleading reporting on political issues is therefore of concern. The previous approach of the PCC to entertaining complaints only where they came from an affected individual may have allowed a degree of impunity in this area: in the context of misleading reporting on political issues, representative bodies are likely to be far better placed to monitor, and complain about, inaccuracies.

## Science reporting

- 9.57** In many ways, the imperative for accuracy in political reporting is matched in relation to science reporting. There is a significant public interest in the press reporting scientific advances, discoveries or reports in an easily accessible way. The evidence received by the Inquiry suggested that science reporting had improved in recent years and that the majority of science reporting was responsible and accurate.<sup>480</sup> However, in the minority of cases where

<sup>477</sup> p15, *ibid*

<sup>478</sup> pp38-39, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>479</sup> p25, lines 3-12, Tony Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-28-May-2012.pdf>

<sup>480</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>; para 1, [http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy\\_communications/documents/web\\_document/wtvM054159.pdf](http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy_communications/documents/web_document/wtvM054159.pdf)

the press reports a science story carelessly or inaccurately, it can cause substantial damage. As the Science Media Centre wrote:<sup>481</sup>

*“The potential of the media to influence and inform the public on science comes with a huge responsibility. When the media gets it wrong the impact is devastating and causes real harm to individuals and society. The furore over the measles, mumps and rubella (MMR) vaccine, which started in 1998 after a rogue doctor claimed a link between the vaccine and autism, is the best known example of how poor media reporting can cause harm. Vaccination rates before the story stood at about 92% but dropped down to 80% after the scare, and it has taken close to 15 years to get over the damage. Cases of measles in England and Wales rose from 56 in 1998 to 1,370 in 2008.”*

**9.58** In respect of the MMR story, it is correct that the press as a whole were reporting the work of a qualified medical practitioner, as published in a respected medical journal. However, the Science Media Centre, the Association of Medical Research Charities, Cancer Research UK, the Wellcome Trust, and Sense about Science all considered that the press shared responsibility for the scandal, primarily because a single doctor’s research, based on a small case study, which conflicted with all other research in the field and conflicted with the great majority of medical opinion, was unjustifiably given front page prominence.<sup>482</sup>

**9.59** The MMR example was cited by each of these organisations as an example of false balance within the press: that is to say, where the scientific view of a very small minority is given prominence which suggests that there is a significant conflict of opinion within the scientific community.<sup>483</sup> As Fiona Fox, Chief Executive of the Science Media Centre, said in relation to the MMR scare:<sup>484</sup>

*“Time and time again the editor demanded that the fact that 99.99999 per cent of medical science believed this vaccine to be safe had to be balanced in every article by Andrew Wakefield or one of his supporters. So you have the terrible situation where a MORI poll showed, at the height of this crisis, that nearly 60 per cent of the British public thought that medical science was divided. That’s the bit on which the media let the public down.”*

**9.60** False balance (or on occasion, overtly politicised reporting) was noted as a general concern in relation to other topics, including the reporting of GM crops and climate change.<sup>485</sup> The Daily Express’s article ‘100 reasons why global warming is natural’ was identified as an example of where false balance, or the title’s political agenda, resulted in a misleading and inaccurate piece of science reporting.<sup>486</sup> The Association of Medical Research Charities, Cancer Research UK, and the Wellcome Trust wrote:<sup>487</sup>

<sup>481</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>

<sup>482</sup> pp19-22, lines 3-3, Fiona Fox, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf> ; para7, [http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy\\_communications/documents/web\\_document/wtvM054159.pdf](http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy_communications/documents/web_document/wtvM054159.pdf) ; paras 2.3-2.4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Sense-about-Science.pdf>

<sup>483</sup> paras 2.3-2.4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Sense-about-Science.pdf>

<sup>484</sup> pp20-21, lines 17-3, Fiona Fox, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>

<sup>485</sup> p6-7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf> ; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Dr-John-Abraham-University-of-St-Thomas.pdf>

<sup>486</sup> p6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>

<sup>487</sup> paras 12-13, [http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy\\_communications/documents/web\\_document/wtvM054159.pdf](http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy_communications/documents/web_document/wtvM054159.pdf)

*“The media often has a tendency to pursue balance in its stories, by countering one claim with another, and allowing alternative viewpoints a right of reply. This is perfectly proper in, for example, political reporting. Yet in science, the practice can often lead to distortions of its own. In science, it is often the case that a mainstream opinion about the interpretation of known data is shared overwhelmingly by professionals in that field, for example with the safety of the MMR vaccine or the link between greenhouse gases and global warming.*

*When this is the case, the effect of balancing opinion to stoke debate can be to create a misleading impression that dissent from the mainstream view is more widespread and serious than it actually is.”*

- 9.61** In addition to a problem of false balance, the Inquiry heard that there is a tendency in parts of the press to sensationalise science news headlines. Ms Fox noted that the content of the copy of science stories, written by science reporters, was generally exemplary, but that the headlines attached by sub-editors tended to misrepresent and exaggerate the underlying story.<sup>488</sup> Those headlines tended to fit within the category of ‘scare story’ or ‘breakthrough’.
- 9.62** Within the category of ‘scare story’ the Inquiry saw examples including The Sun’s headline *“Breast cancer risk all over shops’ shelves”*. The underlying research showed that traces of household chemicals are found in the breast tissue of women with breast cancer but the research did not find any causal link between the chemicals and breast cancer, let alone a causal link sufficient to justify the headline.<sup>489</sup> Similarly, a number of newspapers published stories, based on a British Medical Journal (BMJ) report, advising pregnant women against sleeping on their right (*‘Sleeping on left cuts stillbirths: New advice for mums-to-be’* (Mirror); *‘Sleep on your left to avoid stillbirth’* (Sun); *‘Sleeping on your right side “could put your unborn baby at risk”* (Mail)). However, the study’s own authors, the BMJ editorial, the BMJ press release and a set of expert comments released by the Science Media Centre all stated clearly that the study on which the article was based was not sufficient evidence to provide any new health advice to pregnant women.<sup>490</sup>
- 9.63** The Daily Mail has a clear commitment to reporting on health issues, as evidenced by its weekly “Good Health” supplement, but it has also been criticised for headlining with unjustified scare stories. One example seen by the Inquiry was the Daily Mail’s report of a *“Cancer danger of that night-time trip to the toilet”*. The underlying research showed that interrupting the circadian rhythms of mice by flashing lights for one hour pulses during a 12 hour night time cycle could cause damage to cell division. The research did not show a causal relationship between interruptions of circadian rhythm and cancer, but suggested that further research could investigate whether there might be such a link. Although one of the researchers said in an interview that turning on an artificial light at night could have an impact on the body clock, there was no suggestion in the research, nor in the interview, that a night-time trip to the toilet causes cancer.<sup>491</sup>
- 9.64** It is appropriate to mention a more recent example of a slightly different type of science story which causes concern. On 26 June 2012 the Daily Mail published an article that purported to describe the findings of research undertaken by scientists at the University of New York.

<sup>488</sup> p25, lines 5-17, Fiona Fox, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf> . As indicated above, this is not a problem limited to science stories.

<sup>489</sup> pp40-41, lines 6-2, *ibid*

<sup>490</sup> p10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>

<sup>491</sup> pp95-100, lines 1-22, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf> ; paras 66-84, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/08/Submission-from-RPC-regarding-Shaw-Morrissey-and-Mouse.pdf>;

The headline in the Mail Online read “Racism is Hardwired into the Brain”.<sup>492</sup> The article itself made a number of points, including: “*It’s possible, the researchers say, that even right-thinking, ‘egalitarian’ people could harbour racist attitudes without knowing*”.

- 9.65** This interpretation of the scientific research put forward in the Daily Mail article has since been rebutted in terms in a letter to the Guardian by the team of scientists at New York University who conducted that research.<sup>493</sup> Further, Dr Elizabeth Phelps, the lead researcher who is also cited in the Daily Mail article, has made clear in the relevant correspondence that the Daily Mail did not contact the researchers for comment, but rather quoted selectively from the press release announcing their findings.<sup>494</sup> Dr Phelps *et al* criticised the interpretation of the research put forward by the Daily Mail, and in particular the use of words like “*hardwired*”, as “*irresponsible*”.<sup>495</sup>
- 9.66** In response to questions from the Inquiry, Martin Clarke, editor of the Mail Online, said that the article was written from copy supplied by a respectable agency, National News.<sup>496</sup> Mr Clarke also stated that the article was published by others under a very similar headline. He drew to the attention of the Inquiry the example of Medical Daily, an online trade journal and news aggregator for the medical profession, published in the USA.<sup>497</sup> However, Mr Clarke did not mention that the Medical Daily report appears to rely heavily on the Mail’s own article, and reads:<sup>498</sup>

*“A few decades ago, it was unthinkable that looking at the brain to understand representations of social groups such as black versus white was even possible, let alone that such explorations could yield useful knowledge,” the authors wrote, according to the Daily Mail.’*

- 9.67** The argument that the article has been provided by an established News Agency, or alternatively published by others under a similar headline, if correct, merely serves to demonstrate that this lapse of standards occurred in publications beyond the Mail. On any view, this was contentious and problematic material, and merited careful handling. Further, it was not in the nature of a story which necessitated urgent treatment.
- 9.68** Examples of scare stories are not limited to health journalism; the reporting of climate change is also susceptible to exaggeration. When a *Nature* paper modelling climate change projected warming between 2 degrees and 11 degrees, almost all the newspapers carried the latter figure in their headlines, with one tabloid splashing a huge 11 degrees on the front page alongside an apocalyptic image. This was in spite of the fact that the press briefing to launch the paper had all emphasised that the vast majority of models showed warming around 2 degrees.<sup>499</sup>

<sup>492</sup> <http://www.dailymail.co.uk/sciencetech/article-2164844/Racism-hardwired-human-brain-people-racists-knowing-it.html>

<sup>493</sup> [www.guardian.co.uk/world/2012/jul/02/mail-race-nature-neuroscience?newsfeed=true](http://www.guardian.co.uk/world/2012/jul/02/mail-race-nature-neuroscience?newsfeed=true)

<sup>494</sup> *ibid*

<sup>495</sup> *ibid*

<sup>496</sup> p4, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-statement-by-Martin-Clarke-re-Miscellaneous-articles.pdf>

<sup>497</sup> p4, para 10, *ibid*

<sup>498</sup> <http://www.medicaldaily.com/articles/10458/20120626/racism-decision-cognition-emotional-ethnicity-human-brain-psychology.htm>

<sup>499</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>

- 9.69** The impact of these kinds of scare stories can be twofold: first they can create unnecessary public anxiety, and (as in the case of the MMR scandal) have a consequently detrimental impact on public health; and second, they can have a “cry wolf” effect, reducing trust in science reporting generally.
- 9.70** The flipside of the scare-story is the overblown ‘breakthrough’. As noted by the Association of Medical Research Charities, Cancer Research UK, and the Wellcome Trust:<sup>500</sup>

*“Many newspapers (though not all of them) are apt to exaggerate interesting but preliminary advances in biomedical science, proclaiming them as groundbreaking achievements that will transform individuals’ health when in fact they are reporting nothing more than promising results from experiments on mice, or cells grown in culture.”*

- 9.71** Examples of such stories included stories based on a report in *Nature* magazine that a drug discovered in the soil on Easter Island may have the effect of extending life in mice, but was expressly said to be harmful to humans. Nonetheless, the headlines included: *““Scientists discover Easter Island ‘fountain of youth’ drug that can extend life by ten years”, “Easter Island drug ‘adds decade to life” and “New pill can add decades to life”*.<sup>501</sup> Similarly, an example from *The Independent* was a story about the use of human stem cells to regenerate growth headlined, *‘Once they were blind, now they see. Patients treated with cells from human embryo’*. Unfortunately, the research on which the article was based did not show that stem cells had caused blind people to see again. It had simply shown that stem cells could be used safely in humans. There was no evidence that the stem cells, rather than chance, had caused two of the subjects of the experiment to show marginal improvements in their vision.<sup>502</sup>
- 9.72** Such exaggerated ‘breakthrough’ reporting can have several negative consequences. First, it can raise expectations for advances in medical science which are not met. This can feed a public perception that science is always promising and never delivering. Secondly, it can raise false hopes for patients. As the Association of Medical Research Charities, Cancer Research UK, and the Wellcome Trust noted:<sup>503</sup>

*“This is particularly true and damaging where it concerns treatments for incurable diseases that are not proven, yet which are portrayed as “miracle cures”. This can lead patients to spend life savings on treatments that are most unlikely to work, or on occasion to eschew the most effective known therapies in favour of alternatives that are untested or disproved.”*

- 9.73** Ms Fox suggested that the press ought to exercise a little more caution in the prominence given to science stories and in the choice of headline. She noted that the press like to publish extraordinary claims, but need to ensure that those claims are backed by extraordinary evidence. She said:<sup>504</sup>

*“We are not proposing that the media ignore extraordinary stories but that they treat them with extra caution and demand at least some strong evidence before going to print. This may simply mean putting these stories further inside the paper rather than*

<sup>500</sup> pp2-3, [http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy\\_communications/documents/web\\_document/wtvM054159.pdf](http://www.wellcome.ac.uk/stellent/groups/corporatesite/@policy_communications/documents/web_document/wtvM054159.pdf)

<sup>501</sup> p12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>

<sup>502</sup> pp26-28, lines 2-4, Fiona Fox, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-24-January-2012.pdf>

<sup>503</sup> p3, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Submission-by-Wellcome-Trust-Cancer-Research-UK.pdf>

<sup>504</sup> p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Fiona-Fox.pdf>

*splashing on the front page, including the voices of third party experts casting doubt on the findings, and following up these stories with equally significant coverage if the claims are refuted.”*

- 9.74** Assessing the evidence as a whole, it is clear that science reporting is generally accurate and responsible. However, the examples of inaccurate reporting identified by the various witnesses demand attention. Given the important public interest in science journalism, and the potential harm caused by overblown or sensational science reporting, greater care is needed by parts of the press prior to publishing sensational headlines of breakthroughs or scares. In addition, further consideration should be given to the need to provide balanced reporting without giving unjustified credence to minority views.
- 9.75** At the end of her evidence I invited Ms Fox to provide some draft guidelines for science journalism which, if followed, would reduce the risk of the press printing the type of story that has received critical comment. Ms Fox has responded to that request and has produced guidelines<sup>505</sup> which in my view are commendable for their utility as well as their succinctness. Any new regulator should bear them closely in mind.

## Conclusion

- 9.76** In their various submissions and representations to the Inquiry, the Press Core Participants and others with a similar interest have urged on me that factual error cannot be eliminated in press reporting, and that the evidence adduced to the Inquiry falls short of supporting the proposition that the problem is sufficiently serious or widespread to be classed as systemic, cultural or generic. I have paid close regard to these submissions, and I have not lost sight of the point that the Inquiry is inevitably taking a snap-shot of a picture which is immensely complex and multi-faceted. I have already made the point that the issue is not about quantity.<sup>506</sup> Taking all these matters on board, and assessing the evidence as a whole, I have come to the conclusion that there does exist a cultural strand or tendency within a section of the press to practice journalism which on occasion is deliberately, recklessly or negligently inaccurate. In other words, this is not simply a matter of accidental (or co-incidental) understandable human error.
- 9.77** The reasons for the existence of this cultural strand go further than the obvious and basic fact that stories are often written under pressure of approaching deadlines and it is inevitable that errors will occur. The pressures I am particularly concerned about are of a different nature: specifically, the commercial and personal pressures operating on journalists in an extremely competitive market to be the first to achieve the ‘scoop’, to place a novel slant on a story which otherwise lacks punch, or at worst to manufacture the facts or detail of a story to maintain the interest of the readership.
- 9.78** As with other similar cultural problems which I have identified in this Chapter, the requirement is for the creation of a regulator with more robust powers, not to censor or control the content of press reporting but to set out firmer and clearer ethical and professional standards whose adherence would directly lead to far fewer (measured both qualitatively and quantitatively) of the types of sub-standard reporting this chapter has identified. In that regard, the value of the work carried out by Full Fact is extremely important and I am pleased to recognise that Full Fact can claim to be one of the organisations that does seek to ‘guard the guardians’.

<sup>505</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Second-Submission-to-inquiry-Guidelines-for-Science-and-Health-Reporting.pdf>.

<sup>506</sup> para 1.1 of Part F, Chapter 3

## 10. Financial controls and payments for stories

### Controls on payments

- 10.1** The Operation Motorman revelations, along with the evidence of phone hacking at NoTW highlighted a significant problem with the control over cash payments within a number of newspaper titles. The evidence received by the Inquiry suggests that some improvements have been introduced to address the supervision of cash payments,<sup>507</sup> but there was certainly some evidence to suggest that more could be done in some titles.<sup>508</sup> Without engaging in the evidence relating to payments to public officials, which for reasons already described cannot be addressed in any detail, it is not possible to conclude in this Report that the supervision and control of cash payments is a practice for which the press, or parts of the press, deserve criticism as a whole.
- 10.2** However, the evidence heard by the Inquiry did raise substantial concerns in relation to the payment of sources generally, whether by cash or electronically. The concern arises not necessary because those sources are or are likely to be acting unlawfully (such as Mr Whittamore or Mr Mulcaire), but because the very act of payment may reduce the reliability of the information, and/or encourage breaches of privacy.
- 10.3** The evidence of the ‘fake stories’ and ‘medical records’ stings in Mr Atkins’ *Starsuckers*’ shone a light on this problematic issue. The evidence heard by the Inquiry is that the practice of paying sources for stories was widespread and continuing. Although there are undoubtedly circumstances in which payments for stories may be justified (see the MPs’ expenses stories) the evidence suggested payments for stories may incentivise exaggeration or fabrication and/or encourage breaches of privacy. For those reasons, it is worth exploring the evidence of this practice in some detail.
- 10.4** The Inquiry has been told that virtually all tabloid newspapers accept stories from members of the public, and indeed, many pay for that information. Most broadsheets, including the Financial Times, The Independent, the Daily Telegraph, The Times and the Guardian do not actively seek stories from the public and prefer not to work in this way, but all except the Guardian and the Financial Times would still pay for information if justified by the public interest.<sup>509</sup>

### Advertising for stories

- 10.5** Both journalists and editors have told the Inquiry that they regard tip-offs from the general public as an important source of legitimate information. In particular, they have made clear that the importance of such information to newspapers should be recognised in the form of payment to the individuals who supply it. In his evidence to the Inquiry, Mr Myler said that it was entirely legitimate for newspapers to make payments to sources for information that was newsworthy.<sup>510</sup> This view is shared by others in the industry, including Mazher Mahmood, who said that he believed that it was important that members of the public were

<sup>507</sup> p9, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Hugh-Whittow.pdf>

<sup>508</sup> p118, lines 1-6, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>509</sup> p89, lines 1-3, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>510</sup> pp43-45, Colin Myler, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-15-December-2011.pdf>

paid and rewarded for legitimate tips, information and stories.<sup>511</sup> However, there is perhaps a difference between making payment for a tip-off that is made without encouragement or request, and actively soliciting tip-offs through advertising for stories.

- 10.6** Traditionally, the tabloid press has advertised for information or stories through prominent advertisements in the pages of the particular newspaper and, in some cases, on the straplines of relevant columns, or through prominently sited and easy to find web-pages. Mr Smart confirmed The Sun's approach: page 2 of the newspaper routinely carries a telephone number that members of the public can call directly if they have stories that they perceive to be of potential interest to the newspaper.<sup>512</sup> By way of example, on Friday 30th March 2011, this advertisement read:

*"Get cash for your stories:*

*We are always after good story – and we pay big money for them every day. If you've got a story about a celebrity, a scandal, a human interest story or any other great tip, call our newsdesk today. Don't worry about the cost – we'll call you straight back."*

- 10.7** In addition to the telephone number The Sun also provides an email address and Twitter link through which members of the public might contact the paper.
- 10.8** Just like The Sun, the NoTW also advertised for stories, drawing the attention of readers to the payments, (sometimes in cash but also by cheque or electronic means) that the newspaper might make for those stories. In addition to advertisements carried on both its website and on the pages of the newspaper itself, the NoTW also asked readers to suggest potential lines of Inquiry that its one time investigative journalist, Mr Mahmood, might further investigate. That call was carried on the byline for Mr Mahmood's column and read:<sup>513</sup>

*"Do you know a scandal that Maz should expose? If so, you can ring him any time."*

- 10.9** In addition to an email address, a phone number was also provided to facilitate that communication from readers. The NoTW was unique in advertising for members of the public to help inform potential lines of Inquiry for the investigative journalists at the newspaper, and in fact Mr Mahmood has said that only a very few investigations were initiated as a consequence of information received from members of the public.<sup>514</sup> Mostly, where newspapers do advertise for stories, it is made clear, as is explored below, that the interest is in stories related to celebrities and other individuals with a public profile or, on a more limited basis, other human interest stories.
- 10.10** The Daily Mirror also advertises for stories and promises 'big monies' for them. Particularly, it makes mention of stories relating to celebrities and other people with a public profile. Like The Sun, the Daily Mirror advertises for stories both on the paper as well as on the newspaper's website through a link from the front page entitled 'sell your story'.

<sup>511</sup> p20, lines 11-19, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-25-January-20121.pdf>

<sup>512</sup> pp62-63, lines 22-5, Gordon Smart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>513</sup> p39, lines 20-21, Mazher Mahmood, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>514</sup> p20, lines 11-13, *ibid*

**10.11** The Daily Star also advertises for stories through a dedicated page on its website accessed through a drop-down link from the landing page of the newspaper's website. That page reads:<sup>515</sup>

*"GOT A PICTURE OF CELEBS LETTING THEIR HAIR DOWN? LET US SEE THEM!*

*Get your camera phones working and send your photos, with details – who, where, when to us!*

*Messages cost £1 plus usual network charges, but we'll pay a whopping £200 if your pics are used on the Goss pages.*

*LOVE CELEB GOSSIP? SO DO WE, SEND US YOUR STORY!*

*Know of a star behaving madly, sadly or badly?*

*For your chance to bag £200 – Send us your story with all the juicy details. If we use your story, we'll send you the cash!\* It's as simple as that."*

**10.12** In evidence to the Inquiry, representatives from the Daily Star emphasised the importance of showbusiness and celebrity stories to that paper. Ms Neesom, told the Inquiry that as the title was a relatively young newspaper it did not have the same established readership as some of its competitors.<sup>516</sup> The paper therefore needed to ensure that the content it carried appealed to its readership. Ms Neesom said that reader interest lay substantially in stories about the lives of celebrities and other individuals with a public profile.<sup>517</sup> A number of these stories were sourced from members of the public responding to the call for stories published in the Star newspaper itself.<sup>518</sup>

**10.13** The Daily Express also advertises for stories through its website. Readers are encouraged to contact the paper through a number of media, including telephone, email and SMS text message. It is notable that the Daily Express website makes no mention of payment in exchange for information.

## Levels of payment for material

**10.14** Levels of payment for information vary from newspaper to newspaper. Peter Wright, the former editor of the Mail on Sunday, said that at the Mail Group payments of up to £50,000 were made for information during his tenure.<sup>519</sup> However, he was also clear that such an amount would be paid in exceptional circumstances and only for a story of substantive and significant interest to the readers of Mail Group newspapers. Typically, such a story would take the form of an in-depth interview or a book serialisation.<sup>520</sup> More typically, Mr Wright said, the amounts paid by the Mail Group for stories, and particularly to members of the public, were much smaller: in 2010, the highest amount paid was £3,500, and *'they would most be a lot less than that'*.<sup>521</sup> Mr Wright said that whilst most payments were made electronically, the Mail Group would also make cash payments, because some of those individuals supplying material might not have bank accounts.

<sup>515</sup> <http://www.dailystar.co.uk/gotastory/>

<sup>516</sup> p53, lines 2-7, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>517</sup> pp47-49, lines 22-10, *ibid*

<sup>518</sup> p46, lines 22-25, *ibid*

<sup>519</sup> p79, lines 5-14, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>

<sup>520</sup> p79, lines 5-8, *ibid*

<sup>521</sup> p78 lines 12-14, *ibid*

- 10.15** In this respect, the operation of payment systems at the Daily Mail was similar to that at The Sun. There, cash payments were still made in a small number of circumstances. It was for individual journalists to make such requests for payments to senior staff and managing editors for authorisation. Whilst the amounts that could be paid for information to third parties could be significant, they were dependent on the final size of the story when published and also the likely interest of the subject of the story to the readers. Typically, payments for stories made by The Sun ranged from between £600 and £10,000 depending on the size and nature of the story.
- 10.16** A similar scale of payment for information also existed at the NoTW. Mr Thurlbeck said that information leading to a front page splash might result in payments of up to £20,000.<sup>522</sup> Mr McMullan explained that journalists working at the title, particularly those journalists working at the showbusiness desk, had access to substantive budgets without real oversight.<sup>523</sup> Mr McMullan has said that, as deputy features editor, he was able spend amounts of up to £10,000 on stories that resulted in a double page spread.<sup>524</sup> In this position, he was able to make payments of up to £3,000 for a page lead, and sums of between £5,000 and £10,000 for larger stories.<sup>525</sup> Payments of more than £1,000 for any other story had to be authorised by the then editor.
- 10.17** Although the Inquiry has heard that payments for stories supplied by members of the public would not normally exceed £10,000, other witnesses have suggested that in certain circumstances, payments for certain stories, in particular “kiss and tell” stories involving individuals with a significant public profile, could be much higher. Mr Shear explained that competitive pressures could put significant upward pressure on payments made if the papers concerned understood the stories in question to be profitable.<sup>526</sup> Mr Shear said that if stories involved a significantly high-profile celebrity, a kiss-and-tell story might cost: “*something like 10k to half a million.*”<sup>527</sup> Indeed, Mr Thurlbeck claimed that Rebecca Loos was paid a six figure sum for information about her relationship with the footballer, David Beckham.<sup>528</sup>
- 10.18** Similarly, in Mr Atkins’ discussions with a NoTW journalist in relation to his ‘medical records sting’, the journalist set out the paper’s willingness to pay amounts substantially greater than £10,000 for stories of likely interest to readers and therefore of potential value.<sup>529</sup> Mr Atkins recorded the journalist as suggesting that the NoTW might be willing to pay £80,000, depending on the strength of the story.<sup>530</sup>
- 10.19** Irrespective of the final amounts that have been paid it is clear that issues around payment formed an important part of discussions between journalists and their interlocutors. Mr Atkins evidence described his efforts to supply and sell information to a number of newspapers including the Sunday Mirror and the NoTW explaining that levels of payment were raised at the very outset of his discussions with the journalists from each newspaper.

<sup>522</sup> p65, lines 17-23, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>523</sup> pp71-72, lines 21-12, Paul McMullan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>524</sup> p71, lines 8-11, Paul McMullan, *ibid*

<sup>525</sup> p73, lines 8, Paul McMullan, *ibid*

<sup>526</sup> p64, lines 15, Graham Shear, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>527</sup> p64, lines 15, *ibid*

<sup>528</sup> p73, lines 19-21, Neville Thurlbeck, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-12-December-2011.pdf>

<sup>529</sup> p13, para 68, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Chris-Atkins1.pdf>

<sup>530</sup> p13, para 68, *ibid*

## Accuracy and the credibility of material supplied by members of the public

### Corroboration

- 10.20** The specific concerns at payments for information crystallise not principally around the type of information disclosed by sources in exchange for payment, but rather that the fact of payment might encourage the sources of that information to exaggerate, distort or simply fabricate the information that they seek to sell. The section above dealing with Mr Atkins' 'fake stories' sting suggests that the mechanisms for corroborating such information given by third parties may not be particularly effective.
- 10.21** The Inquiry has received evidence from a number of different newspapers about the processes followed to establish the credibility of stories and the veracity of accusations that may have been made by members of the public in the information they seek to sell. These processes were also designed to protect newspapers from potential legal actions for libel or defamation.<sup>531</sup> Although not uniform, the descriptions of such processes in evidence to the Inquiry from journalists at The Sun, the Daily Mirror and the Daily Star, as well as at the NoTW, are similar.<sup>532</sup> It is illustrative of practices across parts of the press that these processes were not formal and whilst a number of witnesses to the Inquiry have claimed that they were generally practised, they were not obligatory or uniformly enforced.
- 10.22** Mr Smart described in broad terms the efforts made by journalists to establish both the credibility and reliability of stories that were provided by members of the public. These efforts might include journalists separately seeking corroboration of any allegations made through a number of sources.<sup>533</sup> This might be done through contacting the subject of the story directly or indirectly through their agents or other representatives.<sup>534</sup> Mr Smart said that the showbusiness journalists at The Sun had excellent contacts, particularly with the likely subject of stories submitted to the paper by members of the public; these contacts enable these journalists who might be pursuing such stories quickly to stand them up.<sup>535</sup>
- 10.23** A similar process is also followed at the Daily Mirror in response to potential stories supplied to the paper by members of the public. The practice there is to discuss potential stories with those who could contact the paper, to make an initial assessment of the credibility as well as the value as a news item all during the initial telephone call. In those circumstances where journalists perceive stories to be credible, they might meet with the source to discuss the material further. Mr Owens suggested that journalists at the Mirror newspapers might also discuss the merits of a story with more senior colleagues on the news desk before deciding whether to pursue it further. Mr Owens also said that journalists working at the Sunday Mirror had access to a lawyer in the office at all times, to whom any concerns with stories could be addressed.<sup>536</sup> In-house lawyers might also be involved in discussions with the news desk about the merits of a given story.<sup>537</sup>

<sup>531</sup> Gordon Smart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>; Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>532</sup> p53, lines 3-6, Gordon Smart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>533</sup> p52, lines 4-7, *ibid*

<sup>534</sup> pp63-64, lines 20-18, *ibid*

<sup>535</sup> p52, lines 4-15, *ibid*

<sup>536</sup> p60, lines 23-25, Nick Owens, [www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf)

<sup>537</sup> p61, lines 1-3, *ibid*

- 10.24** Ms Neesom explained that it was the practice at the Daily Star to seek to corroborate all stories that were supplied by third parties.<sup>538</sup> However, Ms Neesom also accepted that, in some cases, corroboration was not always possible, as the individuals in question were not always contactable.<sup>539</sup> A failure to corroborate a story might not prevent its publication; this was so, particularly, if the story were unlikely to lead to the launch of legal challenge by the individual concerned. She also suggested that, in many cases, stories leaked to the newspaper by PR representatives working on behalf of particular celebrities would not be checked, given that they stories were essentially coming from the celebrity him or herself.<sup>540</sup> The Inquiry was told that information submitted to the paper by members of the public, particularly in relation to so-called “kiss and tell” stories involving celebrities and other individuals with a public profile, was difficult to corroborate satisfactorily with the result that it was now less likely to be published than it once was.<sup>541</sup>
- 10.25** These informal mechanisms and processes for establishing the credibility of a story are also described and elaborated by Ms Marshall in her memoir, *Tabloid Girl*. Ms Marshall explained that when contacted by members of the public, journalists would pose a number of questions relating to that celebrity. According to Ms Marshall, the purpose in asking such questions was intended to help separate those members of the public who may possess stories of potential interest to readers from those who had contacted the newspaper in the hope of securing payment for either spurious or fabricated information. Ms Marshall explained that the questions asked by journalists in these circumstances were often informed by the specialist knowledge that they may have about the celebrities about whom they wrote.<sup>542</sup> This knowledge may be the result of relationships built up over a number of years with the celebrities in question.

### Numbers

- 10.26** Although representatives of the press who have given evidence to the Inquiry have not provided exact figures for the number of calls received from members of the public seeking to supply stories, they were clear that the numbers were substantial and provided the source material for a significant proportion of showbusiness stories each year. Mr Smart provided some sense of the scale of the information supplied in this way, as well as the demands on journalists working on showbusiness stories which accounted for the majority of telephone calls received.
- 10.27** Mr Smart explained that the Bizarre column at The Sun received many thousands of telephone calls in response to advertisements in the paper calling for readers to sell their stories. He noted that the small team of journalists working on the Bizarre column produced approximately 60,000 stories each year. On average, each journalist working on that column was responsible for researching and writing up over 3,000 individual stories.<sup>543</sup> He explained that those stories provided by members of the public were important to helping achieve those targets.

<sup>538</sup> p40, lines 1-25, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>539</sup> p41, lines 1-2, *ibid*

<sup>540</sup> p40, lines 1-25, *ibid*

<sup>541</sup> p25, lines, 1-13, Nicole Patterson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>542</sup> Marshall, S, *Tabloid Girl*, *passim*

<sup>543</sup> p64, lines 10-18, Gordon Smart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

**10.28** Similarly, Mr Owens suggested that the volume of information received from members of the public at the Sunday Mirror was significant. Mr Owens said that the Sunday Mirror received “dozens” of stories each day from members of the public.<sup>544</sup> Mr McMullan also reported that, during his time at the NoTW, he would receive up to 30 telephone calls each day from members of the public seeking to sell their stories.<sup>545</sup>

**10.29** As a consequence, Mr Smart suggested that the volume of work required to produce sufficient copy as well as the very real limitations on resources available to journalists militated against the corroboration of all stories.<sup>546</sup> Mr Smart said that it was the practice of the showbusiness desk only to seek to stand up the two lead stories or those which were most contentious.<sup>547</sup> Smaller stories and those which were unlikely to cause offence or reputational damage would not normally be fully corroborated.<sup>548</sup> Mr Owens also admitted that, given the quantities of information received from the public, it was not always possible to run full checks on stories.

### *Judging whether a story is credible*

**10.30** A decision to run a story without having fully established the credibility of a source might be justified on a number of grounds. First, journalists might seek to establish some of the facts around a story but not necessarily all details, proceeding with the publication of the story on the basis of that partial corroboration. Second, as described in evidence by Mr Smart, journalists might judge that a story was credible given their knowledge of the individuals concerned or the knowledge of others individuals linked to that person.<sup>549</sup> As an example, Mr Smart said that he decided to publish stories supplied to him by the documentary film-maker Mr Atkins, which later turned out to be fabricated, because they chimed with his knowledge of the people concerned. In response to questions about the likely veracity of a story supplied by Mr Atkins about the film maker Guy Ritchie (who it was alleged had injured himself while drunkenly juggling cutlery in a London restaurant), Mr Smart suggested he had known that Mr Ritchie had been in the restaurant in question at the time, and that he had managed to corroborate that Mr Ritchie was drunk at the time and was ‘misbehaving’. Mr Smart said that the references to juggling came only at the end of the article and were an “*insignificant*” part of a “*trivial story*”.<sup>550</sup> However, Mr Smart did concede that it was unacceptable that somebody should be able deliberately to make up a story and that such a story should then appear in a newspaper.<sup>551</sup>

**10.31** In relation to a story by Mr Atkins alleging that the singer Sarah Harding had a library full of books on astro-physics, Mr Smart suggested that, as a personal acquaintance of Miss Harding, he was well placed to judge the credibility of Mr Atkins’ claim. Mr Smart told the Inquiry that he knew that Miss Harding had “*quite an impressive library*”.<sup>552</sup> He also said that he contacted Miss Harding’s agent who said “*it wouldn’t surprise me if she owned a book like that*”.<sup>553</sup> Mr Smart explained that this provided sufficient verification to decide in favour of

<sup>544</sup> p66, lines 13, Nicholas Owens [www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf)

<sup>545</sup> p11, s1, Mr McMullan’s Witness Statement was not adduced in evidence

<sup>546</sup> pp63-65, lines 20-2, Gordon Smart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-9-January-2012.pdf>

<sup>547</sup> p64, lines 13-18, *ibid*

<sup>548</sup> p64, lines 16-18, *ibid*

<sup>549</sup> p52, lines 4-16, *ibid*

<sup>550</sup> p69, lines 20-25, *ibid*

<sup>551</sup> p70, lines 6-10, *ibid*

<sup>552</sup> p69, lines 11-12, *ibid*

<sup>553</sup> p70, lines 14-15, *ibid*

publishing the story, even though the fundamental allegation in the story remained untrue. It is to note that, although in both of these cases the central allegation remained untrue, the general corroboration of some of the details of the allegations by the respective agents of Miss Harding and Mr Ritchie enabled Mr Smart to stand up the story sufficiently to mitigate the risk of legal action from either party.

## Risks of payments for stories

**10.32** There are two significant risks associated with the advertisement by newspapers for stories: first, that it may incentivise fabrication and/or exaggeration, and second that it may encourage breaches of privacy. The Inquiry has seen evidence of both.

### *Incentivising fabrication and exaggeration*

**10.33** In his evidence, Mr Atkins argued that the willingness of newspapers to pay for stories encouraged distortion and exaggeration on the part of sources and incentivised fabrication of material, particularly as the materials provided may frequently go unchecked and unverified.<sup>554</sup> Mr Atkins also said that, in his view, given the potentially very high level of payments involved, those members of the public seeking to sell stories to newspapers were often motivated more by profit than accuracy.<sup>555</sup> Further, he suggested that the journalists he spoke with encouraged him to exaggerate the more sensational aspects of the stories in question, in order that they might deliver more newsworthy content to their editors. Mr Atkins noted in his evidence that the more “outlandish” and sensational the stories he offered to the newspapers, the higher the level of payment that was offered in return.<sup>556</sup>

**10.34** By way of example, Mr Atkins described to the Inquiry his attempt to sell a story about the Canadian pop singer, Avril Lavigne. Mr Atkins explained that he contacted the Daily Express and attempted to see if he might be able to interest the newspaper in a story about the singer falling asleep in the nightclub, Bungalow 8. Although the story was rejected by the journalist at the Express, that journalist suggested that the title would be more interested in running the story if Mr Atkins could come back with a story that Ms Lavigne had been found “*smoking crack*”. Mr Atkins was able to sell the original story to the Daily Mirror for £50 and the story was published without verification.<sup>557</sup> Trinity Mirror has since accepted that it was wrong to have published the article and have published both a correction and issued an apology to Miss Lavigne.

**10.35** Mr Davies explained that the Guardian had adopted the approach that, as a matter of principle, it would not pay for stories. He sought to explain that reasoning as one driven by practicalities rather than ethical, legal or financial considerations (although consideration of those issues had helped to inform the Guardian’s position).<sup>558</sup> Essentially at one with Mr Leigh, the position of Mr Davies was that the purchase of information might lead individuals to fabricate material or exaggerate the extent and impact of material in order to increase the value of that information.<sup>559</sup>

<sup>554</sup> p4, para 18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Chris-Atkins1.pdf>

<sup>555</sup> p5, para 24, *ibid*

<sup>556</sup> p4, para 20, *ibid*

<sup>557</sup> p4, para 19, *ibid*

<sup>558</sup> p88, lines 9-25, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>559</sup> p167, lines 20-25, *ibid*

- 10.36** Mr Leigh gave a specific example of a situation in which the Guardian had maintained this position, even where the information for sale was thought to be in the public interest. He spoke of a potential story about the infiltration by a major weapons manufacturer of the Campaign Against the Arms Trade. The source of the information, who Mr Leigh and his colleagues believed to be credible, had requested payment of approximately £20,000. Mr Leigh said that whilst he believed that the story was in the public interest, he could not in the circumstance justify the sum of money requested and also because it caused concerns that relevant details had been embellished or exaggerated.<sup>560</sup> Mr Leigh also made it clear that he did not think that it would be possible to stand up the story without the information held by his source.<sup>561</sup>
- 10.37** The Guardian’s approach is admirable and, by adopting a hard line on payments for information, the risk of fabrication and/or exaggeration is substantially limited. However, in saying that, I should not be interpreted as saying that the Guardian’s approach is the only legitimate approach and should therefore be adopted by all titles. As noted above, the Daily Telegraph paid a substantial sum of money for the information which led to the MPs’ expenses scandal and I have made no criticism of the Telegraph’s decision to pay that money. The Times, The Independent and the Daily Telegraph also made clear that they would pay for stories, exceptionally, if they perceived there to be a clear public interest in the story in question. I accept that there may be many circumstances in which payments for information are justified in the public interest.
- 10.38** I also accept that payments for information may also be acceptable in the pursuit of pure entertainment stories or diary pages, provided that the publication does not lead to the publication of fiction, and/or the breach of privacy (see below). It is essential that titles which choose to make payments for stories (whether in the public interest, or merely because they interest the public) are fully aware of the risks involved, including the very real risks of providing an incentive for fabrication and/or exaggeration. It seems that at present, parts of the press are not sufficiently aware of those risks and do not seek to corroborate or check the stories published.

### Providing an incentive for intrusions into private life

- 10.39** A further concern arising from the solicitation of stories for payment is that the practice provides an incentive for breaches of privacy. The “kiss and tell” is a prime example of this. While the evidence heard by the Inquiry suggested that traditional “kiss and tell” stories are declining, they are clearly not merely of historic interest and continue to appear in tabloid newspapers. Sometimes, these will involve breaches of privacy justified by the public interest,<sup>562</sup> but other times they will not be so justified. What is clear is that the offer of payment by the individual titles is often a significant motivating factor for the (generally) women who sell their stories. The Inquiry also heard that the offer of payments to (generally) women involved in intimate relationship with well-known people can lead to conduct at least verging on the blackmail of those people: Mr Flitcroft said that one of the women with whom he was involved demanded £3,000 to keep quiet; a second woman demanded £5,000. One can only infer that those sums were close to the sums offered by the newspaper for their stories.<sup>563</sup>

<sup>560</sup> pp63-64, lines 9-1, David Leigh, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-6-December-2011.pdf>

<sup>561</sup> p64, lines 2-13, *ibid*

<sup>562</sup> *Ferdinand v Mirror Group Newspapers* [2011] EWHC 2454 (QB)

<sup>563</sup> p1, para 7-12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Garry-Flitcroft.pdf>; pp48-51, lines 16-6, Garry Flitcroft, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-22-November-2011.pdf>

- 10.40** In addition, the evidence emerging from the “medical records sting” in Chris Atkins’ *Starsuckers* (discussed above) supports the conclusion that the offer of payments for stories incentivises breaches of private life. Notable in that evidence was the discussion between Mr Atkins and a journalist from the Sunday People, in particular on how the private information could be used without revealing that it derived from medical records; the journalist suggested instead that a woman who had allegedly had a breast enlargement could be featured in a “silhouette spread” or a “have they, haven’t they story”. This causes some concern because it suggests that even information that a newspaper judges too private to publish in the form disclosed by the source may be used as the foundation for a different story, which is not based directly on the source material.
- 10.41** Further, as Steve Turner of the BPPA has noted, the request by some newspapers for readers to send photographs of people in the public eye, in return for payment, has led to the development of “*amateur celebrity chasing paparazzi*” or “*stakerazzi*”. As discussed above in Section 5 of this Chapter, this has caused significant invasions of privacy for many people in the public eye.
- 10.42** It is important to note that the payment for information about the private life of an individual may not always be unethical. It may also be ethical in certain circumstances to pay for a photographs provided by members of the public. I should make it absolutely clear that I am not advocating the banning of payments for information, even payments for private information. What concerns me is the degree to which some newspapers appear to rely on the provision of private information to fill their pages, and therefore actively encourage the disclosure of private information via eye-catching advertisements which offer monetary reward. This approach risks the wholesale disclosure of private information without consideration of the public interest in doing so. Even if the newspaper does not subsequently publish the disclosed information, the disclosure is itself a breach of privacy.

## Conclusions

- 10.43** Plainly, there are circumstances where the making of payment for information for stories is clearly illegal as a matter of criminal law: the Bribery Act 2010 forbids the payments to public officials, and there is no defence based on actual or perceived public interest. The extent of such criminal activity is not a matter for this Inquiry given that it forms the basis of Operation Elveden.<sup>564</sup>
- 10.44** Beyond the specific confines of the Bribery Act, the paying of sources for information is not contrary to the criminal law (although it should be noted and underscored that the general principle which permits the protection of the confidentiality of sources does not justify paying money to a public official and then ‘protecting’ his or her identity), although it may often be unethical, for a number of clear and obvious reasons. First, the source may require payment for the very reason that he or she has obtained the information in question by illegal, unethical or otherwise dubious means, and the payment is, as it were, the price for taking the risk. Second, the fact that a source apparently requires payment for supplying the information in question may well be an incentive for exaggeration and embellishment. Put another way, it is legitimate to argue that a source who provides information without seeking remuneration for it is more likely to be acting out of sound motives. Third, the offering of money for stories may well encourage members of the public to engage in intrusive methods in circumstances where there is no clear public interest.

<sup>564</sup> Part E, Chapter 5

**10.45** Overall, paying for information may be seen as increasing the risk of unethical if not illegal conduct by the source and, in consequence, by the journalist acting on the information purchased. In order to reduce these risks to acceptable levels, if newspapers are to continue to offer payment for stories, at the very least what is required are clear and effective internal systems of accountability and reporting, together with an acute assessment of where the public interest lies. In large parts of the press, this does not appear to have been occurring.

## 11. Treatment of critics

**11.1** The way in which an individual, an organisation, or an industry treats its critics can reveal a lot about its culture. Openness to legitimate criticism is the hallmark of many thriving organisations and industries. By contrast, defensiveness and intimidation in response to legitimate criticism tends to be a feature of closed-minded and entrenched industries. The phone hacking scandal as a whole revealed that large parts of the press tended to the latter: over the course of five years, much of the press showed a complete unwillingness to engage with those critics who pointed to evidence of unlawful and unethical practices within one newspaper, and to practices which are likely to have taken place in others too. Indeed, rather than engaging with those critics, much of the press subjected them to intense scrutiny, occasionally amounting to intimidation.

**11.2** The clearest example of this is the approach adopted by NI in response to high profile phone hacking critics. As discussed above,<sup>565</sup> lawyers bringing claims against NI were subjected to ongoing surveillance, commissioned with a view to trying to force them to remove themselves from the litigation. Similarly a member of the CMS Select Committee was placed under surveillance during its investigation of phone hacking. Mr Webb confirmed that he was instructed to place Tom Watson MP under surveillance for a period of a week, trying to prove an alleged affair (which was not in fact taking place) in order to pressure Mr Watson to step back from the phone hacking issue. Another member of the Select Committee Mr Bryant, told the Inquiry of his experience of direct intimidation. In early 2011 he was called by a friend who informed him that two people close to Rupert Murdoch had warned that it would be wise for Mr Bryant to desist from the phone hacking investigations, or Mr Murdoch would “get him, in time”. While there is not the slightest evidence to suggest that Mr Murdoch had in fact made any threats, there is no reason to doubt that a phone call between Mr Bryant and his friend took place and that something which could be construed as a threat purporting to be from Mr Murdoch was passed on. Mr Bryant said that further threats were passed on in March 2011.<sup>566</sup>

**11.3** Mr Grant, who was seen as a figurehead of the Hacked Off campaign, was also the subject of threats. The mother of his child was called by an anonymous caller when he was on television discussing the phone hacking issue and told to “*Tell Hugh Grant to shut the fuck up!*”<sup>567</sup>

**11.4** These examples of surveillance and intimidation in the context of the phone hacking scandal are particularly egregious. It seems clear that certain people within the NoTW, or, perhaps, unsought supporters, were determined to prevent many of the facts discussed at elsewhere<sup>568</sup> Chapter 4 from being revealed, and so resorted to deeply unethical methods to prevent that from happening. However, although the evidence as a whole did not suggest that the use

<sup>565</sup> Part F, Chapter 4

<sup>566</sup> p2, para 4–22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-by-Chris-Bryant-MP.pdf>

<sup>567</sup> p1, para 3-5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Supplemental-Witness-Statement-of-Hugh-Grant.pdf>.

<sup>568</sup> Part F, Chapter 4

of direct threats and the like by the press was commonplace, the limited evidence of those methods in the context of the phone hacking scandal was consistent with evidence given by a number of the Core Participants complaining of press misconduct, who spoke to a general atmosphere of intimidation by parts of the press. The evidence of that atmosphere came in two forms: first, evidence of the press launching direct personal attacks on critics; and second, evidence from a wide range of witnesses of a failure to speak out or criticise, litigate, or seek assistance from the regulator, for fear of the personal consequences.

- 11.5** The Inquiry saw numerous examples of parts of the press adopting attack as the best form of defence against critics. When Mr Peppiatt resigned from the Daily Star and published his resignation letter in the Guardian, he was subjected to a campaign of harassment and threats. He received phone calls and text messages telling him, for instance, he was “*a marked man until the day you die*”, or “*RD will get you*”, which he understood to be a reference to Daily Star proprietor Richard Desmond: again, there is no evidence that Mr Desmond was personally responsible for any such communication. An individual with long established links to the tabloid world has apparently been warned by the police in connection with the harassment of Mr Peppiatt.<sup>569</sup>
- 11.6** A more conventional example of the attack by a newspaper of a critic is the Daily Mail’s story about Mr Grant and his alleged ‘mendacious smears’, which is discussed in detail above.<sup>570</sup> That article followed several others attacking and criticising Mr Grant, partly in relation to his role as spokesperson for Hacked Off. One prime example included an *ad hominem* attack par excellence: the article sought to undermine Mr Grant’s arguments in favour of press regulation by attacking his character, describing him as an “*oleaginous, womanising lounge-lizard*” who was a “*lonely, bitter man consumed with hatred of the media who helped make him a star*”.<sup>571</sup> Similar articles were written to discredit Mr Coogan’s arguments in favour of press reform.<sup>572</sup>
- 11.7** The Sun’s response to Mr Brown’s allegation that the newspaper had unlawfully accessed his son’s medical records was a further example of attack as defence.<sup>573</sup>
- 11.8** Witnesses who had pursued litigation against newspaper titles gave evidence that parts of the press sought retribution against those who brought claims against a newspaper title. Mr Thomson, said that a successful action invariably led to retribution. He explained:<sup>574</sup>

*“I’ve acted for Naomi Campbell, Loreena McKennitt, Sienna Miller at the time she was complaining she was chastised for complaining, for whingeing about her privacy. Max Mosley was – every possible claimant, whether it’s a footballer, they have all been chastised for complaining, for going to law to get remedies, and it’s a sort of tactic to undermine their vindication by trashing the claimant.*

*... Of course they can comment on the judicial process in the sense of, “Oh, well, I don’t think that injunction should have been granted”, but – this is my opinion,*

<sup>569</sup> pp40-43, lines 3-15, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

<sup>570</sup> Part F, Chapter 5

<sup>571</sup> <http://www.dailymail.co.uk/femail/article-2056916/Hugh-Grant-baby-Hypocrisy-new-fathers-tawdry-self-love.html>; <http://www.dailymail.co.uk/debate/article-2013285/News-World-How-Hugh-Grant-Steve-Coogan-pose-moral-arbiters.html>;

<sup>572</sup> <http://www.dailymail.co.uk/news/article-2013316/Steve-Coogan-phone-hacking-scandal-sickening-case-hypocrisy.html>

<sup>573</sup> Part F, Chapter 7

<sup>574</sup> pp61-63, lines 22-10, Mark Thomson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>

*my suspicion is: well, if they go to law, we'll give them a good trashing and it will deter other people from doing the same. That's my view about the strategy behind it because it happens, as I said, almost invariably. Let's make it difficult for them, let's deter others, let's trash them and maybe other people will think long and hard about doing it in future."*

- 11.9** Mr Shear gave similar evidence in relation to one of his clients who had sued for libel in respect of allegations of homosexual activity. Having succeeded in the libel action, the client became a target of interest for the newspaper and the victim of what Mr Shear described as *"a revenge-fuelled fervour"*, and a determination to prove something that was damaging to his reputation or to his private life as part of *"the quid pro quo of having the temerity to take on the national media in those circumstances."*<sup>575</sup>
- 11.10** Ms Rowling gave an example of what might be thought of as small-scale retribution by the press. In 2005, she had complained to the PCC in respect of the Daily Mirror publishing her address. A matter of five days after the complaint was made, the Mirror published a photograph of Ms Rowling's daughter as a baby, despite the fact it was well known that she was fiercely protective of her children's privacy and objected to the publication of their photographs. Her view was that the Daily Mirror's decision to publish the photograph was a deliberate act of spite in response to her complaint.<sup>576</sup>
- 11.11** Mr Mosley provided a considerably larger scale example when describing the course of his privacy litigation against the NoTW. In response to Mr Mosley's application for an injunction to prevent (re)publication of the offending article and video, and while awaiting judgment, the NoTW splashed another front page article concerning the events in question under the heading *"MY NAZI ORGY WITH FI BOSS"*. Further, for reasons which to my mind could never do them credit (whatever other justification might be advanced), the NoTW sent a copy of the video to Formula 1 bosses, presumably in what transpired to be an unsuccessful attempt to get Mr Mosley dismissed from his position.<sup>577</sup>
- 11.12** In the light of behaviour of this sort, it is not, perhaps, surprising that a number of witnesses gave evidence to the effect that they avoided litigation or complaints: it seems that many people in the public eye would rather endure breaches of privacy or small libels than conduct litigation, face the repetition of the offending story and endure the aggressive press response that comes from it.
- 11.13** Mr Grant said to the Inquiry: *"to speak out and criticise is to invite a terrible press storm on your head"*.<sup>578</sup> As a consequence, his evidence was that he had avoided litigating or complaining about unethical press practices, except in the most serious cases. Mr Coogan gave similar evidence. He said:<sup>579</sup>

*"if you stick your head above the parapet or you criticise the papers or you make a point of taking action, then they'll come after you, you know. Insofar as my legal action is concerned, I was – I was advised by my publicists that – they actually said*

<sup>575</sup> pp67-68, lines 8-24; pp69-72, lines 21-12, Graham Shear, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-November-2011.pdf>

<sup>576</sup> p68, lines 14-23, JK Rowling, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-24-November-20112.pdf>

<sup>577</sup> p5, para 15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Max-Mosley.pdf>

<sup>578</sup> p67, lines 22-24, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>579</sup> p27, lines 5-21, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-20111.pdf>

to me, “Do you –” When I was considering taking action against News International, my publicists said to me, “Do you really want to make enemies of these people?” By implication – well, the inference being that if – and when I asked them to elaborate, they said, “Well, in the future if they decide to run another story, we can use it as a bargaining chip. We can say that you could have taken legal action and you didn’t, therefore why don’t you drop the story?” But when they said “these people”, they meant that – the inference was clear, that if you make life difficult for them, they will use their newspapers as a weapon against you.”

**11.14** Ms Church<sup>580</sup> and Ms Gascoigne<sup>581</sup> had, for significant periods, adopted the same approach, avoiding litigation and avoiding complaint except in the most serious circumstances, in order to avoid the aggressive and unpleasant response with which a complaint would be met. Ms Church’s evidence indicated that aggressive attacks have a corollary: preferential treatment for those who cooperate with newspapers. She recalled that when she was asked to sing at Rupert Murdoch’s wedding in 1999, her manager was offered the choice between \$100,000, or no fee but favourable treatment in the NI press. Her manager advised her to accept no fee.<sup>582</sup>

**11.15** The evidence as a whole highlighted a point I made during the course of the Inquiry. The press are in a unique position as they carry a very large megaphone: if people cooperate, that megaphone can be used to enhance careers; for those who complain or challenge titles, the megaphone can be used to destroy them. Whereas complainants or litigants against individual titles have a limited forum to air their complaints, the press have a ready and captive audience of hundreds of thousands if not millions of readers who will read their response. As a former NoTW news editor noted in an unguarded moment, the megaphone can be used to “*destroy people’s lives*”.<sup>583</sup>

**11.16** Evidence of aggressive attacks on press critics, and self-censorship by potential critics, extended beyond the celebrity world and into the judicial and political field as well. In response to the Max Mosley judgment, a number of tabloid newspapers launched an aggressive and personal campaign against the judge in the case, Mr Justice Eady.<sup>584</sup> In his speech to the Society of Editors, Mr Dacre described his judgments as “*arrogant and amoral*” and criticised his “*subjective and highly relativist moral sense*”.<sup>585</sup> Although Mr Dacre stated that he had attacked the judgments and not the man,<sup>586</sup> some might be forgiven for reading the speech differently, particularly when reading it alongside Daily Mail articles such as, ‘*As cold as a*

<sup>580</sup> pp45-46, lines 21-3, Charlotte Church, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-20111.pdf>

<sup>581</sup> pp66-67, lines 17-5, Sheryl Gascoigne, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-23-November-20111.pdf>

<sup>582</sup> By letter received 18 October 2012, Charlotte Church’s then manager wrote to the Inquiry challenging this account of the facts in order to restore his own ‘unblemished professional reputation in the face of the continual aspersions cast upon it’. Said to have been prompted by an article on 5 October 2012, it is surprising that he did not do so after the evidence was first given (28 November 2011) when it may well have been appropriate to allow the matter to be ventilated further. As it is, Ms Church does not accept the account provided by Professor Shalit and I am not in a position to take the matter further. The Report consists of a review and an analysis of the evidence which was given, rather than that which was not

<sup>583</sup> Burden, P, *Fake Sheikhs and Royal Trappings*, front page

<sup>584</sup> pp27-28, para 133-138, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Max-Mosley.pdf>

<sup>585</sup> <http://www.pressgazette.co.uk/node/42394>

<sup>586</sup> p12, lines 19-21, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

*frozen haddock, Mr Justice Eady hands down his views shorn of moral balance...'.<sup>587</sup> The key point, it seems to me, is that if Mr Dacre and others had a strong objection to the development of protection of a right to privacy in UK law, they were perfectly entitled to express that objection in forceful terms. But by directing the rhetorical fire at an individual judge who was seeking to apply the principles set down by higher courts and whose judgments were capable of challenge on appeal, that objection takes on the appearance of being aggressive and intimidating. Furthermore, it was an attack to which, by judicial convention, Mr Justice Eady was unable to respond.*

**11.17** Similarly intimidating and aggressive attacks have been directed at politicians who have criticised aspects of the press. Rather than engaging with the arguments made by the critics, parts of the press have engaged in *ad hominem* attacks. A prime example is the treatment of critics of Page 3 who have been labelled variously as “fat”, “ugly” “harridan”, “battleaxe” and “jealous of beautiful women”. Their arguments have been described as “potty”, “senseless” and “furious rants”.<sup>588</sup>

**11.18** However, the preponderance of evidence suggests that overt intimidation of politicians by the press is rare. What is far more widespread is a self-restraint by politicians fearful of criticising the press. The evidence received from a number of politician witnesses indicated that fear of press attack was a significant factor in the failure of successive Governments to tackle the issue of press behaviour, notwithstanding a recognition that better regulation was required. This is discussed in greater detail elsewhere, but for the purposes of this chapter it worth noting Lord Mandelson’s view that the Blair and Brown Governments were ‘cowed’ by the power of the press and the threat of a hostile response to any attempts to address press regulation.<sup>589</sup> The Rt Hon Ed Miliband agreed that fear played a significant part in the failure to address press regulation during the Blair and Brown years.<sup>590</sup> When Mr Blair attempted to articulate his concerns about some aspects of the culture of the press in a speech delivered prior to his departure from office,<sup>591</sup> the almost universally critical press response, including a number of personally directed attacks, appeared to confirm those fears.<sup>592</sup> As Mr Paxman noted in his MacTaggart lecture in the same year:<sup>593</sup>

*“...I thought the way we responded to Tony Blair’s speech was pretty pathetic. Again, let’s be frank. These two trades, politics and media have a great deal in common. Both deal in words and images, both involve a contract with the public based upon fairly explicit promises...*

*By and large, the response to Blair’s attack just pressed the F12 key. Yah booh. You’re a politician. We’re media yahoos. Get over it.”*

<sup>587</sup> <http://www.dailymail.co.uk/news/article-1038478/QUENTIN-LETTAS-As-cold-frozen-haddock-Mr-Justice-Eady-hands-views-shorn-moral-balance-.html>

<sup>588</sup> See above at para 8.20

<sup>589</sup> p9, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Lord-Mandelson.pdf>. Lord Mandelson slightly pushed back from this in oral evidence.

<sup>590</sup> p28, lines 12-24, Ed Miliband, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-12-June-2012.pdf>

<sup>591</sup> [http://news.bbc.co.uk/2/hi/uk\\_news/politics/6744581.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/6744581.stm)

<sup>592</sup> <http://www.dailymail.co.uk/news/article-461603/The-magnificent-self-delusion-Mr-Blair.html>; <http://www.telegraph.co.uk/comment/telegraph-view/3640592/Blairs-last-enemy-freedom-of-speech.html>; <http://www.guardian.co.uk/commentisfree/2007/jun/13/media.pressandpublishing>; [http://www.thesun.co.uk/sol/homepage/news/sun\\_says/236972/Vital-freedom.html](http://www.thesun.co.uk/sol/homepage/news/sun_says/236972/Vital-freedom.html)

<sup>593</sup> <http://www.telegraph.co.uk/news/uknews/1561287/In-full-Jeremy-Paxmans-MacTaggart-Lecture.html>;

**11.19** Assessed as a whole, it is appropriate to conclude from the evidence that a practice has existed within parts of the press, at certain times and in certain circumstances, of seeking to intimidate or seek retribution against complainants and critics. While that approach may not have been widespread, it has been sufficiently prevalent to create a generalised fear amongst those in the public eye of criticising or challenging the press owing to concerns about personal attack and vilification. I repeat that the press is entitled to hold whatever opinions it wishes and, subject to defamation, is equally entitled to express them: it cannot complain, however, if the inference is drawn that this practice is a form of special pleading and that the attack follows a challenge to the way in which they go about their business.

## 12. Complaints handling

**12.1** An issue related to the way in which the press treats critics is the manner in which it deals with those who make complaints in relation to specific stories. The Inquiry heard a great deal of evidence of good practice on this issue, in particular in relation to the use of readers' editors at a number of titles. But there was also substantial evidence of poor practice, showing first, that the complaints process can be (sometimes, it was thought, deliberately) protracted, complicated and expensive; second that there is a strong reluctance in parts of the press to apologise even when it is not in dispute that a story was incorrect; and third, that apologies, retractions and corrections are frequently given substantially less prominence than the offending article and therefore fail to satisfy those who are aggrieved. Although evidence was heard on these issues from many witnesses, I focus only on three examples which I treat as case studies: the identity of the titles concerned is not to the point.

**12.2** The first example was the response of a number of newspapers to complaints made by the McCanns in light of defamatory reporting of the circumstances of their daughter's disappearance.<sup>594</sup> Although some of the narrative has already been described,<sup>595</sup> it bears brief repetition here. In September 2007, the McCanns' solicitor Angus McBride met with all the editors of the national newspapers to convey the McCanns' concerns about the defamatory reporting of Madeleine's disappearance and the harmful impact this reporting was having on the search for her. That first meeting appeared to have no effect and, after continuing libellous reporting by a number of daily newspapers, further meetings were arranged between Mr McBride, Clarence Mitchell and the editors responsible. Those further meetings also appeared to have no effect and the defamatory reporting continued. On 26 September 2007, a solicitors' letter threatening libel proceedings was sent to those newspapers which appeared to be the worst offenders. That letter, and a further letter sent on 10 October 2007, appeared to have no impact on the continuing libellous reporting.<sup>596</sup>

**12.3** In January 2008, the McCanns' representatives sent a formal letter before action in advance of a libel claim to both the Daily Express and the Daily Star newspapers. Notwithstanding the fact that the newspapers were aware they had no clear factual basis for any of the libellous stories published,<sup>597</sup> the Express Group wrote that they were not willing to publish an apology for the libels, but were willing to offer the McCanns a "platform" to tell their side of the story, and offered them an exclusive interview and photo-shoot with OK! Magazine. Unsurprisingly, the McCanns rejected the (astonishingly misjudged) offer. As Dr Gerry McCann wrote:<sup>598</sup>

<sup>594</sup> pp9-13, para 53-80, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerry-McCann.pdf>

<sup>595</sup> Part F, Chapter 5

<sup>596</sup> pp9-13, para 53-60, *ibid*

<sup>597</sup> Section 6

<sup>598</sup> p11, para 68, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerald-Patrick-McCann.pdf>

*“I found it simply breathtaking that they would think it appropriate to offer us interviews or other coverage in their own newspapers that they would subsequently make money from, as an appropriate remedy for the distress and hurt they had caused.”*

- 12.4** Although the Express Group subsequently published what they described as an “unprecedented” front page apology to the McCanns, that was not matched by their apology to the friends of the McCanns who had also been falsely accused (on the front page) of covering up the truth about Madeleine’s disappearance: their apology in the Daily Express was found on page five.
- 12.5** The McCanns also brought proceedings against Associated Newspapers Ltd (ANL), on the basis of defamatory coverage in the Evening Standard and Daily Mail. The claim was settled with a substantial payment to the Find Madeleine fund, and an apology in the Evening Standard. The Daily Mail offered the McCanns free advertising for the Find Madeleine fund, but refused to apologise essentially on the basis that the defamatory stories published by the title had been balanced with a number of favourable reports about the McCanns. Unsurprisingly, the McCanns were disappointed by the newspaper’s stance, but chose not to continue a protracted dispute.<sup>599</sup>
- 12.6** The second example of poor practice in responding to complaints is Neil Morrissey’s experience of a complaint against the Daily Mail.<sup>600</sup> On 19 March 2011, the Daily Mail had published an article alleging that Mr Morrissey had been banned from a pub in France for drunken and rowdy behaviour. The story was untrue, the Daily Mail had been told in advance of publication that it was untrue, and the Daily Mail eventually accepted it was untrue and apologised. But the process leading to that apology was unnecessarily protracted.
- 12.7** On 23 March 2011, immediately after publication, Mr Morrissey’s lawyers wrote to ANL stating that if an immediate apology and retraction were published, no claim for damages would be issued. That letter and a subsequent one went unanswered for a month. ANL eventually replied on 21 April 2011 refusing to publish an apology or retraction even though it appears that they did not claim in terms that the story was true, insisting instead that the story presented Mr Morrissey “in a sympathetic light”.
- 12.8** Mr Morrissey issued a libel claim on 21 June 2011. A further six weeks passed before, on 5 August 2011, the Daily Mail accepted that the story was untrue and made an offer of amends. Although ANL claim that it was only then that it became clear that the story was untrue,<sup>601</sup> it is difficult to understand why it took almost five months to reach this conclusion.
- 12.9** Once the Daily Mail accepted its error, the parties entered negotiations to agree the format and placement of an apology. The original article was published on page 19, took up a full page of the Daily Mail, was around 600 words long and included four large photographs. Mr Morrissey originally requested a 160 word apology under its own headline, but entered into negotiations with the Daily Mail over wording.<sup>602</sup> After six weeks of negotiations, the Daily Mail published a 67 word unilateral apology on its “corrections and clarifications” column on

<sup>599</sup> p13, para 80, *ibid*

<sup>600</sup> pp4-10, para 10-40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-on-behalf-of-Neil-Morrissey.pdf>

<sup>601</sup> p2, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/08/Submission-from-RPC-regarding-Shaw-Morrissey-and-Mouse.pdf>

<sup>602</sup> p2, para 8, *ibid*

page 2.<sup>603</sup> Mr Morrissey complained that this apology did not have anything approaching the same prominence as the offending article.

**12.10** The Inquiry heard evidence from a number of witnesses with regard to correction and clarification columns and their benefits and disadvantages. Although I accept that there are significant benefits, a legitimate criticism that needs to be addressed is how to distinguish an apology for defamation or breach of privacy from simple factual corrections or clarifications. The apology to Mr Morrissey was published alongside a correction of the price paid by the NHS per loaf of gluten-free bread, and it seems reasonable in that context for Mr Morrissey to complain that the placement of the apology devalued it. In my view, an apology should at least be headlined with “apology” or “sorry” or something to clearly mark it out as something distinct from a simple factual correction. In the absence of such a clear marker, it is unsurprising that some witnesses inferred that newspapers seek to bury their apologies.

**12.11** The third example was provided by the organisation Carbon Brief, and evidences an inadequate response to complaints of inaccuracies that harm the public interest.<sup>604</sup> Carbon Brief noted a series of articles in the Daily Mail which suggested that there was an average £200 “green tax” on household energy bills, which accounted for 20% of total household energy costs. The claim was inaccurate (the best accurate figure was around £80 or 8%), but was being used to justify a number of opinion pieces critical of the government’s green agenda. Carbon Brief was concerned that the error fed into the Mail’s *“editorial line on the matter, which can be summarised as a campaigning stance against green policies to encourage renewable power or energy efficiency”*.<sup>605</sup>

**12.12** Immediately after publication, Carbon Brief wrote to the Daily Mail to identify the error, but received no response. A subsequent complaint to the PCC was defended by the Daily Mail by reference to a 2008 report by the think-tank Civitas. However, that report did not in fact support the Daily Mail’s £200 or 20% claim. Accordingly, the Daily Mail published a correction some three months after the claim had first appeared, and after it had been repeated many times in other titles.<sup>606</sup>

**12.13** That was not the end of the matter. Less than two weeks after the correction had been published, the 20% claim was repeated in the Mail on Sunday. Carbon Brief wrote to the Mail on Sunday to identify the error but, once again, received no response. Carbon Brief therefore made a second complaint to the PCC. Pending the resolution of that complaint, and despite the fact the Mail on Sunday was aware of both the PCC complaint and the previous correction in the Daily Mail, it published a further article making the same claim, saying that *“the country is overrun with wind farms and energy costs are skyrocketing, with green stealth taxes adding 15 to 20 per cent to the average domestic power bill.”* The Mail on Sunday subsequently published a correction, but then, two months later, once again repeated the claim.<sup>607</sup>

**12.14** Carbon Brief summarised its complaint in the following bullet points.<sup>608</sup>

- *“This has been a time consuming and involved process, over a fairly straightforward factual inaccuracy.*

<sup>603</sup> Appendix 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-on-behalf-of-Neil-Morrissey.pdf>

<sup>604</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Carbon-Brief.pdf>

<sup>605</sup> p1, *ibid*

<sup>606</sup> pp2-4, *ibid*

<sup>607</sup> pp4-5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Submission-by-Carbon-Brief.pdf>

<sup>608</sup> p5, p9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

- *The MoS repeated a figure that had already been corrected twice while there was a PCC complaint about the figure with the paper.*
- *Despite two successful PCC complaints about a specific statistic and published corrections in both the Mail and the Mail on Sunday, the Mail group are still repeating the figure.*
- *Either the Mail group’s internal processes for noting complaints are inadequate, or they do not take PCC negotiated corrections seriously.”*

**12.15** To those bullet points might be added a fifth point, namely that complaints to the PCC would never have been required had the titles replied to the original letters sent by Carbon Brief direct to the newspapers. Accordingly, the example raises concerns about the ability, or willingness, of some newspaper titles to respond to complaints made direct to the newspaper by readers. Sensibly, most complaints should be resolved at that level without the need to refer a complaint to the regulatory body. But the Carbon Brief example suggests that, in some cases, some newspapers ignore complaints entirely, or delay in responding for significant periods, until the regulator, or the courts, are involved.

**12.16** The three examples above provide evidence of each of the three specific concerns raised by witnesses in relation to inadequate complaint handling by parts of the press: i) the delay and expense of bringing a complaint, ii) the reluctance of parts of the press to apologise or correct errors, and iii) the failure to give due prominence to apologies and corrections.

#### *Unnecessary delay and over-complication of the complaints process*

**12.17** Full Fact provided the Inquiry with evidence of all three issues. In relation to the delay occasioned by parts of the press when dealing with complaints, Full Fact suggested that some newspapers deliberately complicate and draw out the complaints process as a tactic to avoid making apologies and corrections. They wrote that *“little effort is made on the part of newspapers to avoid making the process extremely awkward and time consuming for complainants”*.<sup>609</sup> <sup>610</sup> Will Moy spoke of their regular experience as follows:<sup>611</sup>

*“Where the first offer you get is, “We’ll amend the headline online only”. Then you get the offer of “We’ll print a letter from Full Fact disagreeing with our article but we won’t change the article or admit there was anything wrong with it”. Then you get page 12, then you get page 6, then you get page 4, then you get page 2. All of this, rounds and rounds of correspondence, weeks between them, takes forever, deeply tiring. And all of this, of course, after the actual inaccuracy has been accepted.”*

**12.18** A specific example of apparently deliberate awkwardness was Full Fact’s evidence that on three occasions, after a long process of negotiating agreed corrections, and after having reached agreement, the Daily Mail had contacted the PCC to seek changes to the agreement on the night before publication. The organisation noted:<sup>612</sup>

<sup>609</sup> p9, *ibid*

<sup>610</sup> Mr Moy overstates the position in suggesting that this is standard practice within newspapers. The Inquiry has received much evidence to contrary effect: see, for example, the decision of the Court of Appeal in *KC v MGN Ltd* [2012] EWCA Civ 1382 and the earlier decision of Eady J in *Bowman v NGN* [2010] EWHC 858 (QB)

<sup>611</sup> p63, lines 5-18, William Moy, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-8-February-2012.pdf>

<sup>612</sup> p9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

*“This means unilaterally reopening the complaints process on an evening before publication, when complainants may not be in a position to respond immediately. Indeed, this means demanding a response time from the complainant that we never receive from newspapers themselves.*

*That this has been done on three separate occasions over four complaints to our knowledge, all by the same newspaper and not just to Full Fact, gives such moves the impression of a considered tactic to disrupt the process.”*

**12.19** Although it is not necessary to reach a conclusion as to whether the Daily Mail’s approach on the three occasions cited was part of a deliberate tactic, the simple fact is that it is part of a general tendency within parts of the press to delay and complicate what ought to be a reasonably simple process of prompt correction and apology. Mr Snow gave evidence of what he considered was unnecessary argument with ANL over the precise format of an apology to be published after he had been defamed. He said:<sup>613</sup>

*“The confession was that it was completely untrue and they accepted it was untrue and they retracted it and apologised. The apology was 1.5 inches by a column and then the wrestling was over whether there should be a photograph of me above it. They didn’t want the photograph because that would draw attention to the apology. Actually, in the end, we got the photograph, but I mean, this is pathetic. Wrestling over 1.5 inches when you have had five pages of something which the paper itself deems untrue? That is not the way forward...*

*That is the process we have at the moment. That is justice; that is the way any reader who – or any person offended by a paper who has something wrong gets redress.”*

### *Reluctance to publish corrections and/or apologies, even where error is clear*

**12.20** In relation to a reluctance within some titles to publish apologies and/or corrections, Full Fact’s ‘churnalism’ project was instructive.<sup>614</sup> Along with Mr Atkins, Full Fact published a number of fictional press releases that were adopted and published by newspapers without sufficient checking. One, published in the Metro, told of a fictional stammerer who had decided to undergo unorthodox speech therapy to cure his stammer in time for Valentine’s Day. Another, published by the Daily Mail on the basis of a Facebook page, reported claims that the Prime Minister’s new cat was actually stolen from a council estate in South London. Full Fact informed the newspapers that they had published hoax stories but both refused to publish corrections or clarifications, despite extensive correspondence. Full Fact noted:<sup>615</sup>

*“... it once again raises the question of why newspapers are so adversarial on the issue of acknowledging errors at all. It is extremely rare for us to submit a complaint about a significant factual inaccuracy that is not initially dismissed by the paper.*

*Even in cases where papers have been indisputably wrong (such as over a basic error leading to stories reporting life expectancy on a Merthyr Tydfil estate was lower than in Haiti) several rounds of correspondence over several weeks have been required to get a worthwhile correction printed.*

<sup>613</sup> pp26-28, lines 4-5, Jon Snow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-25-June-2012.pdf>

<sup>614</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Fifth-Submission-by-Full-Fact.pdf>

<sup>615</sup> p8, *ibid*

*One of the problems at the heart the issue is not that papers get their facts wrong or indeed borrow heavily from press releases, but an unwillingness to acknowledge and act on the problems that may arise as a consequence.*

*Given the time and resource pressures in the media it is inevitable that mistakes get made, so why not be more willing to acknowledge and correct them when they are pointed out?*

*Perhaps it would make the embarrassment from these kind of hoaxes a little easier to swallow.”*

### **Lack of due prominence**

- 12.21** The identification of a reluctance to publish apologies and/or corrections feeds into the third issue identified: lack of due prominence when an apology or correction is made. Full Fact<sup>616</sup> and the Media Standards Trust<sup>617</sup> gave evidence on this point. Considered together their evidence suggests that it is extremely difficult to find any adjudications, apologies or corrections that are given equal prominence as the offending article. It is of course correct that “equal prominence” is not what is required by the Editors’ Code, but it is also clear that what parts of the press consider to be “due prominence” is not the same as what victims of inaccuracies, defamations and breaches of privacy consider it to be.
- 12.22** Ms Mills,<sup>618</sup> Ms Gascoigne,<sup>619</sup> Ms Miller,<sup>620</sup> Mr Coogan,<sup>621</sup> Mr Snow<sup>622</sup> and Ms Diamond<sup>623</sup> all spoke of the insufficient prominence with which apologies were published after complaints of breach of privacy or libel. They were consistent in complaining that corrections or apologies were nowhere near as prominent as offending articles and noted that the damage to reputation or privacy caused by a front page splash, or full page article, could not be remedied by the publication of a two inch apology within a corrections and clarifications column, or elsewhere in the newspaper.
- 12.23** Exemplifying this problem was The Sun’s editor’s evidence (supplemented by a further letter to the Inquiry on behalf of the Sun)<sup>624</sup> in relation to a PCC adjudication relating to The Sun’s article entitled “*Boy, 12, turns into girl*”. The article was held by the PCC to be inaccurate and a breach of the girl’s privacy. The original article had appeared on the front page of the newspaper, with a further full page on page 5. The adjudication was published on page 6, at the request of The Sun and agreed by the PCC, in a narrow column on the right of the page, adjacent to an eye catching article headlined “*£1m Baby P Bungle*”. That the adjudication was published further back in the newspaper than the article was directly contradictory to Mr Mohan’s written evidence, where he had written: “*Corrections are never placed further back*

<sup>616</sup> pp8 -12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Full-Fact.pdf>

<sup>617</sup> pp22-23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Submission-by-Media-Standards-Trust.pdf>

<sup>618</sup> pp91-92, lines 7 –15, Heather Mills, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-9-February-2012.pdf>

<sup>619</sup> pp80-81, lines 4 –6, Sheryl Gascoigne, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-23-November-2011.pdf>

<sup>620</sup> p32 lines 15 –24, Sienna Miller, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-24-November-2011.pdf>

<sup>621</sup> pp34-38, lines 2 –4; pp48-51, lines 13-7, Steve Coogan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-22-November-2011.pdf>

<sup>622</sup> pp24-28, lines 11 –5, Jon Snow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Afternoon-Hearing-25-June-2012.pdf>

<sup>623</sup> pp57-59, lines 17-25, Anne Diamond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-28-November-2011.pdf>; para 13-18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Anne-Diamond1.pdf>

<sup>624</sup> p57, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/11/Witness-Statement-of-Alan-Walls.pdf>

*in the newspaper than the original article, except for those connected with page one stories where the correction is published on page two*".<sup>625</sup> Nonetheless, Mr Mohan appeared to defend the prominence claiming that it was one of the longest adjudications ever published.<sup>626</sup> That may be so, but if Mr Mohan was claiming the publication of this particular adjudication as an example of due prominence, that causes significant concern.

**12.24** Mr Blair's evidence indicated the potential importance of due prominence in correcting errors in political reporting. He recalled the front page vehemence with which parts of the press had attacked Lord Mandelson's alleged lies in relation to the Hinduja passport scandal and compared that vehemence to the relative lack of publicity given to the subsequent official report which cleared Lord Mandelson of any wrongdoing.<sup>627</sup>

**12.25** Although some editors and journalists resisted the suggestion that apologies and corrections were "buried" within newspapers, a number accepted that there was at least a perception that this was the case. Rebekah Brooks noted that, in her experience, *"correcting inaccuracies does not cost a great deal for the press, but it is given low priority and minimal projection"* and she accepted that the NI newspapers were as much at fault for this as others.<sup>628</sup> She said:<sup>629</sup>

*"one of the biggest complaints I used to get, not necessarily about my own newspaper but about the press in general, was the prominence of apologies when an inaccuracy had taken place... The page 37, one paragraph type thing."*

**12.26** In light of Mrs Brooks' evidence, it was somewhat ironic that James Murdoch complained of a lack of prominence of apologies in articles concerning NI. He said:<sup>630</sup>

*"Look, I think it's – you know, I have personal opinions about this, and actually, as the subject of a lot of press coverage over the last year myself, to be honest, I've had cause for reflection, and I have been concerned with things like the ability to make a case, the ability to reply. I have been concerned with things like prominence of corrections. The Guardian alone I think has had to correct stories about News Corporation over 40 times in the last ten months or so, none of which seemed to have the same prominence as the original story, and that worries me. I think clearly it shows that somewhere in that code strengthening needs to occur with respect to accuracy and creating accountability there, but you know, I think this is going to be a matter for this Inquiry and for the industry."*

**12.27** Former PCC Chairman Sir Christopher Meyer acknowledged that during his tenure between 2003-2007 there was a problem ensuring that corrections and apologies were given due prominence; his view was that the problem remained today. In large part, he accepted that the problem lay with the fact that the PCC had no power to direct where corrections and apologies should appear, and no power to direct their size and prominence.<sup>631</sup>

<sup>625</sup> p4, para 18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>

<sup>626</sup> pp59-61, lines 16-23, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-9-January-2012.pdf>

<sup>627</sup> pp14-15, lines 1-18, Tony Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-28-May-2012.pdf>

<sup>628</sup> p17, para 99, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Second-Witness-Statement-of-Rebekah-Brooks.pdf>

<sup>629</sup> p59 lines 10-16, Rebekah Brooks, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-11-May-2012.pdf>

<sup>630</sup> pp65-66, lines 13-2, James Murdoch, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-24-April-2012.pdf>

<sup>631</sup> pp56-59, lines 15-5, Sir Christopher Meyer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-31-January-2012.pdf>

## Conclusion

**12.28** Looking at the evidence in the round, it appears that parts of the press have adopted an adversarial approach to complaints, whereby even when clear errors have been identified, there has been a failure to provide swift and complete remedies to complainants. Plainly, there are common themes here with the section of the Report addressed to the treatment of critics [see section 11 above]. Parts of the press have, at times, sought to avoid corrections and apologies and have sought to minimise the prominence of those corrections and apologies. I agree with Sir Christopher Meyer that any new regulator must address this issue and must have the power to order editors where, when, and how they should publish apologies, retractions, corrections and/or adjudications.

# CHAPTER 7

## CONCLUSION

### 1. Introduction

- 1.1** The foregoing review of just a representative sample of the vast quantity of evidence submitted to and considered by the Inquiry has served to identify a real problem within the culture, practices and ethics of the press. In setting out this evidence at some length I have provided my own evaluation of it, but I believe that I have done so in such a way that anyone reading this Report with care will be able to reach his or her own view.
- 1.2** I need to re-emphasise a point which I have already made more than once. There is a difference between saying that there is a real problem within the press (including a section of the press) on the one hand and saying that this problem is so widespread that it infects the majority of press practice on the other. I am not saying the latter. The unethical practices to which the evidence points afflict only a section of the press, and even then not for the majority of the time. Furthermore, in cases where the relevant section of the press has been identified, I am not to be understood as criticising all desks or departments within any individual title, still less the majority of journalists working there. The evidence points to a less sweeping conclusion, but one which is nonetheless a cause for significant concern. Although unethical practices have been perpetrated by or within some parts of some titles only for some of the time, the coverage or strength of the evidence I have read, seen and heard is more than sufficient to indicate the presence of a culture (or sub-culture – the precise terminology does not matter) which subsists and needs to be addressed.
- 1.3** The term ‘culture’, and the approach I should adopt, has been subjected to lengthy analysis and critique in some of the submissions the Inquiry has received. I have considered all of these submissions with great care. Whereas this Report is hardly the place for an in depth sociological debate into the meaning of complex terms, my approach may be simply stated. I have focused in particular on unethical *practices*: these fall four-square within my Terms of Reference. My conclusions as to an unethical *culture*, or *sub-culture*, flowing from the identification of such practices are necessarily inferential. The evidence has very often demonstrated the existence of identical practices in more than one title, and on many occasions across several titles. The prevalence of such practices will vary as between titles, and the Inquiry has in any event largely avoided an attempt to carry out a quantitative as opposed to a qualitative evaluation. But what this Inquiry has focused on throughout is the presence of practices which are more than isolated, coincidental or accidental both within individual titles and, viewing the matter more widely, a relevant section of the press. In other words, evidence of a culture within a title, or a part of a title, which is common to, similar, or identical within another title, or part of another title, can be regarded as evidence of a culture within a section of a press; and, furthermore, of a problem which needs to be addressed (not least by the provision of an appropriate regulator) by the press as a whole.
- 1.4** Another highly relevant factor is that it is not too difficult to discern common themes and patterns within the categories of unethical conduct described and evidenced earlier.<sup>1</sup> These categories are already to some extent artificial, and they undoubtedly overlap. Take the example of phone hacking. True, it is illegal, and many forms of subterfuge are not; but on analysis it shares much in common with other forms of unethical conduct which the Inquiry

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<sup>1</sup>Part F, Chapter 6

has examined. Surveillance of targets in search of a story full of prurient details but devoid of public interest, and the blagging of information to support a similar sort of story, are in essence not vastly different in moral – as opposed to technological – terms from listening into a voicemail in pursuit of similar tittle-tattle. Furthermore, hovering above all of these practices are additional matters of commonality: in particular, a failure to respect the personal autonomy of individuals, and a concomitant tendency to treat celebrities in particular as objects rather than as individuals, because they have ‘sold’ any entitlement to privacy; a tendency to regard the public interest as a form of trump card, on the basis that the work newspapers do is right, because they are surrogates for their readers and are exercising the right to free speech; and, in more extreme cases, a propensity to regard journalism as above the law, because newspapers are the ultimate guardians of both free speech and the public interest.

- 1.5** On this approach, one may even more readily detect a problem, in the form of a collection of similar practices, which may fairly be described as cultural. Plainly, my approach is somewhat in contrast with the thesis that some have advanced that the real problem within the culture, practices and ethics of the press is, or rather was, that of phone hacking which is therefore *sui generis* or ‘special’, and peculiar to one (now defunct) title. Some go even further, and have sought to argue that current police investigations into phone hacking and other criminal conduct have been unfair and disproportionate. For reasons which, by now, I have made crystal clear, I totally reject these forms of special pleading. They ignore the evidence the Inquiry has received and, in their most extreme form, come close to suggesting that journalists should not be subject to the rule of law. But in my view there is no more precious principle in a mature democracy.
- 1.6** Those reading the whole of Part F of this Report may be forgiven for thinking that the pages covering good practice are far outnumbered by those covering the bad. I have already made the point that it would be a gross error to measure my assessment of the press in terms of the number of words expended. It is in the nature of public inquiries to investigate areas of public concern and adduce detailed evidence to enable those areas to be probed. The preponderance of good practice within the press, including those sections of the press which have been the focus of criticism, has been recognised by most of the witnesses who have testified; it also chimes with my own experience. This statement requires more than mere recognition; it deserves explanation and elaboration, and the Chapter above meets these pre-requisites.<sup>2</sup>
- 1.7** I have already exempted the regional press from the generality of my findings, but I should address the position of magazines. In their submissions to the Inquiry, News International (NI) invited me to desegregate magazines from newspapers for this purpose on the basis that there is no evidence that they share a common culture, practices and ethics. A number of publishers of magazines have addressed this issue more directly, and have pointed out that the pressures on magazines are somewhat distinct from those operating on newspapers: they are published less frequently, and there is less of a call for the eye-catching headline or the sensationalised story, as one such publisher put it to me. Additionally, the Inquiry only heard from three magazine editors and their evidence was confined to the admittedly important issues of celebrity, intrusion, breaches of privacy, and harassment by paparazzi. Some of this evidence did not place these magazines in an altogether favourable light, and has been covered elsewhere. But save in these specific respects it is appropriate that I exempt magazines from the generality of my findings.

<sup>2</sup>Part F, Chapter 2

- 1.8** It is not the purpose of this concluding section on the culture, practices and ethics of the press simply to summarise that which has already been set out at length. Instead, I intend to apply a somewhat broader perspective.

## 2. Possible causes

- 2.1** Turning now to this wider perspective, a number of possible causes of the problem have been raised and ventilated during the course of the Inquiry, and it is appropriate to address these. Some have suggested that a press which rightly prides itself on its irreverence and fearlessness is almost destined to manifest a tendency to go too far and overreach itself. A press, they say, which is fearful and overly cautious would be inclined to be supine, and fail to discharge its primary function which is to hold power to account.
- 2.2** Others have suggested that unethical press practices are the result of one of two broad sociological factors. First, many would argue that the modern celebrity culture cannot simply be an artefact of a certain section of the press; it is a reflection of the fact that many people appear to be endlessly curious about the personal lives of sportsmen and women, film and pop stars, fashion models and those who attain celebrity status without having done much more than create or benefit from a public persona which attracts interest. Whereas the public as a whole were rightly horrified by the revelations at News of the World (NoTW) because that title's methods so obviously crossed a red line into illegal and unethical territory, the self same public might well take a different view as regards lesser degrees of intrusion. Secondly, many have also argued that elements of the press in this country have acquired a sense of impunity, of being above the law, because they have become too powerful, their economic and social power having become concentrated into too few hands.
- 2.3** I have set out these possible causes without necessarily endorsing any of them. This is so for two reasons. First, many of these potential causes, assuming that they have been correctly identified, are beyond the scope of this Inquiry to the extent that it is difficult if not impossible to devise an antidote or a solution. If, for example, the problem lies within society as a whole, there could be little or nothing I could say or recommend to encourage (let alone force) the tectonic plates to move into an altogether different place. Secondly, and in any event, the Inquiry has not investigated many of these alleged causal factors to the extent necessary to reach clear conclusions on these complex issues, and I doubt whether it would have had the expertise to do so in all instances.
- 2.4** That said, there are three aspects of the wider problem which merit further attention: first, the impact of commercial pressures in a shrinking newspaper market; secondly, the range of issues surrounding the modern employment context and the pressures exerted on journalists, and finally, issues of internal governance and leadership. These issues have been explored in the evidence and in submissions, and the Inquiry is in a position to examine them.

### Commercial pressures

- 2.5** Many have pointed to the impact of commercial pressures in a dwindling marketplace. These pressures encourage excessive risk taking by titles that are in an incessant circulation war with one another; there are also pressures which operate on journalists at the metaphorical 'coal-face', some of which may require them to meet unrealistic targets and deadlines, and to cut corners as regards the exigencies of fact checking and adherence to the letter and spirit of the Editors' Code.

- 2.6** The Inquiry has been told by a large number of witnesses that the economic environment in which newspapers operate is challenging; indeed, this is a hard fact which cannot seriously be disputed. Certainly, newspaper publishers in the UK operate in a highly competitive market where margins are tight and the competition for stories is intense: these factors exert considerable pressure both on editors trying to fill newsheet and journalists seeking copy.
- 2.7** Although some newspapers are highly profitable, the overall market is in decline and has been for many years, this is increasingly characterised by shrinking revenue streams and low profitability. Market share has been steadily eroded over the last eighty years or so: first by radio, and then the advent and growth of television, from one channel in the early days, to the explosion of channels made possible by the introduction of satellite television services and the rollout of digital television. This loss of market share has been further exacerbated over the last 20 years by the growth of the internet and the close to exponential increase in the availability of mixed media services through that medium.
- 2.8** Whilst some newspapers have been able to halt the decline in sales, most newspapers have lost sales at a rate that threatens the future economic viability of many titles. This is a trend that is more acute at, but not restricted to, the local and regional level than at national level.
- 2.9** The ability of newspapers to grow their own sales in the context of this overall decline is also constrained by the tribal loyalties of readers. Clare Enders of Enders Analysis has told the Inquiry that overall only 2% of the market is contestable. It is unsurprising therefore that the commercial need to sell stories believed to be of interest to the public is an increasingly potent consideration.
- 2.10** The impact of these pressures is not uniform. The evidence has also indicated that a difference in commercial imperatives exists between the broadsheets and tabloids. The journalist Nick Davies has suggested that the ownership and financial management of the Guardian by the Scott Trust has enabled the paper to distance itself from any commercial expectation to maximise profit.
- 2.11** By contrast, Mr Davies has suggested that tabloid newspapers are likely to place a greater emphasis on circulation numbers than the broadsheets. In part, this view has been substantiated by the evidence to the Inquiry presented by both tabloid and middle market newspaper editors, as well as by evidence presented to the Inquiry by the former tabloid journalists Richard Peppiatt, Mathew Driscoll and Paul McMullan. On the other hand, Mr Richard Desmond, the owner of the Northern and Shell Group and publisher of the Daily Express and Daily Star newspapers, said in evidence that he did not believe that there was a direct correlation between stories and sales. Other witnesses from his titles (and indeed elsewhere) expressed the same view, drawing on circulation data relating to the period when the story of the abduction of Madeline McCann featured heavily on the front page of the Daily Express.
- 2.12** The Inquiry need not resolve this issue, but I make the following broad observation. It may well be that the examination of any one individual case, such as the McCann example, will fail to demonstrate a ‘spike’ in sales over a relatively short period of time. However, it is a different question, and one less verifiable by empirical evidence, as to whether the publication of particular types of story over many months and years is responsible, at least in part, for long term trends and patterns in newspaper circulations.

## Employment issues

- 2.13** The demand for circulation appears to create, at least within some newspaper titles, a significant pressure on journalists to perform. Some of the journalists who have given evidence to the Inquiry make clear that the pressures to secure copy are extreme, and that their jobs and livelihoods are at stake on an almost daily basis, particularly for those on temporary or informal contracts. The challenges operating in the print market are most obviously manifest in the reduction in journalist headcount across the national and regional press. The consequences for those journalists who remain are broadly uniform; they must produce more stories of interest to readers on reduced resource.
- 2.14** In evidence to the Inquiry, a number of journalists have explained that they were required to produce a particular number of bylines in a given time frame. In many cases there were sanctions if these targets were not met; for those on short term contracts this might mean the termination of that contract. The former NoTW journalist, Paul McMullan has told the Inquiry that he kept his own cuttings in order to keep a record of the minimum of 12 bylines per year he was required to produce at the NoTW. The Guardian journalist David Leigh has suggested that, as a consequence of this pressure to generate a tangible product, at some newspapers there existed a real culture of fear among journalists if targets were not met.
- 2.15** James Hipwell, the former city correspondent for the Daily Mirror, described similar pressure at that title and recalled occasions where staff would receive emails from the then editor, Piers Morgan, berating them for not delivering enough exclusive stories for the paper.
- 2.16** The challenging economic circumstances in which many newspapers operate and the continual pressure on the bottom line of most newspaper businesses has led many newspapers to introduce new ways of working, often built around short term contracts, a growth in the use of freelancers and a reduction in the number of permanent staff posts. Michelle Stanistreet, General Secretary of the National Union of Journalists (NUJ), has suggested that this increased casualisation of journalists' employment across the newspaper industry has created an environment of great uncertainty for many newspaper employees. Ms Stanistreet claimed that journalists employed on a casual or short-term basis were forced to work under even greater pressures than permanent members of staff. She articulated the concerns that had been raised with the NUJ by freelance journalists. These included employment without job security and a failure to provide journalists with the basic resources they needed to undertake their work; such as the failure to provide a laptop, mobile phone and the ability of claiming expenses. Ms Stanistreet also said that casual and freelance journalists worked with permanent staff in the same pressurised newsroom environment, but invested greater resources and faced higher potential losses should they fail to deliver stories or other achievements.
- 2.17** This characterisation of short term and temporary contract work presented by Ms Stanistreet was echoed in the evidence of Steve Turner, General Secretary of the British Association of Journalists. He highlighted the apparent injustice of journalists being forced to work on short-term contracts for many years, and the fact that reporters were put under impossible pressure to produce stories without being given the resources to do so. This was also reflected in the evidence of the journalists Richard Peppiatt and Sharon Marshall.
- 2.18** The Inquiry has heard from journalists working at both tabloid and broadsheet titles who have spoken about the prevalence of bullying in some newsrooms and, in particular, the bullying of relatively junior and sometimes vulnerable staff by senior management teams, including

editors, and the impact that such behaviour has on the working practice of journalists. In Part F, Chapter 4, I found that bullying had taken place at the NoTW.

**2.19** It must be noted, however, that the majority of the journalists who testified before the Inquiry denied that there was a culture of bullying in the newspapers in which they worked. They freely acknowledged that the environment was competitive and pressurised, but it might be said that the same descriptors could be applied to many work places in different walks of life.

**2.20** I am not suggesting for one moment that any witness deliberately misled the Inquiry when giving evidence along these lines. But had there been, for example, a culture of bullying or of turning a blind-eye to ethical standards at any title, I doubt whether many journalists would have been prepared to tell me that in terms. Furthermore, whether a work-place is ‘competitive and pressured’ is to some extent a subjective impression, as is the subsidiary issue of whether pressure is a force for the good or the bad.

**2.21** Apart from the anonymous evidence adduced through Ms Stanistreet, and the evidence from Steve Turner, General Secretary of the British Association of Journalists, a limited number of former journalists did speak to the existence of a bullying and less than ethical culture in the papers in which they worked. The qualitative deficiencies of the anonymous evidence must be recognised, and in respect of each of the former journalists there are reasons for treating their evidence with caution. I have examined their evidence in previous sections of the Report, but here I set out two pieces of evidence which struck a particular chord with me: this is because of the way in which the evidence was given, its inherent plausibility, and its consistency with other evidence.

**2.22** Matthew Driscoll, formerly of NoTW, told the Inquiry in an extended sequence of answers:

*“Q. You tell us in your witness statement at paragraphs 7 to that you spoke to colleagues about this blagging technique and they told you that the practice had gone on for some time and also that the obtaining of medical records was common practice. Do you recollect that?”*

*A. It was certainly something that wasn’t a rarity, no.*

*Q. Did you ever raise your concerns with your sports editor or with anyone else at the time?”*

*A. No. I mean – well, I certainly raised my surprise that anything like that could be done. That was all new to me, having come from the Daily Star. But, you know, as I’ve thought about it long and hard, it would be a very brave journalist, certainly in the early years of his career on the paper, to suddenly say, “I’m not happy with these techniques that are being used.” You’d be basically making a decision over your career there. Anyone on that floor who complained too much would find themselves pushed out, certainly.*

*Q. Can you assist us with why you think this type of practice was going on? What was the purpose? Why did they have to resort to this?”*

*A. The main reason is to make sure a story’s true. You know, this is kind of the irony, really. Tabloid newspapers are very fearful of getting a story badly wrong, and the lawyers are just as – the in-house lawyers are just as scared of that because it costs a lot of money if you do get it wrong. Not only do you have the humiliation of putting an apology in the paper or it being followed up and being disproved by other papers, it can then cost you a lot of money in out-of-court settlements, and money is the be all and end all of tabloid newspapers, really, and the pressure was on to make sure*

*a story was correct and that you wouldn't get any comeback legally. So there was a pressure to use, as it now turns out, almost any means necessary to make sure that a story was 100 per cent true.*

*Q. Are there any other blagging incidents that you'd like to draw to our attention?*

*A. Only ones I heard of. The examples I've given you are the ones I'd directly worked on, yeah.*

*LORD JUSTICE LEVESON: I'm sorry, I just have to follow up the last answer. So everything that was done was done to avoid libel?*

*A. That's my opinion, yeah, certainly.*

*LORD JUSTICE LEVESON: Any consideration given to concepts of propriety or privacy*

*A. I'm sure there would have been sometimes, but I think the biggest priority was to make sure that that story was true, to make sure there would be no litigation further down the road. I think that's where the onus lied."*

**2.23** I recount this evidence without making any judgment about the managerial approach at the NoTW (beyond that expressed in Chapter 4 of this Part of the Report) but it is important as providing an insight into press culture for a number of reasons. For present purposes, the focus is on what Mr Driscoll had to say about an environment which effectively precluded whistleblowing or speaking out.

**2.24** James Hipwell, the former Daily Mirror journalist, emphasised the commercial and competitive pressures on journalists:<sup>3</sup>

*"It was quite common to be threatened with the sack. Frankly, if a journalist doesn't bring in enough exclusives or enough stories, then what use is he to a newspaper? This is a highly competitive industry. You can easily be replaced. It takes you years and years to get to – you know, to get onto a national newspaper, very often, and, you know, you don't want to blow it by not pulling your weight, and the fact is if you don't bring in great copy, great exclusives, you're not going to last in the job."*

**2.25** I appreciate that both Mr Driscoll and Mr Hipwell have been challenged on the basis of bias, the former because of his complaints directed at the NoTW and the latter following his treatment (and his conviction) while working at the Daily Mirror. The entirety of the evidence received by the Inquiry, however, points strongly to the conclusion that journalists were and are reluctant, if not afraid, to speak out about whatever unethical or illegal activities they came across, however frequently or infrequently that might have been. Equally, it is difficult to avoid the conclusion that the failure to provide protection to whistleblowers contributed to this reluctance.

**2.26** Piers Morgan, former editor of the NoTW and the Daily Mirror, did not express concern that, to his knowledge, there were no "whistleblower" policies in place at NoTW or the Daily Mirror during his period as editor at these papers.<sup>4</sup>

**2.27** Richard Peppiatt, a former journalist at the Daily Star, vividly described a culture in which whistleblowing was deterred:<sup>5</sup>

<sup>3</sup> p34, lines 16-25, James Hipwell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-21-December-20111.pdf>

<sup>4</sup> pp9-10, paras 43-44, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Piers-Morgan.pdf>

<sup>5</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Pepiatt.pdf>

*“It seemed to me that reporters’ employment contracts were structured specifically to limit the possibility of any ethical protest. Many, including myself, were on casual contracts, which is to say they can be terminated at anytime. The spectre of being ‘let go’ at any moment is a powerful deterrent against sticking your head above the trench if you disagree with something that is occurring. Even if someone was bold enough to complain, no channel existed for employees to raise concerns about ethical or journalistic practices. My feeling was certainly that the further up the chain of command you went the less, not more, concern over newsroom behaviour existed.”*

**2.28** Whistleblowing is usually protected under the provisions of the Employment Rights Act 1996 to the extent that employers are not empowered to act to the detriment of employees in relation to public interest disclosures. However, there is a strong argument for recommending greater protection in this regard, and in my view the case advanced by the NUJ to the effect that ‘conscience clauses’ should be routinely introduced into the contracts of employment of journalists is more than justified.

**2.29** The NUJ goes yet further, and has argued through its General Secretary, Michelle Stanistreet, that:<sup>6</sup>

*“... there is a connection between the anti-trade union culture at News International and the moral vacuum that’s been allowed to proliferate.*

*The culture stems from the top of the organisation yet it is ordinary working journalists who are being sacrificed and whose livelihoods have been destroyed whilst those at the top of News International enjoy impunity.”*

**2.30** Although I can see the clear possibility of a causal connection between a culture where journalists are reluctant to speak out and the presence and in particular the perpetuation of unethical practices, Ms Stanistreet’s point about a similar anti-trade union culture and such practices is a more controversial proposition. She may be right, but I am not in a position to express a concluded view about this on the limited evidence I have heard.

**2.31** Taken together, these different pressures (a competitive market, growth of new media, declining circulation, reduction of journalist headcount, reduced budgets, a casualisation of workforce, a lack of support to whistleblowers, and a sometimes bullying culture) risk the prioritisation of the pursuit of a story over all other, ethical, considerations. It is of interest that in her evidence to the Inquiry, Ms Marshall has said that in her experience there were no ethical conversations in journalism. Her evidence echoed the view of Northern and Shell proprietor, Richard Desmond, when he told the Inquiry that: *“We do not talk about ethics or morals because it’s a very fine line, and everybody’s ethics are different.”*<sup>7</sup> While that appeared to be a minority view across the industry as a whole, it nonetheless reflects the culture of a section of the press.

**2.32** It should be emphasised that what is here being identified is the enhancement or magnification of risk. Just as poor systems of governance may increase the risk of unethical practice, so does the existence of the sort of commercial factors identified here. But these risks may or not mature in the real world and separate consideration needs to be given to that. For example, an unpromising commercial environment might nonetheless engender exemplary newsroom practices in any given case: this would be the consequence of there being editors and journalists of sufficient calibre to withstand the pressures and temptations operating on

<sup>6</sup> p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Michelle-Stanistreet.pdf>

<sup>7</sup> p6, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf>

them at all material times. That said, it cannot sensibly be denied that, in the real world, the existence of an environment whose attributes might well be described as unfavourable to good practice will have a tendency to generate bad practice.

## Leadership and governance

- 2.33** I have mentioned commercial pressures on titles and personal pressures on journalists, but many would say that the emphasis should be more specific. To the extent that the Inquiry has identified a real problem within the culture, practices and ethics of the press, many would argue that the proximate cause of that problem should be visualised as being one of a failure of leadership and internal governance. The culture and tone of an organisation is set by and from the top: in terms of leading by example, insisting on adherence to standards, and implementing systems of governance which serve to identify and eliminate both legal and ethical risk at all levels of the organisation.
- 2.34** The Inquiry does not propose to comment in depth on the quality of leadership at NoTW (or higher up the corporate ladder into NI or News Corp) in any greater detail than set out earlier, since to do so might prejudice the criminal trials of at least two (if not many more) individuals. By extension, I will need to take care in examining the position in relation to other titles in case my reasoning and conclusions are transposed back onto NoTW or run the risk of offending what I have described in the Introduction as the self denying ordinance. I repeat, not for the first time, that this part of the Inquiry has been focused on aspects of the practices of the press at a higher level than the specifics ‘who did what to whom, who authorised it and who knew about it’; its purpose is to address issues of regulation. Within these obvious and ever-present constraints, it is both possible and appropriate to set out some concerns, even if these fall short of amounting to clear-cut and transparent conclusions.
- 2.35** A review of the evidence adduced before the Inquiry and already analysed has given rise to concern in at least two respects. First, it is suggestive of leadership and internal governance failures in relation to the use of private investigators and the making of cash payments: on any view, these were high risk areas which warranted a firmer hand on the tiller. Second there are concerns in relation to the use of ‘sources’.
- 2.36** It has already been pointed out that a number of editors and lawyers confessed to having no knowledge that private investigators and search agencies were used at their titles. By way of example only, the editor of the Daily Star, Dawn Neesom, stated that she was not aware that search agencies were being used until their existence was brought to her attention by her legal team.<sup>8</sup> This was also the case for Hugh Whittow, editor of the Daily Express and his predecessor in that role, Peter Hill. Hugh Whittow stated that he “*had no knowledge of [the use of private investigators] at all until it started appearing in the newspapers and on television*”<sup>9</sup> and had only recently discovered that some reporters at the Daily Express had used the services of search agencies.<sup>10</sup> More surprisingly, neither he nor Mr Hill could recall being made aware of the Information Commissioner’s 2006 report ‘*What Price Privacy Now*’,

<sup>8</sup> p60, lines 4-14, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>; pp6-7, paras 17-19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dawn-Neesom.pdf>; p13, para 58, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Justin-Walford.pdf>; pp4-5, paras 12-14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf>

<sup>9</sup> p115, lines 9-13, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>10</sup> pp117-118, lines 12-2, *ibid*

even though it identified seven journalists at the Daily Express as being involved in enlisting the services of private investigator Mr Whittamore.<sup>11</sup>

**2.37** Elsewhere, executives, editors and lawyers who were aware of the use of private investigators and search agencies, conceded that they had no knowledge of the methods deployed to obtain information. Few expressed concern about this lack of knowledge, even with the benefit of hindsight. This lack of concern was evident in the evidence of Nicole Patterson, head of legal at the Express and Star titles. Ms Patterson expressed the view that newspapers were entitled to expect search agencies and private investigators would operate within the law to obtain information:<sup>12</sup>

*“Longmere Consultants, Searchline, SystemsSearches and Express Locate are all names of search agencies that I know that are used by law firms to find and serve people with papers, and totally legitimate as far as I was aware, and I’m not sure that when you employ anybody that you ask in great detail whether they – how they go about doing what they do. You employ a company to do something for you and you expect that they would do it within the law. You expect that. Not that you don’t care. You expect it.”*

**2.38** Other editors shared Ms Patterson’s expectation that search agencies would operate within the confines of the law.<sup>13</sup>

**2.39** Ms Patterson also expressed the view that, as head of legal, the question of what methods were used were not within her remit; such considerations were editorial matters.<sup>14</sup> However, as has already been noted, Ms Neesom, Mr Whittow and Mr Hill, each editors at titles owned by the Northern & Shell during Ms Patterson’s time as head of legal, gave evidence that they were unaware of the use of search agencies and private investigators. At its lowest, this revealed a degree of confusion within management as to the allocation of responsibility for overseeing the use of external providers of information.

**2.40** It was also revealing that most lawyers who gave evidence to the Inquiry had backgrounds in corporate law or media law.<sup>15</sup> None described having expertise in criminal law and a number confessed to having no knowledge of criminal law or the legality of information gathering techniques.<sup>16</sup>

<sup>11</sup> p14 lines 3-21, Peter Hill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>; p115, lines 14-25, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>;

<sup>12</sup> p9, lines 3-18, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>13</sup> p119, lines 5-17, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>; pp12-13, lines 15 –18, John Witherow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf>; p10, para 42, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>

<sup>14</sup> p15, lines 18-20, p23, lines 10-15, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>15</sup> p1, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Alastair-Brett.pdf>; p1, para 1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Jonathan-Chapman.pdf>; p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Justin-Walford.pdf>

<sup>16</sup> p1, para 1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Jonathan-Chapman.pdf>; p2, para 4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Tom-Crone.pdf>

**2.41** John Witherow, editor of The Sunday Times, was clear in his evidence that the editor bore responsibility for the conduct of any third party used to obtain information.<sup>17</sup> However, when questioned about the extent to which it was possible to police external providers of information, Mr Witherow conceded that it was down to individual journalists to ensure that private investigators “*behave in what we regard as a proper way*”.<sup>18</sup> Mr Witherow was not alone in delegating responsibility for the supervision of private investigators to journalists. The former editor of the Daily Mirror, Richard Wallace, stated:<sup>19</sup>

*“During my time as Editor of the Daily Mirror we have used, on occasion, the services of private investigators. I have not directly commissioned or had direct contact with them. They would, of course, have been paid for their services, but I would not be involved in their instructions have knowledge of what they were doing or be involved in the nuts and bolts of their payment.”*

**2.42** Against this backdrop, it is of some concern that the evidence to the Inquiry from most editors was that there was no procedure or protocol in place in relation to when private investigators or third party sources could be used, how they were identified, or the methods they were permitted to employ.<sup>20</sup>

**2.43** In place of protocols or procedures, emphasis was placed on the expectation that third parties would operate within the law.<sup>21</sup>

**2.44** The Sunday Times was the only title to give evidence that they have adopted a more formal approach to the use of external providers of information since the phone hacking scandal. As Mr Witherow explained:<sup>22</sup>

*“[I]n the light of the phone hacking scandal we have naturally checked to make sure we operate within the PCC Code and the law. As one precaution we are drawing up formal understandings with freelancers to make sure they abide by the law and the PCC Code, although most are already accredited to reputable organisations which require such behaviour. We have also introduced a more formal approach when considering subterfuge. This involves the reporter making his case in writing and this*

<sup>17</sup> p14, line 20, John Witherow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf>; p9, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf>

<sup>18</sup> p13, lines 8-18, John Witherow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf>

<sup>19</sup> p19, para 66, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Wallace.pdf>

<sup>20</sup> p51, lines 1-15, Thomas Mockridge, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>; p7, para 19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dawn-Neesom.pdf>; p10, para 42, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>; p6, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Colin-Myler1.pdf>; p9, para 33 <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf>

<sup>21</sup> p50, lines 10-25, Thomas Mockridge, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>; p119, lines 5-17, Hugh Whittow; p9, lines 3-18, Nicole Patterson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>; pp12-13, lines 15-end, John Witherow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-17-January-2012.pdf>; p5, para 25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Justin-Walford.pdf>; p13, para 49, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Wallace.pdf>; p9, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf>

<sup>22</sup> p3, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf>

*being discussed by the heads of news, the newspaper's lawyers and the Editor and Managing Editor, with a formal minute made of the decision."*

- 2.45** It appears that, at the majority of titles, there is no formal system in place to govern when journalists may engage external providers of information, and on what basis. Without the adoption of such a system, editors and lawyers will continue to have difficulties in controlling third party sources and holding accountable those responsible for unethical conduct. If the conditions which enabled the use of private investigators to go unchecked for so long are to be avoided, significant improvements must be made to systems for monitoring and supervision.
- 2.46** A related issue is the adequacy, or lack of it, of systems for recording payments made for information. It appears that until recently such expenditure was dealt with as ordinary expenses claims, with the result that there was little oversight at editorial level.<sup>23</sup> A number of editors gave evidence that the amounts paid to external sources were small and did not attract attention so that there was never any cause to question the expenditure.<sup>24</sup>
- 2.47** Some titles have acknowledged the need to improve the financial accounting system and have introduced new systems to monitor expenditure. For example, at NI there was acknowledgement that the payments control system was inadequate and it was replaced in September 2011.<sup>25</sup> Before then it was left up to the discretion of the managing editor whether or not to question individual payments. Under the new system the policy makes clear that journalists should use non cash methods of payment for information, and only when the source insists on a cash payment is it acceptable to pay in cash. The journalist requesting the cash must obtain agreement from his or her departmental head that payment be made, and that authorisation must be countersigned by the editor or a deputy editor, as well as the managing editor. It is notable, however, that the new system does not necessarily require the identification of the recipient of cash payments and there is no limit to cash payments.<sup>26</sup>
- 2.48** Other titles have failed to acknowledge the difficulties presented by informal accounting systems. Mr Desmond gave evidence that *"the company operates stringent costs management, which I believe helps us to ensure that the company's money is not used for any unlawful purpose"*.<sup>27</sup> But tight purse strings are not a surrogate for proper accounting systems, and Paul Ashford, Northern & Shell group editorial director, conceded that there are flaws in the company's financial accounting system.<sup>28</sup>

<sup>23</sup> pp84-85, lines 8-20, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>; p11, para 35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf>; p6, para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dawn-Neesom.pdf>; pp1-2, paras 5 – 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Welsh.pdf>; p4, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Wright.pdf>

<sup>24</sup> pp34-35, lines 14-15, Paul Ashford, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>25</sup> pp68-71, lines 13-21, Susan Panuccio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-17-January-2012.pdf>; p3, para 5.1.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Susan-Panuccio.pdf>; p7, para 22.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Simon-Toms.pdf>

<sup>26</sup> p2, para 5.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Susan-Panuccio.pdf>

<sup>27</sup> p3, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf> The Daily Mail introduced new procedures in late 2011 as part of a review of payments to third parties in light of the new Bribery Act; however, Paul Dacre did not accept that problems existed under the previous system: p3, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf>

<sup>28</sup> pp34-35, lines 14-15, Paul Ashford, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

- 2.49** A related leadership or governance issue concerns the use of sources. It is of course appreciated that a balance has to be struck between on the one hand micro-managing each and every story to the extent that sources are identified and checked for accuracy and reliability, and on the other hand trusting the journalist's say-so that source X is reliable. The former would be unworkable in practice, not least given the pressure of deadlines and the fact that many stories by their nature do not need this degree of close attention. The latter is unacceptably *laissez-faire*. Overall, there is considerable room for improvement in this regard, and more should be done at management level, by editors and lawyers in particular, to interrogate and verify the sources of information prior to authorising publication of a story.
- 2.50** Most of the editors who gave evidence to the Inquiry acknowledged that responsibility for deciding whether to publish a story rests with them. However, most also stated that they would frequently authorise publication of a story without knowing the identity of a source.<sup>29</sup>
- 2.51** Editors expressed the common view that primary responsibility for checking sources lies with the journalist. This in itself is an appropriate delegation of responsibility. However, it has become clear that there are inadequate systems in place to verify sources. The gravamen of the evidence received by the Inquiry was along the lines that only if something about the story caught an editor's attention would the reliability of sources be questioned.<sup>30</sup> A number of journalists stated that they were rarely asked to verify the facts of a story.<sup>31</sup> The approach was justified, in part, by the need to protect source anonymity.<sup>32</sup> More generally, editors emphasised the importance of trust in the reliability and integrity of individual journalists as being fundamental to the operation of the newsroom.<sup>33</sup> Mr Wallace's view epitomised that expressed by most editors:<sup>34</sup>

*"To the best of my knowledge and belief, my journalists (like me) do comply with the law and the Code and I must trust them to do so. In the absence of any reason to call this relationship of trust into question, I do not believe that I should necessarily (or in some cases, properly) be aware of my journalists' sources and methods."*

<sup>29</sup> pp47-49, lines 1-7, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>; p7, para 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>; p5, para 11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dawn-Neesom.pdf>; p3, paras 12-13 and p6, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf>

<sup>30</sup> pp112-113, lines 22-15, Tina Weaver, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>; pp107-108, lines 9-19, Hugh Whittow, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>;

<sup>31</sup> p5, paras 33-34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Nick-Fagge.pdf>

<sup>32</sup> p9, para 42, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Piers-Morgan.pdf>; p5, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>; p3, paras 12-13, p6, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-John-Witherow.pdf>; p3, paras 6-7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Harding.pdf>; p11, para 35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf>

<sup>33</sup> p11, para 35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Paul-Dacre.pdf>; p3, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-James-Harding.pdf>; p9, para 7.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Thomas-Mockridge.pdf>; p5, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>; p5, paras 34-35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Colin-Myler1.pdf>; pp48-49, lines 21-8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>; p3, para 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dawn-Neesom.pdf>; p9, para 42, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Piers-Morgan.pdf>;

<sup>34</sup> p13, para 49, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Wallace.pdf>

- 2.52** Although a degree of trust in subordinates is required in the operation of any organisation, there is concern as to the extent of unchecked discretion afforded to journalists across the newspaper industry, and it is certainly arguable that this sort of *laissez-faire* attitude engendered a climate in which more serious ethical and legal breaches could be permitted to occur. Furthermore, this lack of supervision and excessive degree of trust may well have fostered a culture in which journalists feel able to publish stories on the basis of a single, unverified source.
- 2.53** The complacency evidenced in the presumption that individual journalists would act lawfully and ethically is all the more concerning when viewed in the context of the failure within the press to develop effective systems to govern standards of conduct. In an industry which relies so heavily on the delegation of responsibility to journalists, it is essential that stringent codes of conduct and systems of accountability are developed and implemented. However, the available evidence suggests that there was a failure across significant sections of the industry to develop and implement appropriate systems to govern conduct and ethics. The Editors' Code of Practice provided a reasonable benchmark for adequate practice, but the evidence examined in Chapter 6 above suggests that not enough was done to ensure compliance, and that such systems as were in place were and are informal in nature and defined by the personalities of the individuals in positions of leadership.
- 2.54** Mr Peppiatt provided the following account of the treatment of the PCC Code during his time as a journalist at the Daily Star:<sup>35</sup>

*"I would describe corporate governance at the Daily Star as laissez-faire at best. There was little or nothing in the way of documents or official policies governing conduct. I was never asked or offered the opportunity to sign a code of conduct, nor did there exist to my knowledge an 'employee handbook' type resource to reference. The PCC Code was not something that I ever heard referenced in relation to how a story should be handled, although certain limitations such as not trespassing in hospitals were implicitly acknowledged. I have admitted that some stories I wrote at the Daily Star were wholly inaccurate, often written under pressure from superiors to distort the facts at hand. For me to have referenced the PCC Code to protest against this I would have been laughed out the door."*

- 2.55** Asked to describe how the Editors' Code of Practice was enforced at the Daily Star, Ms Neesom gave the following evidence:<sup>36</sup>

*"It's just expected of the staff and it's enforced by people not being very happy with them if they mess up ... The journalist concerned will probably be warned by the news desk that they have done something wrong ... I personally probably wouldn't talk to the journalist concerned, but the news desk or my deputy editor would."*

- 2.56** Systems of supervision at other titles were similarly informal. Colin Myler, former editor of the NoTW, in somewhat vague terms described relying on *"a culture of individual and collective responsibility for ensuring compliance with the PCC Code and the law"* during his editorship.<sup>37</sup>

<sup>35</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Richard-Peppiatt.pdf>

<sup>36</sup> p37, lines 1-22, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

<sup>37</sup> p3, paras 16-19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Colin-Myler1.pdf>

Mr Wallace explained that one of the checks on conduct at the Daily Mirror is to position senior reporters alongside more junior reporters.<sup>38</sup>

- 2.57** Dominic Mohan, editor of The Sun emphasised how he sought “*to foster a culture of honesty, integrity and high ethical standards at the Sun*”<sup>39</sup>. However, when asked how he had tried to foster those qualities, his answer revealed that ethical controls at The Sun are similarly ad hoc, relying on the judgment of individual journalists and the initiatives and attentions of individual managers rather than being systematic:<sup>40</sup>

*“I think just on – an editor can – their contact on a day-to-day basis with their staff, so whether that be in morning news conference, during my features conferences, during my lunchtime plot meetings or my presence on the back bench in the newsroom on a daily basis, I think people know what I expect of them and know what standards and ethics that I stand by.”*

- 2.58** In the absence of formal systems of enforcement, even instances of clear and serious breaches of the Codes did not result in significant disciplinary action. The Inquiry has already examined in depth the response of senior management at the NoTW to Mr Justice Eady’s strictures in relation to the thinly-veiled threats to two of the women involved in the Max Mosley privacy claim, and has touched on that of senior management at Trinity Mirror in relation to the *Starsuckers* investigation. These are indicative of a cultural tendency metaphorically to circle the wagons, defend that which has been criticised (even judicially) and attacking those who utter the criticism and, in some cases, garnering support from others in the industry. Free speech is, of course, of critical importance; judges (among others) are not infallible and are well used to being criticised without having the ability to respond. Similar criticism can be advanced about appellate decisions. What is missing, however, is internal reflection about (and action in respect of) breaches of the Code which are worthy of censure.
- 2.59** Putting to one side that fact that an editor is ultimately responsible for what is published, questions naturally arise as to whether the real problem within the culture, practices and ethics of the press which this Inquiry has identified should be regarded as a failure of leadership. For reasons which have already been fully explained, it is unnecessary to venture into the territory of whether an editor at any particular title must have been aware of *specific* malpractice merely by virtue of his or her position. I have in fact already made clear that a number of editors were unaware, for example, of the extensive use of private investigators within their organisations, and if this evidence is to be accepted (and there is nothing directly to contradict it) it does tend to suggest that the editorial role does not automatically carry with it knowledge and understanding of every journalistic practice which is in play in the title for which the editor is responsible.
- 2.60** Approaching the issue at a far higher level of generality, however, it is possible to express a number of tentative views. The point has already been made that the culture or tone of an organisation is set by or at the top. If ethical failings have been highlighted, it would be counter-intuitive to regard these as largely attributable to the isolated frailties of individual ‘rogue’ journalists. As in other walks of life (evident, for example, in relation to the police),

<sup>38</sup> p54, lines 4-12, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>; pp55-56, lines 22-1, Lloyd Embley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-16-January-20121.pdf>

<sup>39</sup> p7, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Dominic-Mohan.pdf>

<sup>40</sup> p46, lines 17-25, Dominic Mohan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-9-January-2012.pdf>

journalists take their lead from the example set by the leaders and managers within their organisations, and are guided and influenced by the culture within the industry as a whole. Although it would be equally counter-intuitive to regard journalists as purely the ‘victims’ of such a culture, or of an ethical vacuum created by inaction at the highest levels within the organisation, the significance of this factor does need to be acknowledged.

- 2.61** Insight into issues of this sort was provided by Richard Desmond’s candid evidence to the Inquiry, betraying a reluctance on his part to engage with what might be thought to be a basic questions that all those in journalism should be prepared to focus on. He said: *“Ethical – I don’t know what the word means, perhaps you would explain what the word means,”* before adding, as noted above: *“We do not talk about ethics or morals because it’s a very fine line and everybody is different”*.<sup>41</sup>
- 2.62** Even when those in a leadership role acknowledged errors of judgment, they were unwilling to confront the ethical component of that failure. Many editors expressed regret at the way in which the Christopher Jefferies story was reported; yet none sought to explore what ethical standards had been transgressed in this episode. For example, Mr Wallace viewed the failings which led to the publication of the Jefferies story as a “black mark” on his career, stating that *“I think Mr Jefferies’ name will be imprinted on my brain forever more. It will change very much the way I deal with any story of this nature in the future”*.<sup>42</sup> However, he did not consider that any practical changes could be made to reduce the risk of recurrence, stating:<sup>43</sup>

*“Ultimately it’s down to the judgments of editors and, you know, as I found in this regard and other mistakes have been highlighted, we all make mistakes. I’m not seeking to downplay those mistakes or dismiss them; I’m just saying you can have as many safeguards and checks and balances in place you would like but these errors are going to happen. It’s about creating a climate, I believe, which makes all editors think perhaps a little bit longer than they have previously.”*

- 2.63** In the absence of clear leadership on ethical standards, it is at least arguable that journalists latched on to alternative barometers of what amounted to acceptable conduct.
- 2.64** Another trend emerging from the evidence considered above is that the press tend to subsume ethical considerations within an assessment of legal risk. This type of reasoning process was encapsulated in the explanation provided by Mr Desmond which follows his answer about ethics and identifies the approach taken at his titles:<sup>44</sup>

*“I think that we are in a business to give readers/viewers what they want to read and watch and as long as it is legal that is what we aim to do. We do not talk about ethics or morals because it is a very fine line and everybody’s ethics are different. However, we do of course care about the title’s reputation and so we would not run a story if we thought it would damage that or seriously affect someone’s life.”*

<sup>41</sup> p62, lines 1-18, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>42</sup> p73, lines 4-6, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>

<sup>43</sup> p73, lines 10-19, Richard Wallace, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-16-January-2012.pdf>

<sup>44</sup> p63, lines 1-10, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>; p6, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Richard-Desmond.pdf>; pp27-28, lines 1-3, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

**2.65** One of the consequences of this approach was that legality, or in some cases, the risk of being sued, became the touchstone of acceptable conduct. A number of editors and executives gave evidence that they would be more likely to engage in conduct which might amount to a civil wrong if they knew that the subject of a story or photograph was not likely to bring a civil action. This was to some extent evident in the evidence provided by Mail on Sunday editor, Peter Wright, who said:<sup>45</sup>

*“Sometimes [duty lawyers] are overcautious, and in particularly on celebrity stories, you have to take a view to – we’re talking about libel here – there are certain individuals who are very likely to sue and other individuals who, for whatever reason, are very unlikely to sue, and because I’ve been doing this job for a very long time, I may have a better knowledge of that than the duty lawyer. The duty lawyer will point out to me, “Look, this could be – there could be a risk here”, and it’s their job to point out the risk. It’s my job to take the decision.”*

**2.66** The prioritisation of the management of legal liability over ethical risk was present in the legal departments of some newspapers. Senior lawyers who gave evidence to the Inquiry narrowly defined the scope of their responsibilities to exclude any comment on ethical risk as opposed to legal risk and liability. This was particularly evident in the legal department at NI. Lawyers would not advise about the legality of methods used to obtain information,<sup>46</sup> nor would they advise on the PCC Code which was an editorial matter.<sup>47</sup> Their remit focused on all aspects of libel law and the legal risks attendant on defamation; dealing with post publication complaints; and copyright complaints.<sup>48</sup> The position was the same at Express Newspapers.<sup>49</sup>

**2.67** The consequences of the focus on legality over ethics were eloquently captured in the evidence of Mr Peppiatt. He commented on the distinction between a legal and a moral sense of truth:<sup>50</sup>

*“The legal sense of truth is sort of: what can we get away with saying? That’s sort of the legal sense. The moral sense would be more: what would be a fair way to represent this? What would be an accurate way to represent this? Now, tabloid newspapers have no interest in the moral sense. All they want to do is think: what can we get away with saying? How far with we push the boundaries and get away with it? As you see when you have these monsterings of people, it’s sort of: how far with we push it? If one newspaper pushes the line, everyone rushes to fill the void behind them. It’s just a matter of: what can we get away with saying? There’s no consideration of: what are the ethics? What are the moral considerations?”*

<sup>45</sup> pp32-33, lines 15-14, Paul Silva, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>; p73, lines 9-20, Peter Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-11-January-2012.pdf>;

<sup>46</sup> pp1-2, paras 1-2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Jonathan-Chapman.pdf>

<sup>47</sup> pp66-69, lines 16-7, Tom Crone, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Afternoon-Hearing-13-December-2011.pdf>; p85, lines 2-25, Jonathan Chapman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Transcript-of-Morning-Hearing-14-December-2011.pdf>

<sup>48</sup> p3, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Jonathan-Chapman.pdf>

<sup>49</sup> p23, lines 10-15, p25, lines 18-22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Witness-Statement-of-Jonathan-Chapman.pdf>

<sup>50</sup> p28, lines 4-22, Richard Peppiatt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-29-November-2011.pdf>

- 2.68** It appears that sometimes the fact that conduct was legally permissible became an excuse not to probe whether conduct was also morally acceptable. This is particularly so in relation to libel (can we prove it is true?) as distinct from privacy (does it transgress Article 8 rights?) although the latter is increasing in prominence as the law has had to deal with an increasing number of complaints in this area.
- 2.69** Another damaging tendency was, and is, for editors to measure the rectitude of their reporting against the conduct of their competitors. A number of editors and journalists, when asked to justify some of the more egregious examples of misconduct discussed in this Report, relied heavily on the fact that other titles were printing the stories.
- 2.70** For example, Mr Desmond would not accept that Mr Hill behaved unethically in relation to his stewardship of the coverage of the McCann story. When asked whether he agreed that it was up to the editor not to behave in such a way, he replied *“No, not at all. Every paper – I didn’t bring every paper with me, but I’m sure we can justify my statement – every paper every day for that period of time was talking about the McCanns. It was the hot story – it was the story.”*<sup>51</sup>
- 2.71** Mr Hill was likewise unrepentant about the coverage of the McCann case. He justified it as follows:<sup>52</sup>

*“My decision was made because I believed that the stories were true and that the readers of The Daily Express had an interest in them. The Daily Express was not the only medium that published offending stories. They appeared widely in the press and on every TV station. I have never made up a story or asked anyone else so to do. Of course, if there is a big story, there is also pressure to get the best lines because it is a highly competitive industry. However, that does not mean that journalists will invent stories and that newspapers will print made up stories.”*

- 2.72** It is notable that his justification again relied heavily on the fact that other titles were printing the stories, as if that in itself provided a basis for vindicating the accuracy of the story. Editor-in-Chief of Associated Newspapers, Paul Dacre, whilst accepting that errors had been made in the reporting of Mr Jefferies’ case, emphasised that coverage by the Daily Mail was less offensive than at many other titles.<sup>53</sup> In this respect, he agreed with the suggestion that there is a snowball effect that impacts on the way in which other newspapers report the same story, observing: *“I think the way the boundaries are pushed by the press collectively almost encourages some papers, not all papers, to push the limits too far”*.<sup>54</sup>
- 2.73** An element of relativism was again evident in Mr Dacre’s appraisal of Daily Mail’s coverage of the McCann story:

*“I think looking back there was obviously the odd article that we regretted. I think – but I think, on a balanced view of the Daily Mail’s performance on that story over the years, I think we were at the more responsible end.”*<sup>55</sup>

<sup>51</sup> pp77-78, lines 21-11, Richard Desmond, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Afternoon-Hearing-12-January-2012.pdf>

<sup>52</sup> p8, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Second-Witness-Statement-of-Peter-Hill.pdf>

<sup>53</sup> pp75-76, lines 23-3, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

<sup>54</sup> p76, lines 4-16, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>

<sup>55</sup> p81, lines 9-13, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>; pp85-86, lines 22-6, Dawn Neesom, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Transcript-of-Morning-Hearing-12-January-2012.pdf>

Mr Dacre described the pressure within the newsroom to carry the same stories as other papers.

*“[T]his was the most extraordinary story. There have only been two or three in my lifetime. You could actually see, when you got the circulation reports of other newspapers that week, people putting the McCanns on the front pages, their circulations went up. I remember the rows and recrimination in our offices that we weren’t carrying these stories. Well, in retrospect, I’m glad we didn’t carry those stories.”<sup>56</sup>*

- 2.74** The Rt Hon Gordon Brown MP, characterised the combined effect of some of these factors as amounting to or creating a ‘race to the bottom in standards’.<sup>57</sup> No doubt he was deploying all his rhetorical skills to make his point, but putting the same point another way and certainly somewhat less aggressively, it must be accepted that there is not a race to the top. The combined effect of the predominance of commercial considerations, the lack of clear ethical direction from the top, the subordination of ethical considerations to legal risk, and the element of moral relativism involved in seeking to justify one’s own conduct with reference to what others were doing at the same time, gives rise to the strong suspicion that ethical practice was not always given the central position it deserved within the culture of a significant section of the press.
- 2.75** Aside from the issue of leadership, that of internal governance also falls to be addressed. The point has already been made that governance within newspapers has a tendency to be informal and personality based. Given the nature of this type of business, much will always depend on the personal qualities of those at the top of the organisation, and it is understood that proprietors in search of profit in a declining market will naturally enough be tending to focus on the commercial and charismatic qualities of their editors, in particular on their ability to enhance the saleability of their product. That said, it is clear from some of the evidence received by the Inquiry from those in senior editorial and management positions that a high value is placed on the maintenance of ethical standards in certain sections of the press, and on that basis there is no reason why this level of practice should not be capable of being replicated across the board.
- 2.76** Proper internal governance also involves the creation and implementation of systems of standards, training, supervision, audit and review. In most titles the evidence pointed to the existence of systems which may fairly be described as informal and cursory. Many editors have informed the Inquiry that in a fast-moving news and current affairs environment it would be quite unrealistic to expect anything more formal, still less the imposition of systems which would entail undue bureaucracy and sclerotic decision making. I am not proposing this sort of regime because I too understand the practical realities as well as the obvious risk that going too far would be counter-productive. Nonetheless, it is clear to me that more could and should be done to ensure that potentially problematic cases are addressed in a more structured manner with key decisions recorded, with short reasons given, in order both to improve the decision making process and enhance accountability.
- 2.77** I have already made the point that much of the content of newspapers is uncontroversial in the sense that it does not create significant legal and ethical risks. I also fully understand and

<sup>56</sup> p81, lines 14-22, Paul Dacre, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-6-February-20121.pdf>; p9, para 30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Peter-Hill.pdf>; p39, lines 16-23, Paul McMullan <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-29-November-2011.pdf>

<sup>57</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Witness-Statement-of-Gordon-Brown-MP.pdf>

appreciate that the majority of celebrity reporting is based on information provided directly by the individuals themselves, or by their agents. However, experienced editors, sub-editors and lawyers must develop an accurate sense of which stories are likely to test the boundaries of legal and ethical reporting, and, in any event, systems should be in place to assess risk in these respects. For example, the 'big' stories which attracted a significant proportion of the time and attention of this Inquiry quite obviously fell in that category even before they ever saw the light of day; and the same applies, albeit to a lesser extent, to many of the smaller stories which the Inquiry has examined.

**2.78** Equally, and in this regard it is appropriate to speak very generally, stories which appear to have been obtained by surreptitious means are likely to attract greater risk. I believe that had more time been taken in these instances for discussion about both the legal and ethical risks, and the quality and reliability of the sources, with that discussion noted contemporaneously for review and audit after the event, it is probable that far fewer of these objectionable stories would ever have been published. Furthermore, the implementation of systems which require a greater element of formality and accountability is likely to lead in the longer-term to the fostering of a culture which is both more risk averse and more respectful of the legitimate private rights of individuals.

**2.79** Finally, I would also like to add a word on journalism training. I have not sought to look at the adequacy of the training available to, or provided to, journalists. However, a number of professors of journalism have given evidence to the Inquiry and it is apparent from their evidence that the schools of journalism are committed to offering high quality training in which ethical journalism plays a full part. Largely as a result of the financial pressures on parts of the press, journalism training is increasingly moving away from newsrooms and into the universities. There is also an important role for ongoing in house training, including in relation to new laws and ethical or compliance issues that are highlighted by particular cases. A number of titles have told the Inquiry that they work with the PCC to deliver training on specific issues as appropriate. It is clearly important that the industry generally, and employers in particular, should place a high priority on training to ensure, *inter alia*, that all journalists understand the legal and ethical context within which they work.

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### 3. The relevance of the internet

**3.1** Many editors and commentators have argued that the burgeoning of the internet is likely to render irrelevant much of the work of the Inquiry even assuming that it has not already done so. If, for example, celebrity X's privacy is violated online, then the metaphorical cat is well out of the bag, and there is no reason why open season should not exist in the printed media. A clear exemplification of that argument is the justification used by The Sun in relation to the Prince Harry photographs, discussed in Chapter 5.

**3.2** In my view, this argument is flawed for two reasons. Putting to one side publications such as the Mail Online which bind themselves voluntarily to the Editors' Code of Practice (and which is legitimately proud of the world-wide on line readership that it has built up), the internet does not claim to operate by any particular ethical standards, still less high ones. Some have called it a 'wild west' but I would prefer to use the term 'ethical vacuum'. This is not to say for one moment that everything on the internet is therefore unethical. That would be a gross mischaracterisation of the work of very many bloggers and websites which should rightly and fairly be characterised as valuable and professional. The point I am making is a more modest one, namely that the internet does not claim to operate by express ethical standards, so that bloggers and others may, if they choose, act with impunity.

**3.3** The press, on the other hand, does claim to operate by and adhere to an ethical code of conduct. Publishers of newspapers will be (or, at least, are far more likely to be) far more heavily resourced than most, if not all, bloggers and websites that report news (as opposed to search engines that direct those on line to different sites). Newspapers, through whichever medium they are delivered, purport to offer a quality product in all senses of that term. Although in the light of the events leading to the setting up of this Inquiry and the evidence I have heard, the public is entitled to be sceptical about the true quality of parts of that product in certain sections of the press, the premise on which newspapers operate remains constant: that the Code will be adhered to, that within the bounds of natural human error printed facts whether in newsprint or online will be accurate, and that individual rights will be respected. In contrast, the internet does not function on this basis at all. People will not assume that what they read on the internet is trustworthy or that it carries any particular assurance or accuracy; it need be no more than one person's view. There is none of the notional imprimatur or kitemark which comes from being the publisher of a respected broadsheet or, in its different style, an equally respected mass circulation tabloid.

**3.4** The second reason largely flows from the first. There is a qualitative difference between photographs being available online and being displayed, or blazoned, on the front page of a newspaper such as The Sun. The fact of publication in a mass circulation newspaper multiplies and magnifies the intrusion, not simply because more people will be viewing the images, but also because more people will be talking about them. Thus, the fact of publication inflates the apparent newsworthiness of the photographs by placing them more firmly within the public domain and at the top of the news agenda. As Professor Baroness Onora O'Neill made clear<sup>58</sup>, it is important:

*“to recognise the extent to which exposure to media content is unchosen – particularly by children, those in institutional settings, and those in public places. Regulation should have regard to the realities of media penetration rather than assuming that it always reflects consumer choices.”*

**3.5** Ultimately, this is most decidedly not a debate about free speech. A newspaper's right to publish what it chooses within the general law (whether or not it complies with the Editors' Code) is not in question, although within a more robust regulatory framework the consequences of a breach of the Code, publication having occurred, might well be such as to have a deterrent effect. To turn this into a debate about free speech both misses the point and is in danger of creating the sort of moral relativism which has already been remarked on. This is, or at least should be, a debate about freedom with responsibility, and about an ethical press not doing something which it is technically quite able to do but decides not to do. This freedom (and where the editors choose to draw the line whether rightly or otherwise) was neatly encapsulated by the decisions taken in relation to Prince Harry and the Duchess of Cambridge.

## 4. The press response to this Inquiry

**4.1** Our free press has been and is entitled to comment as it chooses on the work of this Inquiry, and although I am equally entitled to exercise my own right of free speech, I am firmly of the view that it is not for me to reflect any commentary back onto the press. However, it is right that I make an observation on one matter.

<sup>58</sup> p6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Professor-Baroness-ONeil.pdf>

- 4.2** The publicist, Max Clifford was asked to comment on the effect, if any, that the Inquiry and the general public mood were having on the current work of the press. He said this:<sup>59</sup>

*“Q. Do you have any feel for what’s going on at the moment? Has the scandal which broke last summer had a chilling effect on the types of methods which are being used now to obtain stories?”*

*A. I mean hopefully yes, I mean, it’s frightened people and made them stop those kind of things, which is what I believe and sincerely hope, but also the effect of this Inquiry, I think, has frightened editors, so, you know, for example, in recent months there’s several major stories which would have dominated the headlines that I’m aware of which haven’t come out.*

*Q. I don’t want you on that topic to say anything which would invade any individual’s privacy, but can you give us some idea of what exactly it is which is holding editors back from publishing the sort of story you have just mentioned?”*

*A. Well, I think it’s a backlash. It’s a public backlash. I mean, what really got the British public angry was Milly Dowler and the McCanns, wasn’t it? People like that. You know, stars having their phones tapped, people like myself that are successful, wealthy, have done very, very well out of the media or films, television, so what, those people don’t care, they have far more important things to worry about. But when they read and heard about Milly Dowler, when they read and press. It’s the best chance anybody’s got, otherwise we’re like Chinese and Russians and just slaves to the system. But are they savage? Can they be savage? Absolutely right. Of course some of the most successful papers are the most savage because an awful lot of people would much rather read nasty things about other people than nice things.”*

- 4.3** I have no hesitation in accepting the way in which Mr Clifford characterises the present position. He gave his evidence in a forthright manner and had no reason or motive to mislead the Inquiry. I do not interpret his evidence as suggesting that press conduct has been exemplary since July 2011, and that in any event would not accord with my own experience: indeed, three of the case studies as discussed earlier,<sup>60</sup> post date the commencement of this Inquiry, and, whatever view might be taken of these stories, indicate that the chilling effect of the Inquiry (if it exists at all) is limited.

- 4.4** If, as appears likely, the press, or certain sections of the press, have exercised a substantial measure of self-restraint for the reasons explained by Mr Clifford or otherwise, I do have to ask myself what will happen after this Report has been published and memories begin to fade. I have little hesitation in concluding that, unless something is done about it, the press would fairly speedily revert to type: in other words, it would start printing the sort of stories to which Max Clifford has alluded. It is not difficult to come to such a conclusion given the history of self-regulation of the press, and the lessons to be derived from that. Part D Chapter 1 of the Report recalled the cyclical nature of press self-regulation. In the aftermath of the three Royal Commissions, the Younger Report, Sir David Calcutt QC’s two reports, and the death of Princess Diana, the press has shown signs of reform and signs of self-improvement only to regress in the years that follow, prompting the need for a further Royal Commission, public inquiry or similar. The fact is that many of the root causes of the problems in the culture practices and ethics of the press (in particular, commercial pressures in a declining market-

<sup>59</sup> pp46-47, lines 1-8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-9-February-20121.pdf>

<sup>60</sup> Part F, Chapter 5

place) endure, and, to be blunt, a fairly basic understanding of human nature suggests that the problems identified are unlikely to be eliminated by self-control.

- 4.5** This is not to be interpreted as an altogether pessimistic message. There are many who argue that it would be a mistake to swim against the tide of human nature. That viewpoint may or may not be correct in other contexts, but in my view it does not apply in the present. A *laissez faire* approach would carry with it a pessimistic message, but that is both negative and unrealistic. The real problem which I believe exists within the culture, practices and ethics of the press justifies, if not demands, a more robust system of independent press regulation which is capable of addressing that problem head on.
- 4.6** Not merely would such a system have the obvious benefit of meeting the immediate needs of those who have suffered at the hands of the press, it would also bring about, incrementally and over the course of time, lasting change within the culture, practices and ethics of the press to a point when it would no longer be appropriate to speak of practices which are cultural. Instead, we would have arrived at a state of affairs in which any failings or lapses would indeed be isolated and straightforward examples of frank human error or, as one press core participant has put it, ‘unadorned errors of judgment’ which would not be evidence of a sub standard culture or practices.
- 4.7** Putting to one side the current investigations, the clearest message which comes out of the entirety of this lengthy part of the Report addressing the culture, practices and ethics of the press overall is that, time and time again, there have been serious and uncorrected failures within parts of the national press that may have stretched from the criminal to the indefensibly unethical, from passing off fiction as fact to paying lip service to accuracy. In doing so, far from holding power to account, in these regards the press is exercising unaccountable power which nobody holds to account. In my view, the maintenance of the status quo is simply not an option; the need for change in internal but most importantly in external regulation has been powerfully identified.
- 4.8** There is a corollary point which I also wish to emphasise. Lord Black told the Inquiry that in his view the phone hacking scandal by itself was ‘*[i]n terms of the architecture of the system... the most obvious example of why urgent reform of the system is needed*’.<sup>61</sup> Lord Black did not provide any further examples justifying the need for urgent reform, but the lengthy pages of this Part of the Report most certainly do. It has not been my purpose or endeavour to apportion blame but it has been necessary to set out the substantial, if not overwhelming, weight of evidence which not merely justifies but requires regulatory form in a manner which meets public expectations and the public interest. In my view the case for such reform has been proven many times over.
- 4.9** Having made this fundamental point strongly as I am able, I return to what I said at the very start of Part F of the Report. I recognise the constitutional important of free speech within the context of a responsible press, and I also recognise that most of what the press does is good journalism free from the sort of vices I have had to address at length. No one reading this Report in full should come away with the impression that the press as an industry is shot to pieces. It is not; but at the same time as acknowledging that, I also state and repeat that what has come out of the investigation that this Chapter of the Report summarises demonstrates that it is essential that the need for a fresh start in press regulation is fully embraced, and a new regime thereafter implemented.

<sup>61</sup> p21, lines 7-9, Lord Black, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-1-February-2012.pdf>

# **PART G**

## **THE PRESS AND THE POLICE: THE RELATIONSHIP**

# CHAPTER 1

## POLICING WITH CONSENT: THE ROLE OF THE PRESS

### 1. Introduction

- 1.1 The issues addressed in this Part of the Report, driven largely by understandable public concern, were expressed succinctly by Robert Jay QC in opening Module Two of the Inquiry:<sup>1</sup>

*“Public concern hereabouts may be expressed in just one sentence: the relationship between the police and the media, and News International in particular, was, at best, inappropriately close and if not actually corrupt, very close to it. Furthermore, the nature of this relationship may explain why the police did not properly investigate phone hacking in 2006 and subsequently in 2009 and 2010, preferring to finesse the issue on these later occasions by less than frank public statements.”*

- 1.2 In seeking to address these key questions, the Inquiry’s Terms of Reference require an examination of the relationship between the press and the police, a review of the extent to which the current policy, practices and regulatory framework has failed, and a consideration of any recommendations as to the future conduct of relations between the police and the press.
- 1.3 Although this requires the Inquiry to consider the conduct of the police, that scrutiny only applies to the extent that that conduct meshes with the relationship between the police and the press, rather than more generally. The primary focus of the gathering of evidence has been directed towards possible recommendations for the future; inevitably, that has involved a reflective and analytical investigation of the past which identifies areas of practice which can be subject to critical appraisal.
- 1.4 During Module Two, the Inquiry heard oral evidence from 93 witnesses. 36 of these were serving or former police officers, including the current Commissioner of the Metropolitan Police Service (MPS) and 11 Chief Constables. Evidence was also taken from 25 journalists. Much of the evidence has testified and paid tribute to the high standards maintained and hard work carried out by the Police Service, often in very challenging circumstances. There has been real support for the positive aspects of the relationship between the police and the press and the way in which they can work together (for example in relation to appeals for witnesses). However, the Inquiry has also heard evidence which leads me to conclude that the relationship is in need of recalibration. Bernard Hogan-Howe, the Commissioner of the MPS, conceded on arriving to the role in September 2011 that *“...it is right to observe that those relations [that is to say, the relationship between the MPS and the media] were in neither a normal nor an entirely healthy state...”*<sup>2</sup> Furthermore, the Commissioner went on:<sup>3</sup>

*“I recognise that there is a need to review and improve our relationship with the media. It seems clear from recent events relating to phone hacking...that the*

<sup>1</sup> pp 8-9, lines 21-4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf>

<sup>2</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>3</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

*boundaries between the MPS and the media need to be reconsidered and reset. However, I would not wish to return to a police service which is perceived as secretive and unaccountable by the public and considered unprofessional by the media.”*

- 1.5** The stark suggestion that the original police phone hacking investigation in 2006, Operation Caryatid, was curtailed because of pressure from News International is covered in detail in Part E, Chapter 4 of this Report. In reaching conclusions and considering recommendations for the future in this part of the Inquiry, I have considered and examined the different potential manifestations of the arguably over-cosy relationship between the police and the press, both through the detailed example of Operation Caryatid and the experiences of the day-to-day relationships that we have heard about from both the press and the police; it is only through this process that the exact nature of the underlying problem might be ascertained. Mr Jay provided a summary of these manifestations, in no particular order, in his opening submission to Module Two:<sup>4</sup>

*“First, the acceptance and conferring of inappropriate hospitality. The risks here are self-evident.*

*Secondly, the giving and receiving of ‘off the record’ briefings. Again, the risks here are pretty much self-explanatory, but apart from the obvious lack of transparency the person doing the briefing will often have an agenda and each party will be hoping for, if not expecting, future favours.*

*Thirdly, the kindred problem of ‘leaks’, putting to one side genuine whistle-blowing.*

*Fourthly, the equally associated problem of the attribution by the Press of ‘police sources’ to stories. This is a term which is redolent of impropriety, or at the very least carries with it the possibility of inappropriate behaviour, either because the police officer has indulged in gossip or leaks, or because the term is in truth a cipher or fig-leaf for an invented story because the source does not in fact exist. It should also be recognised...that the so-called ‘police source’ may not be a police officer but someone associated with the Police but from outside the MPS.*

*Fifthly, the Press turning up at incidents, or at newsworthy occasions, because they have been tipped off by a Police officer. Again, this is indicative of an unhealthy relationship existing between individual police officers and individual members of the press...”*

- 1.6** These five potential features or manifestations of what may be an underlying problem in the relationship between the police and the press are not intended to be an exhaustive list of the issues that are considered in this part of the Report. It is also important to emphasise that some of these issues have also been dealt with or touched on in the recent reports of Sir Denis O’Connor (then HM Chief Inspector of Constabulary)<sup>5</sup> and Mrs Elizabeth Filkin (reviewing the position at the MPS).<sup>6</sup> I have been much assisted by their work, which is covered in more detail in Chapter Three below.

<sup>4</sup> pp14-15, lines 19-20, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Robert-Jay-opening-submission-for-Module-23.pdf>

<sup>5</sup> HMIC *Without Fear or Favour: A review of police relationships* <http://www.hmic.gov.uk/media/a-review-of-police-relationships-20111213.pdf>

<sup>6</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

## 2. The purpose of the relationship and public confidence

**2.1** The relationship between the press and the police, and between the press and the public, is a keystone in the foundation of a democracy and an effective criminal justice system.

**2.2** The approach to policing in this country can be explained as ‘policing by consent’. Commissioner Hogan-Howe described this concept as meaning policing with, and on behalf of, the public. It is axiomatic therefore that public confidence in the police is a key element in sustaining this model. Commissioner Hogan-Howe stressed in his evidence to the Inquiry that the public have been, and must continue to be, partners in preventing and solving crime, and that this is most effectively achieved through the conduit of the media which enables witnesses to come forward and provide evidence. It can also be said that an effective and professional relationship with the media can often prevent an operation being jeopardised. Agreements can be reached between the media and police officers that the former will not run a particular story until such time as it is operationally safe to do so; it is argued, with real force, that this is a vital part of the relationship. Similarly, victims can be protected in cases such as kidnapping and murder, where the running of news stories prematurely could either prevent the release of the victim or the apprehension of the suspect.<sup>7</sup>

**2.3** Cressida Dick, Assistant Commissioner Specialist Operations in the MPS, expanded on this point:<sup>8</sup>

*“...It’s very important that the public understand policing as much as they can, and also that they hold us to account, and they can only do that by knowing about policing. We need the public to help us in a variety of ways. Obviously we need information about crimes that have happened, but also we need people to have confidence in the police and in the whole system, so that they will give us intelligence or give us evidence, be witnesses, provide observation posts...”*

**2.4** In his evidence, Sir Denis O’Connor described the importance of public opinion “...it’s another anchor point...in police legitimacy...with a measure of public sentiment, anything is possible. Without it, progress is very difficult...”<sup>9</sup> Further, the HMIC report, ‘Without Fear or Favour: A review of police relationships’, argues that the police are part of the community they serve and therefore need relationships with it, including with the media, to carry out their role effectively.<sup>10</sup>

**2.5** Given that the police operate with the consent of the public, the media also play a key role in holding the police to account by providing transparency and challenge. HMIC suggests that the police use the media for a variety of reasons, including to reassure the community they serve, to reduce the fear of crime, and to enhance public confidence in the Police Service. Furthermore, HMIC contends that the overarching principle of police relationships with the media is that the Police Service should not seek to constrain the media but allow them accurately to report news from which the principal beneficiary is the public.

<sup>7</sup> pp8-9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>8</sup> pp15-16, lines 24-7, AC Cressida Dick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

<sup>9</sup> p7, lines 5-8, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>10</sup> p27, HMIC (2011), *Without Fear or Favour: A review of police relationships*, <http://www.hmic.gov.uk/media/a-review-of-police-relationships-20111213.pdf>

**2.6** Appropriate and transparent contact and communication between the police and the press is, therefore, crucial to ensure that this accountability is maintained. It might be said that, where relations are poor and there is insufficient engagement, public confidence will suffer. That was certainly the view of Lord Macdonald of River Glaven, the former Director of Public Prosecutions (DPP), in his evidence to the Inquiry. He explained, in relation to another key part of the criminal justice system, the Crown Prosecution Service (CPS), that when he took up the post of DPP “...there had been a long legacy of mutual distrust. I believe the CPS was seen by the media (and by the public) as opaque, remote and unaccountable...”<sup>11</sup> Lord Macdonald took the view that this was extremely damaging to the CPS and to public confidence in the criminal justice system more generally. As a result, he initiated a policy of closer engagement between the CPS and the media and argued that this impacted positively on the way that the CPS was portrayed by the media, not because journalists were somehow lulled into reporting on the organisation more favourably, but because it was able to speak to journalists more openly about the positives. More importantly, Lord Macdonald stressed that this openness emphasised the accountability of the CPS as a public service.<sup>12</sup>

**2.7** There is, therefore, a clear and overwhelming public interest requirement for the police to communicate with the public. The police, acting corporately, currently reach the public primarily through the filter of the media.<sup>13</sup> For this reason the relationship between the press and the public is also vitally important: this serves to emphasise the significance of the concerns outlined in Part F of the Report. Peter Clarke, formerly Assistant Commissioner Specialist Operations in the MPS, sought to describe this interrelationship:<sup>14</sup>

*“...there’s an extent to which the police interest and the public interest overlap, but overwhelmingly, the police exist to serve the public interest, so the public interest is obviously paramount.”*

**2.8** A close and transparent working relationship between the police and the media is also essential to guaranteeing fair reporting and effective policing. As the MPS argued in its opening statement to the Inquiry:<sup>15</sup>

*“Properly structured, such a relationship improves the scope, depth and accuracy of press reporting and enables the police better to perform their duty of protecting the public. It is through healthy and open contact with the police that the media are able properly to report on the criminal justice system. It is through contact with an honest and intelligent press that the police are able to engage and inform the public – not just with a view to solving crime but also as a means of warning and protecting the public where necessary.”*

**2.9** Commissioner Hogan-Howe identified five areas in which keeping the media properly informed about policing and criminal matters was critical to the functioning of the MPS (and, presumably, to the functioning of the Police Service more generally). First, through the media, the organisation is able to communicate its key messages regarding the prevention and detection of crime. Second, a healthy relationship with the media can serve to increase the public’s understanding of how the MPS goes about its work of policing London. Third,

<sup>11</sup> p30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lord-Macdonald-QC1.pdf>

<sup>12</sup> p32, *ibid*

<sup>13</sup> p6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>14</sup> p9, lines 20-23, Peter Clarke, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf>

<sup>15</sup> pp7-8, para 34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Opening-Statement-on-behalf-of-the-Metropolitan-Police-Service.pdf>

the relationship provides an important means by which the MPS can seek the assistance of the public in that work. Fourth, contact with the media, properly handled, serves to increase public confidence in the police and to promote a greater understanding of MPS policies and initiatives. Fifth, it provides the means by which the public can scrutinise police actions and policies. It also allows the police to test the persuasiveness of their strategies, policies and tactics. It is suggested that a plan that can withstand a searching press conference is usually at least credible.<sup>16</sup>

**2.10** The importance of the relationship was echoed in the evidence throughout this part of the Inquiry by police and press alike. By way of example, former Commissioner of the Metropolitan Police Lord Condon told the Inquiry how strong relations with the media were “...*essential and in the public interest.*”<sup>17</sup> They enabled him to give confidential briefings to the press on sensitive issues such as terrorism, preventing potential leaks that would have damaged police investigations.<sup>18</sup> Similarly, Assistant Commissioner Dick described the relationship as: “...*crucial and important.*”<sup>19</sup> In addition, many crimes were solved as a direct result of assistance from the media who communicate with the public at large.<sup>20</sup>

**2.11** As a counterpoint to this relationship, Sandra Laville, crime correspondent for the Guardian, argued, I have no doubt correctly, that journalism had a legitimate and proper role in a democratic society to interrogate, challenge and question in the public interest or, in other words, to be the peoples’ eyes and ears.<sup>21</sup> Mrs Filkin, in her evidence to the Inquiry, agreed with this contention and reiterated the importance of the police maintaining a strong working relationship with the media given the coercive powers afforded to policing.<sup>22</sup> Mrs Filkin argued therefore that the police should actively protect proper scrutiny of their work:<sup>23</sup>

*“...the police have very, very extensive powers, and those powers, for the rest of us, need to be under constant scrutiny, to make sure they haven’t overstepped their mark in the powers that they have and they’ve operated those powers properly.*

*Obviously, they have to do that themselves as well, but we need outside agencies who constantly also scrutinise what these very powerful organisations do, and the media is important for doing that. And I would hope that as an important public institution, the police would also see that they had a role in protecting that scrutiny, that that scrutiny was valuable to them in helping them do their job properly...”*

**2.12** It is clear that the MPS faces its own challenges in ensuring that the public are informed about the work of its officers and staff and the organisation as a whole. Mr Tim Godwin, formerly Deputy Commissioner of the MPS, observed that from 2000/2001 the media focus appeared to shift towards individuals, predominately to senior police officers.<sup>24</sup> This, he said, replicated the rise of the “*celebrity police chief*” in the USA where individuals were credited with significant crime reduction in particular cities. Mr Godwin said of this media approach:<sup>25</sup>

<sup>16</sup> p8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>17</sup> p24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Condon.pdf>

<sup>18</sup> pp6-7, *ibid*

<sup>19</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-AC-Cressida-Dick.pdf>

<sup>20</sup> p11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sara-Cheesley.pdf>

<sup>21</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>22</sup> p10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>23</sup> pp102-103, lines 15-3, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>24</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Tim-Godwin.pdf>

<sup>25</sup> p51, lines 6-10, Tim Godwin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-7-March-2012.pdf>

*“...I thought that that actually undermined the efforts of lots and lots of people who were doing great things and that generally an individual wasn’t in themselves able to bring about things like crime reduction in a city like London.”*

### 3. Tensions in the relationship between the media and the police

**3.1** Dr Rob Mawby, lecturer in criminology at the University of Leicester, suggested that tension was endemic to the police-media relationship. Dr Mawby argued that this was understandable given that the media and the police occupied roles in public life that periodically brought them into conflict.<sup>26</sup> As to the root of this tension, Dr Mawby offered this view:<sup>27</sup>

*“The root of the tension is the different roles and objectives of the police and the media. The police are in place to detect crime, to maintain order. The media are there to maximise their audiences, to run successful businesses, and also to hold the police to account. So although they have things in common, there’s always going to be a bit of tension in that relationship, which will ebb and flow.”*

**3.2** On this point, Ed Stearns, Chief Press Officer in the Directorate of Public Affairs within the MPS, observed:<sup>28</sup>

*“...the media will want to know everything, and there are reasons why the police, operationally or for personal – in terms of victims, well, I can’t give them everything. So there is a tension and I think it’s something that has probably been around for many years.”*

**3.3** Dr Mawby went on to suggest that this inbuilt tension in the relationship between the press and the police may actually be in the public interest, *“...as long as that tension operates within a healthy framework, where the police are trying to be open and accountable and the media are trying to hold them to account and where there’s clear channels to pass information.”*<sup>29</sup>

**3.4** This inherent tension sometimes leads to discontent on the part of the media that they are not receiving all the information they want, and concerns on the part of the police that the activities of the media may interfere with operational policing. In relation to the first point, for example, Adrian Faber, Editor of the Wolverhampton Express & Star, complained that there were often delays in the release of the names of people killed in road accidents or other incidents. Mr Faber fully accepted the need for the police to inform relatives before the details were released, but suggested that the release of the names of the deceased could take several days, by which time the information became journalistically worthless as it had already appeared in the social media as well as being known in the general community.<sup>30</sup>

**3.5** In relation to the second point, the evidence the Inquiry has heard indicates that, particularly when high profile incidents catch the attention of the public and the media alike, the level of press interest can be enormous and, furthermore, that this can impact on police investigations.

<sup>26</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Dr-Rob-Mawby.pdf>

<sup>27</sup> pp81-82, lines 20-2, Dr Rob Mawby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>28</sup> p40, lines 9-13, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>29</sup> p82, lines 6-10, Dr Rob Mawby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>30</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Adrian-Faber.pdf>

- 3.6** Tensions in the relationship can also be caused by the individual needs of the different sections of the media. Lucy Panton, former crime editor of the News of the World, for example, said that as the ‘Sunday’ representative for the Crime Reporters Association (CRA) she had spent *“years trying to better the police’s understanding on what Sunday newspapers needed from them. It has always been the case that police briefings are directed at meeting the needs of daily papers. I used these meetings to try and inform and change the way police used the Sunday papers.”*<sup>31</sup>
- 3.7** Jerry Kirkby, Assistant Chief Constable of Surrey Police, explained that following the disappearance of Milly Dowler, Surrey Police media relations officers described the media demands made upon them as *“alien”, “a steep learning curve”, “just immense”, “relentless”* and *“overwhelming”*.<sup>32</sup> Senior police officers involved in the case described elements of the press as *“extremely demanding, and in some respects mischievous”*, and the level of interest as *“unprecedented and immense”*.<sup>33</sup> The unprecedented demands also meant that some parts of the media felt that they were not being given the information that they required, and this led to some tensions.<sup>34</sup>
- 3.8** This tension in the relationship between the press and the police can also have unwanted consequences for those caught in the middle of a major investigation. Christopher Jeffries, who was arrested in connection with the murder of Joanna Yeates, described the media interest in him as *“enormous”*. He said that he was effectively under house arrest moving between friends’ houses like *“a recusant priest.”*<sup>35</sup> From the police perspective, Detective Chief Inspector Philip Jones described it as *“an unrelenting media interest from the point that Joanna was reported missing”*.<sup>36</sup>
- 3.9** Dr Gerry McCann said of the media interest following the disappearance of their daughter Madeleine: *“Nothing could have prepared us for the unprecedented media coverage, particularly in Portugal and the UK which followed”* and spoke of *“the intensity of media focus”*.<sup>37</sup>
- 3.10** In December 2006, following the discovery of the bodies of five young women in Ipswich over a ten day period, there was an explosion of press coverage. The Senior Investigation Officer, then Detective Chief Superintendent Stewart Gull, said that:<sup>38</sup>

*“the level of interest shown by not only the local and regional media but also national and international media was unprecedented”.*

<sup>31</sup> pp7-8, para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lucy-Panton.pdf>

<sup>32</sup> p5, lines 13-23, Jerry Kirby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>33</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Assistant-Chief-Constable-Jerry-Kirkby.pdf>

<sup>34</sup> p8, *ibid*

<sup>35</sup> p15, lines 3-12, Chris Jefferies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Morning-Hearing-28-November-2011.pdf>

<sup>36</sup> p101, lines 13-14, DCI Philip Jones, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>37</sup> pp2-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Witness-Statement-of-Gerald-Patrick-McCann.pdf>

<sup>38</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Stewart-Gull.pdf>

He went on:<sup>39</sup>

*“There were at times somewhat I considered to be unhelpful, unjustified and unbalanced media reporting which at best was misleading and at worst caused further anxiety and worry within the local community.”*

- 3.11** For the duration of the investigation of the Ipswich murders, known as Operation Sumac, Suffolk Constabulary implemented a dedicated media strategy.<sup>40</sup> One of the key lessons learned from this was that maintaining positive media relations took up a vast amount of time for the officer nominated as spokesman, and that needed to be accounted for in the investigative structure so that operational policing could continue effectively.<sup>41</sup> Suffolk Constabulary took the conscious decision that all comment would be on the record and there was a constant drip feed of information provided to the media.<sup>42</sup> Their handling of the media during this particular investigation was widely praised.<sup>43</sup>
- 3.12** In describing some of the consequences of this sometimes tense relationship, it is perhaps worthy of note that these sorts of events are rare for county police forces, but are certainly more commonplace for the Metropolitan forces, such as the MPS, Greater Manchester Police, West Yorkshire Police and West Midlands Police. This is a theme to which I will return in subsequent sections of this Report.

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<sup>39</sup> p5, *ibid*

<sup>40</sup> p13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Anne-Campbell.pdf>

<sup>41</sup> p14, *ibid*

<sup>42</sup> p54, lines 7-19, Anne Campbell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>43</sup> pp2-3, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Stewart-Gull.pdf>

# CHAPTER 2

## THE HISTORY OF THE RELATIONSHIP: DIFFERENT APPROACHES

### 1. Metropolitan Police Service: the Commissioners

- 1.1 It might be said that the approach of the Metropolitan Police Service (MPS) to the press has reflected, at least in part, the differing attitude of different Commissioners and the different treatment that holders of that post have received at the hands of the press. The Inquiry heard evidence from a number of recent Commissioners about these variations, and considered their views on the success or otherwise of each approach.

#### Sir Robert Mark

- 1.2 The post of Commissioner of the Metropolis is unique given that the post holder is not only responsible for the policing of London but is also seen as the senior figure in British policing. The Commissioner is also personally responsible for the safety of Her Majesty The Queen and senior members of the Royal Family, wherever they are in the world.<sup>1</sup>
- 1.3 Sir Robert Mark, who was Commissioner between 1972 and 1977, likened the relationship between the police and the press to an *“enduring, if not ecstatically happy marriage”*. He sought to establish a new approach to police-media relations in the capital.<sup>2</sup>
- 1.4 On becoming Commissioner in 1972, Sir Robert was concerned that the senior ranks within the MPS had developed too many ‘fiefdoms’; this concern extended to the way in which the supervisory ranks dealt with the media. Sir Robert, who was one of the first Chief Officers to recognise and acknowledge that police corruption was widespread in several forms, decided relentlessly to drive down on it. He had a novel approach to tackling what he thought were unhealthy relationships between some of his senior officers and the press. The result was that, rather than restricting the amount of contact between his officers and journalists, he encouraged and allowed more. Sir Robert issued a new edict allowing all officers of the rank of inspector and above to talk to the media; that privilege had previously only extended to the superintending ranks. Sir Robert’s guidelines were simple: officers were allowed to talk about their own work but not about the work of others; he asked his officers to use their common sense in what was disclosed to the press.<sup>3</sup>
- 1.5 Lord Condon, another former Commissioner of the MPS, argued that since Sir Robert Mark’s tenure, the post had become irreversibly a very public post and that the Commissioner had become, and was expected to be, a *“public figure”*.<sup>4</sup>

<sup>1</sup> p4, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Condon.pdf>

<sup>2</sup> p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Dr-Rob-Mawby.pdf>

<sup>3</sup> pp12-13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>4</sup> p4, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Condon.pdf>

## Lord Condon

- 1.6** Lord Condon was Commissioner from 1993 to 2000. He explained that the Commissioner was the public face of policing in the United Kingdom and therefore the post holder had to deal with the media at an entirely different level of intensity to any Chief Constable; he was able to use, as a point of comparison, the fact that he had previously been the Chief Constable of Kent. He said that there were times while he was Commissioner when his relationship with the media was completely dominating.<sup>5</sup>
- 1.7** Lord Condon described how he sought to engage with the media in three ways: event-driven press conferences, planned campaign-driven media events, and relationship-building.<sup>6</sup> He used Operation Bumblebee, the operation directed at domestic burglary, as a good example of the second type of engagement. He championed these campaigns through personal briefings with the media and interviews.<sup>7</sup>
- 1.8** Lord Condon also explained how he tried to meet with all print, television and radio editors at New Scotland Yard, their own offices or occasionally over a meal to discuss and promote his reform agenda and views on policing issues.<sup>8</sup> As to whether he took the view that it was important to offer greater access to particular parts of the media, Lord Condon told the Inquiry, “...the Commissioner of the day, Chief Constable of the day, must be totally apolitical and must be totally without any favourites in the media, and so there has to be a “without fear or favour” approach to the media.”<sup>9</sup>
- 1.9** Despite these efforts at engagement, journalists perceived the culture of relations between the MPS and the media during Lord Condon’s period in office as being very restrictive and subject to tight controls.<sup>10</sup> Lord Condon himself seemed to recognise this: he described how the Crime Reporters Association (CRA) meetings, for example, “*petered out*” during his tenure as Commissioner because he suspected that some of the crime reporters found them “*a bit boring*”.<sup>11</sup>
- 1.10** Lord Condon also accepted that his personal style of media relations, compared with other recent Commissioners, was to keep journalists at a professional distance. Nonetheless, he did not consider it, “...*intrinsicly wrong or morally or ethically wrong to be friendly or to have a social relationship...*” with the press.<sup>12</sup>

## Lord Stevens

- 1.11** When Lord Stevens took over as Commissioner in January 2000, it was widely acknowledged that the MPS was in crisis as a result of the Macpherson Report<sup>13</sup>. As a result, Lord Stevens

<sup>5</sup> p14, lines 8-9, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>6</sup> pp4-5, paras 11-13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Condon.pdf>

<sup>7</sup> p4, para 12, *ibid*

<sup>8</sup> pp25-26, lines 12-3, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>9</sup> pp26-27, lines 24-3, Lord Condon, *ibid*

<sup>10</sup> p2, para 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>11</sup> p23, lines 10-11, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>12</sup> p31, lines 21-23, Lord Condon, *ibid*

<sup>13</sup> <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>

took the decision that a wholesale change in culture was needed and he embarked on a major strategy of engagement with the public.<sup>14</sup> A key feature of this engagement strategy was developing a closer relationship with the media.<sup>15</sup>

**1.12** This new approach was evident from Special Notice 19/00, *A new policy for relations with the media*, which I consider in greater detail later on in this Chapter.<sup>16</sup> A major theme was to encourage police officers of all ranks to engage with the press, provided that they were qualified to do so.<sup>17</sup> Lord Stevens also explained how he worked hard as Commissioner to foster good relations with the media by having lunches with the editors of all the national newspapers and the Evening Standard, and by making himself personally available to speak to journalists.<sup>18</sup>

**1.13** Lord Stevens attempted to follow a policy of being open and transparent with the media, giving answers to legitimate questions without going into confidential areas. He felt that it was important to promote what the MPS was doing well but also to have frank conversations about what they were doing badly.<sup>19</sup> The change in style between that of Lord Condon and that of Lord Stevens was described by Jacqueline Hames, a former Detective Constable with the MPS, in this way:<sup>20</sup>

*“This all changed when Sir John Stevens became Commissioner in 2000 and introduced the current “open door” policy by which officers are positively encouraged, sometimes even ordered, to allow the media access to operations and to explain all aspects of their work.”*

**1.14** The approach to media relations taken by Lord Stevens appears to have been generally appreciated by the press.<sup>21</sup> Michael Sullivan, crime editor of The Sun, for example, said that:<sup>22</sup>

*“When he was commissioner, Lord Stevens described crime reporters as part of the extended police family. This should not be taken out of context because he also applied the same description to members of independent advisory groups who worked closely with the Met and helped move them on from the problems around the murder of Stephen Lawrence.”*

## Lord Blair

**1.15** In his evidence to the Inquiry, Lord Blair explained that when he took over as Commissioner in January 2005 he thought that the MPS should spend less time on press matters; he felt in particular that discussion of media positions and opinions had become too consuming of senior officers’ time, although he did not consider Lord Stevens’ approach towards the media

<sup>14</sup> pp4-5, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>15</sup> pp55-56, lines 22-15, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-2012.txt>

<sup>16</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-9-Special-Notice-19-00.pdf>

<sup>17</sup> p12, para 34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>18</sup> p10, para 30, *ibid*

<sup>19</sup> p11, para 33, *ibid*

<sup>20</sup> p3, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Jacqueline-Hames.pdf>

<sup>21</sup> p2, para 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>22</sup> p2, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Michael-Sullivan.pdf>

to have been in any way improper.<sup>23</sup> As a result, although he was keen to be open with the media, continuing to have working lunches with members of the press and meetings with the CRA on a monthly basis, Lord Blair had fewer social interactions, and no dinners, with editors and journalists.<sup>24</sup>

- 1.16** Lord Blair had a much less positive experience of relations with the media during his time as Commissioner.<sup>25</sup> This appears to have been, at least to a degree, a result of infighting and disagreements between senior officers, some of whom Lord Blair suspected of leaking information to the press about disputes within the MPS Management Board.<sup>26</sup>
- 1.17** The sometimes fraught nature of the relationship between the MPS and the media at this time was recognised by journalists and police officers alike. For example, Mr Sullivan, contrasted the approach under Lord Stevens when “*things ran pretty smoothly*”, with that under Lord Blair, when there were “*difficulties*”.<sup>27</sup> Lynne Owens, formerly an Assistant Commissioner in the MPS and currently the Chief Constable of Surrey Police, commented, “...*I think we saw, during Lord Blair’s Commissionership, some commentary on his leadership in the media and I think that did impact on the relationship the MPS formed with the media.*”<sup>28</sup>
- 1.18** The Daily Mail, in particular, was highly critical of Lord Blair both before and during his Commissionership, although Stephen Wright, former Crime Editor and currently Associated News Editor for the Daily Mail, denied that the newspaper had “*an agenda against him.*”<sup>29</sup>

## Sir Paul Stephenson

- 1.19** Sir Paul Stephenson described how, upon becoming Commissioner in January 2009, he was concerned about the largely negative commentary in the press during Lord Blair’s Commissionership; he believed this reflected poorly and unfairly on the MPS and was distracting for senior officers.<sup>30</sup> Whilst he was Deputy Commissioner, Sir Paul had sought to ensure that there was a representative from the Directorate of Public Affairs (DPA) present during engagements with the media in an attempt to bring some structure to the relationship.<sup>31</sup>
- 1.20** Once Sir Paul became Commissioner he tried an approach of more openness and engagement with the press. Dick Fedorcio, formerly the Director of Public Affairs for the MPS, described Sir

<sup>23</sup> p7, para 18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>24</sup> p14, lines 21-22, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>; p9, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>25</sup> pp5-6, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>; <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Annex-to-Lord-Blair-Statement.pdf>

<sup>26</sup> pp3, 76, lines 9-21, 7-13, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>27</sup> p42, lines 2-7, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>28</sup> p19, lines 6-10, CC Lynne Owens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-6-March-2012.pdf>

<sup>29</sup> p27, line 2, Stephen Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-15-March-20121.pdf>

<sup>30</sup> pp7-8, lines 12-5, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; p6, para 15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>31</sup> p13, lines 2-22, Sir Paul Stephenson <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; pp6-7, para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

Paul's style as being "*probably nearer to John Stevens in his style, in terms of his approach*".<sup>32</sup> Sir Paul emphasised the importance and relevance of the seven Nolan principles of public life, "*...honesty, openness, leadership, accountability, selflessness, integrity and objectivity*".<sup>33</sup> He also attempted to improve internal communications and to turn all 50,000 or so MPS employees into effective media communicators.<sup>34</sup>

- 1.21** More specifically, Sir Paul explained that he felt that some of the contact between the media, particularly the written press, and a small number of senior colleagues was closer than it needed to be.<sup>35</sup> Sir Paul did not wish to identify the particular individuals, but clarified that he was concerned about leaks and gossip about disagreements within the Management Board of the MPS. This was damaging because it hindered efforts to have a full and frank discussion in relation to the issues of the day at management board level.<sup>36</sup>
- 1.22** Sir Paul's approach to media relations was successful to some degree; there were fewer leaks and, in his own words, fewer "*newspaper stories about dysfunctionality in the Met and dysfunctionality at senior level*" during his tenure.<sup>37</sup> Kit Malthouse, the former Chair of the Metropolitan Police Authority (MPA), now the Mayor's Office for Policing and Crime (MOPC), described Sir Paul's approach at the time as "*ambassadorial*" and explained that he was "*very prominent at civic engagements and...he thought it was an important part of his role to get out and promote the good work of the Metropolitan Police to anybody who would listen*".<sup>38</sup> However, it would be accurate to say that MPS relations with the media during Sir Paul's Commissionership were overtaken by events in mid-2011, which I will address in more detail later on in this Chapter. These eventually culminated in his resignation.<sup>39</sup>

## Commissioner Hogan-Howe

- 1.23** The current Commissioner took up his post in September 2011. He has seen it as his role to return the relationship between the MPS and the media to what he describes as "*a more considered and functional state*", following the furore caused by the phone hacking affair and the resultant instability and distortion in relations.<sup>40</sup> Although Commissioner Hogan-Howe considered the media relations policy established by Lord Stevens to be in the right spirit, he was concerned that the approach had evolved over the years so that on occasions, in

<sup>32</sup> p49, lines 10-12, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>33</sup> p8, lines 11-17, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>34</sup> p9, para 25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>35</sup> p6, para 16, *ibid*

<sup>36</sup> p10, lines 10-24, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; p8, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>37</sup> pp17-18, lines 8-8, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; p9, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>38</sup> p25, lines 10-16, Kit Malthouse, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-29-March-2012.pdf>

<sup>39</sup> pp53-54, para 130, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>40</sup> p2, lines 12-25, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>; p3, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

practice, it had led to too close a relationship with the press, or at least a perception that the relationship was too close.<sup>41</sup>

**1.24** I will deal with the current and future approach of the MPS to media relations in later sections of this Chapter.

## 2. Other police forces

**2.1** The Inquiry heard evidence about the approach to media relations taken by several police forces other than the MPS. Three important themes have emerged. First, it appeared to be universally accepted that the MPS faced unique challenges in terms of media relations in comparison to other regional forces. Lord Condon argued that *“the Commissioner of the day is the public face of policing for their country, whether he or she likes it or not, and that brings with it certain demands”*, and as a consequence he described the role of Commissioner in relation to the media as being *“fundamentally different and totally more demanding than any Chief Constable’s role.”*<sup>42</sup> Lord Blair reinforced this point, highlighting the MPS’s responsibilities nationally for counter-terrorism and the protection of the Royal Family, and its long history of policing both public disorder and political demonstrations.<sup>43</sup> Chris Sims, Chief Constable of West Midlands Police, suggested that *“I think there is a very different context in the Met to the context in which we operate outside...”*<sup>44</sup>

**2.2** It is important to note that most journalists employed by national newspapers, including specialist crime reporters, are based in London. John Twomey, crime reporter for the Daily Express, described national newspaper crime reporters as tending to be *“very London-centric”*.<sup>45</sup> It is part of a journalist’s job to build appropriate relationships with police contacts, and they do so principally with their local force, in this case the MPS. A number of journalists working for national titles gave evidence that their relationships with other police forces were less well established.<sup>46</sup> Timothy Gordon, editor of the South Wales Echo, suggested that *“...I’d like it to be...clear that there is a huge difference between the regional press and what appears to be happening in the nationals...The regional press is a very, very different arena...”*<sup>47</sup>

**2.3** The second theme to emerge from the evidence was the very different approach to news gathering between national tabloid titles and local media. The third theme to emerge was that different forces had tried different approaches to media relations over the years with differing results.

<sup>41</sup> p4, lines 3-13, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>42</sup> p14, lines 7-24, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>43</sup> p3, para 9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>44</sup> p57, lines 7-8, CC Chris Sims, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>45</sup> p9, para 38, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Twomey.pdf>

<sup>46</sup> For example: p11, para 24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Mark-Hughes-The-Telegraph-taken-as-read.pdf>; p8, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Thomas-Pettifor.pdf>

<sup>47</sup> p19, lines 1-14, Timothy Gordon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

## Media relations – the MPS and County Constabularies

- 2.4** The former Chief Constable of Cumbria Constabulary, Craig Mackey (now Deputy Commissioner of the MPS), expressed the view that although the MPS still dealt with local journalists in relation to borough-level issues there was:<sup>48</sup>

*“...then the national dynamic that makes things very different around London, and that’s the national media effectively responding as a local media for London, and that does bring a different dynamic in terms of the demands and particularly the level of detail that’s required to service that.”*

- 2.5** The difference between London and other parts of the country was again echoed by Anne Campbell, Head of Corporate Communications at Suffolk Constabulary. She said this in relation to the MPS:<sup>49</sup>

*“...It has a unique place in not just the investigations but the issues it covers, because of course it carries out investigations on behalf of a number of the other forces as well, and I’m thinking about some of the international investigations where...there’s been cause to send people abroad to investigate. That tends to be the remit of the Met. So the Met’s local media, if you like, are the national media, whereas for most other forces it’s very much a local and regional media. So the Met is very different for a number of reasons.”*

- 2.6** The Chair of the Association of Chief Police Officers (ACPO) Communications Advisory Group and Chief Constable of the British Transport Police (BTP), Andrew Trotter (who previously served as a Deputy Assistant Commissioner within the MPS) pointed to the contrast between the challenges faced by the MPS with regard to media relations and that of a regional constabulary. He said:<sup>50</sup>

*“...the MPS is under intense media scrutiny almost daily, there is frequent contact between Directorate of Public Affairs and national journalists...As DAC I was often used as the MPS spokesperson. As a result of this experience I lecture on police training courses, and to foreign police audiences...When I arrived at BTP the contrast with the MPS could not have been starker...There was one press officer and little contact with the media other than reactive responses in office hours when the one member of staff was available.”*

- 2.7** A similar point was made by Sir Hugh Orde, President of ACPO. He said:<sup>51</sup>

*“The culture within the MPS will inevitably be different to that within most other police forces. This reflects the unique position of the MPS in managing some national policing responsibilities and dealing with a high level of scrutiny and the national media on a daily basis.”*

- 2.8** Sir Hugh went on to explain that the culture within the MPS towards the media was a “very different relationship” than that experienced by other constabularies because of “...the sheer

<sup>48</sup> p90, lines 1-9, Deputy Commissioner Craig Mackey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>49</sup> pp36-37, lines 21-6, Anne Campbell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>50</sup> pp17-18, paras 20.1-20.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Andrew-Trotter1.pdf>

<sup>51</sup> p5, para 5.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

*intensity and pressure and interest in what's going on in London is fundamentally different even to the Police Service in Northern Ireland which is pretty busy..."*<sup>52</sup>

## The differing attitude of the local and national press towards the police

- 2.9** An important factor in the relationship between the police and the media at a local and national level is that local provincial forces have an existing working relationship with their local and regional reporters (including regional correspondents for national titles). They do not necessarily know or trust the national media who descend occasionally when a big story breaks and have little or no regard to the importance of establishing, preserving or maintaining any sort of relationship as long as they can deliver the immediate story.
- 2.10** Anne Campbell also spoke about the different attitude of local and national press towards the police. She felt that the national media were much more difficult to deal with than the local media. She described in particular how local journalists tended to provide a balanced and a *"rounded view"*, whereas the national media were *"not so worried about putting our side of the story; in other words, that balanced view..."*<sup>53</sup>
- 2.11** Liz Young, Head of Corporate Communications of the Police Service of Northern Ireland (PSNI), noted that the national media were not as interested as the local media in developing a future relationship. As a result, she argued that they were more likely to act unprofessionally by being over demanding or less sensitive to security issues.<sup>54</sup>
- 2.12** Gillian Shearer from the Cumbria Constabulary said that the national media, in her experience, were significantly more aggressive than the local media, and less willing to adhere to instructions about what could and could not be published.<sup>55</sup> She also confirmed that the misleading use of the term 'police source' had disappeared from the lexicon of the local media (this issue is considered in more detail in later in the Report).<sup>56,57</sup>
- 2.13** Amanda Hirst, Head of Corporate Communications at Avon and Somerset Constabulary, agreed that the media pressure in high-profile cases could sometimes be *"intolerable"* for senior investigating officers, and described how at one point in the investigation of the murder of Joanna Yeates, she had advised Detective Chief Inspector Philip Jones not to watch the news or read the newspapers, such was the coverage that the case was receiving.<sup>58</sup>
- 2.14** An element in this sometimes difficult relationship is that the MPS press bureau is much better resourced than many local forces. The journalists who gave evidence to the Inquiry were generally positive about their experiences of dealing with the Directorate of Public Affairs (DPA), as a well-resourced operation working around the clock with a sufficient number

<sup>52</sup> pp86-87, lines 21-1, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>53</sup> p50, lines 1-13, Anne Campbell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>54</sup> pp34-35, lines 21-8, Liz Young, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-28-March-2012.pdf>; p16, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Liz-Young.pdf>

<sup>55</sup> pp64-65, lines 18-11, Gillian Shearer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>56</sup> Part G, Chapter 3

<sup>57</sup> p78, lines 9-11, Gillian Shearer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>58</sup> p26, lines 8-22, Amanda Hirst, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-27-March-2012.pdf>

of suitably trained and experienced staff. In contrast, journalists described some provincial forces as providing a more limited service, for example with a lack of media trained staff on duty at the weekend.<sup>59</sup>

## The different approaches to media relations

- 2.15** Chief Constable Chris Sims and Chief Inspector Sally Seeley, Head of Corporate Communications, from West Midlands Police, explained that their force had had a “*very traditional relationship with the media*”, that is to say a relationship that was reactive, “*transactional*” and very much driven by events.<sup>60</sup> Despite West Midlands Police being a large force of 13,000 officers and staff, there were only 30 members of staff in the Corporate Communications department, which dealt with all types of communications, not just media relations.<sup>61</sup>
- 2.16** Both Chief Constable Sims and Chief Inspector Seeley were clear that they could find no evidence of “*informal contact*” with the media by their officers, in the sense of social relationships with journalists; working contact was overwhelmingly captured and recorded by the press office.<sup>62</sup> However, Chief Constable Sims conceded that there were still problems with leaks from time to time, although it was not considered to be a significant issue; he believed that these occasionally arose as a result of disgruntlement on the part of some officers or staff due to budget reductions or other difficult decisions.<sup>63</sup>
- 2.17** Chief Constable Peter Vaughan and Catherine Llewellyn, Temporary Assistant Director of Corporate Communications, gave evidence in relation to South Wales Police. Chief Constable Vaughan explained that the policy developed by that force required all ACPO rank officers and senior police staff to be accompanied to meetings and interviews with the media by a member of the media department, and for all contact to be recorded for the purposes of transparency. As a matter of practice, it was expected that this policy would be followed by more junior officers as well.<sup>64</sup>
- 2.18** Chief Constable Stephen House of Strathclyde Police explained that his predecessor, Sir Willie Rae, had kept a very low profile and took an approach of non-engagement with the media. This had led to some criticism.<sup>65</sup> As a consequence, Chief Constable House decided to encourage a more open, proactive approach towards the media and had meetings with all

<sup>59</sup> For example, pp27-28, lines 8-3, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-28-February-2012.pdf>; p3, para d, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-Nick-Davies.pdf>; p12, para 45, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Scott-Hesketh-taken-as-read.pdf>

<sup>60</sup> p54, lines 20-24, CC Chris Sims, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>; p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>

<sup>61</sup> p53, lines 13-22, Chief Insp Sally Seeley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>62</sup> p7, para 25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>

<sup>63</sup> pp76-77, lines 22-17, CC Chris Sims, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>; p8, para 31, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>

<sup>64</sup> pp25-26, lines 15-18, CC Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>65</sup> p42, lines 4-11, CC Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>; p3, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Stephen-House1.pdf>

the major newspapers and broadcasters at the beginning of his tenure as Chief Constable.<sup>66</sup> However, he also explained that he then gradually stepped back this level of engagement, principally to ensure that the force's key messages were not diluted by a sense of media and public weariness.<sup>67</sup> Chief Constable House told the Inquiry that he encouraged a similar policy to that of the South Wales Police, namely of having someone from the media department present to record any meeting with the media.<sup>68</sup> He commented that Strathclyde Police actively recruited journalists for their media department and would not be concerned if staff left to go back into the media; indeed, he thought that this would be a sign that they were good at what they did.<sup>69</sup>

**2.19** Chief Constable Simon Ash of the Suffolk Constabulary described Suffolk officers and staff as being *“very cautious in their dealings with the media”*, leaving press relations to the Corporate Communications department.<sup>70</sup> Chief Constable Ash said that he had almost no contact with the national media, but an excellent working relationship with the local media, particularly BBC Radio Suffolk.<sup>71</sup>

**2.20** Chief Constable Ash described the Spotlight media information management system used by Suffolk and Norfolk Police; this was the same system used by the MPS.<sup>72</sup> This system kept records of all contacts (whether formal or informal) with journalists and politicians.<sup>73</sup> In response to the concern raised by various journalists that such a system of record-keeping would cause communication by police officers to ‘dry up’, he argued that although, at that time, the Spotlight system had only been in place for four months, he had not detected any reluctance on the part of his officers to have contact with the press as a result. Indeed, he said:<sup>74</sup>

*“...my bigger concern is ensuring police officers continue to notify the contacts. That’s where I think the weakest link in this process is, not so much the content...”*

**2.21** On the other hand, however, Terry Hunt, Editor of the East Anglian Press, was less convinced with this argument and thought that it would be a *“step backwards”* in terms of openness with the press.<sup>75</sup> Colin Adwent, the East Anglian Press crime reporter, agreed that this approach *“may well inhibit officers from talking to the press in certain cases”* and thought that it would not be in the public interest.<sup>76</sup>

**2.22** The former Chief Constable of Cumbria Constabulary, Craig Mackey, and Gillian Shearer, Head of Marketing and Communications for Cumbria Police, explained the approach to media

<sup>66</sup> p43, lines 2-15, CC Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>; p4, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Stephen-House1.pdf>

<sup>67</sup> pp44-45, lines 11-1, CC Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>68</sup> p59, lines 1-12, CC Stephen House, *ibid*

<sup>69</sup> p74, lines 7-23, CC Stephen House, *ibid*

<sup>70</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Simon-Ash.pdf>

<sup>71</sup> p4, *ibid*

<sup>72</sup> Although the MPS refer to this system by its former name, Solcara

<sup>73</sup> p11, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Simon-Ash.pdf>

<sup>74</sup> p21, lines 20-23, CC Simon Ash, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>75</sup> p93, lines 14-25, Terry Hunt, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>76</sup> p79, lines 5-25, Colin Adwent, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

relations in that force. Cumbria encouraged senior officers to engage with the media; they were not currently required to record every contact, although this was something that was being considered by the force.<sup>77</sup>

- 2.23** Assistant Chief Constable Jerry Kirkby of Surrey Police discussed in some detail the experiences that Surrey had with the media during the Milly Dowler investigation and the changes subsequently made to the press office as a result.<sup>78</sup> In particular, Chief Constable Kirkby explained that, in dealing with the media after the disappearance of Milly Dowler, Surrey realised that they needed to develop a better relationship with the national press. From 2002, therefore, Surrey Police fostered closer relations with the CRA; this subsequently developed into both more frequent formal briefings and several informal meetings in a social environment with CRA journalists which would take place in a restaurant.<sup>79</sup> It was said that the purpose of the informal contacts with journalists was so that:<sup>80</sup>

*“...senior officers and press officers could meet with journalists from the Crime Reporters Association, understand their expectations and their needs and develop an understanding of working practices on that basis.”*

- 2.24** Chief Constable Kirkby said that initially he found these informal meetings useful but, in late 2010 following a Chief Officer group review, it was decided that the purpose of developing a good relationship and a better understanding of working practices had been achieved, and that *“the context, public perception around austerity and socialising had changed”*. The result was that they were discontinued.<sup>81</sup>
- 2.25** Chief Constable Colin Port of the Avon and Somerset Constabulary explained that when he had taken over as Chief Constable the force had been under attack by the media following a police standards review of the force; he therefore made *“strong efforts to have a good, open, transparent relationship”*.<sup>82</sup> Chief Constable Port said that he considered Avon and Somerset’s policies and procedures on media relations (and gifts and hospitality) to be adequate, but did acknowledge that changes were made following the phone hacking revelations and the negative experience of Christopher Jefferies.<sup>83</sup>
- 2.26** Chief Constable Jon Stoddart and Barbara Brewis, Media and Marketing Manager from Durham Constabulary, said that the force had a *“workable and trusting relationship”* with their local media and that contact took place on a daily basis across all ranks, from the force’s police community support officers through to the more senior ranks.<sup>84</sup> Ms Brewis described the force’s general approach to media relations as having *“a good professional relationship with the media but they’re not your friends.”*<sup>85</sup> Chief Constable Stoddart explained that the force had developed a high level of trust with the local media, in particular, without any

<sup>77</sup> pp57-58, lines 21-11, Gillian Shearer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>78</sup> pp6-13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Assistant-Chief-Constable-Jerry-Kirkby.pdf>

<sup>79</sup> pp24-25, lines 19-3, ACC Jerry Kirkby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>80</sup> p25, lines 7-12, ACC Jerry Kirkby, *ibid*

<sup>81</sup> p26, lines 8-15, ACC Jerry Kirkby, *ibid*

<sup>82</sup> pp47-48, lines 23-7, CC Colin Port, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>83</sup> p55, lines 5-22, CC Colin Port, *ibid*

<sup>84</sup> pp41-42, lines 21-7, CC Jon Stoddart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-27-March-2012.pdf>

<sup>85</sup> p46, lines 15-16, Barbara Brewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-27-March-2012.pdf>

culture of socialising, although he conceded that this was perhaps a function of the small size of the organisation and the location itself.

**2.27** Ms Young explained that there was a practice in the Police Service of Northern Ireland of officers phoning the communications department after any contact with the media to inform them that it had taken place; a note would then be made to that effect.<sup>86</sup> Expanding on this point, Ms Young explained that when the press office facilitated an interview with the media, the focus was on who was the most appropriate person to deal with the relevant inquiry; there was no restriction on the rank of officer or member of staff engaging with the media.

**2.28** These varying accounts from regional forces illustrate that while all forces placed an importance on a necessity to have a good professional relationship with the media there were varying degrees of engagement and openness. These differences are not due simply to the different media demands placed on those forces in comparison to the MPS, but also to fundamentally different attitudes.

**2.29** This, perhaps inevitably, leads to the question of national standards. Mr Fedorcio expressed the view that some national standards in this area were important so that *“there’s no difference between one police force and another in how they go about in their relations with the press.”*<sup>87</sup> Oliver Cattermole, Director of Communications for ACPO, agreed that the public would expect a consistency of approach in the form of national standards but cautioned:<sup>88</sup>

*“...The difficulty or the tension, if you like...in terms of the emphasis on devolving decision-making to a local level, which is a quite prominent theme in policing at present, and therefore...getting the balance right between local interpretation and local policies and national framework is sometimes difficult.”*

**2.30** The need for some form of local variation was expanded upon by Chief Constable Trotter:<sup>89</sup>

*“...There will be some local variation, and perhaps for a particular reason. An example might be the Metropolitan Police will allow inspectors and above to talk to the media without reference to the press office. In my force, the British Transport Police will allow any member of staff who has legitimate reason to talk to the press to do so. Much of that is to do with our geography and the fact that we won’t have an inspector on every location from Inverness to Truro perhaps in the middle of the night, so a lot will depend on local circumstance.”*

Chief Constable Trotter agreed that a commonality of approach between forces on important issues was sensible and, in respect of areas such as firearms policy, public order and force inter-operability, essential. However, he explained that whilst national guidance could be given to chief officers, it is they who were still in command of their forces, and there may be some legitimate reason for variation.<sup>90</sup>

<sup>86</sup> p47, lines 21-24, Liz Young, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-28-March-2012.pdf>

<sup>87</sup> p68, lines 18-25, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>88</sup> p26, lines 11-22, Oliver Cattermole, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-28-March-2012.pdf>

<sup>89</sup> p40, lines 14-25, CC Andy Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>90</sup> p41, lines 7-21, CC Andy Trotter, *ibid*

- 2.31** Given the very real variation in force sizes and the varying demands placed on forces by the media, Chief Constable Stoddart agreed that a sensible approach would be to introduce a national set of high level principles which were then worked out on the ground and inspected against both internally and externally through Her Majesty’s Inspectorate of Constabulary (HMIC). He said:<sup>91</sup>

*“...the solution...could come locally, because certainly, you know, 2,500 people in Durham Constabulary and 45,000 in the Metropolitan Police – the scale is just ridiculous. So I don’t think that one size fits all is going to work. I do think national standards should be made clear. I think that somehow or other we have to enable there to be a local solution to come to that which is agreeable to those national standards.”*

### 3. Press departments

- 3.1** When analysing the development of police press offices, it is noteworthy that the first attempt to formalise police-media relations followed the decision of Sir Nevil Macready, then Metropolitan Police Commissioner, to establish a ‘press room’ at Scotland Yard in October 1919. The catalyst for the establishment of the Press Bureau was a number of police scandals arising from leaked information that originated from detectives within the MPS who were selling information to journalists in public houses. Sir Nevil sought to counter these informal communication channels with a more formal alternative. Dr Mawby, a lecturer of criminology at the University of Leicester, explained that it was not until the late 1960s that other forces followed the example set by the MPS and themselves established press offices.<sup>92</sup>

- 3.2** In the period that followed, these press departments developed to the extent that Dr Mawby described the label ‘press office’ as something of a misnomer. He suggested that what used to be headquarters-based press offices typically managed and partly staffed by police officers with a responsibility for reactive media liaison, had developed into departments responsible for internal communications, operational support, media liaison and public relations. They were now often called ‘Corporate Communications’ departments.<sup>93</sup> Amanda Hirst, Head of the Corporate Communications Department for the Avon and Somerset Constabulary, agreed and explained that the term ‘press office’ was no longer adequate to describe the breadth of communications undertaken by the Police Service. She said that the Corporate Communications department was responsible for all aspects of internal and external communications of the Avon and Somerset force, including proactive and reactive interactions with the media, campaigns, events, web and social media and internal communications.<sup>94</sup> For the purposes of this Report, however, and particularly as many of the witnesses continued to use the term, “press office” will be used as a generic term for Police Service communications teams.

#### The benefits

- 3.3** Chief Constable Trotter argued that in an age of 24-hour and seven days a week media coverage (that included social media), it was necessary for police forces to have a press office.

<sup>91</sup> pp57-58, lines 14-6, CC Jon Stoddart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-27-March-2012.pdf>

<sup>92</sup> p84, lines 2-21, Dr Rob Mawby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>; p10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Dr-Rob-Mawby.pdf>;

<sup>93</sup> p85, lines 11-17, Dr Rob Mawby, *ibid*; p10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Dr-Rob-Mawby.pdf>

<sup>94</sup> p2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Amanda-Hirst.pdf>

He suggested that the day-to-day interaction between police forces and the media was of such obvious importance that forces could not adequately manage this relationship without dedicated personnel who had the appropriate experience, qualifications or training. Chief Constable Trotter explained that the media had a crucial role to play in appeals for information and also the dissemination of accurate information about incidents, investigations and police operations, as well as about the Police Service itself. He pointed out that during a major incident or serious crime investigation there could be literally thousands of press enquiries to deal with, press conferences to arrange, public appeals to be broadcast, and websites and new media to be managed. All of these, he argued, were best dealt with by police media professionals rather than police officers. Chief Constable Trotter argued that the public and the media received a far better service from a force press office than by trying to track down busy front line police officers for information.<sup>95</sup>

**3.4** Chief Superintendent Derek Barnett, President of the Police Superintendents Association of England and Wales, agreed with this viewpoint and suggested that the presence of a press office had become a vital component for modern policing.<sup>96</sup> Anne Campbell, in her capacity as Chair of the Association of Police Communicators (APCOM), suggested that the professional management of the media was a vital function for the Police Service as it directly impacted on the public's perception of the Service as a whole and was indirectly related, in her view, to levels of public trust and confidence in the Service.<sup>97</sup> Similarly, Sir Hugh Orde explained that within the context of the day-to-day activity of any police force, a press office performed an integral and specialist function. He suggested that the press office could be viewed as another specialist section within the police organisation, supporting the primary objective of keeping people safe. Just as modern police forces had access to, for example, experts in forensics, investigations, road traffic and public order, he suggested that in a similar vein Chief Constables required professional advice from a specialist media department so that they were able to make fully informed decisions in relation to that discipline.<sup>98</sup>

**3.5** Chief Constable Trotter explained that a key function of a police press office was to act as a conduit between the media and its officers. He suggested that by using press officers to organise interviews between police officers and journalists, a force could ensure that there was a proper reason for the interview, that there was a record of the interview (which was potentially subject to disclosure in criminal, civil or disciplinary proceedings), that the press strategy for the operation or crime investigation was being followed, that the police officer was properly prepared for the interview, and that all proper arrangements were put into place.<sup>99</sup> Joanne Bird, Head of Media and Marketing for the British Transport Police (BTP), expanded on this point and explained that every press office was there to help and support police officers in doing their jobs. She suggested that press officers were more efficient and effective at putting together press statements and appeals to the public than their operational counterparts and, furthermore, that this fact was recognised by front-line officers. Ms Bird argued that the immediacy of the media's need for news meant that the media could

<sup>95</sup> p11, para 12.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Andrew-Trotter1.pdf>

<sup>96</sup> p11, para 20.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Derek-Barnett.pdf>

<sup>97</sup> p13, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Second-Witness-Statement-of-Anne-Campbell.pdf>

<sup>98</sup> p7, para 10.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

<sup>99</sup> p11, para 12.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Andrew-Trotter1.pdf>

inadvertently be an additional pressure on an operational response with the result that the press office provided an important support function.<sup>100</sup>

- 3.6** Although the enthusiasm for police press departments varied between witnesses, the consensus view was that they were now a necessary component of a modern police force. Amanda Hirst suggested that *“I think it is fair to say that the media suffer the existence of Corporate Communications Departments/press offices.”*<sup>101</sup> Adrian Faber, editor of the Express & Star, Wolverhampton, shared this view, saying *“Press officers can have a role to play as a central point of contact for a large force spread over a large geographical area. I suspect many journalists see them as a ‘necessary evil’.”*<sup>102</sup> Others were more unequivocal in their views on this issue. Sandra Laville, crime correspondent for the Guardian, said *“I would rather deal with officers directly but I can see with the vast amount of media requests police forces get, that press offices are essential.”*<sup>103</sup> Jonathan Ungoed-Thomas, chief reporter at The Sunday Times, agreed and said *“It is crucial for police forces to have a press office. The key role is to ensure a steady flow of information to reporters without unnecessarily hampering operational officers with inquiries and to ensure journalists working on an in-depth story speak to the most appropriate officer at the most appropriate time.”*<sup>104</sup> Jerry Lawton, chief crime correspondent of the Daily Star, argued that press offices were necessary and explained that:<sup>105</sup>

*“Press officers are (usually) available whereas police officers are frequently too bogged down with all their other duties to talk. When a query emerges on a daily newspaper, speed of response is critical. Good press officers, who understand how newspapers work and journalists’ requirements, concerns and pressures, can actually help explain to reluctant officers on your behalf why it may be mutually beneficial to release certain pieces of information.”*

## Disadvantages

- 3.7** Notwithstanding the fact that press departments are now considered to be a necessary and vital component of modern policing, the Police Service itself recognises that the media can sometimes become frustrated by this additional ‘layer’ or conduit to direct contact with police officers. Chief Constable Sims (from the West Midlands), whose force policy was for individual officers to engage with the press office if approached directly by the media, acknowledged this point in his evidence.<sup>106</sup> Similarly, Gillian Shearer (Head of Marketing and Communications in Cumbria) explained that, although generally speaking the media were comfortable going through the press office, sometimes they became frustrated if they

<sup>100</sup> p5, para 5.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Joanne-Bird.pdf>

<sup>101</sup> p6, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Amanda-Hirst.pdf>

<sup>102</sup> p10, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Adrian-Faber.pdf>

<sup>103</sup> p15, para 38, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>104</sup> p10, para 46, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jonathan-Ungoed-Thomas.pdf>

<sup>105</sup> p12, para 44, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeremy-Lawton.pdf>

<sup>106</sup> p10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>

could not get hold of all of the information that they required; often, therefore, they tried to approach officers directly.<sup>107</sup>

- 3.8** This sense of frustration was expressed by a number of witnesses. Mr Faber suggested that the biggest culture change over the past few years in the relationship between the media and the police had been the introduction of press officers and argued that the referral of press enquiries to a press office had created a tier of bureaucracy between journalists and police officers.<sup>108</sup> He expanded on this point and said:<sup>109</sup>

*“...there is increasingly limited access to the actual police officers on the ground, and it tends to be that the press office is there to provide standard information and if we want to go further than that and find out more, we will try to go to the individual officers, but sometimes we are referred back to the press office.”*

- 3.9** Ms Laville shared this viewpoint and suggested that adding another layer between a journalist and a police officer who had information to convey could lead to delays, some inaccuracies, and often to a lack of depth in the information provided. She argued that this was partly the reason why Lord Stevens had introduced the policy within the MPS of allowing middle ranking officers and above to talk openly to journalists in the interests of accuracy, context and a wider understanding of the issues.<sup>110</sup>

- 3.10** There was also recognition amongst some of the regional police forces that the media would like to see increased access to force press offices. Chief Constable Baggott, speaking about the Press Office of the Police Service of Northern Ireland, for example, said *“We do know that the media would like the press office opening hours to be extended to 24/7 however given budget constraints this is not possible.”*<sup>111</sup> The Guardian reporter, Nick Davies, expanded on this point, describing from his point of view the difference in the service provided by a press office in a big city force and that provided by a smaller provincial force. He said:<sup>112</sup>

*“That was something I came across talking to provincial reporters...some of them complained that the press office of the local police force was so understaffed that the routine was that they would call the press office and get a recorded message saying, “Here’s the story we’ve selected for you today”, and they would just be expected to copy that down and put it into the paper. They couldn’t even pursue it. Close to that also is press officers posting stories on websites, their own websites, for journalists to put into the paper, and there’s a big reporting problem with that, because you’re allowing the police force to make all of the editorial decisions about what should be reported and with angle and language and quotes...it’s not being done for malicious motives. It’s about shortage of resources cuts, not enough press officers, whereas a big city force like the Met, I don’t come across that. You can get a human being on the end of the phone.”*

<sup>107</sup> p6, para 13.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Gillian-Shearer.pdf>

<sup>108</sup> p2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Adrian-Faber.pdf>

<sup>109</sup> p24, lines 6-12, Adrian Faber, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>110</sup> p14, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>111</sup> p19, para 40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Matthew-Baggott.pdf>

<sup>112</sup> pp27-28, lines 8-3, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-28-February-2012.pdf>

- 3.11** Mr Davies also suggested that, with rare exceptions, press officers saw it as their legitimate role to protect the interests of the organisation or individual for whom they worked. He argued that whilst it was unusual for a press officer purposely to mislead a journalist (given that it would undermine their future credibility), when under pressure, some press officers did occasionally lie to reporters in order to protect their organisation. Mr Davies went on, however, to say that, more commonly, police press officers would hold back information that might embarrass their employer, or promote information which tended to enhance the reputation of the force concerned.<sup>113</sup>
- 3.12** Mr Lawton supported this viewpoint and said *“I think a large part of their role [a force press office] is to ensure the force is portrayed in as good a light as possible. That is only natural particularly in tough financial times and amid rumours of force mergers.”*<sup>114</sup> Mr Faber suggested that although his journalists tended to get the information that they were seeking from the press office, he was sometimes frustrated in having to deal with the police agendas of ‘reassurance of the public’ and ‘risk assessments’. He argued that this manifested itself in the police view that the public had an exaggerated perception of crime which was fuelled by media coverage; as a result, the police took the view that unless it was helpful in an investigation, they would not automatically release the information.<sup>115</sup>
- 3.13** Commissioner Hogan-Howe argued that what might be described as reputation management was an important consideration. He made it clear, however, that *“I wouldn’t use the words ‘reputation management’, but I do think public information is vital to make sure the public are informed about what their Police Service is trying to do on their behalf”*.<sup>116</sup> In dealing with this issue, Chief Constable Vaughan suggested that all press officers, certainly within South Wales police, were aware of their responsibility to be open, honest and transparent and would always try to give as much information as they could. He argued that press officers would never withhold information from the media because, internally, it was perceived to be negative or unpalatable. Chief Constable Vaughan explained that if information could not be released or queries could not be confirmed or placed in context, then press officers would use their professional judgment to respond accordingly, seeking legal advice if necessary. He suggested that, on the occasions where the police were unable to service the needs of the media as comprehensively as they would like, this could sometimes lead to a perception that press officers were being unhelpful or obstructive.<sup>117</sup>

## Respect for exclusives

- 3.14** A large number of the witnesses that gave evidence emphasised the importance of trust in the relationship between the police and the media so as to allow it to function effectively and in the public interest, particularly in the context of confidential briefing.<sup>118</sup> It was argued that police respect for media exclusives was an important facet of that relationship of trust.

<sup>113</sup> p3, para f, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-Nick-Davies.pdf>

<sup>114</sup> p11, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeremy-Lawton.pdf>

<sup>115</sup> p2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Adrian-Faber.pdf>

<sup>116</sup> pp22-23, lines 8-12, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>117</sup> p26, para 89, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Peter-Vaughan.pdf>

<sup>118</sup> See for example: p4, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-James-Murray.pdf>; and p73, lines 8-14, Paul Peachey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

**3.15** In relation to this issue, Barbara Brewis, Media and Marketing Manager for Durham Constabulary, said that “No media outlet is given preferential treatment, although if an individual reporter becomes aware of a story or issue exclusively it would be unprofessional not to take this into consideration when planning how we distribute information.”<sup>119</sup> In this context, Ms Brewis provided the specific example of a recent major fraud investigation. She explained that the BBC and one of the force’s local newspapers had become aware of the police’s activities and “as police enquiries were at a very early stage, we asked both reporters concerned if they would hold back from running stories in case the main suspect was alerted and went ‘to ground’. Once he had been arrested we told the reporters and provided enough information for them to run stories, ahead of any other media outlets.”<sup>120</sup> She explained: <sup>121</sup>

*“...If a reporter comes and asks a question about a story they are running and nobody else has it, I think it’s only professional to honour that exclusive. I would not put it then out on general release. I may put it out on general release once it appeared in that outlet, but I wouldn’t do it in advance of that.”*

**3.16** Jon Ungoed-Thomas, Chief Reporter for The Sunday Times, argued that police respect for exclusives were particularly important for Sunday newspapers. He suggested that he would seek one-to-one briefings for this reason – he explained: “...what’s absolutely vital for a Sunday newspaper is you’re not sitting there with seven other journalists, because you’ll pick it up in the newspaper the next day and you’ll read it, so you want to be on your own and you want to have one-to-one briefings.”<sup>122</sup>

**3.17** I am satisfied that the interim ACPO guidance for relationships with the media adequately deals with this issue for both sides. It stipulates: <sup>123</sup>

*“Media organisations should be treated in a fair and equal manner. This means that once in the public domain, information released by the police should be available to all. Where a media organisation generates an ‘exclusive’, their right to share information in confidence with the police should be respected. It may be appropriate for the police to work with a particular media organisation on an issue (such as with a local paper campaigning against a local crime issue), **where it serves a policing purpose to do so** [my emphasis]. All media organisations have the right to consideration for such opportunities.*

*On some occasions it may be necessary to briefly delay the release of information to the media to ensure that resources are in place to respond to public feed back, for example an appeal for witnesses or information, where officers need to be immediately available to respond to arrest named suspects.”*

## The Directorate of Media and Communication

**3.18** The relationship between the MPS and the media is now managed by the Directorate of Media and Communication (DMC). The DMC came into being on 1 April 2012, having previously

<sup>119</sup> p6, para 12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Barbara-Brewis.pdf>

<sup>120</sup> pp16-17, para 44, *ibid*

<sup>121</sup> p73, lines 7-12, Barbara Brewis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-27-March-2012.pdf>

<sup>122</sup> p88, lines 6-10, Jon Ungoed-Thomas, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>123</sup> p6, paras 6.1-6.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Submission-from-ACPO-Interim-Guidance-for-relationships-with-the-Media.pdf>

been known as the Directorate of Public Affairs (the DPA); the overwhelming majority of the witnesses that appeared before the Inquiry therefore referred to the body by its old name.<sup>124</sup>

- 3.19** The DMC is a large department with significant demands placed on its time and resources. For 2011-12, it had an allocated budget for 69 members of staff with a total expenditure of £6.7 million.<sup>125</sup> This can be compared, for example, with the equivalent departments in the West Midlands Police (a staff of 30), Strathclyde Police (a staff of 25), and South Wales Police (a staff of about 20).<sup>126</sup> The majority of DMC staff, some 45 out of 69, are press officers attached to the News Branch and are tasked with providing media support as the principal contact point between the MPS and the media. The remaining members of staff deal with internal communications, e-communication, marketing and publicity.<sup>127</sup> The DMC News Branch consists of a 24-hour, seven days a week press bureau, which is often the first point of contact for the media. There are five specialist desks dedicated to supporting the four main functional commands within the MPS: Specialist Operations, Specialist Crime, Central Operations and Territorial Policing and the corporate desk.<sup>128</sup>
- 3.20** Ed Stearns, chief press officer at the DMC, made it clear that the directorate was far more than a call centre.<sup>129</sup> He explained that the DMC engaged in a much wider breadth of work. Each call required a considered response and, in some cases, it was necessary to prepare press lines and to liaise with police officers or police staff.<sup>130</sup> Responding to media inquiries was only one of the DMC's main functions. Mr Stearns explained that it was also responsible for marketing, advertising, social media, co-ordinating the corporate stakeholder engagement of the MPS and much of the internal communication for the entire organisation.<sup>131</sup>
- 3.21** Notwithstanding the role of the DMC, it has consistently been the policy of the MPS to devolve media contact to operational officers, and to permit officers of a suitable rank to speak to the media about their own areas of responsibility. The current Media Relations Standard Operating Procedure (SOP) for the MPS states that officers below the rank of Inspector can speak to the media with the authority of their line manager, and officers of the rank of Inspector and above are authorised to speak to the media about their own areas of responsibility (unless there is a specific media strategy in place or a dedicated spokesperson identified).<sup>132</sup> There are, therefore, over 2,000 officers of Inspector rank and above who are authorised and encouraged to speak to the media.<sup>133</sup>
- 3.22** The scale of press contact is considerable. The MPS services some nine national newspapers, eight Sunday newspapers, five national television channels, plus two 24-hour media channels, a wide variety of digital channels with their associated documentary content, two national

<sup>124</sup> p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>125</sup> p1, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>126</sup> p2, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Inspector-Sally-Seeley.pdf>; p86, line 16, Robert Shorthouse, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>; p3, lines 23, Catherine Llewellyn, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>127</sup> p4, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>128</sup> p5, para 15, *ibid*

<sup>129</sup> p3, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>130</sup> *ibid*

<sup>131</sup> p3, para 8, *ibid*

<sup>132</sup> p4, MPS Notice 26/2006 Media Relations Standing Operating Police, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-12-Notices-26-2006.pdf>

<sup>133</sup> p5, para 16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

radio stations and ten London based radio stations, together with almost 100 local newspapers, and a wide range of minority, specialist, online and international organisations. The DMC also has the names of over 1,000 journalists and organisations on its media database, all of whom have asked the MPS proactively to provide them with information. In addition, at any one time, there is at least one documentary for national television being undertaken. This is in addition to the reactive work of responding to media press inquiries.<sup>134</sup>

**3.23** As set out above, the Inquiry has heard a significant amount of evidence that the position of the MPS is very different to that of regional forces. Its major local daily newspaper is the *Evening Standard*;<sup>135</sup> but this feeds into the national newspapers for the following day and it therefore has significance beyond most local papers.<sup>136</sup> As the Commissioner observed, anything that happens in London as the capital city may not just be nationally significant but may also have international ramifications, *“A murder here with a foreign link can often have an impact beyond anything that we can sometimes anticipate.”*<sup>137</sup> In contrasting his experience as Chief Constable of Merseyside with that in the MPS, Commissioner Hogan-Howe suggested that:<sup>138</sup>

*“...for many reasons, the dynamic with the press here is quite different, and then finally [there is] the impact of the 24-hour reporting through the mass media. The pressure of that here...it’s pretty voracious...So I think that impact in London – I can’t say by what factor, but it’s hugely amplified to my experience which I saw in South Yorkshire and in Merseyside...”*

**3.24** The DMC handles some 120,000 media calls a year with over half of them going to the press bureau at Scotland Yard. In an average week, the DMC gets between 200 and 300 calls a day. By way of illustration, at the peak of the public disorder on 9 August 2011, the number of daily calls rose to over 1,700 and remained at approximately 1,200 on the 10th and 11th August 2011. Mr Fedorcio argued that it was essential, both for the police and the media, that the DMC handled these calls, the alternative being that they would go directly to police officers who would then be prevented from attending to policing duties.<sup>139</sup> In 2011, the DMC News Branch issued 1,008 news releases, arranged 447 media facilities including interviews, press conferences, briefings, visits and attendance on police raids, made reference to 396 successful court cases, supported 100 murder investigations and attended 316 Gold Groups (a Gold Group is a senior strategic decision-making body made up of experienced and senior or specialist staff) meetings.<sup>140</sup>

**3.25** Media management information within the MPS is held in a database called Solcara (now known as Spotlight).<sup>141</sup> Mr Fedorcio explained how Solcara worked in practice. A record was kept in relation to individual cases and incidents. That record would initially contain a description of: (i) the information that the DMC had been given, (ii) who had provided that information, and (iii) the time that the information had been given. A discussion then took place between the relevant personnel within the MPS, and decisions were made as to the

<sup>134</sup> p5, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>135</sup> see for example p74, lines 15-20, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-2012.txt>

<sup>136</sup> pp73-74, lines 20-1, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>137</sup> p74, lines 9-11, Commissioner Hogan-Howe, *ibid*

<sup>138</sup> pp74-75, lines 17-3, Commissioner Hogan-Howe, *ibid*

<sup>139</sup> pp5-6, para 18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>140</sup> p6, lines 14-20, Bob Quick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-7-March-2012.pdf>

<sup>141</sup> p6, para 16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

approach to be taken in relation to the release, or alternatively non-release, of information to the media. A record was then made of: (i) what information the MPS was able to offer to the media ('for offer'), (ii) what information the MPS may provide if it was asked to do so ('if asked'), (iii) information that third parties had released, which was known by the MPS and which may be released by the MPS, making it clear when it was released that its source was a third party, and not the MPS ('non attributable'), (iv) information in possession of the MPS, such as information on reporting restrictions, or the date and time of a briefing by an MPS officer, which may be released to the media but was not for publication by them ('not for publication'), and (v) information that was not for distribution to the media (this may include confidential or sensitive details of a victim or of a person arrested and was referred to as 'Bureau information').<sup>142</sup> The Spotlight system is now being adopted by a number of other forces too.<sup>143</sup>

**3.26** Despite the important function performed by the DMC, there has been some criticism of its behaviour and practices. Elizabeth Filkin, in her report *The Ethical Issues Arising From The Relationship Between Police And Media*, recorded the excellent work that was done by the DMC (then the DPA), but nevertheless highlighted her serious concerns about what she had been told about the reluctance of some police officers to provide information to the DPA because of two perceptions. First, there was the perception that in some instances the DPA had been unwilling to provide information to the public. Second, that, again sometimes only, information was misused. Mrs Filkin suggested that the impact of those perceptions, regardless of the facts, was damaging because they fuelled surreptitious briefing and hampered an effective and transparent corporate response in providing information to the public.<sup>144</sup> Kit Malthouse, formerly the Deputy Mayor for Policing and Crime in London, suggested that the DMC was dominated by its relationship with the news media and said:<sup>145</sup>

*"...it's a common trap that communications departments fall into, which is that they migrate, because of the nature of the news media, its immediate demands, the reactive nature of it, they migrate to thinking that news and using the news media is the only way to communicate with the public, whereas of course there are many other forms of communication, and I raised this with the Commissioner and with the head of the DPA, that I felt it would be beneficial for the Met to move away from merely a concentration on news towards other forms of communication..."*

**3.27** Michael Sullivan, crime editor of The Sun, said that he believed that the MPS compiled "charts" on individual reporters and a system of "grading" or marking to illustrate whether they were deemed to be favourable to the MPS or not.<sup>146</sup> The MPS strongly denied this claim and Mr Stearns asserted that the DMC did not keep charts on individual reporters. He explained that the DMC, as part of its public relations function, did carry out media monitoring, but

<sup>142</sup> p6, para 19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>; p9, Special Notice 24/98 MPS Master Bundle Policies/Procedures, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-8-Special-Notice-24-98.pdf>

<sup>143</sup> For example, p9, para 30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Anne-Campbell.pdf>

<sup>144</sup> Filkin, E, *The Ethical Issues Arising From The Relationship Between Police And Media – Advice to the Commissioner of Police of the Metropolis and his Management Board (January 2012)*, p46, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-5-Elizabeth-Filkin-Report-January-2012.pdf>; see Part G, Chapter 3

<sup>145</sup> pp13-14, lines 10-1, Kit Malthouse, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-29-March-2012.pdf>

<sup>146</sup> pp55-57, 69-70, lines 9-14, lines 23-23, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>; p13, para 65, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Michael-Sullivan.pdf>

suggested that this operated at a very general level with no focus on particular reporters.<sup>147</sup> It is sufficient for me to conclude that I have seen no evidence of a grading system and neither has any evidence been produced that has analysed the extent to which those who have provided favourable coverage to the MPS have been rewarded with consequential favourable access or other benefits as a result.

**3.28** Sean O’Neill, crime correspondent for The Times, said that he found the DMC “*less than frank*” and that they “*quite often give a partial picture*”.<sup>148</sup> Mr O’Neill provided a specific example where he suggested that the MPS had been obstructive over the release of footage in a major court case (however, he did concede that this example was based on his understanding from colleagues rather than it being a first hand experience).<sup>149</sup> From the other perspective, the MPS, through Mr Stearns, argued that in that particular case the DMC had in fact taken positive steps to secure the release of the footage to the press.<sup>150</sup> In summarising his position, Mr O’Neill said that although the relationship between the media and the MPS waxed and waned, he found the MPS to be defensive and protective of its image and reputation.<sup>151</sup>

**3.29** A number of journalists suggested that the MPS, and the Police Service more generally, had withdrawn from the media since the Inquiry had been convened and because of the general publicity surrounding phone hacking. Mr O’Neill, for example, said of the MPS that, “*there is a different relationship between the police and the press, and I suppose that’s an inevitable consequence of what happened last summer*”.<sup>152</sup> In relation to the Police Service more generally, Mr Gordon, editor of the South Wales Echo, suggested, for example, that the police seemed to be more hesitant about making contact with the press than previously.<sup>153</sup> Indeed, Chief Constable Trotter confirmed from his conversations with journalists that there was a sense that some police forces had closed down slightly in their dealings with the media.<sup>154</sup> However, Mr Stearns argued that the suggestion that the MPS had withdrawn from disclosing information to the media was not the result of any policy of the DMC. Rather, he suggested, it was more likely that journalists had formed this impression because individual police officers, who had become personal contacts of journalists, no longer wanted to engage with the media to the same extent because of the current climate of resignations and arrests.<sup>155</sup> This viewpoint was supported by some journalists who agreed that it was informal contact with police officers that had become more difficult.<sup>156</sup>

**3.30** It is also clear that recent events have had an effect on the way in which some journalists interact with police officers. This point was illustrated by Commissioner Hogan-Howe who

<sup>147</sup> p14, para 34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>148</sup> p24, lines 9-10, Sean O’Neill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>149</sup> p24, lines 11-19, Sean O’Neill, *ibid*

<sup>150</sup> p26, para 66, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>151</sup> p4, lines 14-19, Sean O’Neill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>152</sup> p22, lines 15-23, Sean O’Neill, *ibid*; for example, pp81-82, lines 20-1, Justin Penrose, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>153</sup> pp4-5, lines 7-21, Timothy Gordon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>154</sup> p42, lines 4-11, CC Andy Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>155</sup> pp45-46, lines 11-3, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>; p8, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>156</sup> For example, p107, lines 16-20, Thomas Pettifor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

described his attendance at a social event. It transpired that he was seated at the same table as an editor that he had not previously met. The editor made a conscious effort not to look at him for 20 minutes and after about an hour had elapsed said *“I wasn’t going to speak because I wasn’t sure that we could.”*<sup>157</sup>

- 3.31** It is perhaps unsurprising if recent events, including the establishment of this Inquiry, have affected the personal behaviour of individual police officers in relation to the media. Commissioner Hogan-Howe was prepared to accept the potential criticism that the pendulum in the relationship between the police and the media may possibly have swung a little too far in the other direction, but said *“I prefer, I think, to be criticised for setting the boundary too high than I would by...having set it again too low”*.<sup>158</sup> Notwithstanding this point, the MPS argued that the DMC were fully conversant of the tensions between operational policing and the media appetite for information and were keen that police officers continued to engage with the media.<sup>159</sup>
- 3.32** Overall, in quantifying the extent to which there is a need for a recalibration of the relationship between the media and the MPS it is important to note that the balance of the evidence has demonstrated that the general relationship between the press and the MPS is good and healthy. Assistant Commissioner Cressida Dick’s view was that almost all of the culture within the MPS in relation to its dealings with the press was *“very healthy and professional”*.<sup>160</sup>

## Head of communications

- 3.33** The West Midlands Police have a long standing policy that the head of their communications team was a serving police officer rather than a communications specialist.<sup>161</sup> This role is currently performed by Chief Inspector Sally Seeley.<sup>162</sup> Her responsibility, as Head of Corporate Communications, is to lead that team and to have strategic oversight of the department as a whole.<sup>163</sup> The appointment to this post is for a limited period – approximately two years.<sup>164</sup> In Chief Inspector Seeley’s view, the advantages of this system, as a police officer with 20 years’ service, were that she possessed a degree of objectivity beyond that shown by professional communicators and, additionally, she was able to add real context and an understanding of policing to the work undertaken by the communications department. She believed that this provided support to the team. She also considered that the relatively short period of the appointment meant that the relationships formed remained professional and objective.<sup>165</sup>

<sup>157</sup> p47, lines 10-22, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>158</sup> p9, lines 2-18, Commissioner Hogan-Howe, *ibid*

<sup>159</sup> p8, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>160</sup> p23, para 59, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-AC-Cressida-Dick.pdf>

<sup>161</sup> The Inquiry understands the position in West Midlands Police has changed, however, this does not change the analysis.

<sup>162</sup> p53, lines 4-9, Chief Insp Sally Seeley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>163</sup> p8, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Inspector-Sally-Seeley.pdf>

<sup>164</sup> p54, lines 6-9, Chief Insp Sally Seeley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>165</sup> p54, lines 6-15, Chief Insp Sally Seeley, *ibid*

**3.34** There were mixed views as to whether this policy was a good idea but, insofar as it is possible to discern a consensus, it was broadly against the arrangement. Chief Constable House of Strathclyde Police was firmly against it, and said:<sup>166</sup>

*“...I’m aware that there’s been some discussion about would it be a good idea to have a senior police officer running the media set-up of a police force. In my view, that would be a retrograde step. I think most police forces have been there. It’s not somewhere I would choose to go, personally, because there is a professionalism within media and communications which is not the natural strong suit of police officers...”*

That being said, Chief Constable House did accept that there might be some value in having a senior police officer focused on communications within a force area for a time limited period. However, he believed that the alternative model, as in Strathclyde, was preferable. This saw an expert head of communications sit on the management board, where they were subject to the scrutiny and questioning of the Chief Constable, his Deputy, his Assistant Chief Constables, the Director of Finance and Resources, and to the *“cut and thrust of the management of the organisation on a daily basis”*.<sup>167</sup> Rob Shorthouse, Head of Corporate Communications for Strathclyde Police, agreed, arguing that the role of head of communications was *“a post better held by somebody that has the necessary skills, experience and qualifications”*.<sup>168</sup>

**3.35** In relation to the presence of the head of the DMC on the MPS management board, Lord Blair suggested that it was appropriate not least because the role also encompassed internal communications. He understandably suggested that the Commissioner and the management board would want to communicate directly with their officers and staff. His view was that the Evening Standard and other papers were *“a very important aspect of communicating to the 53,000 people who worked in the Met.”*<sup>169</sup> Lord Blair suggested that this method of communicating with the organisation’s staff was an important way of contextualising and triangulating information outside of the MPS’s own internal publications.<sup>170</sup>

**3.36** I can see value in both approaches to this issue. There is certainly some force in the notion that a police officer brings objectivity, an increased understanding of operational policing and context to the role. It might also be argued that a time limited appointment, such as is in place for Chief Inspector Seeley, necessarily ensures that relationships do not become too close with particular editors or media outlets; this is certainly a risk if the Director of the Communications Operation is in post for many years. On the other hand, a suitably qualified senior officer, with the necessary skills, would have to be found and taken off operational policing duties. I also accept that, provided suitable and robust oversight and line management arrangements are in place, there is real value in a professional lead providing police forces with the expertise necessary for both internal and external communication services.

**3.37** In the circumstances, I consider that this decision is ultimately one for Chief Constables to make based on their own experience of their force, the local media and the issues in the area that they police. If, as I accept is the case, Chief Inspector Seeley and the West Midlands Police, for example, find their system works for their area, it would not be appropriate or right for me to recommend (let alone suggest the imposition of) a different approach. Similarly,

<sup>166</sup> p76, lines 15-22, CC Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>167</sup> p82, lines 11-22, CC Stephen House, *ibid*

<sup>168</sup> p87, lines 10-12, Rob Shorthouse, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>169</sup> pp51-52, lines 13-7, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>170</sup> p53, lines 1-13, Lord Blair, *ibid*

given the different experience of the MPS (and in Strathclyde), provided measures are in place to prevent the development of a relationship of overfamiliarity or friendship which I do not believe is in the public interest and which may come from exceptionally lengthy periods in post, nor would it be sensible or appropriate for me to recommend that the arrangements adopted by such forces should be changed.

## Crime Reporters Association

- 3.38** One of the themes to emerge from the evidence was the relationship between the Crime Reporters Association (CRA) and the MPS, along with the probity and potentially extensive contact that this is said to have provided between crime reporters who are members of this ‘club’ and police officers.
- 3.39** The CRA is a long established forum for national newspaper and broadcast journalists working in the field of crime, law enforcement and home affairs. It has existed in its current form since shortly after the Second World War.<sup>171</sup> Jeff Edwards, the Chairman of the CRA from 1993 to 2009 and currently its President, said that its *raison d’être* was to promote better understanding, cooperation and good working practice between those journalists within its membership and the police and other branches of law enforcement.<sup>172</sup> The CRA’s current Chairman is John Twomey.<sup>173</sup>
- 3.40** Mr Edwards and Mr Twomey both provided an overview of the CRA in their evidence to the Inquiry. Mr Edwards explained that the CRA currently had 45 members,<sup>174</sup> and that the criteria for inclusion within the Association were that members must be employed by a news organisation that operated nationally or was staffed to “*national news organisation standards*”.<sup>175</sup> The CRA had members from the main broadcast news media outlets (BBC, ITN, Sky), all national daily and Sunday newspaper titles (with the exception of The Sunday Times, although its reporters had been invited to join),<sup>176</sup> and, additionally, the Press Association. The Evening Standard crime correspondents were also members because, although the Evening Standard only circulated in London and the Home Counties, it was staffed to national news organisation standards.<sup>177</sup> Mr Edwards explained that the CRA was funded by its members with an annual membership of £30 although members were also asked to make a contribution towards the annual Christmas party (£40 in 2011).<sup>178</sup> The police provided no input into membership which was entirely controlled by the CRA itself.<sup>179</sup>
- 3.41** Although theoretically the CRA covers all of the UK police territory, in reality it is primarily focussed on London and the South East<sup>180</sup> and, therefore, crime reporters on regional newspapers outside this area do not benefit from membership. As to whether this is an issue, it is, in any event, true to say that many local newspapers do not have a specialist crime

<sup>171</sup> p6, lines 9-21, Jeff Edwards, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-14-March-2012.pdf>

<sup>172</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>173</sup> p2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Twomey.pdf>

<sup>174</sup> p4, lines 21-25, Jeff Edwards, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-14-March-2012.pdf>

<sup>175</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>176</sup> pp4-5, lines 21-10, Jeff Edwards, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-14-March-2012.pdf>

<sup>177</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>178</sup> p3, *ibid*

<sup>179</sup> p30, lines 13-19, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>180</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

reporter at all. Indeed, Colin Adwent, senior crime reporter for the East Anglian Daily Times and Evening Star, Ipswich, said that he had never felt limited or inhibited by not being a member of the CRA or an equivalent body.<sup>181</sup>

**3.42** Looking at the specific relationship between the Metropolitan Police and the CRA, Mr Stearns explained that historically the MPS had hosted a formal monthly briefing with the CRA. The briefing was normally led by the Commissioner and was an opportunity to address any topical issues, allow the Commissioner to answer questions and to provide an opportunity for officers with a specialist knowledge on a variety of issues to brief those present on a range of operational or policy work. CRA briefings still occurred but were now rotated with different members of the management board of the Metropolitan Police, including the Commissioner, leading them.<sup>182</sup> Furthermore, Mr Stearns explained that in around 2005, Mr Fedorcio and Peter Clarke, formerly Deputy Assistant Commissioner for Specialist Operations, had agreed that there was a need for the media to be better informed about terrorist related issues and the threat to the United Kingdom. It was therefore decided that a regular but informal lunch meeting would be held with rotating members of the CRA to allow for a general discussion between police officers and reporters who were experts in their field.<sup>183</sup> The CRA lunch briefings were organised through the DPA press office and a press officer always attended; it was understood that the subject for discussion was always non-reportable.<sup>184</sup> Mr Twomey explained that since the resignations of Sir Paul Stephenson and John Yates in the summer of 2011, the CRA lunch briefings with senior officers had ceased.<sup>185</sup>

**3.43** The CRA and the DMC also both hold a number of what are described as ‘informal networking opportunities’ each year, attended by both senior officers and the media. Mr Stearns said that the purpose of the functions (normally an evening over the Christmas period, and sometimes also an evening in the summer) was to develop working relationships, understanding and confidence.<sup>186</sup> In relation to other forces, Mr Edwards explained that in recent years Surrey, Thames Valley, Kent, Hampshire, Sussex, the City of London and one or two other forces had held what he described as modest, get to know you social evenings for CRA members, either at the force headquarters or a hired venue.<sup>187</sup> There were also occasional briefings or press conferences about specific events, some of which were described as off-the-record.<sup>188</sup> CRA members also met with and contacted police officers and staff individually.<sup>189</sup>

**3.44** Mr Edwards described the CRA as operating in a similar way to that of the lobby system amongst Parliamentary correspondents and suggested that it afforded members of the CRA some additional access to some police forces, including the MPS, especially at times of crisis

<sup>181</sup> pp67-68, lines 20-2, Colin Adwent, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>182</sup> p23, para 58, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>183</sup> pp23-24, para 59, *ibid*

<sup>184</sup> p6, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Twomey.pdf>

<sup>185</sup> p31, lines 10-13, John Twomey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>; p6, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Twomey.pdf>

<sup>186</sup> p24, para 60, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>187</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>188</sup> p4, *ibid*

<sup>189</sup> pp8-9, lines 19-20, Jeff Edwards, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-14-March-2012.pdf>; p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

or major events.<sup>190</sup> Mr Edwards conceded that the status of the CRA may, to a certain extent, provide members with privileged access to the police.<sup>191</sup> However, he emphasised that all major news organisations were represented by the CRA.<sup>192</sup> Mr Edwards also explained the value of the CRA, suggesting that it provided a more detailed and nuanced level of engagement with police forces for specialist reporters who covered crime and policing issues,<sup>193</sup> as well as offering what he described as a “*talking shop*” in which misunderstandings between the police and the media, along with difficult issues, could be debated, explained and resolved.<sup>194</sup>

**3.45** This view was echoed by Paul Peachey, crime correspondent for The Independent. He described the CRA as “*useful as a conduit between the police [and press]...there are briefings that are organised perhaps to make it less unwieldy, just purely for the crime reporters.*”<sup>195</sup> He also explained that whilst the membership criteria for the CRA “*used to be fairly strict*” the criteria were now less strict, so that some freelance journalists were members making it a “*fairly broad church*”.<sup>196</sup> Michael Sullivan, a committee member of the CRA, agreed and noted that membership had been expanded to include home affairs correspondents as well as crime reporters, partly as a result of suggestions from the police that it should be more representative of the national and London regional news outlets.<sup>197</sup> Mr Sullivan also explained how CRA members were trusted with more information than less specialist journalists:<sup>198</sup>

*“...The purpose of the CRA is really a group of journalists who specialise in crime reporting. Through the group, as it were, we would hope to be trusted with information perhaps brought in on – not sensitive information, but could be told things in confidence which might put context to a story, might not necessarily be for publication, but would influence what...we’re writing in the newspaper, or indeed broadcasting through radio or television.”*

**3.46** Justin Penrose, crime correspondent at the Sunday Mirror, reiterated the relationship of trust between the CRA and the police and described the relationship between the CRA and the MPS. He suggested that the relationship had built up over the years to the point where police officers trusted the integrity of the CRA’s members. As a result, he explained that officers were able to give members some context in relation to stories and, while informing them of the facts, felt able to tell them if a story they were planning to run could affect future police operations or prevent arrests from taking place. Therefore he suggested that the relationship had worked to a mutual benefit.<sup>199</sup> Mr Stearns described CRA members as having a greater understanding of policing issues than, perhaps, might be the case for a general reporter; this could also include a greater awareness of issues such as the impact of a story on operations and how such problems could be avoided. This meant that the police could proceed with

<sup>190</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>191</sup> p4, lines 9-21, Jeff Edwards, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-14-March-2012.pdf>

<sup>192</sup> pp4-5, lines 21-2, Jeff Edwards, *ibid*

<sup>193</sup> pp6-7, lines 22-6, Jeff Edwards, *ibid*

<sup>194</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>195</sup> p60, lines 8-11, Paul Peachey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>196</sup> p60, lines 15-18, Paul Peachey, *ibid*

<sup>197</sup> pp30-31, lines 22-13, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>; p12, para 53, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>198</sup> pp29-30, lines 19-4, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>199</sup> p3, para 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Justin-Penrose.pdf>

a briefing on that basis and meant that an explanation about the basics of tactics or case history was not needed at the start of each briefing.<sup>200</sup>

**3.47** This theme was expanded on by Stephen Wright, associate news editor of the Daily Mail, who suggested that the CRA could operate in the public interest. He said that the confidential briefings by the MPS to CRA members in July 2005, at a time of unprecedented national security concerns, were “*an excellent example of teamwork between the press and the police. And the CRA was at the heart of that.*”<sup>201</sup> Mr Stearns also suggested that from a public scrutiny perspective, the CRA was valuable because members’ specialist knowledge normally allowed them to ask the right questions so as to ensure that the MPS was held to account where that was required.<sup>202</sup>

**3.48** Jacqueline Hames gave her views on the power wielded by the CRA. She said:<sup>203</sup>

*...it’s sort of a cultural thing, almost, within the police service, and certainly within a high level of investigators, you know, who are at the top of the major criminal investigation sections – you know, specialist crime directorate and anti-terrorist function and things like that – who have spent many years developing their skills and contacts as police officers and establish relationships with journalists over many, many years, sometimes even close friendships, and if a new person coming into that – it’s not an easy place for them to get established because it becomes, by human nature, a gentleman’s drinking club and that’s what it was for many years. I don’t know if that’s the case now, because I’m detached from it, but certainly for many, many years, it was known as...a very close-knit group of people who would have access to information that some police officers don’t have.”*

**3.49** Ms Hames suggested that a recommendation should be made to institute a review of the role of the CRA to ensure transparency in terms of its access to information.<sup>204</sup> Mr Edwards acknowledged that there was a need for more transparency from both sides (i.e. the police and CRA),<sup>205</sup> but he was anxious to avoid a “*draconian approach*”;<sup>206</sup> in the main, he considered that the relationship between the CRA and the police had been successful and beneficial to all parties, albeit that it required constant maintenance and adjustment.<sup>207</sup>

**3.50** Despite the acknowledged need for some additional transparency and proportionate adjustments to the relationship, Ms Hames was the only witness to express real misgivings about the CRA. Other journalists did not see any real problems with it; that applied both to those who were currently members<sup>208</sup> and to those who were not.<sup>209</sup> Mr Stearns did not think

<sup>200</sup> p22, para 56, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>201</sup> p84, lines 2-18, Stephen Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>202</sup> pp22-23, para 56, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>203</sup> pp90-91, lines 14-5, Jacqueline Hames, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-28-February-2012.pdf>

<sup>204</sup> p19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Jacqueline-Hames.pdf>

<sup>205</sup> p15, lines 9-19, Jeff Edwards, <https://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-14-March-2012.pdf>

<sup>206</sup> p13, lines 1-5, Jeff Edwards, *ibid*

<sup>207</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>208</sup> pp73-74, lines 9-6, Stephen Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>209</sup> p80, lines 7-17, Jonathan Ungoed-Thomas, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

that the CRA was a ‘clique’ but rather he considered them more to be experts in their field.<sup>210</sup> Lucy Panton, formerly the crime editor of the NoTW, described how there was a competitive rivalry amongst CRA members,<sup>211</sup> which may seem to suggest that the CRA was not an overly cosy club. Jonathan Ungeod-Thomas proffered the view that he missed nothing important by not being a member of the CRA and therefore being absent from the CRA briefings. He said:<sup>212</sup>

*“...I’ve never covered a major crime story, for instance in London, we’re talking here about the Metropolitan Police, where it’s been raised as an issue that we have missed a significant part of the story because we didn’t attend a briefing and whether we should now consider becoming a member of that association. It’s never been raised with me as an issue, and I’ve never, in terms of Sunday newspapers and the coverage that we cover, ever seen anything where we’ve significantly missed something which I later found out as a result of those briefings.”*

**3.51** Lord Condon reinforced this point of view and said of the CRA:<sup>213</sup>

*“...I wouldn’t have briefed them if I felt it was a desperately exclusive sort of small trade body that gave special access. To me, it seemed that every major crime reporter around in London was part of that, as were those involved with the electronic media, and I guess it was a handy way, once every month – or certainly, latterly, it was every few months – them having the opportunity to discuss things which were of interest to them...”*

**3.52** The CRA forms an important part of the picture of relations between the press as a whole and the MPS. The police themselves view the CRA as a useful group whose membership is not exclusive in any problematic sense. I can see the benefit to both sides of having specialist crime reporters and a forum for them to get together to share expertise and provide appropriate liaison with the police. However, it is clear to me that there is a need for both the MPS and the CRA to take positive steps to ensure that the relationship is a transparent one, and that its membership remains as wide and as open as is consistent with its function. I see no reason why a journalist who has the necessary specialist knowledge should be excluded either because of the title at which he or she works or the location of that title: it would be a matter for the journalist whether he or she wishes to attend briefings in London (which is obviously where they would be held).

**3.53** I do not consider that it is necessary for me to be dogmatic about how these aims can be achieved: rather, it is best left to be worked out by the MPS (doubtless with the advice of the newly formed DMC) and the CRA. I have no doubt that transparency of purpose, membership and meetings along with appropriate publication of membership and minutes will serve to ensure that any suggestion that the CRA is a restricted club can be dispelled. It would also be important that anyone who wishes to join the CRA knows how to go about it and fully appreciates the extent of knowledge or involvement in crime reporting required.

<sup>210</sup> p57, lines 7-11, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>211</sup> p23, lines 1-5, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>212</sup> p81, lines 14-24, Jonathan Ungeod-Thomas, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>213</sup> p22, lines 7-23, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

# CHAPTER 3: THE PRESS AND THE POLICE: THE HARM AND THE RESPONSE

## 1. Introduction

**1.1** This Chapter of the Report will examine the generic evidence called during the course of Module 2: in other words, the broad sweep of the evidence bearing on the relationship between the press and the police, and the conduct of each. The essential question is this: did that relationship become too close? But in order to answer that question it is necessary to examine a range of specific issues in which different facets of that essential question fall to be addressed and answered. At the heart of this matter are serious issues of police integrity and public perception which will need to be examined in this Chapter of the Report at length and with care.

## 2. The use and abuse of information

### Forewarning of the press

**2.1** In opening this Module of the Inquiry, Robert Jay QC identified the issue of the press attending incidents or newsworthy occasions because, it had been suggested, they have been tipped off by the police (or, at least, certain police officers) and the media (or, at least, certain journalists). This section considers and investigates this issue.

**2.2** Hugh Grant gave evidence to the Inquiry on this topic. It is representative of the testimony the Inquiry received in that it does not amount to unequivocal evidence. It is compelling nonetheless:<sup>1</sup>

*‘This came at the zenith of the sort of press storm around that arrest in Los Angeles. I was now back in London, holed up in my flat, and I’d managed to get out for the day, or the night – I can’t remember. Anyway, when I came back, this flat had been broken into. The front door had been basically just shoved off its hinges. As I say, nothing was stolen, which was weird, and the police nevertheless came around the next day to talk about it, and the day after that a detailed account of what the interior of my flat looked like appeared in one of the British tabloid papers. I can’t remember which one at the moment, but it was definitely there, and I remember thinking: who told them that? Was that the burglar or was that the police? And when I told this story to Tom Watson recently, the MP who was writing a book about this kind of thing, he nodded knowingly, saying, “Oh yes, that particular method of break-in I’ve come across with several other people who are victims of a lot of – in the crosshairs of a lot of the press attention, and it doesn’t seem to have been a singular occasion.”’*

and:<sup>2</sup>

<sup>1</sup> pp5-6, lines 6-1, Hugh Grant, <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Transcript-of-Afternoon-Hearing-21-November-2011.pdf>

<sup>2</sup> p40, lines 3-10, *ibid*

*“All I know is that for a number of years, although it did get better in recent years, if someone like me called the police for a burglary, a mugging, something in the street, something that happened to me or my girlfriend, the chances are that a photographer or reporter would turn up on your doorstep before a policeman. So whether you call that supposition or fact, I don’t know.”*

**2.3** Elizabeth Filkin, the former Parliamentary Commissioner for Standards, within her report ‘*The Ethical Issues Arising From The Relationship Between Police And Media*’, made mention of tip offs. The report records that:<sup>3</sup>

*“It is also said that the media is sometimes tipped off by police officers and staff who, as part of their job, have come into contact with celebrities or others in the public eye. Some parts of the media pay members of the public for such information and may have paid police in similar circumstances. Whereas this may be legitimate for members of the public, it is understood, across the MPS, that it is not legitimate for the police.”*

Mrs Filkin expanded on this point in her evidence to the Inquiry and said:<sup>4</sup>

*“... from what I was told, it went across that whole range. Some of it was about people allegedly ringing up in excitement to the newspaper to say that, “Celebrity X has just come into my police station”, and when that poor celebrity got outside, there were lots of cameras there because the media had delivered the cameras. But people also said to me that they thought that in some instances people were paid for information about celebrities ...”*

**2.4** It is true to say that Mrs Filkin’s report provides no specific example of celebrity tip offs, nor does it conclude that there was firm evidence to suggest that the practice takes place. That being said, however, Brian Paddick, formerly a Deputy Assistant Commissioner in the Metropolitan Police Service (MPS), suggested that the arrest of suspects for the 21 July 2005 failed bombings could not have been filmed and broadcast live “*without inappropriate collusion between the press and the police*”.<sup>5</sup> Mr Paddick went on to note, however, the real danger was that if the media were tipped off before a raid took place, then somebody may tip off the suspects leading to their escape;<sup>6</sup> it might be said, therefore, that in those circumstances it was extremely unlikely that police officers engaged in such a raid would tip off the media.

**2.5** Furthermore, former Assistant Commissioner Peter Clarke, in his evidence to the Inquiry, provided an alternative explanation as to how the media became aware of the arrest of the suspects in Mr Paddick’s example. Mr Clarke explained that the operation on 29 July 2005 went on for several hours and involved the evacuation of a block of flats, police cordons and firearms officers. He suggested that given the amount of local disruption that was caused as people were evacuated from their homes, it was highly likely that the media would have been alerted.<sup>7</sup> Indeed, Mr Clarke noted that during this period in 2005, every time the police mounted a high profile operation with armed officers present the media turned up very quickly.<sup>8</sup>

<sup>3</sup> p15, para 3.1.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>4</sup> pp109-110, lines 19-2, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>5</sup> p34, lines 9-14, Brian Paddick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212pm.pdf>

<sup>6</sup> p35, lines 10-12, Brian Paddick, *ibid*

<sup>7</sup> pp16-17, lines 23-18, Peter Clarke, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-1-March-2012.pdf>

<sup>8</sup> p17, lines 5-10, Peter Clarke, *ibid*

- 2.6** Although he could not provide a specific example of a tip off that he had received from a police officer or someone working for the police regarding a celebrity, James Murray, Associate News Editor at The Sunday Express, stated that he was unsurprised that when the police went to arrest a celebrity the photographers were already there;<sup>9</sup> he said:<sup>10</sup>

*“... I have been lucky enough to be on the receiving end of a phone call when somebody’s said they’ve got a good story about so-and-so, and you say, “Thanks very much”, and you make further enquiries to establish the accuracy and the veracity of the story, and then it may be that a short time later you ring up your contact, your source, and say, ‘Would you like to have a little drink or would you like to have a cup of coffee or would you like to have a meal by way of thank you for being helpful in that matter?’ ... it can be a police source. It can be a member of the public who’s got information about a crime. I mean, the sources can come from a multitude of different ways.”*

- 2.7** When talking about leaks to the media more generally, Chief Constable House from the Strathclyde Police also suggested that tipping off may occur. Again, he could provide no concrete examples, but said:<sup>11</sup>

*“... it’s an estimation, because I haven’t done that analysis – I would say most of them do [leaks to the media concerning celebrity cases] because that’s effectively where the money would be, so yes, it’s the newspapers, the reporters and the photographers being on the doorstep of the police office as a celebrity is released and of course that shouldn’t happen. So we backtrack as to how did that happen and the view is that is a leak from the organisation and we investigate it.”*

- 2.8** Assistant Chief Constable Kirkby of Surrey Police confirmed that one of its officers was under investigation in relation to a leak about celebrity information.<sup>12</sup> Lord Stevens, when discussing the issue of tip offs, expressed condemnation for the practice but had no recollection of it actually happening during his Commissionership.<sup>13</sup>

- 2.9** Conversely, there was a significant amount of evidence to suggest that there is no such practice or, to put it slightly lower, that the practice is certainly not prevalent within the police service; and media sources are more likely to be members of the public or information obtained in other ways.

- 2.10** Evidence on this point was provided by Sandra Laville, a journalist of some 23 years’ experience.<sup>14</sup> She said that she had never been tipped off by the police in relation to the arrest of someone of interest, nor was she personally aware of the practice happening.<sup>15</sup> When asked

<sup>9</sup> p71, lines 17-23, James Murray, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>

<sup>10</sup> p70, lines 3-14, James Murray, *ibid*

<sup>11</sup> p66, lines 6-14, Chief Constable Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>12</sup> p4, lines 16-24, Assistant Chief Constable Jerry Kirkby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>13</sup> pp110-111, lines 4-10, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>14</sup> pp1-2, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>15</sup> pp49-50, lines 16-12, Sandra Laville, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

about photographers being present as people of interest were taken away from their homes or photographs being taken as they emerged from police stations, Ms Laville said:<sup>16</sup>

*“... I’m not aware where that information is coming from, and I’m not aware of my colleagues or other people on other papers being told by police officers. I am not aware of that.”*

**2.11** Michael Sullivan, a crime reporter of some 21 years standing,<sup>17</sup> provided the Inquiry with similar evidence. He could only recall one instance where he had received information in relation to the arrest of a celebrity which allowed him and other journalists and photographers to be present when the police arrived; however, that had been a ‘tip’ from a fellow journalist and not the police.<sup>18</sup> He suggested that there was a misconception in relation to the practice of tip offs and said:<sup>19</sup>

*“... I think what you’re seeing on television and in the newspapers where there are photographs of celebrities or well-known people who have been arrested then coming out of a police station, what will happen is if the newspapers become aware through whichever means that somebody is under arrest, a group of photographers, reporters from all papers and camera crews may well ... try and go to the police station where that person is being held. They won’t necessarily be told where they’re being held by the police. In fact, in my experience it’s quite rare that they would. But you would split it up in a practical working, practical way, split up the work of one paper or one photographer goes to this police station, another goes to that police station. I mean I’ve known occasions in our own office where we’ve had teams of three, perhaps four photographers going out to different police stations trying to find out ... which one they’re being held at ... there are various means ... for ... information about the arrest of people to come out, and very often it might be released by that person or the arrested person’s own PR.”*

**2.12** Although formally informed of proposed raids and arrest operations on several occasions through the MPS press office, Mr Twomey could not recall an instance where he had been advised informally about arrests or raids by the police before they had taken place.<sup>20</sup> In relation to the attendance of journalists and photographers at the arrest of a celebrity he said *“I have never experienced that”*,<sup>21</sup> but did acknowledge that he was aware of that sort of thing occurring.<sup>22</sup>

**2.13** A number of other journalists gave similar evidence. Paul Peachey, crime correspondent of The Independent, said that on the occasions that he had been given prior warning of a raid they had been through official channels and not a secret tip off.<sup>23</sup> Jon Ungood-Thomas, chief reporter at The Sunday Times, said that on the one occasion that he had received prior notification of a raid or arrest it had been provided to him through the press office with

<sup>16</sup> p50, lines 13-20, Sandra Laville, *ibid*

<sup>17</sup> p2, para 6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Michael-Sullivan.pdf>

<sup>18</sup> pp46-47, lines 13-1, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>19</sup> pp47-48, lines 3-4, Michael Sullivan, *ibid*

<sup>20</sup> p11, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Twomey.pdf>

<sup>21</sup> p40, lines 10-15, John Twomey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-2012.pdf>

<sup>22</sup> p40, lines 21-23, John Twomey, *ibid*

<sup>23</sup> p70, lines 1-12, Paul Peachey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

the approval of senior police officers;<sup>24</sup> Mark Hughes, crime correspondent of The Daily Telegraph, also made the same point.<sup>25</sup> Jerry Lawton, chief crime correspondent for The Daily Star, said that where he had been given off-the-record prior warning about pending arrests it was usually to stop the publication of a story which could hamper the investigation.<sup>26</sup> He also reiterated that he had never been tipped off about a celebrity arrest.<sup>27</sup> Scott Hesketh, crime reporter for The Daily Star Sunday, also said that he had only received off-the-record information either relating to a proposed arrest that was confidential and not for publication or about plans to drop charges on a controversial case.<sup>28</sup>

**2.14** Sean O’Neill, crime editor of The Times, made a similar point and said that on the small number of occasions that he had been given prior notification of an arrest, it had been because he had been persistently asking questions of the police about an investigation or that he was proposing to write stories which the police had been concerned might inhibit an ongoing investigation. The police had therefore shared information with him, under strict embargo, to preserve the security of the operation.<sup>29</sup>

**2.15** In reinforcing the points made by Mr Sullivan, Justin Penrose from the Sunday Mirror offered the following view:<sup>30</sup>

*“In my experience, a lot of celebrity stories tend to be from members of the public or people that are associated with those celebrities rather than from the police. I think there’s a real perception that the police are a leaky sieve, and in my experience that’s not necessarily been the case.”*

**2.16** Tom Pettifor, crime correspondent for The Daily Mirror, confirmed that he had never been offered a story about the involvement of a famous person with the police, either in the role of a victim or as the subject of an investigation, by a police officer or a member of police staff.<sup>31</sup> Stephen Wright, associate news editor at the Daily Mail, also suggested that it would be wrong to assume that information on crime stories necessarily came from the police. He observed:<sup>32</sup>

*“... I use a wide variety of independent sources. Crime reporting is like piecing together a jigsaw. In my work I have had professional dealings with the Home Office, prison and probation personnel, victims of crime, campaign groups, police staff associations, politicians, lawyers and freelance journalists. Furthermore, many of my most important stories came after I followed a particular case for a number of years and stayed in touch with the various people involved.”*

<sup>24</sup> p7, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jonathan-Ungoed-Thomas.pdf>

<sup>25</sup> p14, para 31, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Mark-Hughes-The-Telegraph-taken-as-read.pdf>

<sup>26</sup> p8, para 28, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeremy-Lawton.pdf>

<sup>27</sup> p59, lines 5-6, Jeremy Lawton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-19-March-2012.pdf>

<sup>28</sup> p8, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Scott-Hesketh-taken-as-read.pdf>

<sup>29</sup> pp7-8, para 40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-ONeill.pdf>

<sup>30</sup> pp95-96, lines 21-1, Justin Penrose, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>31</sup> p117, lines 6-16, Thomas Pettifor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>32</sup> p5, para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Stephen-Wright.pdf>

- 2.17** Ed Stearns, chief press officer at the MPS, also supported this viewpoint and in similar terms. He said that formal notification of a proposed raid or arrest, as described by Mr Twomey for example, should not be confused with the media just “turning up” on operations or at arrests without press office involvement. He suggested that this could take place for a variety of reasons: neighbours had called the media; there was traffic disruption leading to media inquiries; or because photographers were already at or aware of the location of a celebrity’s home and were regularly keeping a watchful eye out for activity.<sup>33</sup> Mr Stearns reported that the MPS had also, on occasions, been aware of tip offs being given by lawyers or publicists of the individual involved, including an example where the identity of a celebrity who was the victim of an assault was revealed to the media by personal contacts and not the police.<sup>34</sup>
- 2.18** In summarising the evidence that the Inquiry has received on this issue, much has been of a general nature from which legitimate inferences may be drawn, but there is no direct evidence to suggest that the police have given unauthorised tip offs to the media in respect of celebrity arrests or other raids. However, as Mr Stearns conceded, although he had no direct evidence that media presence at a raid or arrest had occurred as a result of a tip off within the police, through a process of elimination it was sometimes difficult to identify an alternative source for the information.<sup>35</sup> That being said, there is an obvious danger in making assumptions as to the provenance of sources where the media attend police raids or the arrest of a celebrity; and the press, in particular, were not slow to suggest that there could be any number of alternative avenues whereby the information had been disseminated amongst the press. I deal with the issue of leaks of information more generally later in this section, but it is sufficient at this stage to make the point that the more robust the systems and processes in place to mitigate the risks of leaks within an organisation the better.
- 2.19** It is, however, sensible to go one stage further. It should be a matter of serious professional concern to the police that information about their activities which should be kept confidential is, indeed, confidential. The presence of the press at a high profile arrest may, indeed, provide positive coverage although, unless very carefully handled, it may also give rise to difficult issues of fairness within the criminal justice process. Obviously, if, for good reason, a decision has been taken to brief the press about a forthcoming arrest and to allow representative attendance, the risks (and the responsibilities to the target of an arrest) should have been calibrated and taken into account. If there is no such authority, however, and there is a legitimate inference that someone (whether police officer or civilian employee of the police) has leaked the information to the press generally or a journalist specifically, I do not take the view that this is ‘just one of those things’.
- 2.20** The professionalism required of police officers must be sufficiently robust to instil the mindset that such leaks about forthcoming arrests or the involvement of the famous in the criminal justice system are not in the public interest and that the provision of appropriate briefing as to police activity should only be handled through open and transparent procedures which have taken account of all relevant circumstances: they should not be by the back door. This is not the same as ‘whistle blowing’ when I recognise that very different considerations apply.

## Involvement of the press in operations

- 2.21** Colloquially known as “Ride Alongs” or “Tag Alongs”, this is the phenomenon whereby the media are given a specific invitation to accompany the police during a raid or other operation.

<sup>33</sup> pp9-10, para 25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>34</sup> pp9-10, para 25, *ibid*

<sup>35</sup> pp50-51, lines 24-5, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

Those members of the media invited to accompany the police are given special access to, and advance notice of, operations which ordinarily would not be publicly known about beforehand.

**2.22** The rationale behind the involvement of the press in operations is to help improve public understanding of the work of the police through seeing them at work and the challenges they face, thereby dispelling any misconceived perceptions. This process (which it is said has been successful) is referred to by the Directorate of Media and Communication (DMC) as “Taking Media on Operations”.<sup>36</sup>

**2.23** Taking the media on operations is governed by a formal MPS policy<sup>37</sup> and, more generally, by the ACPO ‘Communication Advisory Group 2010 Guidance’.<sup>38</sup> The MPS policy states that taking the media on operations should be considered where it would:<sup>39</sup>

- (a) be of significant public interest;
- (b) help to prevent disorder or crime (for example, by acting as a deterrent to criminals or that informing the public of police action could lead to greater public confidence and co-operation); and
- (c) improve the media/public understanding of police practices and procedures.

The policy is clear that the media must not be taken on any operations involving juveniles, and advises that officers should consider whether it is likely that a media presence could interfere with an individual’s right to their private and family life, their home and correspondence, or with an individual’s right to a fair trial. Both of the aforementioned rights are obviously protected by the European Convention on Human Rights (ECHR). In addition, the policy stipulates that where the media are invited to attend police operations, their involvement must be strictly controlled.<sup>40</sup>

**2.24** The ACPO guidance is broadly similar and advises that there is no law to prevent police forces taking the media on operations, although this is subject to the salutary reminder to forces that there are laws which may affect media reporting, for instance (and, in particular) those designed to ensure a fair trial. The guidance suggests that forces should consider whether:<sup>41</sup>

- (a) the project addresses matters which are in the public interest;
- (b) it is likely to inform or reassure the public;
- (c) it will help prevent or detect crime.

The guidance also identifies risks for consideration, including the possible interference with an individual’s right to a fair trial or privacy, the distress or harassment which may be caused to those being investigated or to innocent members of the public, and the potential to jeopardise future police operations.<sup>42</sup>

<sup>36</sup> p9, para 24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>37</sup> MPS Special Notice 6/01, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-10-Special-Notice-6-01.pdf>

<sup>38</sup> pp8-9, paras 4.27-4.34, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SHO1.pdf>

<sup>39</sup> MPS Special Notice 6/01, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-10-Special-Notice-6-01.pdf>

<sup>40</sup> MPS Special Notice 6/01, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-10-Special-Notice-6-01.pdf>

<sup>41</sup> p8, para 4.28, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SHO1.pdf>

<sup>42</sup> p8, para 4.29, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SHO1.pdf>

- 2.25** A number of witnesses gave evidence to the Inquiry on this issue. Lord Condon suggested that there were arguments for and against the practice. On balance, he felt that it was *“in the public interest if done correctly, with very clear parameters”*.<sup>43</sup> He cited Operation Bumblebee as an example, in which the media were invited along to observe and report on arrests for the purpose of publication, of reassuring the public, and to act as a warning to potential burglars and to be seen to be doing so in such numbers as *“transferred fear from the public to burglars”*.<sup>44</sup> Lord Stevens had encouraged officers to take the media on police operations, where appropriate, as he believed that it would benefit the police, the media and, most importantly in his view, the public. He recognised that there were risks involved but felt that these should not prevent the police from becoming more open and flexible with the media.<sup>45</sup>
- 2.26** Mr O’Neill told the Inquiry that occasionally police forces formally invited the media to go on early morning raids during which suspects were arrested; he provided the example in London where this was often done with the Commissioner or Mayor as part of an anti-burglary initiative.<sup>46</sup> Mr Sullivan provided similar evidence; he said that once every year or two he was invited on mass raids with other journalists to promote specific campaigns on issues such as burglary, domestic violence and uninsured or stolen cars. He suggested that because of the increasing political interest in policing, invitations also now came from the Mayor’s Office.<sup>47</sup>
- 2.27** Lucy Panton, formerly the crime editor at the NoTW, spoke in favour of the practice. She believed that it was in the public interest to allow journalists to shadow the police during specific operations, as it gave the public an insight into what was normally a *“closed off and secretive world”* and showed the good work and sometimes complex nature of what the police had to deal with on a day-to-day basis.<sup>48</sup> Ms Panton could recall seven occasions when she had accompanied the police on raids and operations, two of which occurred before she worked at the NoTW and two of which appeared to have been as the direct result of NoTW investigations. In relation to her time at the People and the NoTW, she argued that:<sup>49</sup>

*“As a Sunday paper, it is incredibly hard to find different and exclusive lines on breaking stories such as arrests which generally happen on weekdays. An opportunity to witness first hand an event like this was beneficial to our readers and in the public interest.”*

- 2.28** In respect of the MPS, Dick Fedorcio suggested that there was *“almost a rota”*<sup>50</sup> in place for inviting the media on operations in London and that a journalist would normally be invited, from the Press Association for example, to act as a pool who would then *“pool everything back in for everyone else to have.”*<sup>51</sup>

<sup>43</sup> p20, lines 4-8, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>44</sup> pp17-18, lines 8-21, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>45</sup> p15, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>46</sup> p8, para 41, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-ONeill.pdf>

<sup>47</sup> p11, para 57, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Michael-Sullivan.pdf>

<sup>48</sup> p17, para 25, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lucy-Panton.pdf>

<sup>49</sup> p16, para 24iv, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lucy-Panton.pdf>

<sup>50</sup> p63, lines 20-21, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>51</sup> pp63-64, lines 25-4, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

**2.29** There were mixed views as to the utility or acceptability of arrangements whereby journalists were invited to accompany the police on operations. Mr Penrose explained that he had, on a small number of occasions, shadowed the police on operations and recalled two specific examples: first, where he had accompanied the police in an armed response vehicle, and secondly relating to a stop-and search operation targeted at knife crime.<sup>52</sup> He provided his view on whether the practice was a good thing:<sup>53</sup>

*“I think it’s a good thing because ... I think what’s being lost so far over this period of months is the good things that the Metropolitan Police and other police forces do. I mean, the idea of going out with the armed response vehicle was to sort of give some kind of idea as to what armed officers do on a daily basis and to give the public a general overview of what they do ...”*

**2.30** Ms Laville said that she had in the past shadowed the police on operations but had not done so for a long time because she felt that she did not get much out of the process.<sup>54</sup> She explained:<sup>55</sup>

*“... it’s all about the official lines of the Metropolitan Police showing themselves, whatever they want to show, whether it’s being tough post the riots or being tough on drug gangs or being tough, currently, on street gangs. I’m not sure you’d get much out of it beyond a picture of someone being arrested, a door being broken down ... It is of interest, but it’s only of interest if I flesh it out with other information. You know, there’s currently at the moment going on an anti-gang operation in the Metropolitan Police. We don’t seem to be able to get access to that at the moment. All we seem to get at the moment is being bombarded with facts and figures and information, which is pretty meaningless without context and colour and texture and more of an insight, and I don’t think you really get that from just going along, riding along like that.”*

**2.31** Chief Constable Vaughan of the South Wales police, saw value in the media joining the police on operations but felt that it must be proportionate.<sup>56</sup> Mr Vaughan recalled the experience of his force engaging with some programmes which, in retrospect, he regretted. He provided the specific example of a programme called “Traffic Cops”, and said:<sup>57</sup>

*“... I think it’s a hugely popular show, but it keeps being reshowed on different satellite channels, and perhaps some of the behaviour that you see on that isn’t the behaviour that you would want reflected into the wider community ... it’s a number of years since the last time that the show came to South Wales Police. Some of those instances aren’t the organisation that I want to reflect as being representative of South Wales Police.”*

**2.32** Mr Vaughan conceded that, perversely, the programme had provided the force with an opportunity to observe the unsatisfactory way in which some of his staff had behaved: it had

<sup>52</sup> p4, para 12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Justin-Penrose.pdf>

<sup>53</sup> pp83-84, lines 23-10, Justin Penrose, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>54</sup> p47, lines 3-7, Sandra Laville, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>55</sup> pp47-48, lines 8-3, Sandra Laville, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>56</sup> p52, lines 19-24, Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>57</sup> p53, lines 1-10, Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

then allowed them to tackle that issue.<sup>58</sup> Given his experiences, Mr Vaughan suggested that inviting journalists to accompany the police on operations was a double-edged sword and had shaped the way in which the force engaged with the media.<sup>59</sup> He said:<sup>60</sup>

*“Very important to us is what ... can we get out of it? What are the media trying to get out of it? I think it’s very important that we’re held to account for our activities and it’s important that the public see that policing isn’t just about knocking down people’s doors, discovering cannabis plants and dealing with violent people. There’s a whole host of roles that my officers and staff deal with, so for us now, if we do have any requests, it tends to be to look at the other functions, the other individuals that help the police force – help us ... to do the job on the front line.”*

**2.33** Whilst there may be a clear public interest in informing the general population that the police are taking appropriately robust action in relation to specific crime types, it is at the same time self evidently vital that the identity of the subject of the investigation is protected – certainly at the point of arrest. This point was acknowledged by Commissioner Hogan-Howe, who was of the view that taking the media on police operations had a place in explaining to the public, through the press, what was happening in their local communities, provided that there was no identification of the suspect and that there was no risk to the judicial process.<sup>61</sup> He expanded on this point and said:<sup>62</sup>

*“... usually great care is taken to make sure that, first of all, the press who are at the event are chaperoned. They have no right of entry into the properties so they should not go into the properties. Number two is that the individuals who are the suspects and are the subject of arrest when you get there, or were being sought when you arrived, are not identified, and there should be nothing, the written nor the visual accounts, that allow that to happen. It is really to get the story that the police are taking action in an area about a particular type of crime, be it drugs or whatever, not that this individual was a subject of the investigation.”*

**2.34** Mark Thomson, a partner at the media law firm Atkins Thomson, provided an example of the serious breaches of the Article 8 rights of the individual who was arrested that could arise as a consequence of the media accompanying the police on a raid. He told the Inquiry about one of his clients who was arrested after the police arrived at his family home unannounced. The police had allowed a film crew to accompany them on the raid and parts of the arrest were filmed. It subsequently transpired that the police had made a mistake and Mr Thomson’s client was completely innocent of any crime, and he was therefore released on the same day with no charges being brought. Unfortunately the BBC broadcast the arrest footage on national television implying that Mr Thomson’s client was guilty. A photograph of the client was also published in a widely circulated TV programme listing magazine. Mr Thomson’s client took legal action against the BBC claiming damages and an injunction for libel and invasion of privacy. The BBC later agreed to apologise to Mr Thomson’s client and make a statement in open court, paying £50,000 in damages and costs.<sup>63</sup>

<sup>58</sup> p53, lines 13-18, Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>59</sup> pp53-54, lines 24-6, *ibid*

<sup>60</sup> p54, lines 7-18, *ibid*

<sup>61</sup> p31, lines 2-18, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>62</sup> p32, lines 3-15, *ibid*

<sup>63</sup> pp2-3, paras 9-12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Mark-Thomson-to-be-read.pdf>

**2.35** In an attempt to mitigate the risk of such an occurrence taking place, the ACPO and MPS guidance on taking the media on police operations includes as an annex a sample ‘contract’.<sup>64</sup> This ‘contract’ has been developed in response to “*lengthy discussions with broadcasters*”.<sup>65</sup> It serves the purpose of reminding officers of their duty to respect the rights of individuals under the ECHR. In particular, officers are:<sup>66</sup>

*“... reminded that no material, photographs or film must be published or broadcast that would interfere with an individual’s rights, particularly the right to a fair trial.”*

The ‘contract’ also details the specific responsibilities of; the media representative(s); the individual force; and, in relation to the entering of private premises, the responsibility of the adult householder or lawful keyholder.

**2.36** In relation to the appropriateness of media participation in police operations and the potential impact on the rights of a private individual, Andy Trotter, Chief Constable of British Transport Police and Chair of the ACPO Communications Advisory Group (CAG), told the Inquiry that:<sup>67</sup>

*“... a balance [should] be struck between the rights of individuals and the genuine public interest in showing that we are dealing rigorously with certain crime types ... also to encourage the public to come forward if they have further information and to discourage people who may be involved in crime.”*

Importantly in my view, however, he believed that individuals who have been arrested should not be identified by any police force, nor the media, although he recognised that others may hold a different perspective. Commissioner Hogan-Howe equally also emphasised this point and said that this practice was “... just intolerable for two reasons: one, it’s improper, legally – well, I’m not sure it’s illegal but it’s improper. But more importantly, it often is wrong.”<sup>68</sup> Mr Trotter said that this situation often led to what he described as “[the media] play a guessing game with us to try and work out who’s been arrested”.<sup>69</sup>

**2.37** In a broader sense, the primary issue of concern is precisely this; that facilitated media involvement in any police operation may lead to the identification of potential suspects. Both Commissioner Hogan-Howe and Mr Trotter stressed during their evidence the potential dangers of this taking place. They both referred to the case of Christopher Jefferies, which “*already points out the frailties of that particular position*” in relation to the standard description of suspected individuals that are released in formal police statements.<sup>70</sup> Mr Trotter also recognised the problems that have existed in a number of regional forces across the UK where suspects have been identified and have risked facing “*both physical campaigns in the street or on Facebook and things such as that.*”<sup>71</sup>

**2.38** Commissioner Hogan-Howe used as an illustrative example the case of Rhys Jones, a murder inquiry which attracted a huge amount of press interest, particularly at a local level. The

<sup>64</sup> pp32-33, Metropolitan Police Service, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-7-ACPO-Communication-Advisory-Group-Guidance-20101.pdf>

<sup>65</sup> p8, Metropolitan Police Service, *ibid*

<sup>66</sup> p32, Metropolitan Police Service, *ibid*

<sup>67</sup> p51, lines 15-21, Chief Constable Andrew Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>68</sup> p26, lines 10-13, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>69</sup> p46, lines 24-25, Chief Constable Andrew Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>70</sup> p47, lines 20-21, *ibid*

<sup>71</sup> p47, lines 24-25, *ibid*

suspected offender had been “*named on the wall ... in the area in which Reece Jones [sic] was murdered.*” The information therefore became public knowledge. Despite the fact that “*... everybody in the area thought they knew they did it [the person named], and we thought we did too ...*”<sup>72</sup>, Commissioner Hogan-Howe stressed that:<sup>73</sup>

*“... there’s no way we confirmed that to the press, nor should we ever have done that. We worked our way methodically, over a year, to prove the case against him and the people who had helped him after the event.”*

He offered the general view that there should be “*... no background briefing on suspects. There should be no comment about suspects ...*”<sup>74</sup> He made the point that on occasions a force may announce the arrest of a suspect in very general terms but considered that there was no benefit, nor any reason to say, for example, “*And this man, this woman, are people who we are interested in and we are now pursuing a case against them ...*”<sup>75</sup> His one exception to this rule was in cases where a suspect might be considered a risk to the general public and were actively evading police authorities. However, Commissioner Hogan-Howe recognised that this was still “*a very hard test, because there is a risk therefore to the court process later*”.<sup>76</sup> He explained that:<sup>77</sup>

*“If you’ve named someone and shared a photograph, it can limit some of the evidential lines that may be available later. So it’s always a case that – that type of revelation is always made after a careful discussion, particularly with CPS and our own lawyers, to make sure that we can substantiate the dangerous and, number two, is there is [sic] reason to alert the public at large so we can locate them before they hurt someone else? That would be the only time I could see [it happening].”*

**2.39** I would endorse the general views of Commissioner Hogan-Howe and Mr Trotter on this issue. Police forces must weigh very carefully the public interest considerations of taking the media on police operations against the Article 8 and Article 6 rights of the individuals who are the subject of such an operation. Forces must also have directly in mind any potential consequential impact on the victims in such cases. More generally, I think that the current guidance in this area needs to be strengthened. For example, I think that it should be made abundantly clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press nor the public.

## Off-the-record briefing

**2.40** When opening this module, Mr Jay identified the “*giving and receiving of off-the-record briefings*” as one of the potential manifestations of an overly close relationship between the police and the press.<sup>78</sup> The principal risks are two-fold, namely the obvious lack of transparency of such interaction, and the potential expectation of future favours from both sides.<sup>79</sup>

<sup>72</sup> p26, lines 14-25, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>73</sup> p26, lines 21-25, *ibid*

<sup>74</sup> p27, lines 12-15, *ibid*

<sup>75</sup> p27, lines 17-22, *ibid*

<sup>76</sup> p28, lines 9-10, *ibid*

<sup>77</sup> p28, lines 10-19, *ibid*

<sup>78</sup> p14, lines 13-22, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf>

<sup>79</sup> pp14-15, lines 18-1, *ibid*

## Definition

- 2.41** One of the potential issues with ‘off-the-record’ briefings or conversations is the lack of clarity around the meaning of this term. It has been apparent from the evidence that the term is often misunderstood and has been used interchangeably with other terms such as non-attributable when police officers or police staff and journalists establish the basis for a conversation. HMIC, within their report ‘Without fear or favour – a review of police relationships’, found that *“there is inconsistency across the Police Service in the use of ‘off-the-record briefings’.”*<sup>80</sup> Sir Denis O’Connor, former Chief Inspector of the Constabulary, elaborated on this point and said: *“... my understanding is that across the country, some people have a form in which they will do non-reportable briefings, some are much less formalised, some will do it more frequently than others. Some are less concerned about exclusiveness in these things in terms of how many people they speak to ...”*<sup>81</sup> Her Majesty’s Inspector of the Constabulary, Roger Baker, in describing this problem said: *“... clarity of definition, I think, is important for the future of what “off the record” means and what it doesn’t mean.”*<sup>82</sup>
- 2.42** In his evidence, Dick Fedorcio, former Director of Public Affairs for the MPS, reinforced HMIC’s findings in this area. He made the point that he had *“always encouraged the provision of as much information “on the record” as possible in the interests of openness and transparency but also because of the dangers that can arise through differing interpretations among police officers, press officers and journalists as to the use and meaning of ‘off the record’.”*<sup>83</sup> He expanded on the confusion surrounding the use of this terminology, and said:<sup>84</sup>

*“I think it’s a serious problem. It’s never, in my view, been solved in my time in dealing with it with the Metropolitan Police and the journalists that we work with. It became a bit of a standing joke at meetings with the Crime Reporters Association that every time someone said, “Can we go off the record?” there would then have to be a debate as to what we meant, so that we would reach a common understanding on that day on that issue at that time as to what we meant. Did we mean that we were going to tell you something that you could not use at all, or were we going to tell you something that you could use but not attribute to us?”*

- 2.43** It is clearly that this issue that is not limited to the larger metropolitan force areas. Craig Mackey, former Chief Constable of the Cumbria Constabulary and now Deputy Commissioner of the MPS, for example, in respect of Cumbria Constabulary’s interaction with the press, stated that *“there are no off the record discussions except for background information ahead of complex court cases.”*<sup>85</sup> However, Anne Pickles, the Associate Editor for Cumbrian Newspapers, said that on occasions off-the-record briefings and communications do occur.<sup>86</sup> Gillian Shearer, head of marketing and communications for Cumbria Constabulary, explained

<sup>80</sup> p29, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>81</sup> p15, lines 6-14, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>82</sup> p45, lines 12-14, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>83</sup> p10, para 40, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>84</sup> p78, lines 11-22, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>85</sup> pp18-19, para 51, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Deputy-Commissioner-Craig-Mackey2.pdf>

<sup>86</sup> pp22-23, lines 8-12, Anne Pickles, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

that this apparent contradiction was due to a “... *blur around the terminology*.”<sup>87</sup> Mr Mackey agreed, and said:<sup>88</sup>

*“I think it comes to this heart of what is “off the record”. It’s different with different parts of the media, and different media outlets will give you a different interpretation of what that means. I prefer and always work with ‘attributable’ and ‘non-attributable’. Everything we said to the media is absolutely attributable to an individual who said it ...”*

- 2.44** Similarly, from the perspective of a journalist, Nick Davies (a freelance who has worked under a part-time contract for Guardian News and Media Limited since 1989) said “... *there’s confusion about it. American journalists and a few British use that expression to describe material which is being provided on the condition that it isn’t used at all, but I use it in the way that most British reporters use it, which is to say that the information is off the record if it’s been given to me for use but not to be attributed to the source ...*”<sup>89</sup> Paul Peachey, crime correspondent for The Independent, agreed:<sup>90</sup>

*“It’s a term that needs clarifying. I work for an American organisation and they have very different views about what “off the record” means. “Off the record” can mean that that detail cannot be used for writing, so ... shall we say “off the record” means it’s just for your knowledge and you don’t use it for an article or it’s often confused with background, which can be used in an article. So most situations it has to be defined, so often, you know, it can mean purely for my own background use, it could mean for something to be printed unattributably ... I have a definition in my mind, but I think it’s a term that is often confused by other people, particularly not in the profession.”*

- 2.45** A number of possible definitions or categories of ‘off-the-record’ contact emerged during the course of this part of the Inquiry. The first was that provided by Mr Davies: the information is provided for use but not to be attributed to the source. Sandra Laville, crime correspondent for The Guardian, in this context suggested that “*sometimes the police might give off the record guidance on something in order to make sure that a mistake is not made in the reporting of a subject, or to correct inaccuracies.*”<sup>91</sup> Mark Hughes, crime correspondent for the Daily Telegraph, provided similar evidence, citing in particular the considerable amount of misinformation that was corrected by the police through off-the-record briefings in the Sian O’Callaghan murder investigation.<sup>92</sup>
- 2.46** A second category of off-the-record briefings were described by Mrs Filkin, who provided the example of a formal briefing where it has been agreed by both sides that it will be off-the-record and that “... *the journalists won’t print anything at the moment because it might*

<sup>87</sup> p40, lines 15-19, Gillian Shearer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>88</sup> p39, lines 12-18, Deputy Commissioner Craig Mackey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>89</sup> p25, lines 3-11, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-28-February-2012.pdf>

<sup>90</sup> pp71-72, lines 23-14, Paul Peachey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>91</sup> pp12-13, para 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>92</sup> p15, para 32, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Mark-Hughes-The-Telegraph-taken-as-read.pdf>

*do harm or jeopardise some investigation.*<sup>93</sup> The understanding in this scenario is that the police intelligence can be published at some point in the future. Jeff Edwards, President of the Crime Reporters Association, provided the example of a terrorist incident or a major crime inquiry where *“accidental reporting might seriously damage a criminal investigation.”*<sup>94</sup>

**2.47** The third category of off-the-record briefing relates to material that cannot ever be published, but is provided to give the press important background information to an event or story. Again, this situation might often arise in the context of a counter-terrorism investigation. Ms Laville provided the example of the *“regular off the record briefings from the Met Police at the height of the terrorist threat in London 2005.”*<sup>95</sup> In respect of the briefings she said that *“most of these were unreportable, but they did provide background on what the police were facing.”*<sup>96</sup>

**2.48** Given the variation in terminology and the associated definitions used, the current ‘Interim ACPO Guidance for Relationships with the Media’ seeks to define the generally used police and media speaking terms as follows:<sup>97</sup>

*“On the record – means that a journalist can report, quote and name their source. Where possible, all conversations should be on this basis and it should always be assumed that a conversation is on the record unless expressly agreed otherwise in advance.*

*Background/guidance – means that information provided can be reported without it being attributed to a source, whether named or not. This is sometimes used to provide further context around an on the record statement.*

*Off the record – means that use of information provided is restricted altogether. Occasionally there may be a legitimate reason for an off the record conversation or briefing to take place, such as where news reporting may have an impact on a current investigation or as a means of preventing inaccuracies or misunderstanding.”*

**2.49** It is very difficult to draw any firm conclusions as to how widespread or common each of these forms of contact is in practice; it is also the case that on occasions there is some overlap between them. The evidence of the journalists, for example varied considerably. Jon Ungeod-Thomas, chief reporter at The Sunday Times, said that *“I have been offered off-the-record briefings probably fewer than 10 times in the last five years, all of which have involved a face-to-face meeting.”*<sup>98</sup> Michael Sullivan, crime editor of The Sun, on the other hand, suggested that he had *“attended a substantial number of ‘off record’ briefings over the years, though they are much less frequent nowadays.”*<sup>99</sup> Similarly, Thomas Pettifor, crime correspondent at the Daily Mirror, in describing the frequency of his off-the-record conversations with the MPS said:<sup>100</sup>

<sup>93</sup> p1, lines 18-23, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>94</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeff-Edwards.pdf>

<sup>95</sup> pp12-13, para 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>96</sup> pp12-13, para 27, *ibid*

<sup>97</sup> p5, para 3.5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Submission-from-ACPO-Interim-Guidance-for-relationships-with-the-Media.pdf>

<sup>98</sup> p8, para 34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jonathan-Ungeod-Thomas.pdf>

<sup>99</sup> p12, para 60, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Michael-Sullivan.pdf>

<sup>100</sup> p115, lines 10-17, Thomas Pettifor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

*“... ‘off the record’ is a slightly vague term that I don’t really like using, but it would be a non-attributable conversation, just to give me context on the story. So it could be a couple of – three times a week, maybe, that I would have non-attributable conversations with officers.”*

- 2.50** Given the apparently nebulous nature of the term ‘off-the-record’, it is not unsurprising that there have been problems arising through its application. Mrs Filkin summarised the issue in her evidence to the Inquiry:<sup>101</sup>

*“... In relation to on or off the record, my key recommendation to people would be: talk to the journalist and find out what this actually means before you start. To exercise some judgment about it. Many journalists are absolutely proper about it, tell you exactly what they will do or won’t do with an off-the-record briefing, and if you explain to them that you can give them information but they can’t use it at the moment, will respect that. There’s no issue. Some won’t. Some are untrustworthy, and like any other walk of life, one has to weigh up people very carefully in terms of what they’re saying ...”*

### Advantages

- 2.51** Despite the confusion that exists in relation to the terminology (with the associated uncertainty in relation to the potential downstream use of the information being provided), many of the witnesses argued that the provision of ‘off-the-record’ briefings served a number of valuable and important purposes.
- 2.52** Two senior and experienced journalists described the provision of information through ‘off-the-record’ briefing as vital. Stephen Wright, Associate News Editor at the Daily Mail, suggested that *“there must be scope for off-the-record contact with the police.”*<sup>102</sup> He said that it was a *“vital way in which people within the force can voice their concerns and expose corruption, malpractice and abuses of power.”*<sup>103</sup> John Twomey, crime reporter for the Daily Express and Chairman of the CRA, said that:<sup>104</sup>

*“off the record conversations are a vital way the media gets information. A good deal of what is disclosed during non-attributable briefings could and, perhaps, should be given on-the-record. But there are often compelling reasons why briefings are given off-the-record.”*

- 2.53** Mr Davies argued that speaking off-the-record can promote openness and transparency. He explained:<sup>105</sup>

*“... I think the immediate fear that police officers have when they sit down with a journalist is that they’re going to get misquoted, and if you can say, “This is unattributable, i.e. you are not going to get quoted at all”, then that fear is removed. That I would say is the primary reason why it happens. It really isn’t sinister. It’s mainstream, normal, unsurprising, over and over again.”*

<sup>101</sup> pp29-30, lines 15-1, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>102</sup> p6, para 20, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Stephen-Wright.pdf>

<sup>103</sup> p6, para 20, *ibid*

<sup>104</sup> p13, para 56, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Twomey.pdf>

<sup>105</sup> p26, lines 13-24, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-28-February-2012.pdf>

Mr Davies went on to say that it would be a “... *mistake to say off the record is the source of the problem. Off the record isn’t sinister. Off the record helps people to tell the truth*”.<sup>106</sup> He also warned against any over reaction to recent events which understandably have called into question the very notion of ‘off-the-record’ contact. As to this, he said:<sup>107</sup>

*“... what’s wrong is to try and close down all off-the-record briefings or all unauthorised access. It’s like saying, “Because I got food poisoning last night, I’ve never going to eat again.” It’s too destructive ...”*

**2.54** A number of other journalists supported this viewpoint. Jerry Lawton, Chief Crime Correspondent of the Daily Star, said that “*all good [police] forces offer off-the-record briefings. In my opinion they are an essential tool for accurate crime reporting.*”<sup>108</sup> By way of illustration he provided the example of the ‘off-the-record’ briefing delivered by the police during the Raoul Moat investigation:<sup>109</sup>

*“In the Raoul Moat case police took the world’s media into their trust after recovering a taped threat from the still-at-large gunman that he would execute a member of the public for every perceived untruth about his family he read/heard in the media. At an off-the-record briefing officers in the case explained the situation and asked newspapers/TV and radio to avoid publishing/broadcasting information about Moat’s family or any details about the threat itself. On my part a double page spread we were planning to run the next day was pulled – without protest or question – the moment I told the news desk. Everyone adhered to the news blackout. Moat was caught without further bloodshed.”*

**2.55** A number of journalists also commented on the general utility of ‘off-the-record’ briefings. Mr Ungoed-Thomas explained:<sup>110</sup>

*“The value of such [off-the-record] briefings is that it allows officers to speak freely and provide useful intelligence, without being nervous that anything they say might be published. The information helps provide useful background and credibility to an article, and helps the reporter understand the intelligence on which police officers may base their assertions.”*

**2.56** Sean O’Neill, crime editor of The Times, suggested that he had received formal ‘off-the-record’ briefings because “*the officer giving them has been in a sensitive role (for example counter-terrorism, organised crime) and reluctant to be named/quoted/identified for personal security reasons.*”<sup>111</sup> Mr Sullivan also provided an illustration of the type of material that might be provided through an ‘off-the-record’ briefing:<sup>112</sup>

*“... if there is a murder and police are looking for a specific suspect known to the victim, then it is useful to know that while reporting on the crime to avoid causing unnecessary fear to readers by giving them a misleading impression the murder was*

<sup>106</sup> p42, lines 9-12, *ibid*

<sup>107</sup> pp43-44, lines 22-1, *ibid*

<sup>108</sup> p8, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jeremy-Lawton.pdf>

<sup>109</sup> p7, para 23, *ibid*

<sup>110</sup> p8, para 35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jonathan-Ungoed-Thomas.pdf>

<sup>111</sup> p8, para 42, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-O'Neill.pdf>

<sup>112</sup> p7, para 37, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Michael-Sullivan.pdf>

*a random act which has put them at risk. Information like that might be given off the record and be accompanied with requests not to publish any names or pictures of anyone of interest to the police whom we have obtained information about from neighbours, friends or relatives.”*

- 2.57** Mr Peachey similarly recognised the benefits of ‘off-the-record’ briefing for the purposes of providing context and to help to prevent inaccurate reporting.<sup>113</sup> He also suggested that ‘off-the-record’ communication was:<sup>114</sup>

*“... part of the relationship of trust that you have to build. I mean, that’s part of the job that I do, is to try to build trust between myself and officers in the organisations. To enable a free flow of information in the knowledge that some things will be told to you not for use, but so that they could effectively allow you to write your story.”*

Mr Peachey did, however, also acknowledge that there were risks associated with the practice. He said:<sup>115</sup>

*“... if something’s been given off the record, then it’s not attributed to anybody particular, so they are perhaps handing over that information without the responsibility that it entails, so, you know, so such information would always have to be checked perhaps more thoroughly than information that would be given by a named source and in the name of a particular organisation.”*

- 2.58** Dr Rob Mawby, from the Department of Criminology at the University of Leicester, suggested that from a policing perspective, ‘off-the-record’ briefings had been identified as being important as long ago as the 1930s, “when Lord Trenchard (Met. Commissioner from 1931 to 1935) took to explaining to Fleet Street editors the reasons for his reforms before making them public.”<sup>116</sup> He made the point that subsequently, “off-the-record conversations and briefings have become part of the currency of police-media relations.”<sup>117</sup>
- 2.59** Peter Clarke, formerly an Assistant Commissioner in the MPS, provided an illustrative example of the potential benefits to the police, and more importantly to the public, of ‘off-the-record’ briefing. He told the Inquiry that:<sup>118</sup>

*“in the period before the attacks on London in July 2005, and before any of the major terrorist trials reached the courts, I felt that there was an overwhelming public interest in the media being made aware of the true nature of the terrorist threat to the UK. During off the record briefings, I informed reporters what was in the pipeline in terms of trials, without prejudicing either current intelligence or the trial process ... The objective was to offer responsible reporters an alternative view to the criticism that was coming from some quarters that the police were unfairly targeting the Muslim communities, using oppressive methods and arresting large numbers of innocent people who were then being released without charge ... The objective was not to enhance the reputation of the police, but to try to maintain the confidence of the Muslim communities through what was a deeply unsettling time for them.”*

<sup>113</sup> p73, lines 15-19, Paul Peachey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>114</sup> p73, lines 8-1, Paul Peachey, *ibid*

<sup>115</sup> p72, lines 17-24, Paul Peachey, *ibid*

<sup>116</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Dr-Rob-Mawby.pdf>

<sup>117</sup> p8, *ibid*

<sup>118</sup> p12, paras 23-24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf>

**2.60** Similarly, Catherine Llewellyn, the assistant director of corporate communications for South Wales Police, considered ‘off-the-record’ communications to be a valuable tool.<sup>119</sup> She explained that ‘off-the-record’ briefings and communications happened “quite regularly”<sup>120</sup>, and that the information provided was not for publication and was intended to:<sup>121</sup>

*“... either provide important background information, i.e. to contextualise an issue, or information that’s given to correct an inaccuracy, but importantly it is information that is not intended for print.”*

**2.61** Peter Vaughan, Chief Constable of South Wales Police, provided such an example:<sup>122</sup>

*“... [T]here was [a] counter terrorism operation within the Cardiff area and a number of individuals were arrested and it quickly got into the media that a local shopping outlet was the target of their ambition and we had phone calls from the media to say, “We’ve heard that this was the target, this particular area was the target, is that right?” And we were able to say to the media outlets, because of the relationships that we’d developed with them of trust, that it wasn’t that outlet, not tell them where it was, that the target of the activity was, but fairly and squarely saying that the communities of South Wales have nothing to worry about, go into that particular area, so it became a very useful method then of managing what could quickly have escalated out of control ...”*

**2.62** The potential value of ‘off-the-record’ briefings was not recognised just by the Police Service. Lord Macdonald QC, former Director of Public Prosecutions, explained that as part of a wider programme of public engagement (with the aim of increasing public confidence in the Crown Prosecution Service (CPS) and the Criminal Justice System more generally), he had:<sup>123</sup>

*“... instituted a system of embargoed briefings for the media ahead of significant criminal trials, which would often include off-the-record material. These were very well attended by representatives of the press and broadcasters and there was no occasion on which the terms of the briefings were breached. These briefings were designed to assist the media by placing in context the allegations and by explaining the background to the proceedings.”*

### *Risks in principle*

**2.63** Despite the potential value of ‘off-the-record’ media contact, there are clearly inherent risks engaged by the practice. These risks have not gone unnoticed. The recently issued and revised ‘Interim ACPO Guidance for Relationships with the Media’, for example, stresses that “It is important to be aware that speaking terms [including use of the term ‘off-the-record’] are sometimes misunderstood or used interchangeably. For this reason it is always important to clarify how they will apply before exchanging information.”<sup>124</sup>

<sup>119</sup> pp43-44, lines 24-2, Catherine Llewellyn, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>120</sup> p43, lines 7-10, *ibid*

<sup>121</sup> p43, lines 11-16, *ibid*

<sup>122</sup> p44, lines 3-21, Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>123</sup> p31, para 63, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lord-Macdonald-QC1.pdf>

<sup>124</sup> p5, para 3.6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Submission-from-ACPO-Interim-Guidance-for-relationships-with-the-Media.pdf>

- 2.64** A succession of Media Policies and Standard Operating Procedures (SOPs) issued by the MPS also appear to have recognised this point. Special Notice 19-00 (A new policy for relations with the media) stated that:<sup>125</sup>

*“... when confidence and trust is established there may be occasions when senior officers will feel able to talk to reporters on an ‘off the record’ basis – dealing with matters not for public disclosure, explaining reasons for maintaining confidentiality and specifying what might be published.”*

However, the notice also warns that:<sup>126</sup>

*“... it will be for OCU commanders and heads of branches to decide at what levels within their own areas of responsibility such discretion may be exercised. If there is any doubt about this, advice must be sought from the DPA or enquiries referred direct to them.”*

- 2.65** This advice was further developed in the MPS Media SOP 26/2006, which was issued on 5 July 2006. The warnings given in relation to ‘off-the-record’ communications are similar in most respects to the current interim ACPO media guidance. It stated:<sup>127</sup>

*“Misunderstandings can sometimes occur about what ‘off-the-record’ means. Some journalists interpret it as being completely non-reportable, whilst others believe that they can report what is said but not attribute it to the individual who said it. It is therefore advisable that before giving guidance of this sort, the officer/police staff members clarifies the basis on which it is being provided.”*

- 2.66** The updated MPS Media SOP issued in June 2008 contained similar warnings, but also emphasised that *“Police officers or members of police staff must not express views or give off the record guidance on cases/issues that they are not involved in as this could compromise an operation or investigation. Such action could lead to disciplinary action being taken.”*<sup>128</sup> The policy also makes the point that *“it is good practice to keep a written note of any off the record briefings given.”*<sup>129</sup>

### **Risks in practice**

- 2.67** Given the risks involved in the practice of ‘off-the-record’ briefings or communications, a number of witnesses argued that this type of police and press interaction should cease, or at the very least be heavily modified. In very general terms, Lord Condon said that *“off-the-record briefings are never something which I’ve felt comfortable with”*.<sup>130</sup> Lord Stevens agreed, and said, *“I, like Paul Condon, have a problem about off-the-record briefing, especially if police officers are giving their opinion rather than what the evidence is, and it’s very dangerous territory, I think, in my view.”*<sup>131</sup>

<sup>125</sup> p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-9-Special-Notice-19-00.pdf>

<sup>126</sup> p3, *ibid*

<sup>127</sup> pp1-66, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-DF1.pdf>

<sup>128</sup> pp52-53, para 4.8, Dick Fedorcio, *ibid*

<sup>129</sup> pp52-53, para 4.8, *ibid*

<sup>130</sup> p23, lines 4-5, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>131</sup> p65, lines 6-10, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

**2.68** As detailed above, Cumbria Constabulary have a policy of not giving ‘off-the-record’ briefings to the media save in exceptional circumstances.<sup>132</sup> As to this, Ms Shearer said:<sup>133</sup>

*“... I think I would expect the justification to be incredibly significant and the sort of times that I would perceive that to be is around counter-terrorism and at that sort of level. That’s the time when you should be considering off the record. Everything else should be on the record, if you are going to say it.”*

**2.69** Anne Campbell, chair of the Association of Police Communicators (APCOM) and head of corporate communications for Norfolk and Suffolk constabularies, found the term itself unhelpful. She said:<sup>134</sup>

*“I prefer not to use the term “off the record”. Again, I think the connotation is unhelpful. I think there are occasions where it’s useful to have what I would call a background briefing, to give the context to help a journalist understand more of the story in order to make a decision one way or the other. I think “off the record”, it’s not a phrase that I personally use and it’s not a phrase that you would hear in the department used by colleagues. As I say, you do occasionally do a background briefing, but those background briefings would also then be uploaded to our Spotlight system. So basically there is a record of everything, and it will be very clearly stated whether it’s for publication or not for publication but for guidance.”*

**2.70** Despite some of the misgivings in relation to ‘off-the-record’ contact, it is difficult to quantify the extent to which the practice actually gives rise to the problems identified in the above sections. Mr Sullivan, for example, could only provide one example where a confidential briefing had been provided by the police and a trust had been broken by a journalist. He said:<sup>135</sup>

*“There was one occasion ... I hadn’t long been a crime reporter, but there was a briefing given by – actually it was the head of the counter-terrorism unit, or anti-terrorist squad, as they were in those days, and I can’t remember or recall the actual details of the briefing, I’m not even sure I was present, actually, but there was a reporter from one newspaper who hadn’t long been a member, who went back to his office, presumably told his news desk what he’d heard, and was then required to write the story. This caused a lot of problems, as you can probably imagine ... and this particular reporter was excluded from the CRA and we obviously offered our sincerest apologies to the Metropolitan Police and particularly the senior officer who gave that briefing. That’s the only occasion ... I can recall.”*

**2.71** This apparent reluctance to break the trust that exists between police officer and journalist where information is being provided confidentially corresponds with the evidence of Dr Mawby, who recalled:<sup>136</sup>

*“A number of the crime reporters I interviewed talked about how such communications [i.e. ‘off-the-record’] were important in keeping up-to-date and informed, as well as*

<sup>132</sup> p15, para 39.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Gillian-Shearer.pdf>

<sup>133</sup> p42, lines 9-14, Gillian Shearer, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>134</sup> p52, lines 10-23, Anne Campbell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>135</sup> pp31-32, lines 19-9, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>136</sup> p8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Dr-Rob-Mawby.pdf>

*forming part of their ongoing relationships with key sources. For example, a crime reporter with 40 years experience summed up the benefits thus, 'I like to deal with detectives. Most of the information is off-record and if I used it, that would be it – finished'."*

**2.72** Similarly, and in respect of the potential lack of clarity that exists about what the speaking term 'off-the-record' actually means, Justin Penrose, crime correspondent at the Sunday Mirror, commented that *"I have received off-the-record information, but only recall this being proactively offered by the police to reporters as a group. In my experience there are three levels of information: reportable, 'off-the-record' (where information can be reported but not associated with anyone), and non-reportable. The police are very clear in briefings where the information that they are giving sits in terms of these levels."*<sup>137</sup>

**2.73** It is telling in my view, that even those informed witnesses that viewed the concept or practice of 'off-the-record' communications with a degree of scepticism conceded that it could be a valuable policing tool in certain circumstances. Mr Baker, for example, said that:<sup>138</sup>

*"... I'm not a huge fan of what people term "off the record", although they do mean different things by it, I've found, but there is a place for it. If that is in extremis, if life is going to be endangered ... if an inquiry is going to be prejudiced, then there is a place for it, but it should be limited, in my view."*

He expanded on this point and said:<sup>139</sup>

*"There will be circumstances at the top end of the business where lives are at threat, there's a national security issue or an inquiry is about to be completely scuppered by certain behaviour, then that would be appropriate to have a conversation that was not yet at that moment to be published. I think there is a difference. I think a more broad-brush approach, where people are making up their own rules and definitions of what this looks like, for the best intentions, is what I've found is a major gap ... i.e. there's no clarity about the rules, the policies are very different, albeit well intended, and so that leaves lots of staff with no where to go, in my view."*

**2.74** Mrs Filkin also agreed that there was value for the Police Service in the limited and responsible use of 'off-the-record' communications. She said:<sup>140</sup>

*"... I have no doubt that the police will have to occasionally do off-the-record briefing, because otherwise they would jeopardise an investigation, and a reporter may have got a bit of a story which, if they ran it, would be very harmful, and the only way to prevent that being run, in a sensible fashion, would be to give them an off-the-record briefing and to tell them that you would inform them as soon as you could when it was possible to let that get out onto the public airwaves."*

**2.75** I certainly agree that in the circumstances outlined above, and for example in the context of counter-terrorism operations or other sensitive police investigations, some form of non-reportable or confidential briefing mechanism should continue to be available as a limited tool for the Police Service in their interaction with the media. I am not sure that any specific

<sup>137</sup> pp11-12, para 34, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Justin-Penrose.pdf>

<sup>138</sup> p37, lines 8-23, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>139</sup> pp45-46, lines 14-3, *ibid*

<sup>140</sup> p30, lines 2-11, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

guidance from me in this area is necessary or would be helpful. I do, however, make some observations on the matter which are addressed in Part G Chapter 4 below.

**2.76** I would endorse the comments both of Mr Baker and Mrs Filkin comments in relation to the need for transparency in this area. If the police are simply seeking to correct an inaccuracy within a story, for example, then I can see no legitimate reason why that contact should not be considered to be ‘on-the-record’. Beyond these matters, the specific recommendations I make in this domain are set out in Part G Chapter 4 below.

## Leaks of information

**2.77** As Mr Jay identified in his opening to this Module of the Inquiry, leaks of information are another potential manifestation of the arguably overly close relationship between the police and the media.<sup>141</sup> In this section, I will consider this subject and the associated problem of the attribution or misattribution by the press of police sources to stories.

**2.78** In setting the context to this issue, Dr Mawby suggested that:<sup>142</sup>

*“... unauthorised disclosures or “leaks” by police personnel to the media will always be a threat to a police force’s control of information to a greater or lesser degree depending on circumstances. The disgruntled employee or the whistle blower can be an important media source. The extent to which leaks are either in the public interest (for example, bringing malpractice to light) or a problem (for example, putting someone in danger) depends on the circumstances of each incident.”*

**2.79** The evidence that I have received would suggest that in general terms, the problem of leaks to the press has been an enduring issue faced by the Police Service. The actual extent of the problem has been a matter of some debate. The former Home Secretary, Jack Straw, said that although he had no direct knowledge of this issue, he had nevertheless formed a view during a brief period at the Bar during the 1970s that:<sup>143</sup>

*“... in every police station, the local or national papers would have a stringer, who was a police officer or member of staff, who they were paying [for information] ...”*

**2.80** Lord Reid, who held the position of Home Secretary from May 2006 to June 2007, said that he had experienced two media related leak incidents that gave rise to concern. In one case, the informant had been identified as a former Detective Inspector at the MPS who had retired but then subsequently returned to work as a police staff member.<sup>144</sup> The individual concerned was sentenced to eight months in July 2007 for misconduct in public office.<sup>145</sup> The second case was in relation to a leak about terrorist and counter-terrorist activity but the source was never discovered.<sup>146</sup>

<sup>141</sup> pp14-15, lines 18-15, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf>

<sup>142</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Dr-Rob-Mawby.pdf>

<sup>143</sup> pp73-74, lines 16-10, Jack Straw, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-16-May-2012.pdf>

<sup>144</sup> pp148-149, lines 19-20, Lord Reid, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-23-May-2012.pdf>

<sup>145</sup> pp149-150, lines 21-2, Lord Reid, *ibid*

<sup>146</sup> p150, lines 4-21, Lord Reid, *ibid*

**2.81** Lord Condon explained that during his period as Commissioner of the MPS, leaks to the press were a cause for concern *“in a general way”*.<sup>147</sup> He said:<sup>148</sup>

*“... I think they’re always a concern. Again, you reluctantly don’t accept but you sort of grudgingly acknowledge that, in a force of 45,000 men and woman, police and civilian, occasionally there may be leaks, for mixed motivation and probably occasionally for financial reasons. But, again, during my time I was not aware that it was a significant issue beyond the general challenge of dealing with bad police officers.”*

**2.82** Lord Stevens recalled that he had developed *“considerable experience with the problem of leaks of confidential information to the media from my experiences in Northern Ireland.”*<sup>149</sup> However, to the best of his recollection, during his time as Commissioner of the MPS he was *“not aware of any specific cases of leaks to the media by individual officers.”*<sup>150</sup>

**2.83** Lord Blair said that during his tenure as Commissioner of the MPS he felt *“that there were an increasing number of leaks to the media.”*<sup>151</sup> He suggested that the leaks were emanating from the MPS’ management board and the level just below,<sup>152</sup> he explained that:<sup>153</sup>

*“... on no occasion did I ever suspect that any of my senior colleagues were passing on information for money, but I do believe that on some occasions some were being indiscreet as a result of a desire to advance their own views in the public mind or to improve their own public profile.”*

The leaks referred to were of a gossipy nature relating to tensions and disharmony within the MPS management board at the time, rather than leaks of sensitive information relating to police operations or ongoing cases. Lord Blair described the desire to gossip as *“a natural human habit”*, but understandably one that ought to be stopped.<sup>154</sup>

**2.84** Dick Fedorcio, Director of Public Affairs for the MPS during the Commissionership of Lord Blair and beyond, confirmed that as a result of *“... concerns about the way management board was behaving in relation to things appearing in the media ...”*,<sup>155</sup> the MPS management board itself, in February 2008, issued a bespoke media policy to govern their relations with the press. Mr Fedorcio said that there had been *“an inappropriate flow of information”* from a limited but senior cadre of officer within the MPS at the time.<sup>156</sup> He explained that there had been a frequency to the leaks and that this illicit briefing of the press went on for a *“number of months.”*<sup>157</sup> Mr Fedorcio commented:<sup>158</sup>

*“It was very disturbing, and a very difficult time for the organisation and for Sir Ian*

<sup>147</sup> p41, lines 9-12, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-2012.pdf>

<sup>148</sup> p41, lines 12-20, Lord Condon, *ibid*

<sup>149</sup> pp25-26, para 71, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>150</sup> p26, para 72, *ibid*

<sup>151</sup> p18, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>152</sup> p42, lines 3-6, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>153</sup> p18, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>154</sup> p49, lines 5-20, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>155</sup> p72, lines 13-15, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>156</sup> p73, lines 3-13, *ibid*

<sup>157</sup> pp74-75, lines 6-12, *ibid*

<sup>158</sup> p73, lines 16-20, *ibid*

*Blair to lead the organisation when that was going on around him. Would I would say is that the people who I suspect are no longer with the organisation.”*

- 2.85** Sir Paul Stephenson, former Commissioner of the MPS, had been Lord Blair’s deputy during the period in question.<sup>159</sup> Sir Paul said that upon first joining the MPS as Deputy Commissioner in 2005 there were:<sup>160</sup>

*“... frequent newspaper stories of disharmony within the MPS senior management. I believed it was likely that some of the reporting emanated from a small number of self-interested officers, who either leaked to the media themselves or gossiped to others who did.”*

Accordingly, Sir Paul made it a priority of his Commissionership to ensure that the behaviour described did not continue.<sup>161</sup>

- 2.86** Sir Paul explained that given a lack of specific evidence, his preference was not to try and identify the senior colleagues referred to above. However, he did go on to say:<sup>162</sup>

*“... I’m referring to what I consider to be a very small number of the management board ... who, on occasions, either gossiped or leaked about stories from within the Met and from within the management board that was deeply unhelpful and actually added to a continuing dialogue of disharmony and almost dysfunctionality within the Met at the most senior levels. That was hugely distracting and, in my opinion, unprofessional.”*

Sir Paul said that the leaks had been damaging to the organisation because:<sup>163</sup>

*“... if you’re trying to run a management board with people making contributions and having an open, frank discussion where you are trying to engender a team who are willing to disagree with each other in trying to get to the best outcome, to have that reported as “management board at war” is deeply unhelpful in trying to creating that effective team.”*

- 2.87** It was for this reason that Sir Paul encouraged the practice of having a press officer present where there were meetings between senior MPS officers and members of the media.<sup>164</sup> On this point he said:<sup>165</sup>

*“... I thought it would be very helpful if matters came through the DPA generally, and if the DPA were present. In that way, it might discourage the gossiping and what might be described on occasions as being a little bit too loose-lipped ... ”*

This would certainly appear to me to be a very sensible precaution where the circumstances allow. Sir Paul said that he believed that the occurrence of leaks from senior officers

<sup>159</sup> p2, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>160</sup> p8, para 23, *ibid*

<sup>161</sup> p8, para 23, *ibid*

<sup>162</sup> p10, lines 10-24, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>163</sup> p12, lines 14-23, *ibid*

<sup>164</sup> p8, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>165</sup> p13, lines 6-22, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

*“substantially reduced during the period of my Commissionership.”*<sup>166</sup> However, this may have had more to do with a change of personnel within the senior team at the MPS rather than as a result of a specific policy. Sir Paul said:<sup>167</sup>

*“... there were less newspaper stories about dysfunctionality in the Met and dysfunctionality at senior level ... I don’t claim to be the most wonderful Commissioner ever that managed to do things that other people didn’t achieve. I think I was extraordinarily lucky with the people I had on my team, who were hugely professional and were not tempted to behave in that way. So I was a very fortunate man in that respect ...”*

**2.88** This period in the MPS’ history also raises the definitional question of what actually constitutes a leak. It is not a viewpoint that I would share but some may argue that gossip of the type described, however damaging it may be to an organisation, does not constitute a leak of unauthorised material in the true sense at all. Catherine Crawford, formerly the Chief Executive of the Metropolitan Police Authority, addressed this point when she said:<sup>168</sup>

*“... my understanding and to some extent my experience, that is a very wide spectrum that is covered by the word “leak”. So at one extreme you might have passing on, either for money or other motives, classified material which might endanger the security of the state, which clearly is a criminal matter; to the other end of the spectrum, where you can be talking possibly about someone – the expression has been used in this Inquiry indulging in a little “tittle-tattle”, maybe saying to a journalist, “You may think that, I can’t possibly comment”, which is always an indication that there may be something more to probe at ...”*

**2.89** More generally, Sir Paul said that he believed that there was, and perhaps still is:<sup>169</sup>

*“a view held by some in positions of influence to the effect that the majority of police officers gossip and leak information to the media. This is simply not the case. However, any such perception, wholly untrue though it may be, is damaging.”*

He also made the point that in view of the MPS’ size and the volume of valuable information which it holds as an organisation *“information misuse and leaks to the media are always a risk.”*<sup>170</sup> However, he considered that set against the number of people the MPS employ, *“the number of such events was relatively low.”*<sup>171</sup> Nonetheless, he conceded that the fact that leaks occur at all represents a real problem for the Police Service.<sup>172</sup> He said:<sup>173</sup>

*“Their effect is potentially much greater than the frequency of their occurrence would suggest. It is an issue for all major forces across the world and indeed for similar organisations. This was a problem that I had faced in my career at Merseyside Police, where leaks to the media by officers undermined the image of the overwhelming*

<sup>166</sup> p9, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>167</sup> p17, lines 8-17, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>168</sup> pp77-78, lines 20-8, Catherine Crawford, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-29-March-2012.pdf>

<sup>169</sup> p10, para 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>170</sup> pp22-23, para 57, *ibid*

<sup>171</sup> pp22-23, para 57, *ibid*

<sup>172</sup> pp22-23, para 57, *ibid*

<sup>173</sup> pp22-23, para 57, *ibid*

*majority of staff who were honest and professional. I believe the MPS must always remain vigilant to the risk and reality of corrupt or irresponsible behaviour by a few.”*

**2.90** In analysing the extent to which this issue has been a problem for the MPS, Sir Paul provided the following breakdown:<sup>174</sup>

*“16 police officers and police staff have been prosecuted for misusing police information over the past decade, of whom 11 were found or pleaded guilty. 29 police officers and police staff have been dismissed or asked to resign and 208 disciplined for misusing police information over the past decade. I understand that the numbers of officers/staff disciplined for misuse of information has remained stable in the past three years.”*

It is not clear how many of these cases relate to the unauthorised disclosure of information to the media specifically.

**2.91** Peter Clarke, formerly an Assistant Commissioner within the MPS, expressed the view that *“from my experience of over 30 years, serving in uniform and detective roles across London, I think the extent of leaks from the MPS has been greatly exaggerated, although I would not suggest for a moment that it is not a problem.”*<sup>175</sup> Mr Clarke, for example, recalled the police investigation in Birmingham into an allegation that a British serviceman had been targeted by a terrorist network. On the morning of the arrests it became clear that key details of the investigation and the evidence had been leaked. The person or persons responsible for that leak never became known; however, and Mr Clarke commented that:<sup>176</sup>

*“... the circle of knowledge across Government was extensive because of some of the issues involved in the case. One might think it instructive, to some extent at least, that many of the early media reports on the morning of the arrests were coming not from crime or security correspondents, but from political correspondents.”*

**2.92** Perhaps of a similar nature was the issue of leaks in relation to the ‘Cash for Honours’ investigation. Lord O’Donnell, former Cabinet Secretary, recalled that he asked Sir Paul Stephenson in 2007 to look into the fact that information in relation to the police investigation was frequently finding its way into the public domain.<sup>177</sup> He said:<sup>178</sup>

*“... It didn’t seem to be in the politician’s interest for this information to have emerged, so I simply asked Sir Paul Stephenson: would he kindly look into the issue? Because I didn’t believe the leaks were happening at my end. I mean, there may have been other leaks happening from my end, but on this specific issue, I wanted his view.”*

**2.93** Former MPS Assistant Commissioner John Yates had been in charge of the investigation but Lord O’Donnell confirmed that he had not at the time (or since) necessarily come to the conclusion that he was responsible for the leaks. He explained:<sup>179</sup>

*“Well, he was doing this investigation, so in a sense I wasn’t necessarily saying it was him. I was just saying it was an area that he was in charge of and could ... Paul*

<sup>174</sup> p23, para 61, *ibid*

<sup>175</sup> p21, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf>

<sup>176</sup> p21, para 43, *ibid*

<sup>177</sup> p86, lines 9-21, Lord O’Donnell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-14-May-2012.pdf>

<sup>178</sup> pp86-87, lines 22-3, *ibid*

<sup>179</sup> p87, lines 10-21, *ibid*

*Stephenson look into that area and see – was there someone in that group who possibly was there. But it was quite apparent to me that a number of senior police officers had very strong links with the media, and they were very close and, in my view, I would say, too close. Their defence of this was that this was necessary, and this was true of a number of senior police officers. I happen to think it's not the right way to operate."*

- 2.94** Whatever the reality of the situation, this again would appear to have been an issue of perception. Lord Mandelson, however, in his evidence, went much further. He said that it was his *"solid belief"* that Mr Yates had been responsible for the leaks in question.<sup>180</sup> He explained:<sup>181</sup>

*"... All of those close to the investigation were absolutely convinced that Mr Yates was briefing journalists throughout the investigation, and frankly it was common knowledge in journalistic circles that this was happening. I remember a journalist remarking on this to me himself."*

- 2.95** That viewpoint does not correspond with the findings of the police review into this matter. The review was led by the then Chief Constable of Surrey Police, Bob Quick. Although there is some debate about the action taken following the completion of the review, Mr Quick confirmed in his evidence that he found:<sup>182</sup>

*"... no evidence of leaks, and more than that, I examined ... the pre-interview disclosure of material during the interview of a number of suspects, and it was clear to me that some of the material in the public domain that was being created as leaked material may well have been sourced from people who had been the subject of an interview and therefore the disclosure of material in preparation for that interview."*

Specifically in respect of Mr Yates, Mr Quick said:<sup>183</sup>

*"I certainly could see no evidence through my review of deliberately leaking material, and I saw robust and secure processes to handle the material secured through the investigation."*

- 2.96** The allegations were also strongly denied by Mr Yates.<sup>184</sup> In conclusion, Sir Paul said the following:<sup>185</sup>

*"... any leaks that were happening could be much better explained of coming from without that team, and of course it is the case that the most sensitive information in that operation never leaked ..."*

- 2.97** I do not think it necessary for the purposes of this Inquiry for me to reach any conclusions on this matter. Suffice it to say, there is disagreement as to the actual source of the leaks and the matter may never be resolved to the satisfaction of those concerned.

<sup>180</sup> p110, lines 7-9, Lord Mandelson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-21-May-20121.pdf>

<sup>181</sup> p44, lines 13-19, *ibid*

<sup>182</sup> pp93-94, lines 22-5, Bob Quick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>183</sup> p95, lines 6-9, *ibid*

<sup>184</sup> p42, lines 7-20, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>185</sup> p48, lines 3-12, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

**2.98** Bringing matters forward, Mrs Filkin, through her report ‘The Ethical Issues Arising From The Relationship Between Police And Media’, reported that:<sup>186</sup>

*“it is clear both from what appears in the media, and from what I have been told, that there is contact – which is neither recorded nor permitted – between the media and police officers and staff, at all levels. This results in improper disclosure of information which is damaging to the public, the MPS and to the policing of London.”*

In attempting to provide some context to this issue, Mrs Filkin said that there was no consistency in relation to which parts of the MPS were said to be more susceptible to leaks, making the point that *“it’s always somewhere else.”*<sup>187</sup> She also recorded the *“widespread view”* that a certain amount of leaking is *“inevitable”*.<sup>188</sup>

**2.99** As to the potential scale of the problem, Mrs Filkin said:<sup>189</sup>

*“... it was a big enough scale for a lot of people ... inside the Met to be worried about it, but in terms of numbers, no, I couldn’t say anything solid about that, I don’t think, other than almost everybody I spoke to felt it did the Metropolitan Police Service harm, that it was thought, sometimes wrongly, to leak. I make the point that ... I saw instances of other people in other organisations leaking information about the Metropolitan Police Service. So that obviously happened too, but certainly people within the Metropolitan Police Service felt that it did them harm that that was a reputation or a perception, however accurate it turned out to be.”*

**2.100** The current Commissioner of the MPS, Bernard Hogan-Howe, told the Inquiry that there had been *“9 separate investigations recorded into police officers leaking material to the media”* since he took on the role in September 2011.<sup>190</sup> He confirmed that of these, five investigations were linked to information leaks to national newspapers.<sup>191</sup> In parenthesis, it is interesting to note at this point that despite accusations in some quarters that there has been a ‘chilling effect’ on the relationship between the police and the media as a result of this Inquiry, there have still been a number of incidents to cause the MPS some concern.

**2.101** This point was reinforced by the evidence of Ed Stearns, the Chief Press Officer for the MPS’ Directorate of Media and Communication, who despite reporting that the amount of *“informal communications”* between police officers and journalists had dwindled in recent months, confirmed that there were still occasions when he was concerned about the provenance of information appearing in the morning’s press cuttings (accepting, of course, that it does not necessarily follow that the information provided to the journalist comes from a police officer or member of police staff – an issue that I will deal with in more detail later in this section).<sup>192</sup>

<sup>186</sup> pp13-14, para 3.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>187</sup> p10, lines 2-5, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>188</sup> pp26-28, para 3.3.4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>189</sup> p10, lines 9-21, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>190</sup> p62, lines 5-11, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>191</sup> p67, lines 5-11, *ibid*

<sup>192</sup> p46, lines 10-20, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

**2.102** Commissioner Hogan-Howe agreed with his predecessors that “*within an organisation the size of the MPS, information misuse (including leakage) will always be a risk.*”<sup>193</sup> However, he stressed that the organisation worked hard to mitigate that risk by, for example, making those who manage employees with access to MPS databases “*accountable for audits of that usage.*”<sup>194</sup> He also pointed out that there were systems and processes in place to “*identify, respond to and detect leaks to the media.*”<sup>195</sup> This includes a daily media review meeting to assess current media and press articles linked to the MPS with a view to identifying any reports which appear to be based on unofficial sources.<sup>196</sup> Furthermore, Commissioner Hogan-Howe explained that:<sup>197</sup>

*“Those identified as potential leaks are then allocated to the relevant DPS [Department for Professional Standards] investigation team to assess and investigate as appropriate. The MPS is one of the few organisations which has established an independent command to deal exclusively with both overt and covert complaints and investigations.”*

**2.103** Cressida Dick, Assistant Commissioner Specialist Operations (ACSO) for the MPS, said that “*it is clear that over the past few years there have been problems with a small number of MPS personnel being willing to leak unauthorised and/or operationally damaging information to the media.*”<sup>198</sup> Furthermore, Ms Dick explained that leaks from the MPS to the media had, on occasions, undermined investigations and had “*damaged individuals and public confidence.*”<sup>199</sup> Ms Dick also explained why she was confident in her assertion that this was not an endemic problem for the MPS:<sup>200</sup>

*“... there have been a limited number of convictions, and indeed misconduct findings, in relation to leaks ... so losses of information, for example, whether negligent or just careless, when it’s official secrets, through to actually forming a relationship with somebody and deliberately passing information to somebody – for example, a member of the press – we have had a small number of convictions and some misconduct findings. So that’s why it’s very clear to me. I’ve also twice during the last couple of years been in charge, at the management board level, of our professional standards area, so I see the sort of intelligence and the investigations that we’re doing, and they are very difficult and frequently we don’t know whether the information has come from the police or from some other party, but there are sufficient there for me to believe, again, that some of these unauthorised disclosures have come from the police ... I think in relation to that, I am confident that it’s not an endemic problem. I spent sort of, in some senses, all my service thinking about issues like this and talking to colleagues and talking to colleagues in other forces around the world, and I genuinely do not believe that this is a culture or anything other than isolated individuals. That’s my view.”*

<sup>193</sup> p18, para 44, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>194</sup> p18, para 44, *ibid*

<sup>195</sup> pp18-19, para 46, *ibid*

<sup>196</sup> pp18-19, para 46, *ibid*

<sup>197</sup> pp18-19, para 46, *ibid*

<sup>198</sup> p3, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-AC-Cressida-Dick.pdf>

<sup>199</sup> p18, para 45, *ibid*

<sup>200</sup> pp19-20, lines 3-7, Assistant Commissioner Cressida Dick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

**2.104** An MPS audit analysis revealed that between 1 April 2006 and 31 August 2011, there were:<sup>201</sup>

*“... 38 investigations involving 41 allegations relating to inappropriate relationships with the media that resulted in the alleged leakage of police information. Investigation into these 41 allegations led to the successful identification of the officer or staff member who was the source of the leak in 13 instances (32%). The remaining allegations are shown as unidentified officer or staff member.*

*The outcome of the investigation into the 41 allegations reveals that 25 (61%) resulted in no further action being taken, 11 (27%) are still ongoing investigations and management action accounts for the remaining 5 (12%).”*

**2.105** In relation to the scale of the problem in the Police Service more generally, Roger Baker, one of Her Majesty’s Inspectors of the Constabulary, said that:<sup>202</sup>

*“... we checked ... the databases to find out what was being reported, not just within the police, but we took the Police Complaints Commission, the various commissioners who keep data on the police. So we searched the databases to find out what was the scale of the ill that everyone seemed to want to cure. What we find out, over a five year period – we went back to April 2006 in the main – we found 314 cases that could be classified as leaks to the police. I’m sure there were far more that hadn’t been recorded in this way, but 314, which broke down to relationship issues, which had to be fairly specific within this, which there were 12 of across England and Wales, and 302 which were around information disclosure to the media, most of which couldn’t be traced through sources. So there could have been a relationship but it wasn’t clear. Beyond that, there’s clearly a lot more going on, is my view, and part of that is because this is not the top – or hasn’t been the top of people’s agendas. Your systems and processes have not been focused on finding these things out. They’ve had to be fairly major issues for them to become recorded at that moment in time.”*

**2.106** It was Mr Baker’s assumption, therefore, that the number of leaks recorded by the Police Service (as detailed above) did not truly represent the extent of the problem.<sup>203</sup> Jane Furniss, Chief Executive Officer and Accounting Officer of the Independent Police Complaints Commission (IPCC), reported that over a five year period (2006/7 to 2010/2011) there had been 5,179 recorded allegations relating to the improper disclosure of information – this represented around 2% of all allegations recorded for that period.<sup>204</sup> Ms Furniss confirmed that it was not possible to identify through the IPCC’s data whether the improper disclosure was made to the media, a private detective, or to another party for example. She explained:<sup>205</sup>

*“... I think it’s important to recognise that it’s quite a wide category ... and I don’t mean to diminish its importance by describing it this way – it may be a curious police officer who’s decided to access the Police National Computer, for example, to find out something about a celebrity. It may be someone who’s looking to see whether his daughter’s new boyfriend is a suitable young man. It could be a very wide range*

<sup>201</sup> p19, paras 49-50, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>202</sup> pp62-63, lines 17-15, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>203</sup> pp63-64, lines 19-3, *ibid*

<sup>204</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jane-Furniss.pdf>; p1, IPCC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/IPCC-Submission-to-Leveson-Inquiry-Annex-B1.pdf>

<sup>205</sup> p7, lines 8-23, Jane Furniss, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

*of receiving information, getting information to which they're not entitled, through to information being sold to organised crime. It covers a very wide range of activity under that particular label, and it's not possible to break down, not without going to every force and asking them to do that kind of analysis, to know precisely how many fall into those different categories."*

**2.107** Mike Cunningham, Chief Constable of Staffordshire Police and ACPO lead on Professional Standards, said that the most common leak or approach to the press was:<sup>206</sup>

*"... normally from disgruntled members of staff who have a beef about organisational issues. The service is going through significant change ... and the changes within the organisation, some staff feel that they need to vent their anger at the organisation through the press ..."*

This certainly corresponded with the experience of Chris Sims, the Chief Constable of West Midlands Police, who said that there had been occasional leaks within his force area *"by staff disaffected by national developments or local policy."*<sup>207</sup> However, Mr Sims did not believe that the unauthorised dissemination of information from police officers to journalists was generally a problem for his force.<sup>208</sup>

**2.108** The evidence of other forces outside of the MPS was of a similar nature. I will deal with two by way of example. Peter Vaughan, Chief Constable of South Wales Police, said that there had been three leak investigations within the past five years.<sup>209</sup> He explained that they had been:<sup>210</sup>

*"... initiated after information was received to suggest that following the arrest of a serving or a former officer's arrest, certain information was leaked to the media. Two of the matters were unsubstantiated after investigation, whilst the third is currently under investigation."*

Mr Vaughan went on to explain that South Wales Police "have a well resourced and dedicated Anti Corruption Unit who have high levels of capability and capacity to investigate issues of this nature."<sup>211</sup> As a result of this unit, he said that:<sup>212</sup>

*"... In 2011 we had 153 referrals to the anti-corruption unit, which they then used technology and other traditional policing methods to determine the correct course of action ... the local IPCC are complimentary about the way that we try and root out any malpractice, any wrongdoing. We try to get on the front foot to make sure we're ahead of it ..."*

<sup>206</sup> p64, lines 9-17, Chief Constable Mike Cunningham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-29-March-2012.pdf>

<sup>207</sup> p8, para 31, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>

<sup>208</sup> p75, lines 2-15, Chief Constable Chris Sims, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>209</sup> pp37-38, lines 23-4, Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>210</sup> p22, para 72, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Peter-Vaughan.pdf>

<sup>211</sup> p21, para 69, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Peter-Vaughan.pdf>

<sup>212</sup> p39, lines 5-19 Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

**2.109** Within Avon and Somerset Constabulary there have been 20 leak investigations undertaken by the force’s internal investigation unit in the past five years.<sup>213</sup> Colin Port, Chief Constable of Avon and Somerset Constabulary, said that of the 20 incidents, 14 were subsequently found not to have been a police leak. In relation to the remainder, four resulted in disciplinary action, in one case, no offender was traced and one investigation is still ongoing.<sup>214</sup> In relation to the four instances of disciplinary action, Mr Port explained why the officers concerned had not been dismissed:<sup>215</sup>

*“... what concerned me when I looked at the figures was there were four leak inquiries which didn’t result in someone leaving the organisation rather sharpish. These were domestic-type leaks where people had fallen out within the organisation, where they’d told stories about colleagues or told stories about partners, and so that’s the reason, just to reassure the public, that we don’t take leaks lightly at all.”*

### **Police National Computer (PNC)**

**2.110** A specific area of concern for the Police Service is the unauthorised use of the Police National Computer (PNC). Karl Wissgott, Head of PNC Services for the National Policing Improvement Agency (NPIA), explained that the PNC was established in 1974 and has evolved over time to link a number of separate databases. It holds a range of records, including the details of individuals who are convicted, cautioned, arrested, wanted or missing; the registered keeper of vehicles; individuals with a driving licence entitlement or who are disqualified; certain types of stolen and recovered property including animals, firearms, trailers, plant machinery and engines; it supports enquiries against the National Phone Register; and contains the details of individuals on the National Firearms Certificate Holders register.<sup>216</sup>

**2.111** The PNC is used by all police forces in the United Kingdom and other authorised agencies, for example the Serious Organised Crime Agency (SOCA).<sup>217</sup> Mr Wissgott reported that it has:<sup>218</sup>

*“... in excess of 250,000 users and in recent years has handled in excess of 169 million transactions (a check or update of a record) per annum, giving a daily average of just under 463,000 transactions. It makes extensive use of logging all enquiries and updates – this functionality facilitates the auditing and police investigations.”*

He went on to explain that a number of methods were used to try and ensure that the information retained within the PNC was protected and secure, including accreditation, audit processes and mandatory training for all PNC users.<sup>219</sup>

**2.112** Individual forces also have their own audit plans which often work in conjunction with their Professional Standards departments,<sup>220</sup> whilst the vetting of police officers and staff with

<sup>213</sup> p27, para 35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Chief-Constable-Colin-Port.pdf>

<sup>214</sup> p27, para 35, *ibid*

<sup>215</sup> p58, lines 7-14, Chief Constable Colin Port, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>216</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Karl-Wissgott-taken-as-read.pdf>

<sup>217</sup> p7, *ibid*

<sup>218</sup> p7, *ibid*

<sup>219</sup> p16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Karl-Wissgott-taken-as-read.pdf>

<sup>220</sup> p16, *ibid*

access to the PNC is a matter for chief officers.<sup>221</sup> Mr Wissgott explained that through the PNC, police forces were able comprehensively to log all of the transactions carried out on the system. He said that these logs “record all user activity on the system to the extent that both what was requested and the resulting response to the request by PNC can be interrogated.”<sup>222</sup> Moreover, he said that:<sup>223</sup>

*“the overt logging of transactions not only provides a record of what is being asked and the response but also acts as a deterrent to unlawful access because it is available for subsequent analysis and is accepted and used in court as part of the evidential record.”*

**2.113** Despite the safety measures and audit systems in place, Mr Wissgott accepted that:<sup>224</sup>

*“there is, without doubt, evidence that the PNC is misused occasionally and that misuse, from time to time, involves unlawful disclosure. It is for that reason that safeguards are in place both at a national and an individual force level. It is our aspiration that the system will never be misused, but that is quite possibly unrealistic. We believe that the current security measures are effective and proportionate and that, although no unlawful disclosure is acceptable, I do not think that there is a widespread systemic problem, nor that any particular and specific additional security measure would be effective.”*

**2.114** Commissioner Hogan-Hogan perhaps went further than Mr Wissgott in analysing the historical extent of this particular issue. He said that:<sup>225</sup>

*“... over the years it’s been a chronic problem for the Police Service about unauthorised leaks of information, sometimes where officers and staff have used it for domestic purposes, but unauthorised, and occasionally – fairly rarely, but occasionally – where they’ve been paid for information that’s been passed on to people who shouldn’t have had it.”*

With reference to a Freedom of Information request reported in the Telegraph in July 2011, Commissioner Hogan-Howe confirmed that over 200 officers and support staff in the MPS had been disciplined for unlawfully accessing the Police National Computer in the previous ten years, 106 of whom had accessed information in the last three years.<sup>226</sup>

**2.115** However, as I think Commissioner Hogan-Howe fairly pointed out, that must be taken against the millions of times that the PNC will have been accessed during the period in question. He said:<sup>227</sup>

*“... I would never dismiss the seriousness of it. Each incident is serious ... we have a duty to protect information. So each incident would be serious. But if one was to consider over the ten years, each year we’d employ 53,000 people and we turn over probably 5,000 to 10,000 people a year, the numbers involved – admittedly, the ones we discover – are relatively small in a very big organisation. But each incident should be taken seriously. I’m not sure yet it’s a very serious problem organisationally, although others may conclude it is.”*

<sup>221</sup> p17, *ibid*

<sup>222</sup> p17, *ibid*

<sup>223</sup> p18, *ibid*

<sup>224</sup> pp22-23, *ibid*

<sup>225</sup> p67, lines 11-17, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>226</sup> p68, lines 17-22, *ibid*

<sup>227</sup> p69, lines 2-15, *ibid*

**2.116** Against this backdrop, Commissioner Hogan-Howe provided the following view as to what additional safeguards may be needed, together with an assessment of the MPS' current information assurance and audit systems:<sup>228</sup>

*"... it may always be that there could be more done, but I'm not sure the scale of the problem is such that there would be any need at the moment to increase the safeguards. They're fairly rigorous. First of all, there is a password access to computers, which means that the user of the computer can be identified fairly quickly. The biggest difficulty often is when there are printouts from computers, and if they are not managed properly, then wide access to the printout can lead to a wider dissemination than is legally allowed. That is a risk that we have to keep an eye on. The other area that is pretty helpful in helping us to monitor this type of problem is that certainly in the Met, we have a covert professional standards department. We have an overt one, so if a member of the public complains against a police officer, they will overtly investigate that, but then we have a covert team, quite a large team, who, if there is a suspicion of this type of misconduct, will covertly investigate it, either through the IT systems and through any other legal investigative technique that we have available."*

**2.117** The Commissioner's evidence corresponded with that of Ailsa Beaton, Director of Information and Chief Information Officer on the MPS' management board. She also confirmed that *"information leakage is integral to over two thirds of corruption investigations. Information is the commodity most valued by those who seek to corrupt MPS staff."*<sup>229</sup> Ms Beaton reiterated that information leakage and unlawful disclosure was a *"key strand of the MPS Professional Standards Control Strategy"* and that the PNC was subject to *"regular audit and additional dips sampling by professional standards."*<sup>230</sup> However, she did concede that in her view *"the current proactive monitoring of system audit trails could be improved."*<sup>231</sup>

**2.118** In conclusion, I am satisfied that the MPS and the Police Service more generally treat this issue with sufficient seriousness. However, it is equally clear that there can be no room for complacency in this area given that misuse of the PNC continues to be a problem for the service as a whole. I set out my recommendation in relation to this issue in Part G Chapter 4 below.

### *Leak investigations*

**2.119** It was common ground that leak investigations are difficult to conduct, and are rarely able to identify the person responsible. Lord Stevens, for example, said that it was *"extremely difficult"* to enquire into leaks and ascertain who is responsible.<sup>232</sup> Sir Paul Stephenson agreed and said:<sup>233</sup>

*"Whilst it's important, on occasions, to mount a leak Inquiry, I have to be honest: on many occasions when we did it, you do so with a heavy heart because it's going to be so difficult to come to a successful outcome."*

<sup>228</sup> pp67-68, lines 21-16, *ibid*

<sup>229</sup> p10, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/08/Witness-statement-of-Ailsa-Beaton.pdf>

<sup>230</sup> p10, paras 34-35, *ibid*

<sup>231</sup> p7, para 22, *ibid*

<sup>232</sup> p105, lines 12-23, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>233</sup> p15, lines 8-12, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

Similarly, Mrs Filkin recorded that *“investigations of leaks tend to be futile and resource-intensive.”*<sup>234</sup>

**2.120** It is not difficult to understand why this might be the case given that the information leaked is often known to a much broader grouping, particularly in a cross criminal justice system context. As Assistant Commissioner Dick put it, *“very often in the world that I’ve been in, it’s quite hard to pinpoint the leak to the Metropolitan Police.”*<sup>235</sup>

**2.121** The difficulty in pursuing investigations of this type was also illustrated by the evidence of John Twomey, crime reporter at the Daily Express and the Chairman of the Crime Reporters Association, who said that over the years he had been the subject of a number of leak inquiries.<sup>236</sup> He explained:<sup>237</sup>

*“... I think they must have been fairly half-hearted. You get to know about them maybe after they’d been concluded, and it seems sometimes that they’ve identified the wrong people. I’ve never been formally interviewed or directly asked.”*

Mr Twomey was also clear that even if asked by the police to reveal to identity of his source, he would have declined to do so given his moral obligations in this regard.<sup>238</sup>

**2.122** Mr Baker suggested that leak investigations can be made more difficult *“by the fact that there is a sloppiness of rules around what is permissible and what isn’t”*.<sup>239</sup> HMIC, through its report ‘Without fear or favour – a review of police relationship, also stressed the need for national standards in this area.<sup>240</sup> I would fully endorse that recommendation and I deal with the Police Service’s ongoing response elsewhere in this section.

**2.123** Despite the difficulties involved, Sir Paul argued that:<sup>241</sup>

*“... sometimes one would have a leak inquiry even though it might come to nothing – and you have to be very careful with the use of public resources – to remind people of the leadership determination to do whatever it can to enforce good professional standards of probity.”*

For her part, and whilst not meaning to belittle the difficulty in pursuing matters of this sort, Mrs Filkin felt that the MPS could do more to improve upon the effectiveness of the process. She argued for a speedier resolution procedure, where possible, and suggested that the actual process itself could be more transparent.<sup>242</sup> In relation to her second point, she said:<sup>243</sup>

<sup>234</sup> pp10-11, lines 22-8, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>235</sup> p42, lines 12-14, Assistant Commissioner Cressida Dick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

<sup>236</sup> p42, lines 15-23, John Twomey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>

<sup>237</sup> pp42-43, lines 23-3, *ibid*

<sup>238</sup> p43, lines 4-7 *ibid*

<sup>239</sup> p49, lines 22-25, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>240</sup> p5, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>241</sup> p15, lines 19-25, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>242</sup> p11, lines 8-25, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>243</sup> pp12-13, lines 15-7, *ibid*

*“[The MPS are] very loath to tell their staff that they’re carrying out some of these enquiries and even more loath to tell them what the outcome was. I give an example not in relation to a leak but in relation to another matter, in which people across the Met had to get their information from the tabloids about what had happened to somebody ... I’m sure somebody tried to be absolutely proper and not in any way undermine an individual more than they were undermined already because they were being sacked, but I think it doesn’t help to create a culture that we don’t approve of this and we do take it seriously and we do take action on it if you don’t tell people that you’re taking action on it.”*

**2.124** I certainly agree that transparency of process can be an important tool in tackling this issue. It is not a panacea for a problem which, in all probability, will never be completely eradicated, however, it would strongly signal that it is an organisational priority and as such may help to promote increased internal engagement on this issue.

**2.125** Commissioner Hogan-Howe argued for proportionality. He observed that:<sup>244</sup>

*“I would never argue for every leak to be investigated. I think you can drive yourself barmy, I think, if we did that. It is where the consequences are serious or it might display a pattern of behaviour that we want to investigate. It’s those things that are of concern to me, not ... tittle-tattle ... that will happen from time to time, but it is if it starts to damage our reputation in terms of the integrity of how we handle confidential information and sometimes secret information, which it is vital we have that – for the trust of our partners and of the public that we are able to maintain that sort of secrecy.”*

**2.126** Elsewhere in the Report, I have recommended that it should be mandatory for ACPO rank officers to record all contact with the media, and good practice for junior officers and staff (for their own protection). I entirely accept that this in itself will not prevent a determined individual from leaking. However, as Commissioner Hogan-Howe pointed out:<sup>245</sup>

*“... I think what it does mean is that if we do establish the source of the leak and then we ask them did they report that meeting, did they report their account, then there’s a starting place for an investigation, both for a monitoring exercise or audit, to say: is that an appropriate link? Is that an appropriate sharing of information? It allows us to have that conversation. If someone has chosen not to point out the contact, then it puts them in position where they have to explain more, and that is the nature of any investigation of that type... It’s not conclusive evidence, but it’s a starting point that builds an assumption that might be challenged later, but the person who has a duty and a policy that says that’s what they should do, they have to explain, presumably, why they choose to ignore it.”*

### *Misattribution of leaks*

**2.127** An additional problem in attempting to quantify the scale of this problem is the phenomenon of what the press often refer to as a ‘police source’. Sir Paul Stephenson described the

<sup>244</sup> pp63-64, lines 13-1, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>245</sup> pp64-65, lines 6-1, *ibid*

misattribution of a leak to a ‘police source’ as being “one of the most disappointing and frustrating aspects of public life in London.”<sup>246</sup> He explained:<sup>247</sup>

*“... the assumption very often is if a piece of information leaks into the media about an investigation or something that is very police specific, it must have come from the police, and if it’s the Met, it must have come from the Met. Very often that information will be in the hands of many other people. It might be in the hands of the governance authority, the Metropolitan Police Authority [now the Mayor’s Office for Policing and Crime]. It might be in the hands of the CPS, the Independent Police Complaints Commission – many people. So there’s the potential of leaks from elsewhere, and also it did seem to us on occasions that where the description was “police source”, it seemed more likely to have come from elsewhere, and there did seem to be a great deal more gossiping – and I understand why – in London than anywhere else I worked. This was the centre of power, this was where the national media was, there was much more interest, the place was much more political – so therefore there was a great deal more conversations going on about policing in London outside policing than I ever experienced in any other force.”*

**2.128** A number of other witnesses provided similar evidence. Mr Clarke said that:<sup>248</sup>

*“... the expression ‘police source’ can mean anything from a serving police officer, a member of police staff, a member of the Police Authority, or even someone who has been at a meeting where a police officer shared some information.”*

Mr Port made the point that:<sup>249</sup>

*“... it is also not uncommon for journalists to attribute information to, for example, “a source close to the investigation” but would never reveal to any subsequent investigation who that source was, making successful investigation very difficult. There is no way of proving there was, in fact, any police source.”*

Mr Stearns agreed, and said:<sup>250</sup>

*“... The information to the journalist comes from many, many different areas, and, no, I wouldn’t agree that I would always assume that it’s officers, certainly not.”*

**2.129** From a journalistic perspective, the term ‘police source’ would appear to cover a multitude of sins. On occasion it may indeed be used to protect the identity of a police officer or member of police staff who has provided unauthorised information to the journalist. However, it appears that the term is also used for a variety of other reasons, including to enhance the apparent legitimacy of a story or potentially disguise the lack of a credible source. At other times the information provided may in fact have been given on a perfectly proper basis but is described as being from an unidentified ‘police source’ to add an air of investigative journalism.

<sup>246</sup> p9, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>247</sup> pp18-19, lines 24-19, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>248</sup> pp21-22, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf>

<sup>249</sup> p26, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Chief-Constable-Colin-Port.pdf>

<sup>250</sup> p47, lines 9-12, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

**2.130** This problem was reflected in the evidence of a number of witnesses. Mr Davies explained that ‘police source’ was occasionally used to refer to information provided in an ‘off-the-record’ non-attributable briefing.<sup>251</sup> Mr Ungoed-Thomas, the chief reporter at The Sunday Times, was clear that he only used the term for police officers,<sup>252</sup> whilst others used it much more broadly. Sandra Laville, crime correspondent for the Guardian, for example, in defining her usage of the term ‘police source’, said that she viewed it as being “*broadly anybody linked to policing.*”<sup>253</sup> She confirmed that this might, for example, include the Police Authority or IPCC.<sup>254</sup> Michael Sullivan, Crime Editor of The Sun, went further when he said, “*I mean “police source” could be anything, it really could. There is a lack of clarity around that.*”<sup>255</sup> Lucy Panton, former Crime Editor of the News of the World, candidly said that: “*Police source is used liberally in reporting.*”<sup>256</sup>

**2.131** Mrs Filkin’s evidence also reflected the nature of this problem. She noted that the use of the term ‘police source’ tended to imply a leak, but agreed that it may also be used properly to indicate that the source is an institution or someone which is different but related, such as the MPOC, or may in fact be a mask to try and protect the real provenance of a source.<sup>257</sup> She made the point that:<sup>258</sup>

*“I was in one other organisation when a person who had a relationship, a proper relationship, towards policing gave information to a journalist, so I saw that happening, and I was in another organisation where a person said they had given information in the past and had described themselves as a police source. So I saw those sort of things happening ...”*

Both Tim Godwin, the former Deputy Commissioner of the MPS, and the Commissioner expressed frustration at this problem, which can often cause confusion when deciding whether to pursue a leak investigation in the first place.<sup>259</sup>

**2.132** A degree of lack of transparency in this area is inevitable given the often understandable desire of the media to protect the identity of their sources. Given the reputational damage that can be caused, I can also readily understand the frustration of the Police Service in circumstances where a ‘police source’ is quoted but it then transpires that the information came from an outside individual. There is a balance here and I would certainly encourage the press to be as transparent as possible when using the term ‘source’, so that the general provenance of the information is more easily understood. I revert to this issue in Part G Chapter 4 below.

<sup>251</sup> p24, lines 9-25, Nick Davies, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Afternoon-Hearing-28-February-2012.pdf>

<sup>252</sup> p92, lines 9-15, Jonathan Ungoed-Thomas, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>253</sup> p42, lines 13-24, Sandra Laville, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>254</sup> p42, *ibid*

<sup>255</sup> p58, lines 2-17, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>256</sup> p14, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lucy-Panton.pdf>

<sup>257</sup> p16, lines 1-8, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>258</sup> p16, lines 12-20, *ibid*

<sup>259</sup> pp62-63, lines 14-4, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>; pp15-15, paras 44-47, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Tim-Godwin.pdf>

### Whistleblowing

- 2.133** True public interest journalism into wrongdoing continues to play a vital role in the democratic accountability of public bodies and institutions. This is particularly so in the case of the Police Service given the concept of policing by consent. It is for this reason in particular that a framework is needed to allow for a safe and transparent relationship between the police and the media which works in the public interest, respects freedom of expression, but also respects the integrity of individual police investigations. At the same time, this framework must also still allow police officers and police staff the opportunity to report instances of wrongdoing, safe in the knowledge that the information provided will be treated in absolute confidence and with the seriousness that may be warranted.
- 2.134** It is within this context that consideration must be given to where the boundary lies between ‘non-official communication’ and ‘leaking’. This line is often unclear and it may be that the only meaningful distinction is as between information which the organisation concerned is content to be released into the public domain and that which it is not. This latter category would clearly include and should comprise information which is operationally sensitive or otherwise protected from disclosure by law. However, it may also include information which is damaging for other reasons, for example, from a reputational standpoint, or because it is likely to undermine public confidence in policing. In these cases, some may argue that it would be extremely difficult for an organisation to sit in judgment on itself, and weigh up the competing public interests objectively. An obvious corollary in such circumstances is that the organisation will decide against disclosure where the balance ought to be struck in favour of it.
- 2.135** It is therefore maintained by some that in the circumstances outlined above, ‘leaking’ or ‘unauthorised disclosure’ can serve the public interest. Such an example was provided by Sean O’Neill, Crime Editor of The Times, in relation to the:<sup>260</sup>

*“... disclosures over the Met’s failures in the John Worboys and Kirk Reid serial rape cases; reporters learnt of serious investigative failings in both cases by attending early court hearings and put pressure on the Yard which forced it to make public disclosure of its errors. Ultimately this led to a fundamental reform of the way rape and serious sexual offences are investigated in London.”*

- 2.136** In relation to information which ordinarily should not be disclosed to a journalist, he explained that:<sup>261</sup>

*“In my experience this has been information about mismanagement, incompetence or inappropriate actions by their organisation or senior managers/officers. A few years ago I ran a series of stories which were highly critical of the work of the SOCA. At the time SOCA was extremely secretive, had no police authority or similar body to which it was answerable and had been totally exempted from the Freedom of Information Act. Huge efforts were made to try and track down my source who would have been dismissed had he/she been discovered. Thankfully they were not traced.”*

<sup>260</sup> p14, para 67, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-ONeill.pdf>

<sup>261</sup> p8, para 43, *ibid*

**2.137** Mr O'Neill made the point that *"officers often talk to reporters because they have serious concerns about the way their force is operating or about failures in investigations which have put the public at risk."*<sup>262</sup> Commissioner Hogan-Howe recognised this and said:<sup>263</sup>

*"I would never want to stop somebody in the public interest who wants to – in the genuine public interest – wants to reveal something that is not getting out another way, and in fact there is a statutory defence for that type of sharing of information with the press."*

Chief Superintendent Derek Barnett, President of the Police Superintendents' Association of England and Wales, also accepted that going outside the confidential reporting system might be appropriate, but only in *"extreme circumstances."*<sup>264</sup>

**2.138** This leads to the associated debate around the extent to which an individual must exhaust internal procedures before disclosing confidential information to the media. On this issue, Lord Macdonald QC, the former Director of Public Prosecutions, expressed a cautionary view:<sup>265</sup>

*"I disagree that there is necessarily an unshakeable duty upon whistleblowers to exhaust their internal 'remedies' before going on to leak. In too many organisations this would be a recipe for suppression. The route from whistle blower direct to journalist can serve a very strong public interest. Investigative journalism, in particular, depends strongly upon the confidence than an informant has that he may pass on information to a journalist without necessarily revealing his identity publicly, subject of course to any liability he may incur in law. Again, I believe it would be a matter of great regret if the Inquiry were to result in strong discouragement or further legal impediment to this process."*

**2.139** The evidence of Mrs Filkin lent some additional support to Lord Macdonald's analysis. She said that:<sup>266</sup>

*"... the Metropolitan Police Service has an internal speak-up process [known as 'Right-line'], which I think they take seriously – I had looked at it in some detail – and staff can report concerns, either personally or indeed anonymously on the telephone to that operation and those reports are looked at very carefully. I believe that the current Commissioner is looking at all those reports as they come in. So there is a process. What quite a lot of staff said to me ... is, "Oh, well, I wouldn't use it because I don't know what they do with it and I don't trust it", and so in many instances I would say, "Well, wouldn't it have been the sort of thing you could have brought to the attention of your manager?", and I would get the same reply. Obviously for some people there were concerns or fear about their own future if they were in any way regarded – the term that they would use to me – as a trouble-maker. But it was clear from looking at the system that quite a lot of staff did use it and do use it. But it's very important, of course, that the Metropolitan Police Service do some more to make sure that people do use it if they need to and can trust it."*

<sup>262</sup> pp9-10, para 49, *ibid*

<sup>263</sup> p12, lines 20-25, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>264</sup> p77, lines 4-18, Chief Superintendent Derek Barnett, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>265</sup> pp32-33, para 68, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lord-Macdonald-QC1.pdf>

<sup>266</sup> pp112-113, lines 5-2, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

**2.140** HMIC made similar findings in their report ‘Without fear or favour – a review of police relationships’. They recorded that:<sup>267</sup>

*“... all forces have a method of anonymously and confidentially reporting integrity issues (whistle blowing), either by telephone or e-mail or both. Feedback from focus groups indicated a lack of knowledge or a level of scepticism and distrust regarding the anonymity of the systems.”*

**2.141** With an eye to the future, it is clearly important that reporting systems are maintained and that individuals are encouraged to use them. I consider that the starting point for any police officer or member of police staff when wishing to report an issue of concern should be that they first look to their internal procedures. Given the apparent lack of trust in the current process, this may in fact argue for a more independently operated system. The logical location for such a system may be the IPCC given its statutory oversight role; given the obvious organisational ramifications of such a recommendation, I will be suggesting (in Part G Chapter 4) that serious consideration be given to the IPCC as playing an enhanced role in the potential solution to this very important issue.

### *The impact on police investigations*

**2.142** One of the more obviously damaging aspects of leaks to the media is where they result in articles being published that contain confidential details about operational matters. This can have a direct impact on criminal investigations and may result, for example, in the provision of confidential information to suspects regarding police operations and evidence; it can undermine the confidence of victims and witnesses; it may damage the reputation and infringe the privacy of individuals where the media coverage relates to what are subsequently found to be unfounded allegations; and it may also cause unnecessary distress to individuals who are pursued by the media because they are the family or friends of a witness or victim. A number of egregious examples were provided in evidence.

**2.143** Clive Driscoll, a Detective Chief Inspector in the MPS, recalled his experience as Senior Investigating Officer of Operation Fishpool, the re-opened investigation into the murder of Stephen Lawrence.<sup>268</sup> He explained that given the high profile nature and understandable sensitivities surrounding the case it had been essential for the police to gain the trust of the Lawrence family. He also explained that the issue of the murder and the previous investigation had meant that the case *“was also very sensitive within the police because of the impact the McPherson report had had on the reputation of the MPS and the changes which had followed.”*<sup>269</sup> DCI Driscoll said that for these reasons, *“we decided to keep information about the progress of the investigation very close and disseminate information on a “need to know” basis.”*<sup>270</sup>

**2.144** Despite this, information was leaked to the media on more than one occasion. DCI Driscoll recalled that on 18 October 2007 *“a significant amount of information about the investigation”*<sup>271</sup> was leaked through an article in the News of the World. He said that despite

<sup>267</sup> p54, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>268</sup> p5, lines 8-16, Detective Chief Inspector Clive Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>269</sup> pp3-4, para 7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-DCI-Clive-Driscoll.pdf>

<sup>270</sup> p4, para 8, *ibid*

<sup>271</sup> pp11-12, lines 18-7, Detective Chief Inspector Clive Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

there being “no permission for disclosure on the investigation we were doing at all”, the article:<sup>272</sup>

*“... identified that there was a forensic review going on, it identified the fact that we had a team working on Stephen’s case, which up until then we’d managed to keep fairly quiet ... I think they talked about a secret location. It was never that secret, but it identified that the Metropolitan Police Service had moved on and were moving on within Stephen’s investigation.”*

**2.145** DCI Driscoll explained that a second significant leak occurred following a meeting at New Scotland Yard on 7 November 2007. The attendees at the meeting were DCI Driscoll himself, Assistant Commissioner Dick (who was ultimately responsible for the investigation), two members of DCI Driscoll’s team, a representative from the CPS, Mrs Lawrence and her solicitor and barrister.<sup>273</sup> The purpose of the meeting had been to share new evidence with Mrs Lawrence and her legal team and provide a general update on progress.<sup>274</sup> DCI Driscoll recalled that less than two hours after the meeting had finished press enquiries were being made. He said:<sup>275</sup>

*“I received a phone call whilst I was on the train that there was an article that was going to be printed the following day which followed the meeting that we’d just had, or appeared to follow the meeting we’d just had.”*

**2.146** The article itself appeared in the Daily Mail on 8 November 2007, the day after the meeting at New Scotland Yard.<sup>276</sup> Not only did the article reveal that the confidential meeting had taken place, but it also referred to the forensic evidence that was discussed at the meeting.<sup>277</sup> DCI Driscoll explained that the articles concerned disrupted the investigation and “made my job much more difficult”,<sup>278</sup> they also negatively impacted on the police’s relationship with the Lawrence family.<sup>279</sup> He went on to say:<sup>280</sup>

*“At one point it seemed there was almost one story every month, most contained publically held or regurgitated information. However, confidential information about the forensic evidence was also being published in the media and I considered that to be compromising.”*

**2.147** The journalist who wrote the Daily Mail article, Stephen Wright, denied that the source of his information had been a member of the investigation team.<sup>281</sup> For the police’s part, DCI Driscoll did not know the source of the leak but said that could only have come from someone within the MPS, the forensics team or the CPS, a number of whom had access to the sensitive material.<sup>282</sup> He said that he was as “sure as I can be it was not one of my own

<sup>272</sup> pp11-12, lines 25-7, *ibid*

<sup>273</sup> p12, lines 13-21, *ibid*

<sup>274</sup> pp12-13, lines 22-3, *ibid*

<sup>275</sup> p13, lines 7-11, *ibid*

<sup>276</sup> pp5-6, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-DCI-Clive-Driscoll.pdf>

<sup>277</sup> p14, lines 17-25, Detective Chief Inspector Clive Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>278</sup> pp6-7, paras 15-18, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-DCI-Clive-Driscoll.pdf>

<sup>279</sup> p6, para 14, *ibid*

<sup>280</sup> pp6-7, para 16, *ibid*

<sup>281</sup> p5, lines 7-10, Stephen Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-15-March-20121.pdf>

<sup>282</sup> p7, para 19, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-DCI-Clive-Driscoll.pdf>

team – I trusted them all.”<sup>283</sup> Given that some of the details that were published were partly incorrect, he offered the view that the person responsible appeared to be “someone sitting on the perimeter.”<sup>284</sup> DCI Driscoll explained that:<sup>285</sup>

*“... the situation became so bad that we eventually obtained a Press Restriction Order at the High Court ... to prevent the press reporting about the new evidence in Stephen’s murder.”*

**2.148** On 5 September 2010, DCI Driscoll recalled that he was:<sup>286</sup>

*“... informed by the MPS press office that Stephen Wright had got hold of some information which he proposed to publish, including information about the forthcoming arrests/charges and the fact that we were making an order for reporting restrictions ... To the best of my recollection he also had details of forensic information. All the information was highly confidential and sensitive and was kept very close. I do not know how it could have leaked but it was not known to many people and was potentially very damaging.”*

DCI Driscoll explained that he asked Mr Wright, through the MPS press office, not to publish given that it would have had “quite a serious consequence on the operation we were planning.”<sup>287</sup> Following representations from the MPS, the Daily Mail agreed not to publish the article in this instance.<sup>288</sup>

**2.149** Moving matters forward, DCI Driscoll recalled that in the lead up to the trial he was informed by a contact that it was “well known in Fleet Street” that a “named senior member of the MPS” was briefing outside of official meetings; a later more serious allegation was also added. DCI Driscoll said that this concerned “the close relationship between this senior member of the MPS and sections of the media. The relationship was rumoured to be corrupt.”<sup>289</sup> In relation to this specific issue, it is not known whether the senior member of the MPS referred to was the source of the leaks in 2007. DCI Driscoll explained that:<sup>290</sup>

*“My understanding is that an investigation did take place and that in fact that information has been passed across to the Independent Police Complaints Commission and indeed also to Operation Elveden, so I would respectfully ask that I don’t give that name for fear of undermining what could be an ongoing investigation.”*

**2.150** Whilst very careful to praise the contribution of Mr Wright and the Daily Mail in the pursuit of justice for the Lawrence family, DCI Driscoll offered the following thoughts in conclusion:<sup>291</sup>

*“... I do think it’s essential that the police enjoy the confidence of the public, because we are not as effective as we should be without it, and I do believe that maybe lessons*

<sup>283</sup> p7, para 19, *ibid*

<sup>284</sup> p7, para 19, *ibid*

<sup>285</sup> pp7-8, para 20, *ibid*

<sup>286</sup> p8, para 21, *ibid*

<sup>287</sup> p24, lines 3-20, Detective Chief Inspector Clive Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>288</sup> pp13-14, lines 4-2, Stephen Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-15-March-20121.pdf>

<sup>289</sup> p8, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-DCI-Clive-Driscoll.pdf>

<sup>290</sup> p26, lines 5-10, Detective Chief Inspector Clive Driscoll, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>291</sup> p27, lines 9-24, *ibid*

*could be learned which would benefit other investigations and other families that have tragically lost children ... having got the police to be in a position where we were conducting an investigation, which I'm delighted to say resulted in some justice for Mr and Mrs Lawrence, just to reflect on how reporting can affect the family, how reporting can affect witnesses and how it can, even though I would be 100 per cent sure this was not the intention from the Daily Mail, it can undermine a good investigation."*

**2.151** Very similar comments could be made in relation to Operation Sumac, a murder inquiry into the killing of five women in Ipswich in 2006. David Harrison, a crime investigation officer working with the Serious Organised Crime Agency (SOCA) on the murder inquiry, said that he was told in a briefing that *"a News of the World surveillance team had been deployed"* to identify the members of the SOCA team and to also establish where the team was based.<sup>292</sup>

**2.152** Mr Harrison believed that information in relation to SOCA's involvement in the murder inquiry could only have come from *"someone close to the investigation team, either the Suffolk murder inquiry or SOCA."*<sup>293</sup> Mr Harrison described how the actions of the News of the World jeopardised the investigation:<sup>294</sup>

*"... It is historically known that murder suspects, before they realise they're being investigated, may return to the scene of the crime. They may try and dispose of evidence. They may try to move bodies or they may even try to commit further offences. If, whilst doing that, they thought they were being followed – they obviously wouldn't know that it was a legitimate police surveillance team or whether it was a newspaper, but if they thought they were being followed, they might very well stop what they were doing or not do what they'd planned to do ... if a surveillance officer can see the sort of evidence we were after, if that is not possible, then that weakens the prosecution case in the future ... The second objective of our surveillance was not only to ... look for the target to go back to the scene of the crime, but it was also ... that if he had intended to commit further murders, we were in position to either stop him or call resources to stop him. Again, if our surveillance had been weakened by having to try and avoid other surveillance teams looking for us, if we'd lost the subject, he may have gone and committed further murders because we were dealing with something else, we were trying to keep away from other surveillance teams."*

**2.153** Detective Chief Inspector Philip Jones of the Avon and Somerset Constabulary, the senior investigating officer in the Joanna Yeates murder inquiry, gave evidence that the force received an *"enquiry from the Daily Mail concerning low copy DNA having been found on Joanna's body"* during the investigation.<sup>295</sup> He explained that the nature of the DNA had been known to *"a limited number of Avon and Somerset personnel and also to other relevant agencies"* and therefore a leak was suspected.<sup>296</sup> DCI Jones reported that the leak investigation into this matter was still ongoing when he gave evidence.<sup>297</sup>

<sup>292</sup> p4, lines 11-17, David Harrison, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>

<sup>293</sup> p4, lines 18-22, *ibid*

<sup>294</sup> pp8-9, lines 6-11, *ibid*

<sup>295</sup> p7, para 24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-DCI-Phillip-Jones.pdf>

<sup>296</sup> p95, lines 1-24, Detective Chief Inspector Philip Jones, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>297</sup> p96, lines 9-15, *ibid*

**2.154** The description given by DCI Jones of the impact on the police investigation mirrored that of DCI Driscoll. He said that:<sup>298</sup>

*“... the effect of such information appearing in the media had the potential to affect the morale of the team and seed distrust between us. It could be very distracting from our primary objective requiring us to review our investigation ... Crucially, it also had the potential to destroy the trust between the police and Joanna’s family if they believed that we were not informing them of investigative developments.”*

**2.155** It is clear from the evidence that media coverage can on occasions have a negative impact on police criminal investigations. This impact is exacerbated where the information published results from a leak (or an assumed leak), given the internal disruption this can cause to the investigating team and the negative effect that it can have on the police’s relationship with victims and witnesses. The points that I have already made in relation to leaks and leak investigations apply equally here. The above examples also perhaps argue in favour of closer (but transparent) engagement between the police and the media in cases of this sort. In conclusion, Commissioner Hogan-Howe provided an interesting analysis of this point:<sup>299</sup>

*“I think in the cases where the press come to us and say, “We believe X committed this crime”, we would always counsel them not to share that information with the public. It seems to me that if we are able to put into the discussion – we don’t initiate that piece of information as a starting point, but if they come to us with something which we know to be true, then we can hardly deny the truth and if they’re right, they’re right. But I think we have got a duty to try and persuade them to use that information responsibly, which often will mean not publishing it, because that, for me, will compromise the criminal justice process. That’s what it’s there for. All they can be reporting, often at an early stage of an investigation, is their suspicion. Well, as we’ve seen numerous times, suspicions don’t always materialise into convictions. So for me, there’s never a reason to start sharing partial information, and on the whole I’ve found the press to be pretty good at that. The difficulty comes when you have a long-running investigation where the press start to challenge, on behalf of the public, whether the investigation is being run in a professional manner and whether or not you’re taking all steps you can to secure a conviction. That’s where it can become more challenging. But I think provided the press are reassured that it’s a professional investigation that’s being well led, well managed, they accept some of the problems we sometimes face and hold off.”*

### *Use of social media*

**2.156** One of the more recent and potentially most effective tools at the disposal of the Police Service for communicating with the media (or perhaps more importantly, directly with the public) is through the portal of social media.

**2.157** Despite its potential use, social media has not found complete favour within the Police Service. There are also reservations within the media. A number of witnesses regarded its advent as being unhelpful to the proper performance of the police and the press within their

<sup>298</sup> p7, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-DCI-Phillip-Jones.pdf>

<sup>299</sup> pp29-30, lines 21-25, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

respective roles. Colin Port, Chief Constable of Avon and Somerset Constabulary, for example, suggested that:<sup>300</sup>

*“... difficulties can arise where people are spending more time tweeting than actually policing and we don’t encourage officers per se to tweet. What we have is a number of groups of officers who will do it, farm watch or particular watch areas. But we don’t encourage officers to tweet ... we use Facebook corporately, but Facebook, as we know from our own experience, has exposed officers, because of their naivety and trust, to potential compromise, so therefore we monitor and give guidance where appropriate in respect of that.”*

**2.158** Anne Pickles, the acting editor of the News and Star and the Cumbrian News, and Nick Griffiths, the crime reporter for the News and Star, agreed that social media was not without its problems as a method of communicating with the Police Service.<sup>301</sup> Ms Pickles described Twitter as a “personal irritant”,<sup>302</sup> and said:<sup>303</sup>

*“... since officers have started tweeting, it’s become an obstacle, really, for us. It’s almost a full-time job now, monitoring Twitter for police officers’ tweets, and then – of course, once they’re out, they’re completely out of control. Nobody’s monitoring Twitter. So it’s followed by all sorts of threads and streams coming after an officer’s tweet. You get a point where it may be a touch ambiguous. You go to the press office: “I’ve just seen a tweet that says blah, blah has happened.” “We have no information on that. Try tweeting the officer involved.” From our point of view, it wastes time and ... it’s just a blurring and a fudging of what was really quite a streamlined way of getting information ...”*

**2.159** However, the more widely held view was that social media provided opportunities for the Police Service and media alike. The MPS now has its own social media policy.<sup>304</sup> The policy sets out how the MPS will “support and amplify the MPS corporate communication strategy” and “deliver increased direct communication and engagement with Londoners.”<sup>305</sup> Commissioner Hogan-Howe explained that the MPS’ general approach to this issue had changed in two principal respects:<sup>306</sup>

*“One is that we now have not only a policy but we actually have all the boroughs and the specialist departments, who are now being encouraged to use social networking rather than discouraged ... and the second thing is to actively allow our own staff access to the internet. The situation in the past had been ... that you could have access to the internet as one of the 53,000 if you could show good reason to do it ... So both in our use of social network and in our access to internet, we’re encouraging our staff to use it, not to have to explain why they want to use it.”*

The Commissioner acknowledged that there were risks associated with this policy but said that:<sup>307</sup>

<sup>300</sup> p54, lines 3-13, Chief Constable Colin Port, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>301</sup> pp13-14, lines 16-11, Anne Pickles and Nick Griffiths, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>302</sup> p13, lines 16-17, *ibid*

<sup>303</sup> pp13-14, lines 16-7, *ibid*

<sup>304</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Exhibit-ES2.pdf>

<sup>305</sup> *ibid*

<sup>306</sup> pp75-76, lines 10-8, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>307</sup> p77, lines 1-4, Commissioner Hogan-Howe, *ibid*

*“... no doubt some will let us down and we’ll have to deal with them appropriately, but I prefer that problem rather than an organisation that’s a few years behind the times.”*

**2.160** Ed Stearns, chief press officer for the MPS, said that social media offered the MPS an:<sup>308</sup>

*“... opportunity to reach new audiences ... It’s an opportunity for us to get out context around issues to the public, and ultimately it’s another way of reaching the public.”*

Mr Stearns said that the MPS had a number of different Twitter accounts, including the corporate feed @MetPoliceUK which is used as a broadcast tool to provide updates on a range of news and other issues, and @MPSInTheSky which is used to highlight the work done by the MPS’ police helicopter unit.<sup>309</sup> The MPS Twitter feeds are being rolled out to all boroughs and will be used *“to provide information and crucially to engage with local communities.”*<sup>310</sup>

**2.161** Other police forces had a variety of different approaches to the use of social media. South Wales Police provides guidance to police officers on the use of social networks which includes a *“prohibition on divulging any information that may compromise police operations.”*<sup>311</sup> Peter Vaughan, the Chief Constable of South Wales Police, said that officers within the force were encouraged to tweet to their communities but to *“a limited extent.”*<sup>312</sup> He explained that the force has:<sup>313</sup>

*“... one Twitter account for each of our basic command units ... we have what we call ourbobby.com which is a website that each of the policing wards, policing areas, electoral wards have their own information on the crime patterns and everything else that’s going on.”*

**2.162** Deputy Commissioner of the MPS, Craig Mackey, also acknowledged that the use of social media by the Police Service did not come without its risks.<sup>314</sup> However, in respect of its use by Cumbria Police (the force for which he was previously responsible), he said:<sup>315</sup>

*“... It would be fair to say if I was doing an assessment of where I am now to where I was last year, Cumbria’s probably a bigger user of social media than the Metropolitan Police, even given the size of the two organisations. It embraced Twitter, Facebook, Bebo, all the social media far earlier than most others, and it also has some real practical examples. I’d go back to the 2009 flooding where the intelligence cell actually found a lot of people who had been evacuated by Facebook status and followed things up in a way that previously we’d have got in a car and gone off and done things. It also brings an immediacy to it in terms of last Christmas’ drink drive operation, information going straight out on Twitter in terms of what we were doing, where we were. It brings an immediacy and an accountability in terms of what’s going on. It’s not ideal, the limitation on characteristics, and it’s not without its challenges in terms*

<sup>308</sup> p56, lines 17-23, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>309</sup> pp18-19, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>310</sup> *ibid*

<sup>311</sup> p36, lines 16-23, Catherine Llewellyn, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>312</sup> p37, line 2, Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>313</sup> p37, lines 2-14, Chief Constable Peter Vaughan, *ibid*

<sup>314</sup> p79, lines 19-21, Deputy Commissioner Craig Mackey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>315</sup> pp79-80, lines 21-18, *ibid*

*of people going beyond how they should in terms of their interaction, but as a general principle, it's here to stay and I think we have to embrace it."*

**2.163** Similarly, Jerry Kirkby, the Assistant Chief Constable of Surrey Police, recalled the positive use of social media by the force in relation to an armed siege at a bank in June 2010. The use of social media allowed for the receipt of information from the public, and allowed the force to directly communicate information to the public and the media.<sup>316</sup> He said:<sup>317</sup>

*"I think social media is opening up massive opportunities for us for the way we engage and communicate with the public. I think in this instance it was complementary, predicting what will happen in the future. I think we are seeing greater use of social media by the public. It's a good means of communication. Twitter is an excellent means of actually getting fast time information out there, accurate information quickly. One of the interesting factors in this is not only did we communicate with the public; we were also actually communicating with the press on Twitter as well, in so much as they were picking up the comments and the feeds that we were putting out."*

**2.164** In relation to West Midlands Police, Chief Inspector Sally Seeley said:<sup>318</sup>

*"It is important to remember that there are officers and police staff within a range of roles across the Force putting information into the public domain on a regular basis which is followed by the media. For example, a response officer in Walsall has over 3000 followers on Twitter. He regularly 'tweets' about his operational activity and writes blogs on subjects that interest him around policing, including current issues such as his experience of the impact of the Stephen Lawrence murder and the McPherson Report on policing.*

*All officers are encouraged to follow Force social media guidance when engaging and informing via social media. This guidance directs them to consider the Force values, standards of professional behaviour and Force vision when engaging. This engagement is monitored by the Corporate Communications Department and is also monitored by local supervisors.*

*The media perception is that social media accounts provide legitimate and quick access to officers. Whilst engaging freely with the public across social media account, officers and staff who use social media accounts are aware that any traditional media requests require engagement with the Corporate Communications Department. Our experience is that any approach by traditional media in relation to information passed on social media is referred very quickly to the Corporate Communications Department."*

**2.165** Roger Baker, one of Her Majesty's Inspectors of Constabulary, offered the view that *"the police ... have been struggling to keep in front of"* the developing use of social media.<sup>319</sup> He made the point that very few forces had what he would describe as:<sup>320</sup>

*"... robust policies around what you can and cannot do on social media sites such as*

<sup>316</sup> p33, lines 19-24, Assistant Chief Constable Jerry Kirkby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>317</sup> p35, lines 7-19, *ibid*

<sup>318</sup> p4, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Inspector-Sally-Seeley.pdf>

<sup>319</sup> p65, lines 1-3, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>320</sup> p65, lines 6-11 *ibid*

*Facebook, Twitter, et cetera.”<sup>321</sup> Mr Baker went on to say that “I’m not against any of these sites, there are lots of positive aspects from the Police Service communicating with the public on these social networking sites to inform the public of issues in their areas that they would want legitimately to know about.”*

However, he suggested that controls around its usage were “very blurred” – particularly as between what is “public in your professional life” and what should be in “the public domain.”<sup>322</sup>

- 2.166** Andy Trotter, Chief Constable of British Transport Police and Chair of the ACPO Communications advisory group, recognised that there was a need for greater clarity in this area.<sup>323</sup> However, he considered social media to be “an excellent way” of connecting with the public.<sup>324</sup> He said:<sup>325</sup>

*“Police forces can communicate instantly and can receive feedback without the filtering process of newspapers, television and radio. Public confidence in the tabloids is not always high therefore the police need to continue to develop means of direct communication. While there have been instances of poor judgement by police officers when putting entries on Facebook such instances should not deter us from embracing the opportunities presented by the new world of social media. Many forces have made excellent use of new media in high profile murder investigations and during public disorder and there is a continuing growth in the use of new platforms.”*

- 2.167** The Police Service has sought to address these points in part through ACPO’s ‘Interim Guidance for Relationships with the Media’. Its section on social networking stipulates that:<sup>326</sup>

*“Forces will have their own social networking policy or guidance but the same rules and ethos that apply for dealing with the traditional media also apply to the use of social networks like Facebook and Twitter. Social media channels can have benefits as a way to start conversations, build communities of interest, engage with the public and provide information. Professionally, Facebook can be useful to provide more information than Tweeting alone and photographs/video clips can be added. Police Officers and staff should be aware of the danger of material being used out of context.*

*It is important to note that constraints apply even to the private use of Facebook by serving police officers and staff. Personal information that could impact on a police employees’ professional reputation or that of their police force should not be shared. Additionally, cases or work related issues should not be discussed on private accounts via Facebook, LinkedIn or any other social media.”*

- 2.168** This is clearly sensible advice. There is no doubt that, if misused, social media can cause difficulties for the police. This could be through the behaviour of individual officers or members of police staff, or may in fact be caused by the actions of the public. Mr Stearns, for example, cited the problems caused to the police by the widespread public breach of a reporting restrictions order, through the use of social media, in the ‘Baby P’ case.<sup>327</sup> However, in the main I consider it to be a valuable tool for the police in communicating with the public,

<sup>321</sup> p65, lines 3-6, *ibid*

<sup>322</sup> p65, lines 12-23 *ibid*

<sup>323</sup> p13, para 14.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Andrew-Trotter1.pdf>

<sup>324</sup> p13, para 14.3, *ibid*

<sup>325</sup> p13, para 14.3, *ibid*

<sup>326</sup> pp6-7, paras 9.1-9.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Submission-from-ACPO-Interim-Guidance-for-relationships-with-the-Media.pdf>

<sup>327</sup> pp20-22, paras 48-55, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

particularly to a younger audience. Importantly, it is also a method by which the police are able to communicate to the public directly, and not through the conduit of the media. It seems likely that this will be of increasing use to the police and public alike as the role of the traditional print media declines.

### 3. Entertainment: an overview

#### The principles

- 3.1** It is clear that on occasions the MPS, and police forces more generally, has offered hospitality to journalists and police officers and police staff have accepted hospitality in return from members of the media, some to a greater degree and on a more regular basis than others. The point should be made that the offer and acceptance of hospitality is not necessarily wrong, but must always be treated with caution (as the Police Service guidance in place has made clear). There are also bound to be entirely acceptable social and professional relationships between police officers and journalists. However, where those relationships create a perception of proximity or impropriety, real reputational damage can be done to the individuals concerned and the organisation as a whole.
- 3.2** This section will first look at the existing guidelines which establish the principles and expectations of police officers and staff; and secondly, whether these principles were applied in practice.
- 3.3** The Association of Chief Police Officers (ACPO) has recently produced interim guidelines which address the issues identified by both HMIC's 'Without Fear or Favour' report,<sup>328</sup> and Elizabeth Filkin's review into the relationship between the Metropolitan Police Service (MPS) and the media.<sup>329</sup> The guidelines include advice on the approach to the acceptance of gifts and hospitality.<sup>330</sup> These guidelines offer guidance to police officers and staff on the appropriate level of relationships, and professional conduct with the media in all forms. They specifically offer guidance for the interim, stating that they will be reviewed in light of both this Inquiry and the election results of Police and Crime Commissioners in November 2012.<sup>331</sup> The ACPO interim guidelines include firm guidance which states that:<sup>332</sup>

*"It is essential to the standards of integrity demanded of the police service that police officers and staff should recognise and avoid or respond appropriately to potential conflicts of interest. These can be understood as situations where there may be competing obligations or interest to those who relate to the legitimate policing purpose for engaging with the media."*

- 3.4** Specifically, in relation to the acceptance of hospitality, Section Four of the guidelines advise that any instances of personal relationships between a police officer or a member of staff, with a member of the media which exists outside of their professional policing role, "should

<sup>328</sup> HMIC Report - Without fear or favour – a review of police relationships, published December 2011, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>329</sup> Elizabeth Filkin Report - *The ethical issues arising from the relationship between police and media*, published January 2012, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>330</sup> p1, Association of Chief Police Officers, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Letter-from-ACPO.pdf>

<sup>331</sup> p4, para 1.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Submission-from-ACPO-Interim-Guidance-for-relationships-with-the-Media.pdf>

<sup>332</sup> p5, para 4.1, *ibid*

*be disclosed and recorded under a force notifiable associate policy*".<sup>333</sup> The guidelines continue to advise that *"any gift of hospitality must be recorded in accordance with force policy."*<sup>334</sup> The guidance also sets out the duty of police officers and staff to report any practices of, or perceptions of corruption, which might include the acceptance of an improper level of hospitality.<sup>335</sup>

- 3.5** Reference was also made to the Home Office Guidance on police officer misconduct, unsatisfactory performance and attendance management procedures which was effective from December 2008. In relation to this issue it stated:<sup>336</sup>

*"Police officers never accept any gift or gratuity that could compromise their impartiality. During the course of their duties police officers may be offered hospitality (e.g. refreshments) and this may be acceptable as part of their role. However, police officers always consider carefully the motivation of the person offering a gift or gratuity of any type and the risk of becoming improperly beholden to a person or organisation."*

- 3.6** The Rt Hon Alan Johnson MP, who served as Home Secretary between June 2009 and May 2012, offered a view as to the sufficiency of this guidance in light of recent events. He said: *"It seems to me to be sufficient ... you don't need guidance to know how to act properly and improperly, so I think that guidance, which I actually thought was much more recent, but it seems that it was 2008, is sensible. I never saw it in my period as Home Secretary. I wouldn't have expected to have read it. I would expect people to act with the professionalism that one expects both from police and politicians."*<sup>337</sup>

- 3.7** However, in the absence of any central policy guidelines in relation to the acceptance of gifts and hospitality (prior to the recent interim guidelines published by ACPO), the MPS and, indeed individual forces, have generally sought to establish their own policies on this issue. The MPS have commented that:<sup>338</sup>

*"Whilst the level of guidance provided by these policies will differ from force to force, the MPS felt that given its size and scale of operations, a more precise policy was required to provide greater assistance to its staff."*

### **The Metropolitan Police Service**

- 3.8** The overarching principles of the MPS policies and codes of practice are defined by the Nolan principles, established by the Nolan Committee's first report on the Standards in Public Life.<sup>339</sup> The MPS Special Notice 28/97 set out the following key principles in relation to the gifts and hospitality policy:<sup>340</sup>

<sup>333</sup> p5, para 4.2, *ibid*

<sup>334</sup> p5, para 4.5, *ibid*

<sup>335</sup> p6, para 4.6, *ibid*

<sup>336</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Alan-Johnson-MP.pdf>; Home Office Guidance: Police Office Misconduct, Unsatisfactory Performance and Attendance Management Procedures, version 1.1, effective from December 2008.

<sup>337</sup> pp75-76, lines 22-6, Alan Johnson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-22-May-2012.pdf>

<sup>338</sup> p118, para 6.9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Closing-Submission-for-Module-2-from-MPS.pdf>

<sup>339</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-25-Summary-of-the-Nolan-Committees-first-report-on-Standards-on-Public-Life.pdf>

<sup>340</sup> p115, para 6.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Closing-Submission-for-Module-2-from-MPS.pdf>

- (a) *‘Gifts or offers of hospitality must be refused if there could be any doubt about the propriety of accepting them. If a gift or hospitality is accepted, you must be able to justify it in terms of benefit to the public service’*
- (b) *‘If the refusal to accept [a gift] would cause embarrassment or offence, the gift should be accepted but sent to the Director of Procurement and Commercial Services with a covering report.’*
- (c) *‘Inexpensive hospitality offered in the normal course of duty, including attendance at community functions, consultative meetings, visits to youth clubs and schools and so on, may be accepted. It may be appropriate in some cases to accept the offer of a light working lunch (or very exceptionally a working dinner) but more substantial hospitality should normally be declined. If, exceptionally, it is considered appropriate to accept more substantial hospitality, authority must be given in writing by a senior officer ...’*
- (d) *All offers of gifts or hospitality (with certain limited exceptions) must be recorded in registers held by each business group within the MPS.’*

**3.9** The Special Notice 28/97 introduced the formal registration of gifts and hospitality to the MPS.<sup>341</sup> The policy outlined the requirement for recording any acceptances or rejection of gifts and hospitality in a hospitality register for ‘scrutiny purposes’.<sup>342</sup> It set out the responsibility of the MPS unit heads to identify vulnerable posts, and to ensure that personal returns were submitted on an annual basis, including any nil returns. The policy also echoes the ACPO interim guidelines, reminding MPS officers and members of staff of their public duty to report any suspicion of, or abuse of the acceptance of hospitality to an individual’s advantage.<sup>343</sup>

**3.10** Since August 1997, the MPS have reviewed this policy on a regular basis by means of internal audit by the Metropolitan Police Authority (MPA),<sup>344</sup> now reformed as the Mayor’s Office for Policing and Crime (MOPC), most recently conducted in August 2011,<sup>345</sup> and resulting in a revised policy published in February 2012.<sup>346</sup> The review of the existing policy led to the following conclusions made by the Corporate Governance Committee (CGC):<sup>347</sup>

*‘Gifts and hospitality policy does not reflect appropriate professional and ethical standards and/or does not meet legislative requirements.*

*Ill defined policy for dealing with offers of gifts or hospitality.*

*Procedures are not aligned to the approved policy and/or are unclear.*

*Staff and management are not made aware of the policy and procedures or subsequent changes.*

<sup>341</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-17-Special-Notice-28-97.pdf>

<sup>342</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-24-Notices-06-12-Policy-and-Standard-Operating-Procedure.pdf>

<sup>343</sup> p8, Metropolitan Police Service, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-24-Notices-06-12-Policy-and-Standard-Operating-Procedure.pdf>

<sup>344</sup> The internal audit of gifts and hospitality reviews governance arrangements in place which deal with offers of gifts and hospitality on the basis of a risk approach

<sup>345</sup> p13, paras 50-51, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Julie-Norgrove.pdf>

<sup>346</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-24-Notices-06-12-Policy-and-Standard-Operating-Procedure.pdf>

<sup>347</sup> p17, lines 8-20, Julie Norgrove, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-29-March-2012.pdf>

*Unauthorised acceptance of gifts and/or hospitality, lack of transparency, potential conflicts of interest, non-compliance, inaccurate supervision and review.”*

- 3.11** The key principles of the revised policy remain substantially the same, although amendments to the level of detail contained in the guidance were introduced, particularly in relation to “*what constitutes a ‘light working lunch’ or other form of hospitality that can normally be accepted*”,<sup>348</sup> as well as more clarity on the process of auditing hospitality records.<sup>349</sup> The MPS stressed that the revised policy has “*made significant changes*”,<sup>350</sup> although the policy is undergoing further review in light of the recommendations of the Filkin Report.<sup>351</sup>

#### *Other regional forces and constabularies*

- 3.12** Although there are common elements between each of the individual policies which exist in the regional forces and constabularies, it is evident that there is lack of a common framework. The policies generally outline the purpose of the policy, and detail key principles and standards which are associated with the policy. There is also a sense of promoting the ‘common sense’ approach regarding the acceptance, declining and recording of gifts and hospitality. The remainder of the guidance includes: definitions of types of hospitality; the boundaries of acceptable behaviour of both officers and staff; as well as the expectations and responsibilities of individual police officers within that force, in respect of handling gifts and hospitality.
- 3.13** The level of detail included in the definition of, and what constitutes, appropriate or inappropriate hospitality differ between forces and constabularies. Essex Police provide a very brief overview of what is considered as hospitality,<sup>352</sup> quite similar to West Midlands Police.<sup>353</sup> Staffordshire Police define the receipt of hospitality as:<sup>354</sup>

*“The acceptance of free or discounted entertainment, access, service, refreshment or alcohol from any person or body outside the police service”*

and continues to detail a more comprehensive explanation of the potential types of hospitality which officers and staff might encounter.<sup>355</sup> The Police Service of Northern Ireland (PSNI) also follow a similar approach, providing advice and exemplary situations when gifts or gratuities may or may not be received.<sup>356</sup> Clear responsibilities are set out for individuals, the senior management team, District Commanders and Heads of Branches.

- 3.14** British Transport Police also provide guidance in relation to expectations and full responsibilities of: the individual, the line manager, the area and force headquarters department ‘single point of contact’ (SPOC), and the Professional Standards Department Intelligence Unit (PSDIU).<sup>357</sup>

<sup>348</sup> p116, para 6.4(a), Metropolitan Police Service, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Closing-Submission-for-Module-2-from-MPS.pdf>

<sup>349</sup> p115, para 6.4; p119, para 6.12, *ibid*

<sup>350</sup> p118, para 6.9, *ibid*

<sup>351</sup> Part G, Chapter 3, Section 10

<sup>352</sup> p1, Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-RB1-to-ws-of-Roger-Baker-21.02.12.pdf>

<sup>353</sup> p2, para 2.4, Chief Constable Chris Sims, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCCS18.pdf>

<sup>354</sup> p5, Chief Constable Mike Cunningham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCMC13.pdf>

<sup>355</sup> pp4-6, *ibid*

<sup>356</sup> pp6-9, paras 3-9, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SHO5.pdf>

<sup>357</sup> pp4-5, paras 4.1-4.5, Chief Constable Andrew Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCAT8.pdf>

There are exceptions in the acceptance of gratuity, for example, if it is “*considered to be of crucial benefit to BTP business interested, then this may be accepted provided the specific written authority of an [strategic command team] member has been obtained*”.<sup>358</sup> Other forces, including the West Midlands Police, are less informative in this regard.

- 3.15** The principles of public perception and compliance to the Nolan Principles are also frequently cited in these policies, quite similar to the MPS, and set expectations of professional conduct of police officers and staff in relation to handling the acceptance of gifts and hospitality.<sup>359</sup> The standard operating procedure of British Transport Police includes a requirement to this effect, which states that:<sup>360</sup>

*“All BTP employees should abide by the seven principles of public life in accordance with the Nolan Committee report. The seven principles are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.”*

### *Hospitality records*

- 3.16** Many of these policies also set a requirement for either (or both) the authorisation of the acceptance of a gift or hospitality, and the recording of whether these have been accepted or declined. The structure of these policies may also include formats such as a ‘checklist’ of correct practices;<sup>361</sup> thresholds in relation to the value of gifts which should be declared;<sup>362</sup> as well as reference to document templates for officers and staff to complete the process of recording hospitality, which are later released for publication. The processes involved in maintaining these records are considered here in brief.

- 3.17** The MPS requires all police officers and staff in receipt of hospitality or gifts, to declare these in a formal record which is published on an annual basis.<sup>363</sup> This has been the practice since August 1997 and is a formally structured process through which officers and staff are obliged to follow.<sup>364</sup> The MPS formal guidance specifies a timeframe of five days within which all gifts and hospitality (whether accepted or declined), “*must be reported to a line manager ... and entered in the Gifts and Hospitality Register using the Authorisation and Registration form*.”<sup>365</sup> This is an electronic register which indexes all entries made by the responsible individual. The decision making process in relation to any gifts that are accepted lies with the appropriate ACPO level officer (or Director). Gifts that are received are estimated in value, and should the amount be greater than £25, the MPS practice is for these gifts to be sold and the proceeds donated to a charity at the choosing of the force. Any other gifts received below this amount

<sup>358</sup> p8, para 9.2, *ibid*

<sup>359</sup> p3, para 3.3(c), Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SHO5.pdf>

<sup>360</sup> p5, para 5.4, Chief Constable Andrew Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCAT8.pdf>

<sup>361</sup> p2, Chief Constable Mike Cunningham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCMC13.pdf>; p5, para 13.4, Chief Constable Colin Port, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Exhibit-CP71.pdf>

<sup>362</sup> p2, paras 3.1-3.6, Chief Constable Chris Sims, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCCS18.pdf>

<sup>363</sup> p2, Metropolitan Police Service, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-17-Special-Notice-28-97.pdf>

<sup>364</sup> p115, para 6.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Closing-Submission-for-Module-2-from-MPS.pdf>

<sup>365</sup> p6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-24-Notices-06-12-Policy-and-Standard-Operating-Procedure.pdf>

*“should be donated to a locally identified charity”.*<sup>366</sup> Any hospitality that is offered by the MPS is also recorded in the same register.

**3.18** The MPS retains hospitality records for a period of seven years, after which they are subject to removal from the MPS systems in line with the appropriate retention period.<sup>367</sup> The guidance also provides an authorisation hierarchy for the purposes of scrutiny and review of all hospitality entries. This states that:<sup>368</sup>

- *“The Deputy Mayor for Policing and Crime will review the registers of the Commissioner and Deputy Commissioner every month as part of the publication process;*
- *The Deputy Commissioner will review the registers of Management Board members every month as part of the publication process;*
- *Management Board members will review the registers of ACPO officers and Directors (Special Pay Grade – SPG) they are responsible for every month as part of the publication process;*
- *ACPO Officers/Directors (SPG) will review the local B/OCU Registers for their portfolios every month as part of the publication process;*
- *The B/OCU Commander or Business Group lead will review their local B/OCU/ Business Group registers every month as part of the publication process.”*

**3.19** Following this scrutiny exercise, the hospitality records of the MPS Management Board, ACPO and equivalent police staff, are published within 15 working days of the end of the month. The remainder of hospitality records of officers and staff below ACPO level are published within 20 working days of the end of the month. Systems are established by the Management Board members to ensure that officers and staff comply with this policy within their individual business groups.<sup>369</sup>

**3.20** The Director of Audit, Risk and Assurance for the MOPC is responsible for the internal auditing for the MOPC and the Metropolitan Police Commission.<sup>370</sup> The current Director, Julie Norgrove, has explained that the introduction of the Audit Commission Act has led to a change in the statutory approach of the MPS to auditing, and specifically that:<sup>371</sup>

*“... in essence, the change meant that previously the Metropolitan Police was not an auditory body, it was the MPA itself, and that’s why the audit service sat within that functionality. With the introduction of the Act, that has now changed and the Met is an auditory body, as is the MOPC, and therefore both are required to have an effective audit service.”*

<sup>366</sup> *ibid*

<sup>367</sup> *ibid*

<sup>368</sup> p7, *ibid*

<sup>369</sup> p7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-24-Notices-06-12-Policy-and-Standard-Operating-Procedure.pdf>

<sup>370</sup> p1, paras 1-3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Julie-Norgrove.pdf>

<sup>371</sup> p2, lines 11-17, Julie Norgrove, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-29-March-2012.pdf>

**3.21** By comparison, the regional forces and constabularies have less stringent structures in place. Avon and Somerset Police provide only very broad guidelines on the registration of hospitality that is received. The 2010 Procedural Guidance states that:<sup>372</sup>

*“Each department will keep and maintain a register of gifts and hospitality, both refused and received. Managers will review the record regularly (at least annually) to ensure the system works and to ensure the integrity of the process.*

*The register will be available for inspection by a member of the Chief Officers Group (COG) at all times. The register for COG will be inspected by the Chief Constable, and the register for the Chief Constable will be inspected by the Police Authority.”*

Aside from these guidelines, the policy does not go into any depth and is unclear in regards to the scrutiny process, the retention period or the publication of hospitality records. Durham Constabulary are equally as vague on the process of recording hospitality, providing only guidance to this effect, *“all lunches/hospitality offered by Contractors and Organisations will be recorded on a local register.”*<sup>373</sup> West Midlands Police only comment on the form of gifts which should be recorded, that:<sup>374</sup>

*“all gifts of hospitality, given or received, above the value of £75 should be submitted to the Support Services Unit, Corporate Services Department along with form WG450 via the standards forms page of the intranet.”*

The force directive provides no further guidance in regards to the process of publishing hospitality records.

**3.22** Essex Police also provides a very general guideline, and does not set any precise requirements, nor does it specify any formal process for the publication of hospitality records. The policy states that *“for the protection of individuals, records should be kept locally of all accepted hospitality and gifts, other than token items.”*<sup>375</sup> The guidance goes no further other than directing officers and staff to the relevant form which should be completed with the date, recipient and nature of the gift or hospitality that has been received.

**3.23** Staffordshire Police operates an internal, electronic database for the management of hospitality records and any gifts or gratuities that have been received by officers and staff. The guidelines are similarly broad in relation to the required timescale of the recording process, stating that records should be updated by the individual in receipt of the offer, *“as soon as is reasonably practicable”*.<sup>376</sup> However there appears to be more attention within this guidance, than elsewhere, to the important requirement for an audit trail of such records in order *“to demonstrate that proper ethical standards have been observed.”*<sup>377</sup>

**3.24** A more formal framework exists at the PSNI and British Transport Police. Hospitality registers at PSNI are maintained by the District Commanders and Heads of Branches for their respective areas, with the exception of any registers for members of the Senior Management Team, of

<sup>372</sup> p6, paras 15.1-15.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Exhibit-CP71.pdf>

<sup>373</sup> p6, Chief Constable Jonathan Stoddart, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCJS9.pdf>

<sup>374</sup> p2, para 3.5, Chief Constable Chris Sims, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCCS18.pdf>

<sup>375</sup> p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-RB1-to-ws-of-Roger-Baker-21.02.12.pdf>

<sup>376</sup> p11, Chief Constable Mike Cunningham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCMC13.pdf>

<sup>377</sup> p10, *ibid*

which are maintained separately by a Command Secretariat.<sup>378</sup> These records are maintained in both hard copy and an online register, which is completed with full details of the hospitality or gift as a minimum requirement. The registers are reviewed on a quarterly basis by the District Commanders and Heads of Branches to ensure that there are no breaches in staff conduct, although there is no indication that the hospitality records are published on a regular basis by the force.<sup>379</sup> British Transport Police (BTP) specifically state that gifts and hospitality registers:<sup>380</sup>

*“... will be published in accordance with the Freedom of Information 2009 Publication scheme adopted by BTP. ... [they] will be responsible for publishing the register disclosing gifts and hospitality received and declined by SCT members annually.”*

The hospitality records of BTP are kept for a period of four financial years and contain entries of all gifts and hospitality that have been received which exceed the value of £15. Officers and staff have an obligation to declare these to the Area/Portfolio SPOC within the set timeframe of 28 days.<sup>381</sup> The PSDIU are responsible for producing a comprehensive register of these declarations, which are then appropriately disclosed in the form of publication on the BTP website.<sup>382</sup>

- 3.25** The regional forces and constabularies recognise that hospitality records are subject to the Freedom of Information Act 2000. For this reason the hospitality records of senior officers are routinely published, normally on the force website or held by the relevant department in a detailed form, should a freedom of information request be made. The PSNI specifically note in their policy directive that:<sup>383</sup>

*“It must be remembered that all entries will be reviewed by ACCs/Heads of Departments or, in the case of members of the Senior Management Team, Internal Audit, and may also be subject to requests under the Freedom of Information Act 2000. As a result, information must be full enough so that it can be justified at a later date. If information is not full enough, the authorising officer should seek further information from the member of staff.”*

- 3.26** It is a safe assumption that the introduction of the ACPO interim guidelines will help to address this issue and foster the application of a universal guidance policy for both the MPS and all regional forces and constabularies. This will ensure greater clarity on the responsibilities of individual officers and staff, and most importantly define the appropriate expectations of handling hospitality and gifts, in particular, to set formal procedures in relation to the publication of hospitality records. In the following section, the practical applications of the current policies are considered, based on the evidence that the Inquiry has heard.

## The reality

- 3.27** Given the real and understandable concern about the nature of the relationship between certain senior officers within the MPS and News International, and the media more generally,

<sup>378</sup> pp10-11, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SHO5.pdf>

<sup>379</sup> p11, para 13, *ibid*

<sup>380</sup> p9, para 11.3, Chief Constable Andrew Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CCAT8.pdf>

<sup>381</sup> p6, paras 6.5, *ibid*

<sup>382</sup> p7, para 6.6, *ibid*

<sup>383</sup> p10, para 12.5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SHO5.pdf>

the issue of hospitality as between the police and the press has been the subject of much scrutiny. I will address this general issue within this section.

**3.28** In considering these matters, it is important to put them into their overall context. Sir Denis O'Connor, formerly Her Majesty's Chief Inspector of Constabulary, said that a review of force hospitality registers across England and Wales provided to HMIC for the last five years showed 9,500 entries, of which 298 (i.e. less than 3%) related to gratuities and hospitality accepted from the media.<sup>384</sup> Even allowing for under-recording, the numbers therefore are small. However, that is certainly not to understate this issue given its potential impact in public confidence terms.

**3.29** HMIC's report 'Without fear or favour – a review of police relationships' and Mrs Filkin's report 'The Ethical Issues Arising from the Relationship between Police and Media' both provide a very useful backdrop to this topic. When considering this issue, HMIC found that:<sup>385</sup>

*"While all forces and authorities have hospitality and gratuity policies, these vary significantly. Most seek to provide guidelines, but few provide sufficient clarity to staff on what is acceptable."*

Self-evidently, therefore, this is not an issue that was limited to the MPS. As the Home Secretary put it:<sup>386</sup>

*"... in relation to the question of what are appropriate relationships between police officers and the media, I think this is a more general issue than simply the Metropolitan Police ..."*

**3.30** Interestingly, HMIC also recorded that in the absence of clear rules or guidance on this issue:<sup>387</sup>

*"... police officers and staff endeavour to define what should and should not be accepted based on their own concept of what is right and what is wrong and where the boundaries of appropriateness lie. There is sound evidence that in doing so junior staff understand the impact of their own decisions on the force's reputation. They looked to senior officers to lead by example, although in many cases felt that senior leadership was lacking."*

**3.31** Mrs Filkin's report, although focused specifically on the MPS, identified very similar issues and can be read alongside HMIC's report in terms of the key messages that they impart. More particularly, Mrs Filkin found that:<sup>388</sup>

*"... many of those who spoke to me said that a culture had developed, at some senior levels in the organisation, which made it normal, and in some cases expected, that contact with the media would be close. In addition, hospitality which is now widely considered inappropriate was accepted."*

Mrs Filkin also recorded the opinion of some police officers and staff within the organisation

<sup>384</sup> pp28-29, lines 8-1, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>385</sup> p12, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>386</sup> p66, lines 10-17, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

<sup>387</sup> p41, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>388</sup> pp19-20, para 3.2.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

who felt that there “appeared to be one rule for senior contact with the media and another for the rest of the organisation.”<sup>389</sup> She expanded on this point and said:<sup>390</sup>

*“Because the publication of the hospitality register and so forth, which had occurred for the first time shortly before the summer of last year, many of the police officers and staff that I interviewed were obviously highly shocked by the amount of hospitality that the senior people appeared to be receiving; either hospitality in the sorts of things of dinners and lunches and so forth at rather expensive restaurants, but also some of them were receiving very large numbers of tickets to very expensive sporting events, so there were a set of things which some senior people had been receiving, others had not, others had not accepted, and that was clear. But many, many of the lower ranks people, as I think one of the senior people who was quoted said ... I think his quote is that people were filling their boots, and that was a very view ... That was what people were telling me, that it was very much a senior issue. Not entirely a senior level ... people would say, well, people, yes, have drinks, people might be bought the odd meal and so forth at more junior levels, but it was very much in that period of time seen to be identified with certain members of the senior staff and management team.”*

**3.32** These findings prompted Mrs Filkin to conclude that:<sup>391</sup>

*“There has been wide variation in how the senior team interpreted policy on dealing with the media and receiving gifts and hospitality. In some instances this interpretation is seen as inappropriate. There has been no clear standard set by the senior team for police officers and staff to use as a guide for their own behaviour and in some instances the standards set have been poor and have led to consequent damage.”*

Mrs Filkin recommended that the MPS senior team:<sup>392</sup>

*“... must signal a change in culture and set a consistent example for all staff on the ethical standards they expect, including how they relate to the media and the interpretation of the gifts and hospitality register.”*

I would certainly endorse this finding.

**3.33** Within the context of the corporate management of ethical issues, Mrs Filkin also made the point that:<sup>393</sup>

*“... during my Inquiry members of the senior team acknowledged that there were significant differences of opinion about the need to develop close relationships with the media and the appropriateness of receiving extensive hospitality as part of it. The importance of collective standards on these issues was either not recognised by some of the senior team, or was of secondary importance in a culture where the value of independent decision-making at chief officer level is protected.”*

The corporate management of the organisational risks in this area is, in my view, vitally important particularly in relation to a police force’s senior team given the top-down leadership role they play in the setting of standards. This is an issue to which I will return.

<sup>389</sup> pp20-21, para 3.2.3, *ibid*

<sup>390</sup> pp106-107, lines 2-3, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>391</sup> pp29-41, para 4.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>392</sup> p41, *ibid*

<sup>393</sup> pp41-42, para 4.3, *ibid*

**3.34** Commissioner Hogan-Howe certainly recognised the general points made by Mrs Filkin, and expressed his surprise at the extent and the frequency of the social interaction between certain senior officers within the MPS and the press.<sup>394</sup> In my view, the importance of example setting in this area cannot be understated. The Home Secretary reinforced this point when she said:<sup>395</sup>

*“... one of the themes that actually comes out of some of the reports that have taken place, that one of the reasons why it’s necessary to put a clearer framework in place for everybody within each force is precisely because junior officers may see relationships developing and not understand that actually the nature of those relationships may be necessary because of the nature of the job that the senior officer is doing but may take another message from it.”*

**3.35** It is undoubtedly the case that senior MPS officers had differing approaches to the issue of casual hospitality and what was considered by them to be acceptable in this context. It is true to say that all of the past Commissioners of the MPS who gave evidence had meetings over drinks or meals with journalists to a greater or lesser extent. The variance between Commissioners in relation to the frequency with which they engaged in this type of interaction with the media appeared to be due to a mix in personal style and the media climate in place at the time of their Commissionership.

**3.36** Lord Condon said that he “rarely” met with newspaper editors at restaurants or pubs, preferring instead to meet on police premises.<sup>396</sup> However, he went on to say that:<sup>397</sup>

*“... there were some editors – I don’t think they were being precious, but the demands on their time were such that it was clear that if you wanted to meet them, it had to be on their terms, at their office or at a restaurant. So over the course of seven years, on a small handful of occasions, I may have had the odd meal ...”*

**3.37** More generally, Lord Condon said that he had preferred to keep journalists at a professional distance. He explained:<sup>398</sup>

*“I guess it’s a question of personal style and comfort zones and I think over the years, in policing and beyond, I think I understand the media, and I think whilst you’re Commissioner, you have certain professional relationships and you make life more difficult for yourself if those professional relationships cross into friendships and a social life that goes with friendships. I’m not saying that it’s intrinsically wrong or morally or ethically wrong to be friendly or to have a social relationship, but I knew where my comfort zone was, and I was more comfortable with it being on very much a professional basis. So I may be wrong, but I don’t think I ever invited anyone from the media to my home address or I ever went to their home address.”*

**3.38** A number of witnesses shared this general view. The former Deputy Commissioner of the MPS, Tim Godwin, for example, said that his contact with the media had been on a formal

<sup>394</sup> pp5-6, lines 24-4, Commissioner Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>395</sup> p72, lines 6-15, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

<sup>396</sup> p27, lines 4-7, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>397</sup> p27, lines 9-15,

<sup>398</sup> pp31-32, lines 13-2, *ibid*

basis, had not been conducted socially, and never over alcohol.<sup>399</sup> Mr Godwin’s approach was borne out of a concern that the *“perception of a close relationship [with the media] in that way might actually be misinterpreted.”*<sup>400</sup> Whilst again careful not to suggest that the alternative approach was necessarily intrinsically or ethically wrong, Mr Godwin felt that it was important for the MPS to maintain its *“constitutional separation”* from the media.<sup>401</sup> Given that the line between the perception of impropriety and substantive wrongdoing can be so nuanced, as recent events have demonstrated, this point becomes all the more important.

**3.39** Since leaving the Police Service, Lord Condon’s views on the potential dangers of hospitality have hardened. He offered the view that *“hospitality can be the start of a grooming process which leads to inappropriate and unethical behaviour.”*<sup>402</sup> He explained that:<sup>403</sup>

*“... since leaving the service I have gone on to work and deal with integrity in international sport, and dealing with integrity in the business community, and I think it’s just common sense that in any walk of life hospitality can be appropriate, can be sensible, can be necessary, can be ethical. But the other side of that, it can lead to inappropriate closeness and, in some cases, that can lead to criminal behaviour. Certainly in the sporting world I have investigated cases where initial hospitality to international sportsmen eventually led to criminal behaviour.”*

**3.40** Lord Blair’s evidence in relation to his social interaction with the media was similar in most respects to that of Lord Condon. He said that he:<sup>404</sup>

*“...attended the CRA Christmas and summer drinks receptions on one or two occasions. I attended garden parties and the like hosted by newspapers. I would occasionally share a table with editors who were sponsoring public events, such as the Police Bravery Awards, organised by the Sun. On some relatively rare occasions I would have lunch with a journalist ... The only hospitality I offered to the media would have been the occasional tea or coffee.”*

**3.41** Lord Stevens’ social contact with the media was more frequent. As has been described, this was part of a wider strategy to *“raise the morale and restore trust in the MPS.”*<sup>405</sup> <sup>406</sup> Lord Stevens described how he:<sup>407</sup>

*“...worked hard to foster good relations with the media. This involved being available to speak with editors or journalists. I had lunches with the editors of all the national newspapers.”*

Lord Stevens argued that that it would not have been possible for him to have fostered professional relationships with national newspaper editors without some form of hospitality.<sup>408</sup>

<sup>399</sup> p53, lines 1-6, Tim Godwin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-7-March-2012.pdf>

<sup>400</sup> p53, lines 11-18, *ibid*

<sup>401</sup> pp53-55, lines 21-7, *ibid*

<sup>402</sup> p32, lines 6-8, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>403</sup> p32, lines 11-22, *ibid*

<sup>404</sup> p10, para 24, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>405</sup> pp9-10, para 29, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>406</sup> Part G Chapter 2

<sup>407</sup> p10, para 30, *ibid*

<sup>408</sup> pp103-104, lines 19-4, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

He said:<sup>409</sup>

*“Some editors I saw in their offices and some editors I dealt with by way of phone on occasion. Specifically if I thought, you know, the stories they were putting out were wrong. But in a more relaxed – this is the way they did business. And if you didn’t do it that way, they probably wouldn’t see you ... Certainly with Mr Dacre, we used to have lunch, but he used to have some of his premier journalists there, and I have to say, you didn’t concentrate so much on what you were eating because you were held to task and you were taken through things, and quite rightly so. With Sir Max, it was probably more relaxed because it was sometimes on a one-to-one basis, but he’s a man of immense knowledge and I have to say on occasions I learnt more from them than they learnt from me, I think.”*

**3.42** Whilst he accepted that there was a risk of perception in meeting frequently with the media, particularly on a more social basis, Sir Paul Stephenson’s evidence was of a similar nature to that of Lord Stevens.<sup>410</sup> Sir Paul argued that it was *“difficult to see how the Commissioner could do his or her job properly”* without a significant amount of media engagement at a senior level to counter the sometimes unbalanced coverage of the MPS.<sup>411</sup>

**3.43** It is certainly apparent that there is increasingly a public facing dimension to the role of Commissioner, and Chief Constables more generally. I make the point elsewhere that there is a difficult balance to be struck in this area. Engagement with the media is an important part of the job for the reasons given above. However, great care must be taken to ensure that a perception of proximity is not formed, not only because of the obvious reputational damage that can be caused, but also because of the importance of providing an appropriate example to other ranks within the Police Service.

**3.44** It is also clear that a difference in approach to the issue existed at other senior ACPO ranks within the MPS. John Yates and Andy Hayman, both formerly Assistant Commissioners in the MPS, for example, appear to have accepted casual hospitality to a greater degree than their ACPO colleagues.<sup>412</sup> I consider the evidence of Mr Yates and Mr Hayman later in this Chapter. Suffice it say at this stage, both examples provide an emphatic illustration of the point made above in relation to the reputational damage that can be caused should a perception of proximity be formed.

**3.45** Despite the self-evident risks, it is worthy of note in this context that other senior officers who took a different approach to their interaction with the media, saw no ethical difficulty in meeting with a journalist in a more social setting.<sup>413</sup> Colin Port, Chief Constable of Avon and Somerset Police, went further by suggesting that it was not necessarily possible to discern what was acceptable from the nature of the hospitality. He said:<sup>414</sup>

*“I trust and rely upon the discretion of my staff. They make life-and-death decisions*

<sup>409</sup> pp103-104, lines 24-18, *ibid*

<sup>410</sup> p28, lines 2-3, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>411</sup> p28, lines 2-10, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>412</sup> pp1-16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-MPS-59-Andy-Hayman-meetings-with-the-Media.pdf>; pp1-30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-MPS-61-John-Yates-meetings-with-the-Media.pdf>

<sup>413</sup> p16, lines 14-19, Chief Constable Lynne Owens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-6-March-2012.pdf>

<sup>414</sup> p52, lines 6-10, Chief Constable Colin Port, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

*day in and day out, and if I can't trust them to decide that a cup of coffee or a glass of wine or a pint of beer at the appropriate time is not appropriate, then I've lost the plot."*

**3.46** Mr Port, however, went on to make the point that any hospitality received must pass a 'blush' test as to what the public would consider to be acceptable.<sup>415</sup>

**3.47** That being said, there was a general acceptance from those within the policing world that there were additional dangers engaged where meetings were conducted in a social environment. Lynne Owens, Chief Constable of Surrey Police, for example, said that:<sup>416</sup>

*"I think the challenge of a social setting is if you are in that environment and you're drinking alcohol, then there is perhaps an expectation that you will say some things that you wouldn't say in a more formalised setting..."*

Dick Fedorcio, formerly the Director of Public Affairs for MPS, who generally saw value in the utility of social interaction with the media, also agreed that alcohol could increase the risk of gossip or inappropriate commentary.<sup>417</sup>

**3.48** From the perspective of the journalists that gave evidence, it is clear that their life blood is information, much of which is obtained by talking to those with a direct knowledge of the matters in which the journalist is interested at that time. It is often the case that this interaction is facilitated through face-to-face contact. A number of witnesses argued that the most socially acceptable way of achieving this was to engage over a meal or a drink. Mr Fedorcio, for example, said that given the practicalities of both professions:<sup>418</sup>

*"... very often a lunchtime was seen as a good time by both parties to do it. On other occasions, it wasn't. A lot of crime reporters, for example, would spend time in court, so their hours were restricted between sort of morning and during the afternoon, so lunchtime was a break, or later in the day, evenings and so on. It varied in some ways. Some journalists didn't have that problem, they didn't attend court, they were happy to do it whatever time of the day you could fit them in the diary, but for others it was more of a practicality."*

**3.49** It appears that this form of interaction was commonly regarded as a reasonable bargain if the food or drink was purchased by the journalist. This is perhaps implicitly confirmed by the fact that the vast majority of journalists from whom I heard were permitted, to a greater or lesser extent, to claim for such expenses from their employers.<sup>419</sup> Indeed, a number of witnesses made the point that this practice was commonplace, and emphasised that it was not just police officers who were the subject of casual hospitality from journalists. Sandra Laville, crime correspondent for the Guardian, argued that social interaction of this sort was:<sup>420</sup>

*"... part of human relationships. I think if an officer has worked all day and takes time out from his family to come and meet me, I see nothing wrong with buying him a*

<sup>415</sup> p52, lines 16-21, *ibid*

<sup>416</sup> pp16-17, lines 24-3, Chief Constable Lynne Owens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-6-March-2012.pdf>

<sup>417</sup> pp60-61, lines 1-24, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>418</sup> pp60-61, lines 17-8, *ibid*

<sup>419</sup> p5, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-ONeill.pdf>

<sup>420</sup> pp28-29, lines 24-9, Sandra Laville, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

*drink or having a meal with him. As long as it's reasonable, as long as common sense is applied, I see it as part of normal human relationships, and journalists do it with every profession. They do it with doctors, they do it with trade union leaders, they do it with lawyers, they do it with pharmaceutical companies. You know, scientific reporters do it with scientists."*

- 3.50** Ms Laville also spoke for most, if not all, of the journalists who gave evidence when she said the following in response to Lord Condon's observation that hospitality could be the start of a 'grooming process'. She said:<sup>421</sup>

*"... I think it's a very strong thing to say. I think, as I've said, there's criminality and then there's legitimate journalistic activity, and socialising to a reasonable extent, using common sense, with police officers is not a grooming process. These people are grown-ups. Some of them make life or death decisions ... they deal with organised crime, they investigate rape. You know, the idea that me buying them a couple of beers or a meal is grooming them in any way is faintly ludicrous, to be honest. I don't agree with that."*

- 3.51** The notion that it is reasonable and appropriate for police officers or police staff to meet with journalists and discuss issues with them over a light working lunch found favour with a number of witnesses. Anne Campbell, Head of Corporate Communications for Norfolk and Suffolk Constabularies, for example, said that:<sup>422</sup>

*"...I think there has to be caution, but I actually think a lot of it falls into that area of common sense. I mean, journalists from time immemorial – and I used to be a journalist – are used to, I suppose, having drinks in bars and that would be one way of chatting to make relationships. It's probably moved on since then. I don't actually believe it's acceptable to purchase alcohol, but I think for low level-level expenses or refreshments, then those expenses are justifiable because it is part and parcel of the role. How else would I be able to have fairly private conversations with senior members of the media to discuss the massive changes affecting the Police Service?"*

- 3.52** Deputy Commissioner Craig Mackey provided similar evidence. He suggested that the question was one of proportion and balance:<sup>423</sup>

*"... It might be entirely appropriate over a working lunch to have a sandwich, a pizza or a cup of coffee, but actually outside the working day in other environments, you begin to get to the point where you have to question (a) your own values, but also why are you doing it? Why are you there?"*

He also favoured what has previously been described as a 'blush test':<sup>424</sup>

*"... it ought to be the sort of thing that when you write it in the hospitality register and it appears on the force Internet, you're entirely comfortable in terms of what you've done and why you've done it, and be very clear that there is a professional reason and basis on why you're accepting hospitality..."*

<sup>421</sup> p37, lines 5-16, *ibid*

<sup>422</sup> p48, lines 9-21, Anne Campbell, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-26-March-2012.pdf>

<sup>423</sup> p48, lines 5-11, Deputy Commissioner Craig Mackey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-26-March-2012.pdf>

<sup>424</sup> p47, lines 12-21, *ibid*

**3.53** Ms Laville offered a view as to what should be considered acceptable and appropriate in this context. She argued that the offer of casual hospitality involving, for example, expensive meals and alcohol, fell within the ambit of the Bribery Act:<sup>425</sup>

*“... I think if it’s not reasonable, if you’re repeatedly taking an officer to the Savoy and throwing in a lap dancing club repeatedly, obviously that’s not reasonable or common sense and it potentially is illegal, so there’s your criminality.”*

As to what she felt was a “reasonable level” of hospitality, Ms Laville said:<sup>426</sup>

*“... there’s a guideline at the Guardian that it should be no more than £40 to £45 for two people having a meal, but I mean sometimes it goes above that. Obviously we live in London. But, you know, reasonable amount.”*

**3.54** A number of the journalists who gave evidence also argued that there was no link between the level of the casual hospitality offered and the amount or type of information received. Stephen Wright, the associate news editor of the Daily Mail, said that:<sup>427</sup>

*“... whenever I’ve had lunch or dinner with someone, there’s no strings attached. I fully respect that. If they don’t want to talk in an authorised way...It would be completely inappropriate to lavish hospitality on a junior officer – any officer, frankly. I don’t think that is the issue at all, certainly not the way I operate, it would be completely inappropriate.”*

**3.55** John Twomey, crime reporter at the Daily Express, made an associated point, by suggesting that the standard of the restaurant frequented was linked to the rank of the police officer concerned and the need for privacy, rather than as a method of obtaining more information.<sup>428</sup> In relation to this issue more generally, Mr Twomey conceded that his working relationship with police officers “could be done in a police station or at Scotland Yard, quite clearly”<sup>429</sup>, however, he argued that it was “a convivial and convenient and more comfortable way of meeting. But clearly you don’t have to have the food and drink element.”<sup>430</sup> Despite conceding that there could be a question of perception in relation to interaction of this sort, Mr Twomey did not accept that the offer of casual hospitality was an inducement to the police officer concerned.<sup>431</sup> He said:<sup>432</sup>

*“... it does go on in a business world. It goes on in Parliament. Defence correspondents meet army officers in their clubs, in restaurants. It doesn’t mean to say they’re knocking back £400 bottles of champagne...there’s a tradition there, and I think they would expect it. They don’t want to be stuck in Scotland Yard when they could be out in a comfortable place...in surroundings with people they know and they can trust...I don’t think you should lose that. I think...there’s a question of flexibility...if new rules, should they be introduced, if they’re too strict...it will make it more difficult for reporters like me to get access to information, to get access to officers. If you only*

<sup>425</sup> p37, lines 17-25, Sandra Laville, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>426</sup> p38, lines 1-11, *ibid*

<sup>427</sup> pp21-22, lines 21-15, Stephen Wright, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-15-March-20121.pdf>

<sup>428</sup> p32, lines 3-16, John Twomey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>

<sup>429</sup> p34, lines 8-22, *ibid*

<sup>430</sup> p35, lines 10-13, *ibid*

<sup>431</sup> p35, lines 10-20, *ibid*

<sup>432</sup> pp35-37, lines 19-2, *ibid*

*can meet them in police stations or at Scotland Yard...I think they will probably be more likely to be toeing the party line, as it were...it would be a shame to lose that because it makes everything so formal and restricted."*

**3.56** It was also argued by some that this issue has become somewhat overstated. Michael Sullivan, crime editor at The Sun, made the point that:<sup>433</sup>

*"... there's been a lot of mention in this Inquiry about long lunches and reporters or journalists entertaining lavishly, bottles of champagne. My experience actually is that those lunching and buying dinners have become an increasing rarity over the last few years, and that was really perhaps as Fleet Street sobered up or perhaps as the police became more professional with alcohol taken during working hours. The normal social setting would be in a pub, or possibly a wine bar, but more likely a pub, and it wouldn't be a case of the reporter handing over a credit card behind the bar and let's go and drink as much as possible. It would be a case of the journalist buying a round of drinks and the police officer buying a round of drinks in those social settings..."*

**3.57** The general evidence of the police forces outside of London was that casual hospitality was conducted at a limited level. The Chief Constable of South Wales Police, Peter Vaughan, for example, told the Inquiry that he would meet the media for the purposes of interviews or press conferences.<sup>434</sup> In addition to these meetings, he has also attended charity fundraisers, where the media were present, as well as sporting events within the force area. Mr Vaughan provided an example where he was invited to a rugby match by Media Wales, which was also attended by a Welsh government minister, as well as "another key individual from Welsh society". He explained that:<sup>435</sup>

*"...it was deemed as an opportunity to go along to meet people in a social surrounding that wasn't necessarily a formal office environment, and to step on them, to develop some sort of relationship rather than retrench and dig myself in."*

He told the Inquiry that it had been an opportunity for him to address the issues that were affecting the force at that time:<sup>436</sup>

*"...it felt right at that moment ... from the inaccuracy being reported by the Police Review... it just presented itself as an opportunity then to start to put the record straight."*

**3.58** Mr Vaughan went on to explain that the meetings were "fully documented in the Force Media Register".<sup>437</sup> Hospitality recorded included the provision of drinks or refreshments by the media.<sup>438</sup> Catherine Llewellyn, a press officer for South Wales Police, told the Inquiry that there had not been an occasion where any hospitality has been accepted or offered to the

<sup>433</sup> p51, lines 1-19, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>434</sup> pp6-7, paras 19-20, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Peter-Vaughan.pdf>

<sup>435</sup> p14, lines 4-8, Chief Constable Peter Vaughan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>436</sup> p14, lines 15-22, *ibid*

<sup>437</sup> p14, lines 15-22, *ibid*

<sup>438</sup> pp7-8, para 22, *ibid*

media on her behalf.<sup>439</sup> Typically, meetings which took place between the force and the media were conducted in the offices of South Wales Police, or Media Wales.<sup>440</sup>

**3.59** The editor of the South Wales Echo, Timothy Gordon described the relatively minimal level of contact between himself and officers of South Wales Police. He has said that the majority of contact is made by the reporters of his title. He has told the Inquiry that the other titles of Media Wales Limited, publishers of the South Wales Echo, including the Western Mail and Wales on Sunday, also have infrequent contact with the local force. Describing one example of a meeting he attended in March 2011 with the Chief Constable and Deputy Chief Constable of South Wales Police, the editor in chief of the Western Mail, and the editor of Wales on Sunday, Mr Gordon told the Inquiry that:<sup>441</sup>

*“There was no hospitality at the meeting, which was held at the Media Wales offices, beyond a cup of tea/coffee/glass of water being offered.”*

Mr Vaughan also noted in his evidence that this meeting was deliberately arranged after lunch, as he told the Inquiry that he does not dine socially with editors or journalists, and has not been invited to any lunches or dinners of this kind.<sup>442</sup> Mr Gordon asserted that as editor of the South Wales Echo, he has never accepted any hospitality from the local force, as far as he could recall, with the exception of *“a cup of tea ... may have been the offer of a biscuit”*.<sup>443</sup>

**3.60** Abigail Ashford, the crime correspondence for the South Wales Echo, echoed the absence of any culture of accepting hospitality from the local force. Ms Ashford explained just one occasion where she attended a Cardiff v Swansea football game, at no expense, whilst ‘shadowing’ the Inspector of South Wales Police. The purpose of this exercise was to report on how the local force policed the event.<sup>444</sup> She said that the extent of hospitality that was offered was *“a sandwich and a cup of tea from their own catering, but I also bought food for myself.”*<sup>445</sup> Ms Ashford could not recall any other occasions where she had received hospitality from South Wales Police.

**3.61** Chris Sims, Chief Constable of West Midlands Police, told the Inquiry that he would meet occasionally with editors of the local papers, but not very often. He stressed the absence of a culture of hospitality between the force and the local media, stating that there are very few occasions that the force have accepted hospitality from the media, and specifically, that he has never accepted any.<sup>446</sup> Mr Sims referred to only one occasion in 2005, where a number of West Midlands Police officers attended a local football match, courtesy of a local newspaper title, which had included the invitations to other prominent figures within the community.<sup>447</sup>

<sup>439</sup> p18, lines 12-15, Catherine Llewellyn, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>; pp14-15, paras 42-44, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Catherine-Llewellyn.pdf>

<sup>440</sup> p16, lines 9-20, Chief Constable Peter Vaughn, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>441</sup> p3, paras 7-8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Timothy-Gordon.pdf>

<sup>442</sup> p16, lines 7-16, Chief Constable Peter Vaughn, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

<sup>443</sup> p9, lines 14-20, Timothy Gordon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>444</sup> p5, para 16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Abigail-Alford-taken-as-read.pdf>

<sup>445</sup> p8, para 29, *ibid*

<sup>446</sup> p6, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>

<sup>447</sup> p6, para 23, *ibid*

With the exception of this event, he could not recall any other instances where the force had accepted offers of hospitality from the local press, other than the acceptance of refreshments or drinks.<sup>448</sup>

- 3.62** Chief Inspector Sally Seeley, told the Inquiry that she was not aware of any instances where there had been an acceptance of hospitality from the media by any of the ACPO rank members of the force. However, Ms Seeley recognised the necessity of building effective relationships with the media and said that:<sup>449</sup>

*“Clearly it would be counterproductive to create an environment where all invitations of hospitality were refused and that would be at odds with the accepted norms of society. Acceptable hospitality falls within these norms and I believe include accepting a drink or some light refreshments having regard for the time, duration and context of the engagement.”*

- 3.63** Mr Sims told the Inquiry that West Midlands Police no longer provide a ‘Christmas Reception’ for the local press, which had previously been held at West Midlands Police Headquarters up until 2007.<sup>450</sup> Since this change, the exchange of hospitality has been minimal, other than the offers of simple refreshments accompanying meetings between officers and the media. Adrian Faber, editor of the Express & Star in Wolverhampton, attested to this view, stating that his title have not been offered (or indeed accepted) any hospitality from West Midlands Police.<sup>451</sup>

- 3.64** Mr Faber has explained the basic level of hospitality offered by his title would be in the form of lunches which would take place at the newspaper’s offices. These lunches had taken place with the previous Chief Constable and senior officers of West Midlands Police. He also explained that a corporate hospitality arrangement existed between the Express & Star with Wolverhampton Wanderers and West Bromwich Albion local football clubs, whereby match tickets have often been offered to police officers, but are not exclusively sought for this purpose.<sup>452</sup> Mr Faber told the Inquiry that “[we] regularly take contacts and advertisers to local football matches”<sup>453</sup> and that he “has not taken any police officer since [2009] as tickets have been used by other people in the company.”<sup>454</sup>

- 3.65** This, as well as the title’s annual Local Heroes Awards, is the only form of hospitality that the Express & Star would offer to West Midlands Police. The hospitality would consist of a meal, drinks and in the case of the football matches, the value of the ticket for watching the game. Mr Faber’s crime reporters have also informally met with police officers over a drink, as a way of discussing their work, but such an offer is not “considered to be a ‘reward’ for information”.<sup>455</sup> In his evidence to the Inquiry, he emphasised that “you’re able to have

<sup>448</sup> *ibid*

<sup>449</sup> pp11-12, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Inspector-Sally-Seeley.pdf>

<sup>450</sup> p4, para 9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>; p12, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Inspector-Sally-Seeley.pdf>

<sup>451</sup> p5, para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Adrian-Faber.pdf>

<sup>452</sup> p6, para 10, *ibid*

<sup>453</sup> p6, para 10, *ibid*

<sup>454</sup> p6, para 10, *ibid*

<sup>455</sup> p6, para 11, *ibid*

*a perfectly professional relationship [with the police] without elaborate entertainment or socialising.”<sup>456</sup>*

**3.66** In summarising this issue, Commissioner Hogan-Howe said:<sup>457</sup>

*“... there’s no doubt that police officers and the press will meet on social occasions. The question is if the only reason for the meeting is around their social interaction and if complicated by alcohol, it seems to me there is a risk that in fact ... judgment is clouded and the relationship develops in another way. I suppose for the Police Service, it seems to be important to say that at least for appearances, but more fundamentally because of the way we should operate, because of the probity of the way we operate, we need to leave the perception that we are not tainted by being too close to any part of society. That can sometimes isolate us. So I think we have to make sure we’re not isolated, but I think at times that just by what might be seen by some as austere, provided we have a good professional relationship, provided we’re open about it and provided that therefore we can be held account, we’re ... probably [in] the right place.”*

**3.67** ACPO have sought to address this issue through the issuing of revised national guidance on gifts, gratuities and hospitality (the guidance was implemented on 18 October 2012). The guidance provides *“police officers and police staff with a framework to determine the boundaries of acceptability regarding the receipt of gifts and hospitality.”<sup>458</sup>* Importantly, given the variation in practice identified by HMIC, the guidance is to be used by forces *“to review and, where necessary, adapt existing policies and procedure for dealing with gifts, gratuities and hospitality.”<sup>459</sup>* The guidance also reminds forces that they have a responsibility to ensure that their staff *“understand how the acceptance of gifts, gratuities or hospitality can undermine personal and professional integrity.”<sup>460</sup>*

**3.68** The general principle underpinning the guidance is one of blanket non-acceptability, save for limited exceptions. The Home Secretary, for one, favoured this approach. She said:<sup>461</sup>

*“I think that is a sensible approach that has been taken by ACPO in an attempt obviously to find a greater consistency ... what is important is that they have the single force register but that everybody knows that there is a general belief that they should not be taking gifts, gratuities and hospitality except where, as it says there, of a more trivial nature.”*

She also re-emphasised the importance of perception in this context:<sup>462</sup>

*“... the expectation is officers should not put themselves in a position where people could feel that they were being influenced by the receipt of such gifts, gratuities or hospitality.”*

<sup>456</sup> p30, lines 23-25, Adrian Faber, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>457</sup> pp16-17, lines 21-23, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>458</sup> p1, para 1.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/11/ACPO-Guidance-Gifts-and-Hospitality.pdf>

<sup>459</sup> p1, para 1.1, *ibid*

<sup>460</sup> p1, para 1.2, *ibid*

<sup>461</sup> p14, lines 10-17, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

<sup>462</sup> pp14-15, lines 23-2, *ibid*

**3.69** The guidance sets out the circumstances in which hospitality may, or may not, be accepted. Given its relevance I reproduce it in full:<sup>463</sup>

*“Hospitality may be accepted if it:*

- *extends to the impromptu provision of light refreshments during the course of policing duties*
- *is a conventional meal provided during the course of the working day by another police force or partner agency in either law enforcement or community safety*

*In either case, there should be no requirement to declare any such hospitality in the force register*

*Hospitality may also be accepted if it is a conventional meal and is in accordance with the recipient’s duties such as:*

- *attending a meeting, seminar or conference organised by an external body*
- *the annual dinner of a representative association or local authority which is limited to isolated or infrequent occasions and can be demonstrably in the interests of the force to attend*

*Such offers of hospitality should be declared in the force register*

*Hospitality will not be acceptable if it:*

- *amounts to regular free or discounted food or refreshments on duty, or off duty where the hospitality offered is made because the recipient is a police officer or member of police staff*
- *includes a degree of lavishness which is outside of the industry norm or is beyond any sense of common courtesy or reasonableness*

*Such offers of hospitality should be declared in the force register.”*

**3.70** I would certainly endorse the key principles contained within this guidance. Without wanting to be overly prescriptive or puritanical on this issue, I think that it should more specifically spell out the dangers of consuming alcohol in a casual hospitality setting (without necessarily specifying a blanket ban); it also strikes me that the concept of an “industry norm” in this context may still allow for a variance in practice from force to force, and may tend to assume what needs to be established. However, I would certainly adopt in full the guidance provided to police officers (at all levels) and police staff in helping them to determine the boundaries of what is acceptable:<sup>464</sup>

*“Is it genuine? Is the offer made for reasons of genuine appreciation for something I have done? Why is the offer being made? What are the circumstances? Have I solicited this offer in any way or does the donor feel obliged to make this offer?*

*Is it independent? Would the offer or acceptance be seen as reasonable in the eyes of the public? Would a reasonable bystander be confident I could remain impartial and independent in all of the circumstances?*

<sup>463</sup> p4, paras 2.21-2.26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/11/ACPO-Guidance-Gifts-ans-Hospitality.pdf>

<sup>464</sup> p3, para 2.12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/11/ACPO-Guidance-Gifts-ans-Hospitality.pdf>

*Is it free? Will I feel obliged to do something in return? How do I feel about the propriety of the offer? What are the donor's expectations of me should I accept?*

*Is it transparent? Would I be comfortable if my acceptance of this offer was transparent to colleagues, the force, and the public or if it was reported publicly? What could be the outcome for the force if this offer was accepted or declined."*

- 3.71** It is also vital that transactional change in the form of new policies and guidance is aligned with real cultural change. As the evidence has made clear, leadership can be the key determining factor in this regard. Given this, it is important that a challenging and transparent environment exists within each force area so that staff at all levels (including Chief Officers) understand what is expected of them in terms of issues of integrity. Again, this is an issue to which I will return.

## 4. The perception of influence

- 4.1** Mr Jay provided the context to this section of the Report when he described some of the inherent risks engaged when individual members of two powerful institutions or groups of institutions, in this case the press and the police, come into contact. He said in the opening to Module 2:<sup>465</sup>

*"... As so often happens in human affairs, the difference between healthy and dysfunctional behaviours does not have to be vast. By this, I mean at least two things: first, that it does not necessarily take many rotten apples to undermine the whole body politic, and secondly, that very often it does not take many adjustments in behaviours, objectively measured, to turn what is good into what is bad and vice versa. More precisely, the potential for abuse on both sides of this bilateral equation is significant, leading to the risk, if not the reality, of unhealthy, over-cosy and overly close relations between the two ... Ultimately, the vice here is lack of democratic accountability and the perception, if not the reality, of personal gain. The noun "gain" in this context needs, of course, to be broadly interpreted and should certainly be apt to accommodate the enhancement of an individual's professional or personal profile."*

- 4.2** Lord Blair was of a similar view and he told the Inquiry:<sup>466</sup>

*"I believe that where that problem may have become significant is that a very small number of relatively senior officers increasingly became too close to journalists, not I believe for financial gain but for the enhancement of their reputation and for the sheer enjoyment of being in a position to share and divulge confidences. It is a siren song ..."*

- 4.3** This qualitative description of the issue at hand was supported by the findings contained within Mrs Filkin's report 'The Ethical Issues Arising From The Relationship Between Police And Media'.<sup>467</sup> Mrs Filkin stated that it was the perception of the public and some journalists that unethical relationships between the media and the MPS had existed and caused harm.<sup>468</sup> Furthermore, she recorded that:<sup>469</sup>

<sup>465</sup> pp12-14, lines 11-12, Robert Jay QC, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/lev270212am.pdf>

<sup>466</sup> p20, para 49, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>467</sup> p65, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>468</sup> p18, para 3.2, *ibid*

<sup>469</sup> p19, para 3.2.2, *ibid*

*“Many of those who spoke to me said that a culture had developed, at some senior levels in the organisation, which made it normal, and in some cases expected, that contact with the media would be close.”*

- 4.4** Assistant Commissioner Cressida Dick acknowledged that a perception had been created that some senior officers had developed overly close relationships with certain parts of the media. She said:<sup>470</sup>

*“I think it is certainly a perception. There’s no doubt about that, and this has clearly been discussed here and widely in the media. It is also the case that there’s been very regular and close contact between some senior members of the Met. I should say I think all of these issues are not, of course, completely confined to the Met, but that’s what we’re focusing on here. I think some of the contact had led to the perception. I can’t tell whether it’s been overly close, but in terms of whether it’s been wrong or right, what I can say is that I think it’s been unfortunate that it has led to that perception, and I think for the future we will have to be clearer about the professional boundaries between us and members of the media.”*

- 4.5** Sir Hugh Orde, President of ACPO, expressed his surprise at some of the “quite close relationships between individual chiefs and certain media outlets”.<sup>471</sup> In seeking to quantify the potential damage caused by this phenomenon, he suggested that:<sup>472</sup>

*“I think you should be concerned because it goes to the heart of the reputation of the service generally, so it is an important factor ...”*

- 4.6** Commissioner Hogan-Howe recognised the fundamental importance of this point and said:<sup>473</sup>

*“... because of the probity of the way we operate, we need to leave the perception that we are not tainted by being too close to any part of society ...”*

The reputational harm that can be caused should the alternative be perceived is perhaps best illustrated by the allegation that the MPS deliberately did not pursue Operation Caryatid further, or reopen it in 2009 and 2010, because of the closeness of the relationship between some of its senior officers and News International (NI).

- 4.7** This allegation was acknowledged by Commissioner Hogan-Howe who said:<sup>474</sup>

*“... it’s left the perception, at least, which is maybe rebuttable but is an assumption which has to be challenged, which is that it may have influenced in some way the thoroughness of that investigation. And that’s an unfortunate place to be for a police officer, to have to start addressing that before they explain why they did or didn’t do something. It can be hard enough sometimes to explain why you did or didn’t do something even when it’s a very straightforward case where there can be no allegation that there was bias involved, but where there’s an establishment of some perception of bias, then it leaves a police officer in a difficult position if that investigation doesn’t go as well as it should. There are many reasons we fail. We fail*

<sup>470</sup> pp20-21, lines 17-6, Assistant Commissioner Cressida Dick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

<sup>471</sup> p100, lines 8-12, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>472</sup> p 100, lines 13-16, *ibid*

<sup>473</sup> p17, lines 5-8, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>474</sup> pp18-19, lines 19-12, *ibid*

*sometimes through negligence. We fail through error. We fail because we just didn't do our job properly. I think people can accept human error. What the except[ion] is that if that's contaminated by a perception of prejudice."*

- 4.8** One of the key issues of concern identified by Mrs Filkin in her report's analysis of the relationship between the media and the MPS was the perception that the access provided to the media by the DPA had not been impartial. This, she said, was a view that had been expressed internally and externally.<sup>475</sup> She concluded that the perception that access was provided unequally was:<sup>476</sup>

*"... widespread and damaging, whatever the reality of its impact on the independence of decision making within the MPS ..."*

and suggested that:<sup>477</sup>

*"... some journalists felt very much cut out of the club, as it were. Some crime journalists feel that they haven't been allowed into the Crime Reporters Association, and other journalists feel that because they're seen as difficult – I would say in many instances good at scrutinising – that they were in the past given short shrift."*

If true, it might be said that the obvious corollary to this is that any journalist brought into the 'club' would be less likely to write a critical piece of a particular police officer or perhaps a force as a whole. As to this, Mrs Filkin said:<sup>478</sup>

*"That would be the implication. How often that occurred, I don't know."*

- 4.9** Mrs Filkin stated that the perception around inequality of access appeared to have grown as a result of a particular style of leadership within the DPA and that this style legitimised *"informal contact lacking in transparency and allowed exclusionary practices to develop."*<sup>479</sup> Mrs Filkin developed this point by saying:<sup>480</sup>

*"... the person who was the senior person in that department was said by a considerable number of people who spoke to me to have set that tone and that style within that department, and that – made it clear that certain newspapers were favoured over others ..."*

Mrs Filkin's reference to 'certain newspapers' was *"mainly"*<sup>481</sup> aimed at the NI stable although she accepted that *"it may have been wider than that."*<sup>482</sup>

## Dick Fedorcio

- 4.10** The 'senior person' referred to by Mrs Filkin in her evidence was the former Director of Public Affairs for the MPS, Dick Fedorcio. Mr Fedorcio recognised that it was important for the credibility of the DPA for that department to have been seen to serve *"all the media equally*

<sup>475</sup> pp45-46, para 4.6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>476</sup> pp18-19, para 3.2.1, *ibid*

<sup>477</sup> p4, lines 7-14, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>478</sup> p4, lines 19-20, *ibid*

<sup>479</sup> pp45-46, para 4.6, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>480</sup> p25, lines 7-14, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>481</sup> p25, lines 23-24, *ibid*

<sup>482</sup> p25, lines 23-24, *ibid*

*and impartially.*<sup>483</sup> He did not however accept that anyone had “benefited through their relationships with me or any of my staff.”<sup>484</sup> The extent to which this may, or may not, have been true is tested throughout the remainder of this section of the report. Mr Fedorcio did accept in hindsight that, at the very least, a perception had been created that the relations of some senior officers within the MPS and the media had become too close. He said:<sup>485</sup>

*“I think at the time I didn’t see it that way. When I look at it now, in view of everything what’s gone on, I would agree with that view.”*

Whilst disputing the underlying fact, Mr Fedorcio also accepted Mrs Filkin’s observation that, at the very least, a perception had been created that certain organs of the press had been favoured over others, in particular NI titles. He said “if she found that perception, then it exists.”<sup>486</sup>

**4.11** As to the reality, Mr Fedorcio argued that within the DPA there had been no preference for one newspaper over another and that the approach had been one of even-handedness. That being said, he did acknowledge that in respect of the printed media, contact had been skewed in favour of the tabloid press because generally speaking, they had been more interested in policing, as they were likely to obtain the sort of sensational stories they needed from the criminal justice system.<sup>487</sup> By way of illustration, Mr Fedorcio suggested that the DPA had sought to avoid situations where a journalist, who may have had a friend in the MPS, was then given information to the detriment of other members of the press.<sup>488</sup> Mr Fedorcio described how he sought to maintain an even-handed approach to media access:<sup>489</sup>

*“... by an awareness amongst myself, the chief press officer, the deputy director, of all the activity that is going on across the department. So it would be an assessment. Not that there’s anything recorded but it would be an assessment of: we think that over time everyone has had a fair share of access to what’s going on.”*

**4.12** The position described by Mr Fedorcio was generally supported by the diaries of Commissioners which showed that there had been a wide spread of meetings with various titles. Lord Blair, for example, stated that “I think the spread of the meetings that are recorded indicate that it was pretty much across the board.”<sup>490</sup> However, Mr Fedorcio did concede that there had been no formal structure in place within the DPA to ensure that access for the press to the MPS was fair and equitable.<sup>491</sup> That being the case, it is perhaps easy to see how a perception of enhanced access for some could have developed. Mr Fedorcio reported that such a system

<sup>483</sup> pp23-24, para 123, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>484</sup> pp23-24, para 123, *ibid*

<sup>485</sup> p90, lines 11-13, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>486</sup> p64, line 25, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>487</sup> pp53-54, lines 6-1, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>488</sup> pp6-7, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>489</sup> p68, lines 14-20, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>490</sup> p16, lines 24-25, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>491</sup> pp56-57, lines 23-9, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

was now in operation, and agreed that it had been a sensible step forward.<sup>492</sup> I can only agree. Similarly, Mr Fedorcio stated that the DPA had not previously adjusted its relationship with journalists on the basis that there had been a perception that there had been too much contact in the past.<sup>493</sup>

- 4.13** The MPS had clearly recognised the risk of its senior officers being perceived as being too close to a particular media outlet and the potential damage that could be done to the reputation of the organisation as a result. Sir Paul Stephenson, then Deputy Commissioner of the MPS, asked Mr Fedorcio to draft a media relations policy for the MPS management board to guide their relationship with the media.<sup>494</sup> The policy, entitled ‘Management Board and the Media’, was published in February 2008.<sup>495</sup> Mr Fedorcio described the background to the document:<sup>496</sup>

*“... I was asked to look at producing additional guidance for how management board themselves should operate, both as a reminder to the individuals, how we expect them to operate, and also to reinforce to them their responsibilities to make sure their staff are aware of the policy and followed it.”*

- 4.14** The policy instructed management board members to:<sup>497</sup>

*“... avoid being too accessible to journalists in any way that could compromise their position or lead to accusations of favouring any particular media outlet or providing unauthorised information to them.”*

Mr Fedorcio confirmed that the risk of a perception being formed that the DPA, or the MPS more generally, were favouring a particular media outlet had been on his radar for a number of months prior to the issuing of the new management board media policy.<sup>498</sup>

- 4.15** Given his position on the MPS management board,<sup>499</sup> it could be argued in respect of Mr Fedorcio that this policy was not adhered to. Mr Fedorcio stated that to perform his role effectively, he was encouraged, by the then Commissioner Lord Stevens, to:<sup>500</sup>

*“get out and network extensively with the media and meet with journalists to build positive and credible relationships for myself and the MPS.”*

He suggested that the purpose of his networking was to *“have a wide range of contacts”*<sup>501</sup> within the media with whom he would *“be in touch”*<sup>502</sup> regularly. This networking activity included meeting with journalists who usually, but not exclusively, belonged to the Crime Reporters Association (CRA) at a bar close to Scotland Yard – often following the Commissioner’s

<sup>492</sup> p57, lines 2-9, *ibid*

<sup>493</sup> p68, lines 21-25, *ibid*

<sup>494</sup> p72, lines 21-24, *ibid*

<sup>495</sup> p64, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-DF1.pdf>

<sup>496</sup> p72, lines 15-20, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>497</sup> p64, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-DF1.pdf>

<sup>498</sup> p77, lines 2-7, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>499</sup> pp1-2, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>500</sup> p12, para 49, *ibid*

<sup>501</sup> p86, lines 1-5, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>502</sup> p86, lines 4-5, *ibid*

regular CRA briefing sessions.<sup>503</sup> As to the cast list of the journalists attending these informal ‘networking’ sessions, Mr Fedorcio said:<sup>504</sup>

*“It would vary. It would vary, depending on attendance at the briefing in the first place and the availability of the people afterwards to do that. I mean, some had to disappear, but there were, I don’t know, normally maybe half a dozen upwards who would attend.”*

- 4.16** Given the length of his tenure with the MPS,<sup>505</sup> Mr Fedorcio accepted that over time he had “inevitably”<sup>506</sup> got to know the journalists with whom he had been meeting regularly on a rolling basis, a number of which he had been seeing for years although, as he pointed out, there would also have been “changes of face during this time. Various journalists have retired or moved on to other specialisms and new ones have come in.”<sup>507</sup> Despite the enduring nature of some of his relationships with individual journalists, he stated that they were all “work-related professional contacts”<sup>508</sup> and that no personal friendships had resulted from his extensive networking activities. On this he said, “I have no personal contact with any of the journalists that I’ve dealt with in my time at the Metropolitan Police.”<sup>509</sup>
- 4.17** This may indeed have been true from Mr Fedorcio’s point of view, although it is easy to see how the opposite perception may have been formed, not least by those with whom he was interacting. Michael Sullivan, crime reporter for The Sun, for example, suggested that he considered himself to have been part of Mr Fedorcio’s ‘inner circle’ of favoured journalists. He said:<sup>510</sup>

*“I would probably say I was, sir, yes. If – “favoured journalists”? I don’t know that that was – that wouldn’t necessarily tell the whole story, sir. I think Dick, if I can call him that since he’s a friend as well as professional contact, over a period of time you get to know someone well and therefore you would normally expect to perhaps have more contact with that person, not just Dick, but with plenty of others, rather than someone arriving – say, for instance, another newspaper has appointed a crime reporter. In the same way that I didn’t know Mike Brammett(?) or Sarah Cullum, because I was an inexperienced reporter at the time, there would perhaps be reporters arriving or being made crime reporters who would then take – it does take a number of years to build up a good working relationship, so I think that would – “favour” is perhaps not totally applicable but perhaps I would regard myself as part of a group of ... long-serving crime reporters who would have been in a circle of trusted journalists for Mr Fedorcio to talk to.”*

<sup>503</sup> p86, lines 13-17, *ibid*; p12, para 53, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>504</sup> p86, lines 21-25, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>505</sup> p1, para 1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>506</sup> p87, line 6, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>507</sup> p87, lines 1-11, *ibid*

<sup>508</sup> p86, line 7, *ibid*

<sup>509</sup> p86, lines 10-12, *ibid*

<sup>510</sup> pp45-46, lines 12-6, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

**4.18** This notion of a favoured grouping or ‘inner circle’ of journalists would appear to have been recognised by other members of the press reporting on the MPS at the time. Jeff Edwards, former Chairman of the CRA and currently its President, said:<sup>511</sup>

*“I wouldn’t like to use the word “favourites”, but I think there were people he had more contact with than with others. Again, I don’t necessarily think you can draw any conclusions from that, but I think there were – as I said, I think that there were possibly some organisations, for instance News International, possibly Associated Newspapers, that I think he was more keen to engage with than others.”*

**4.19** Similarly, Ms Laville said:<sup>512</sup>

*“I think there was something of an inner circle that was created, but to my perception that was more about the length of time certain individuals had been covering crime and they had built relationships over many years; in fact, you know, seven or eight years, and they knew each other very well. But, yes, there was certainly at times a perception that you would have a briefing and then maybe another briefing with a smaller group of people would go on, but, you know, then you negotiate that and you make sure you get in the smaller briefing. I mean, that’s what journalists do. It’s our job to go to the source of the information and find it out ... it never struck me as anything dodgy, it just struck me as these people were good at their jobs and, you know, they’d managed to make a very good contact over many years.”*

**4.20** Although Ms Laville was careful not to suggest that Mr Fedorcio, or the DPA more generally, had in fact favoured certain news organisations with enhanced access or through the provision of information, she did agree that it would be “unhealthy” for such a perception to exist.<sup>513</sup> There was certainly a lack of transparency as to the level and nature of Mr Fedorcio’s interaction with the media. He acknowledged, for example, that the MPS gifts and hospitality register did not record the occasions where he had met with journalists for drinks at a wine bar.<sup>514</sup> It is also true to say that most of his more social interaction with the media was conducted on a one-to-one basis.<sup>515</sup>

**4.21** The hospitality that was recorded within the MPS’ gifts and hospitality register is worthy of some more detailed analysis. In assessing the period between 2003 and 2008, for example, a distinct pattern emerges. In the year 2003, Mr Fedorcio went on accompanied hospitality visits to seven different newspapers, with The Sun and the NoTW being the only newspapers that were visited twice.<sup>516</sup> He also met with journalists from a total of seven different newspapers for individual lunches. Mr Fedorcio met with Lucy Panton of the NoTW on three occasions, and therefore more than any other individual journalist. He also met with Andy Coulson, then editor of the NoTW, on a separate occasion, taking the total number of lunches with NoTW journalists to four. This equalled the total number of his interactions with the Evening Standard, the other leader in terms of his contact with individual titles for the year in question.<sup>517</sup>

<sup>511</sup> p2, lines 1-8, Jeff Edwards, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-14-March-2012.pdf>

<sup>512</sup> p26, lines 3-18, Sandra Laville, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>513</sup> p27, lines 14-23, *ibid*

<sup>514</sup> p106, lines 9-13, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>515</sup> p113, lines 1-5, *ibid*

<sup>516</sup> p113, lines 11-16, *ibid*

<sup>517</sup> pp113-114, lines 17-14, *ibid*

- 4.22** Taking the remaining years in turn, Mr Fedorcio met with the NoTW most often in 2004; the same was also true in 2005 and 2006. In 2007, several newspapers came in equally, with Mr Fedorcio meeting with the NoTW, The Sun, the Express (through John Twomey, in his capacity as a senior member of the CRA), and the Evening Standard on an identical number of occasions. Finally in 2008, Mr Fedorcio met with The Sun most often.<sup>518</sup>
- 4.23** Mr Fedorcio accepted that the record of his interaction with the media for the period in question accorded with his recollection of events.<sup>519</sup> In taking the level, but not at this stage the nature, of Mr Fedorcio's contact with NI as a whole, it could be argued that there was a rational basis for it being skewed in their favour. Sir Paul Stephenson, for example, in analysing his own contact with the media, made the point that during his Commissionership, NI had some 42 per cent of the total United Kingdom newspaper readership.<sup>520</sup> However, that reasoning does not necessarily explain the level of contact between Mr Fedorcio and the NoTW as an individual title within the NI stable, nor does it necessarily justify the nature and amount of the hospitality received.
- 4.24** Mr Fedorcio accepted that there was a commonality in the journalists that appeared within the gifts and hospitality register – namely Michael Sullivan, Stephen Wright, John Twomey and Lucy Panton.<sup>521</sup> Mr Fedorcio attempted to explain this level of interaction with the individuals concerned by suggesting that:<sup>522</sup>

*"... they were quite active in covering the Metropolitan Police, following lots of different angles and stories. They were often exploring whether – you know, they were the sorts of stories that we would be interested in assisting them with."*

- 4.25** That may well have been the case. However, I believe that Mr Fedorcio's understanding of his role and remit as the Director of Public Affairs for the MPS became somewhat blurred over time, to the extent that a perception was created that he had become too close to certain journalists and particular news organisations. Mr Sullivan, for example, described how their "reasonably close working relationship forged over many years"<sup>523</sup> meant that:<sup>524</sup>

*"... on occasions ... he could be – not necessarily open up with any great personal detail on anyone, but talk about his concerns, I suppose, and use me in some ways, as I used him, as sounding boards".*

The particular example given related to the difficulties with the media encountered by Lord Blair during his Commissionership.<sup>525</sup>

- 4.26** Perhaps a more egregious example was provided by Mr Fedorcio himself. It related to his interaction with Ms Panton, formerly crime editor for the NoTW.<sup>526</sup> Mr Fedorcio described how on most weeks he would speak to Ms Panton on the telephone about the stories the newspaper was planning to run the following Sunday. This contact would sometimes involve a

<sup>518</sup> p114, lines 1-10, *ibid*

<sup>519</sup> p114, lines 11-14, *ibid*

<sup>520</sup> p12, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>521</sup> p1, lines 3-7, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>522</sup> p1, lines 11-16, *ibid*

<sup>523</sup> p41, line 22-23, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>524</sup> pp41-42, lines 23-2, *ibid*

<sup>525</sup> p42, lines 2-7, *ibid*

<sup>526</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lucy-Panton.pdf>

one-to-one meeting late in the week, often on a Friday afternoon.<sup>527</sup> On the specific occasion in question, which took place in his office at Scotland Yard, Mr Fedorcio recalled that Ms Panton had arrived for one of their regular end of week meetings:<sup>528</sup>

*“... with a story about the reception into prison of ex-Commander Ali Dizaei (in particular concerning his alleged refusal to hand over his suit to the prison staff).”*

Mr Fedorcio suggested that Ms Panton was:<sup>529</sup>

*“... being chased by telephone and/or text by her office to file this story, which they were expecting from her. To help her, and as she was under pressure, I offered to let her type the story, which she did from notes that she arrived with, in an e-mail on the stand-alone computer in my office.”*

**4.27** Mr Fedorcio stated that he saw a copy of the story at the time that this incident took place.<sup>530</sup> The story itself made reference to ‘a prison source’ and ‘insiders’<sup>531</sup>, which may at least have suggested that The NoTW had a source within the prison providing them with the information – Mr Fedorcio accepted *“that is possible”*,<sup>532</sup> although Ms Panton denied it to be true; instead, she suggested that the information came from *“another journalist.”*<sup>533</sup> Despite the uncertain provenance of the information contained within the article, Mr Fedorcio saw nothing in the story at the time to cause him concern, he said *“not from a Metropolitan Police perspective, but I think for Commander Dizaei it would have been embarrassing.”*<sup>534</sup>

**4.28** Leaving aside for one moment whether it was appropriate for Mr Fedorcio to allow Ms Panton to use his computer to file a story, it might also be argued that the very nature of the article in question gives rise to a number of ethical considerations. As to this, Mr Fedorcio said:<sup>535</sup>

*“... at the time, I recall thinking that I was helping someone who was being put under what I thought was quite unnecessary pressure, if not bullying, by her news desk, and – you know, to help her solve her problem. In return, from my perspective, I felt I was going to get sight of a story which I may not otherwise have sight of until Sunday morning. At the time, I had no idea what was in it, but of course, it enabled me then to consider the impact of that on the Metropolitan Police, if at all.”*

**4.29** For her part, Ms Panton described why the filing of the story was so urgent, even though the meeting with Mr Fedorcio took place on a Thursday afternoon and The NoTW did not go to press until Saturday evening:<sup>536</sup>

<sup>527</sup> p17, lines 3-8, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>; p15, para 70, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>528</sup> p17, lines 9-18, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>; pp15-16, para 74, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>529</sup> pp15-16, para 74, *ibid*

<sup>530</sup> pp17-18, lines 24-2, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>531</sup> p66, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-DF1.pdf>

<sup>532</sup> p18, lines 13-17, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>533</sup> p12, line 1, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>534</sup> p18, lines 7-8, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>535</sup> pp18-19, lines 21-5, *ibid*

<sup>536</sup> pp12-13, lines 22-11, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

*“The – what we call “back of the book stories” – so those are stories that are not as explosive, exclusive, smaller stories – would often be put to bed and put on a page on a Friday, and this would probably come into that category. Also, news editors would want to get their stories from their departments in the newspaper, so they’d want to go into conference in the morning knowing something about the story, as much as they could, to pitch it in conference ... In the olden days, I think people used to knock on doors, strangers, random residents, to use telephones when they were under pressure. I think on this occasion ... journalistic instinct took over and I did what it took to get the news desk off my back.”*

- 4.30** Ms Panton confirmed that once she had typed the story using Mr Fedorcio’s computer, she forwarded it to her own e-mail account, and using her Blackberry then forwarded it on to three individuals at the NoTW.<sup>537</sup> Ms Panton’s covering e-mail to The NoTW read as follows:<sup>538</sup>

*“Had 2 use dicks computer 2 file and can’t seem 2 delete the original msg details. Would not be helpful 2 him for people 2 know I was using his office so pls delete that. Mfl.”*

- 4.31** Although Ms Panton asserted that it was not at his request,<sup>539</sup> it is clear from her covering e-mail that she had formed the view that it would not be helpful for Mr Fedorcio for others to know that she had used his computer to draft and file a story. Given the perception this created, it is not difficult to understand why that might be the case. As to this, Ms Panton said:<sup>540</sup>

*“I wouldn’t know who they were sending it on to. That was where I was concerned, and although I’d just sent it to three people, when you file things it can go to any number of people within that office, who wouldn’t necessarily understand who he was or the situation of why I was filing from there.”*

- 4.32** Mr Fedorcio stated that the computer used was a stand-alone machine and was not connected to the MPS computer system,<sup>541</sup> that the e-mail concerned was not retained on his system, saying *“I deleted it almost immediately afterwards”*.<sup>542</sup> He was also clear that Ms Panton had had no access to any of his files or documents in writing the story and that he was:<sup>543</sup>

*“... keen to say to her that I wouldn’t want anyone to think that I had been the source of the story, which I wasn’t. She arrived with the notes on this when she came to see me.”*

However, the fact is that, by allowing Ms Panton the use of his computer to draft and file the story, this was an entirely accurate assessment of the position in which Mr Fedorcio had placed himself.

- 4.33** Mr Fedorcio denied that this episode came as a result of his friendship with Ms Panton.<sup>544</sup>

<sup>537</sup> pp13-14, lines 21-3, *ibid*

<sup>538</sup> p66, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-DF1.pdf>

<sup>539</sup> pp14-15, lines 24-1, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>540</sup> p14, lines 18-23, *ibid*

<sup>541</sup> p21, lines 14-18, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>; p16, para 75, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>542</sup> p21, lines 9-10, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>543</sup> pp20-21, lines 25-3, *ibid*

<sup>544</sup> p22, lines 1-4, *ibid*

*“I don’t think it resulted from my friendship. As I said earlier, I think I would have considered doing it for anybody who was in that set of circumstances, but I accept it may have been an error of judgment.”*

I can only agree with Mr Fedorcio’s assessment. Whatever his true motivation for allowing Ms Panton the use of his computer, and I am prepared to accept Mr Fedorcio’s explanation that it was done for purely benevolent reasons, this example did (and does) create a perception that an overly close and exclusive relationship existed between the two. This perception was heightened by the level and nature of some of the social interaction between the two.<sup>545</sup> Whatever the reality of the relationship, and again I am prepared to accept that their interaction was fundamentally professional in nature, it was difficult for Mr Fedorcio to rebut the suggestion that over time he had become beholden to Ms Panton. The creation of this perception of influence, as we have seen, clearly had an impact on the public’s confidence in the MPS, and the Police Service as a whole.

## Links with News International

### *News of the World*

- 4.34** Despite the apparently close relationship that existed between certain journalists employed by the NoTW and the MPS, it was suggested that in fact, the newspaper presented the DPA with more difficulties than other media outlets because of their sting operations. Mr Fedorcio said:<sup>546</sup>

*“The News of the World was one of the most challenging media outlets to deal with because of the nature and content of their coverage, propensity for sting operations and their reluctance to approach the MPS with questions or requests for operational support until the last minute on a Saturday. This was fuelled by a lack of trust and the fear that their exclusive story would be undermined by premature police intervention or leaked to another media outlet. From an MPS perspective this was not a satisfactory situation. For example, if we received a telephone call at mid-Saturday afternoon, just ahead of the deadline for Sunday newspapers, then there was little or no time to provide input or properly planned support or intervention.”*

- 4.35** Furthermore, Mr Fedorcio suggested that through his contact with the newspaper he had sought, over time, to:<sup>547</sup>

*“... gain their confidence and trust to encourage them to work with us at a much earlier opportunity on their stories. It enabled me to make arrangements for timely access to relevant officers and put them on notice of what approaches we may be getting in due course. The positive effect of this can be seen in the case of the cricket match fixing story when the editor, Colin Myler, approached me at 6pm on a Friday evening, which gave us far more reasonable notice to put an effective policing plan in place the following day which ultimately led to successful prosecutions.”*

<sup>545</sup> pp1-67, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Dick-Fedorcio-Gifts-and-Hospitality-register.pdf>; pp1-88, [http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/inner\\_view.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/inner_view.pdf) Exhibit-MPS-60-Dick-Fedorcio-meetings-with-the-Media.pdf

<sup>546</sup> p15, para 72, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>547</sup> p15, para 73, *ibid*

**4.36** The occasional difficulties presented by the NoTW for the DPA would appear to have recognised by the newspaper itself. Mr Fedorcio recalled the DPA receiving a Christmas hamper in December 2003 from the then editor of the NoTW, Andy Coulson, which was shared amongst staff. The receipt of the hamper was recorded within the MPS' gifts and hospitality register.<sup>548</sup> Mr Fedorcio explained why the gift had been made:<sup>549</sup>

*"I think that it was a regular occurrence that the News of the World would come to the Metropolitan Police with a question about a story or stories they were running, at the last minute on a Saturday, and the Met was faced with either, in some cases, needing to put an operational response together, ie to find officers who may be able to respond to what they were putting to us, or we needed to find an answer to give them back again ... So I think that in the main, we managed to just about respond to them. It often led, I think, to the News of the World getting their story but the Met not getting its man, if I can put it that way. The lateness of them coming to us meant that operationally we weren't able to secure the sort of intelligence or evidence that we would need to pursue if a crime was being committed ..."*

**4.37** Mr Fedorcio explained that as well as seeking a response to 'sting' type stories, the NoTW had also sought confirmation on facts relating to articles that they were planning to run:<sup>550</sup>

*"I think, like all papers, you may get a normal press Inquiry with: "We understand the following; can you comment?" That would have gone on in the normal run of things ..."*

He also suggested that the NoTW, on occasions, published critical articles in relation to police officers:<sup>551</sup>

*"I can point to a case during the Damilola Taylor case where the News of the World ran a very nasty story about the police officer who had been selected as the media spokesperson for that case, and as a result of his status as the media spokesperson, he became a celebrity in their mind and was therefore fair game for them to look into his private life. They didn't pull punches."*

**4.38** Ms Panton explained that the NoTW frequently carried out high profile investigations, the fruits of which were very often handed over to the police.<sup>552</sup> Despite this, Ms Panton argued that it did not place the newspaper in a special position in relation to the police. She said:<sup>553</sup>

*"I think my role was to try and make these sting operations run as smoothly as possible, and by having someone who was used to dealing with the police, I think the paper found it helpful and the police often did."*

She also argued that there was no preferential treatment by the MPS towards the NoTW.<sup>554</sup>

**4.39** Despite this assertion, there is no doubt that a very damaging perception was created that the NoTW exercised an inappropriate level of influence over the MPS. The appearance of

<sup>548</sup> p13, para 60, *ibid*

<sup>549</sup> pp107-108, lines 17-10, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>550</sup> p111, lines 7-10, *ibid*

<sup>551</sup> p112, lines 16-23, *ibid*

<sup>552</sup> pp7-8, para 8, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lucy-Panton.pdf>

<sup>553</sup> pp24-25, lines 22-2, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>554</sup> pp27-28, lines 25-3, *ibid*

closeness or “cosiness” between some of the MPS’ senior officers and staff at the NoTW can be attributed to a number of factors. Elements of Mr Fedorcio’s interaction with Ms Panton, for example (and in contradistinction to the argument made by her above), give rise to the perception that the newspaper was being given preferential treatment. This legitimate concern was underscored by the level of formality and frequency of some the contact that existed between certain individuals in the MPS and the NoTW.

**4.40** Undoubtedly the most damaging allegation made against the MPS was that some of the relationships in question actually influenced operational decision making, and whilst I subsequently make clear that there is no evidence to suggest that was true, it is easy to see how such a perception was in fact created. By way of illustration, Mr Fedorcio’s social interaction with the NoTW continued whilst Operation Caryatid was taking place. He recalled, for example, meeting for lunch with the NoTW journalist Rebecca Mowley on 23 August 2006, just a few weeks after the arrest of Mr Mulcaire and Mr Goodman.<sup>555</sup> Mr Fedorcio confirmed that he had been aware of the arrests on the day that they had taken place but denied that any discussion in relation to Operation Caryatid had taken place. He said:<sup>556</sup>

*“Not that I recall. I must admit, in all the interactions that I’ve had with News of the World, I don’t recall ever any discussion around phone hacking or those arrests.”*

**4.41** However, it is not hard to see how an alternative conclusion might be formed, with Mr Fedorcio himself now candidly admitting that:<sup>557</sup>

*“I think, looking at it now, one would question that and one would question a whole series of interactions over the following months and years ...”*

This is by no means the only example of this type, and in subsequent sections I analyse in more detail some of the specific relationships and instances of concern that helped to create the perception described.

### *Neil Wallis*

**4.42** Neil Wallis was a central figure in the relationship between NI and the MPS. Mr Wallis joined The Sun as its Chief Investigative reporter in December 1986, and then progressed to be the features editor, news editor, associate editor and then deputy editor of the newspaper. In January 1998 he left The Sun to become editor of the People, and then in January 2003 he joined The NoTW as its deputy editor, a role he held until becoming the newspaper’s executive editor in early 2008. Mr Wallis resigned from the NoTW in June 2009.<sup>558</sup> In describing the background to his contact with the MPS, Mr Wallis explained:<sup>559</sup>

*“The relationships which I forged over a number of years with the senior figures at New Scotland Yard were established by me in my capacity as an experienced journalist who I believe was respected by those I knew at the highest levels for my insight, knowledge and judgment over a range of issues which essentially fit under the discipline of public relations.”*

<sup>555</sup> pp13-14, lines 22-16, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>556</sup> p13, lines 18-21, *ibid*

<sup>557</sup> p14, lines 18-20, *ibid*

<sup>558</sup> pp1-2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>559</sup> p3, *ibid*

Moreover, he suggested that the relationships referred to were built up on the back of his reputation as a journalist:<sup>560</sup>

*“... I think the point being that it was a relationship built up not just at my time at the News of the World but before that at the people and before that at the Sun.”*

**4.43** Mr Wallis asserted that his “good working relationships with senior officers at New Scotland Yard” dated back to the Commissionership of Lord Condon.<sup>561</sup> He suggested that he had “got on well” with Lord Condon and explained that over the relevant period they had from time to time met in his office or on a “handful” of occasions for lunch or dinner.<sup>562</sup> It is worth repeating in some detail the description provided by Mr Wallis of the nature of his conversations with Lord Condon:<sup>563</sup>

*“... What would happen is we would meet, we would have conversations, I’d give him my views, and if he found them interesting or if he found them useful, then I was glad. We talked on a number of issues. He had a number of issues going on at the time ... he was trying to do two things at the same time in the Met. He was trying to end to end tenure, which was a very important thing in the Met, whereby effectively an officer would get a job and it was pretty much theirs for life. At the same time, he was tackling serious issues of corruption, and he believed there was a parallel – there may be a link between the two. He was in the midst of trying to bring an end to tenure, with the knock-on effect of helping disrupt corruption, and this was being met with a pretty strong dirty tricks campaign amongst certain elements of the police who didn’t want it.*

*He had particular problems, I remember, with the Flying Squad at – I think it was called Rigg Approach or somewhere like that. So we would talk about those issues, and as a result of that, one of the things I said to him was: “You should come out with it. You should tell London. You should tell Britain how big a problem this is, that it’s not just you sort of tinkering around for financial reasons, that there is a problem.” So we did a very big set piece, exclusive interview, me on him, in his office, that was a splash and spread in the Sun, followed up BBC, Guardian et cetera, places like that, that spelt out the fact that ... they feared they had 2-300 corrupt officers in the Met and he was determined to root it out. And so it was a big PR campaign for him. He was setting his stall out to the nation but also to the corrupt officers and also to the sort of local government in London, to say, “This is a big problem. It isn’t minor tinkering, as it’s been led to suggest; it is serious.”*

**4.44** Mr Wallis suggested that in giving his advice to Lord Condon “I had an opinion how he could make something that was very important to him accessible to the Great British public”,<sup>564</sup> although he could not remember whether his advice was requested or provided on an unsolicited basis:<sup>565</sup>

*“I couldn’t tell you how it came about ... He wouldn’t talk about specifics ever, of*

<sup>560</sup> p73, lines 9-12, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>; p3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>561</sup> p3, *ibid*

<sup>562</sup> pp73-73, lines 23-9, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>563</sup> pp74-76, lines 13-1, *ibid*

<sup>564</sup> p76, lines 6-8, *ibid*

<sup>565</sup> p76, lines 11-20, *ibid*

*course, but ... he was talking to someone who represented the biggest daily newspaper in the country and then, later, the editor of another major circulation tabloid – he was interested in my views. Chicken or egg, I have no idea.”*

- 4.45** Mr Wallis’ relationship with Lord Condon was not simply one way, and he explained what he was seeking to gain from this type of informal interaction:<sup>566</sup>

*“This was a sort of corporate/strategic relationship. It wasn’t about trying to get a quick hit at a story. For instance, I think one of the things I mentioned elsewhere is the Police Bravery Awards. The Police Bravery Awards, which I happen to think is a great thing, got off the ground because of Sir Paul Condon. We, as the Sun, were a feisty, controversial organisation. We were quite happy to take a whack at anybody and we were seen in that way. We were trying to reach out to the police establishment, if you like, and to make them go along with an idea and it was going to be a struggle. Because of our relationship with Sir Paul, who realised that there may be more to us than simply the tabloid cliché, he became willing to back it and said, “Come what may, the Met will support this.” I was then able to go to the head of the Police Federation, who also had a good trusting relationship with Sir Paul, and together, as a result of that, we were able to jointly go around the rest of the forces of Britain to say, Sir Paul and the Met are backing this. Why don’t you? If you need to, have a conversation with the Met about why they’re backing it.” And as a result, something is still going I think 14, 16 years later.”*

- 4.46** Mr Wallis agreed therefore that this was a long-term strategy on his part, and not one that would necessarily produce an immediate return in terms of stories or exclusives for his newspaper. He said:<sup>567</sup>

*“... Now, let’s be correct about it: if they sat there and said, ‘Oh, incidentally, such-and-such a thing, do you want to know that or do you want that?’ then on occasions I daresay that might have happened. I don’t remember any, but the relationship was about a strategic relationship.”*

- 4.47** This long-term strategy continued through his relationship with Lord Stevens. Mr Wallis told the Inquiry that he had first met Lord Stevens in his capacity as Deputy Commissioner of the MPS, having being introduced to him by Mr Fedorcio.<sup>568</sup> He suggested that the relationship was fostered in much the same way as his relationship with Lord Condon had been:<sup>569</sup>

*“... I mean, initially, but as time developed, it became a more active relationship than it did with Sir Paul Condon, but it would be over meals, phone calls, occasional drink.”*

- 4.48** Mr Wallis stated that through his contact with Lord Stevens he became aware of his intention to apply for the post of Commissioner of the MPS.<sup>570</sup> Furthermore, he suggested that, in his view, Lord Stevens had been *“the best candidate of the candidates I was aware of”*,<sup>571</sup> and

<sup>566</sup> pp77-78, lines 17-14, *ibid*

<sup>567</sup> pp78-79, lines 20-1, *ibid*

<sup>568</sup> p4, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>569</sup> p80, lines 4-7, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>570</sup> p4, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>571</sup> p80, lines 23-24, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

so had advised him throughout the application and interview process.<sup>572</sup> As to how this had taken place, he said:<sup>573</sup>

*“In the same way as I talked about before with Sir Paul Condon, we would be talking, and if an issue came up, we would discuss it and I would give him my view. I had, it is fair to say, quite strong views about what was happening at the Met. I cared about the Met a lot. The MacPherson report was pretty catastrophic for the Met, and whoever succeeded Sir Paul Condon, it was going to be a very, very important appointment for the Met. As Joe Citizen, never mind as a journalist, I had quite strong views about it.”*

**4.49** Mr Wallis candidly admitted that his support for Lord Stevens’ candidacy for the post of Commissioner had not been simple altruism on his part:<sup>574</sup>

*“... What I knew about John Stevens was that he had a view about how police and press should interact. He had a strong view that was based, at least in part, on his experiences in Ireland – which I knew a lot about, because I’d served there – his experiences in Northumbria – which, again, I knew about because I’ve lived there – and also because of what we had seen with Sir Paul Condon, MacPherson, et cetera, et cetera, and the relationship between the press and the Metropolitan Police. He had a view that (a) I agreed with and (b) was also convenient for him and was also good for newspapers. So, if you like, the opposite of a perfect storm. A perfect sunburst.”*

**4.50** Despite this convergence of views, Mr Wallis denied that he had enjoyed a fast-track to the office of the Commissioner:<sup>575</sup>

*“... What happened was that this was a guy who was going for it. I gave him some input. He succeeded. I thought, “Happy days, because this has worked out all right and hopefully there will be a better moving forward way for the media and the Metropolitan Police.” That benefited my newspaper, so it was good all round. I similarly felt, at the time, that there was a better relationship we were working on, for instance, at the Home Office. All right? I didn’t necessarily think that that was of instant benefit to me. I got on with Alastair Campbell. It wasn’t just a benefit to me that ... you were able to talk to Alastair Campbell in the press, if you see what I mean. All I’m saying is my life is not about the MPS.”*

**4.51** Mr Wallis also stressed that throughout the period of Lord Stevens’ Commissionership he had not sought to influence his *“individual decision making process, rather it was a case of him asking me how certain options would be perceived by the general public.”*<sup>576</sup> He said that his role of informal advisor to Lord Stevens *“grew like Topsy”* and continued *“throughout his time as the Commissioner”* over lunches, dinners and by telephone.<sup>577</sup>

<sup>572</sup> p4, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>573</sup> p80, lines 11-20, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>574</sup> pp82-83, lines 16-4, *ibid*

<sup>575</sup> pp83-84, lines 23-11, *ibid*

<sup>576</sup> p6, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>577</sup> p81, lines 4-11, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

**4.52** When dining or meeting for drinks, Mr Wallis stated that he:<sup>578</sup>

*“... would pay the bill on each occasion which I would reclaim via an expenses claim, where appropriate, from News International from time to time, with the assistance of my PA.”*

According to Mr Wallis, the level of contact varied depending on what was happening at the time so that it could be *“every week, every month, twice a day. It just varied”*.<sup>579</sup> The advice offered was on an unpaid basis, with Mr Wallis suggesting that he:<sup>580</sup>

*“... very much regarded it as part of my duties as the Deputy Editor of the News of the World to forge and maintain relations with senior police officers in the interests of my readership.”*

**4.53** Despite his apparently frequent contact with Lord Stevens, Mr Wallis was clear that he saw no conflict between his role in reporting objectively about the police on the one hand, and his informal advice-giving role on the other. He said:<sup>581</sup>

*“... you know, journalism and newspapers are like lawyers. You know ... they can be talking to someone and have a view, but it doesn’t mean to say that they then don’t have a different conversation with somebody else, you know, depending on which side hired you. So I would have a personal view and I would say to whoever I was talking to: “I think this.” If a hoofing great story came along that wasn’t convenient to that, first and foremost I’m a journalist and the hoofing great story went in the paper.”*

**4.54** The long-term benefits of Mr Wallis’ enduring relationship with Lord Stevens and the MPS would appear to have manifested themselves in a number of different ways. Mr Wallis suggested, for example, that on occasions his conversations with Lord Stevens would lead to a specific story for his newspaper:<sup>582</sup>

*“If he wanted and I was interested – because that’s one of the other things that comes into this, of course. Let’s be real. I worked for tabloid newspapers. Quite a lot of police policy, et cetera, et cetera, is simply not of interest to tabloid newspapers. Now, one of the things I would attempt to do was to find a way to make that accessible if it was relevant, but occasionally he might have a view about something that might make a story or a feature or whatever.”*

**4.55** His evidence also suggested a degree of enhanced access to senior officers within the MPS. He said:<sup>583</sup>

*“... One of the benefits of my relationship, without question, with senior police officers is that if I rang – and it would always be via Dick Fedorcio, but if I rang one of them and said, “We have this situation that we think the Met ought to get involved with”,*

<sup>578</sup> p5, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>579</sup> p85, lines 7-11, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>580</sup> p6, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>581</sup> pp81-83, lines 24-9, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>582</sup> p86, lines 1-9, *ibid*

<sup>583</sup> pp86-87, lines 21-3, *ibid*

*then they would take that seriously, because they know that I'm a guy who is not going to mess them about ..."*

- 4.56** This may all hint at an inappropriately exclusive relationship. Certainly one can well understand why the fostering of such a relationship with the MPS would be of significant benefit to Mr Wallis and the newspapers for which he worked. His evidence rather hinted at this aim when he said of his relationship with Lord Stevens:<sup>584</sup>

*"I'd rather hope he was more friendly to me than anybody else, but in honesty, I haven't a clue. I mean, when you look at his hospitality register, as far as I can see, he wasn't mean in his charms, as it were. I know he got on very well, for instance, with Paul Dacre."*

- 4.57** As to the reality, Lord Stevens described his relationship with Mr Wallis in these terms:<sup>585</sup>

*"It was totally professional. I never went to his house, he never came to mine or to my flat. It was all on a professional basis, and that's how I wanted it to be and that's how it was with all of the people involved in the press."*

Mr Wallis endorsed that description.<sup>586</sup>

- 4.58** With reference to his diary, Lord Stevens also commented on some of his social interaction with Mr Wallis. His diary recorded, for example, a meal with Mr Wallis at the Birdcage restaurant in January 2000. As to this, Lord Stevens said:<sup>587</sup>

*"... I met Mr Wallis twice, with my wife and his wife, when we were working up the charity I was basically in charge of, which was Convoy 2000, to involve his wife. We met twice. He paid for the dinner once and I paid for the other dinner, but that didn't come to anything ..."*

- 4.59** His diary also recorded a lunch with Mr Wallis and Lord Waheed Alli in October 2000, and then subsequently a meeting at New Scotland Yard in November 2000 with the same two individuals. He described the purpose of those encounters:<sup>588</sup>

*"... Neil Wallis was a friend of Lord Alli, Waheed Alli. I wanted Waheed Alli to be an adviser – a group of about 12 or 14 people, and I wanted him to be one, to be advisors, to actually say what we were doing wrong, in particular what the Metropolitan Police was doing wrong, what I was doing wrong, and what we could do to right that. So there were two meetings with Lord Alli and he then agreed to be one of the advisers who I used to meet up with once every three to four months for dinner at Scotland Yard."*

- 4.60** For his part, Mr Wallis suggested that this example provided an illustration of the benefits of his informal advisory role, given that his introduction of Lord Alli to Lord Stevens provided

<sup>584</sup> p90, lines 2-6, *ibid*

<sup>585</sup> p81, lines 9-13, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>586</sup> p4, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>587</sup> p76, lines 17-22, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>588</sup> p78, lines 6-16, *ibid*

the latter with a “more diverse audience and pool of ideas than he had been accessing up to that point.”<sup>589</sup>

- 4.61** Lord Stevens’ relationship with Mr Wallis continued beyond his tenure with the MPS. Shortly after his retirement in February 2005, Lord Stevens described how he decided to write a number of articles for the NoTW. This was part of a package which was negotiated around his autobiography, ‘Not for the Faint Hearted’, which was serialised in The Times and the NoTW.<sup>590</sup> Lord Stevens said:<sup>591</sup>

*“... I was approached by Lord Weidenfeld, who talked me into it. Other Commissioners had written autobiographies and I wanted to model my autobiography on Sir Robert Marks’ “In the Office of Constable”. Part of the deal was that that would be serialised in the News of the World and the Times and that was part of the package. The proceeds of that were going to go towards officers attending Northumbria University, where I’m chancellor, who had not been to university, who did not have a degree or university education ... So that was the process. The question writing articles was part of the package that the book involved, and it was writing no more than seven articles in a year, which were police-related, and being paid £5,000 per article, which was a vast sum of money as far as I was concerned, but that, I was told, was the going rate, and Jeremy Lee of JLA, who was acting on my behalf in relation to these matters, dealt with that.”*

- 4.62** In respect of the NoTW serialisation, Lord Stevens was clear that Mr Wallis had nothing whatsoever to do with the contract itself, he said:<sup>592</sup>

*“... that was dealt with by Mr [Kuttner], who was the managing director of the News of the World and the Times. So they were dealt with by separate people, and Neil Wallis wasn’t involved in that.”*

Lord Stevens was also clear that it was the publishers who arranged the particular titles where his articles would be serialised.<sup>593</sup>

- 4.63** The articles themselves went under the title “The Chief”.<sup>594</sup> They were ghost-written and edited by Mr Wallis being “based on major policing issues that arose during 2005-2006, such as the 7/7 bombings and the shooting of PC Sharon Beshenivsky.”<sup>595</sup> Lord Stevens said that in writing the articles he had been expressing a personal view on the matters at issue.<sup>596</sup> He said:<sup>597</sup>

*“The theme was really about how difficult the policing task is in terms of what they do. I had the idea – it might have been naively – that no longer having the constraints*

<sup>589</sup> p7, para 1(a), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>590</sup> p16, para 46, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>591</sup> pp93-94, lines 16-12, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>592</sup> p94, lines 17-21, *ibid*

<sup>593</sup> pp94-95, lines 22-1, *ibid*

<sup>594</sup> pp16-17, para 47, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>595</sup> pp16-17, para 47, *ibid*

<sup>596</sup> p97, lines 10-12, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>597</sup> pp96-97, lines 23-4, Lord Stevens, *ibid*

*of being Commissioner, I could talk about things in a far more open manner in terms of what the police do and the excellent work that they do in terms of terrorism ...”*

**4.64** Although not involved in the contract negotiations, Mr Wallis confirmed that it was through his contact with Lord Stevens that the NoTW had first become aware that an autobiography was being written,<sup>598</sup> and that furthermore, on receipt of that information, he had indicated to Lord Stevens that the NoTW would be “*very interested*” in serialising the book.<sup>599</sup> Mr Wallis suggested that this, together with “The Chief” articles, were examples or by-products of his relationship with Lord Stevens, a relationship built up over a considerable period of time.<sup>600</sup> Mr Wallis explained that he had chosen the subject matter for “The Chief” articles and:<sup>601</sup>

*“... wrote them so that they would be a great read for the News of the World readers, that would gather interest from other media organisations and would be completely compatible with how he thought or what he believed. So it was, again, you know, a synthesis of coming together of interests.”*

**4.65** Mr Wallis also elaborated on the editing process in these terms:<sup>602</sup>

*“... ghosted articles in newspapers have been going for as long as Mr Caxton was here. It was a perfectly common thing and I wouldn’t want you to think that I would just write a piece and lob it in the paper. What would happen was I would have a view, I would speak to John Stevens, we would work out the structure of the article, I would write the article, I would email it to him or fax it to him, he would come back to me and say, “I like this, I don’t want to do that, I want to change this”, I would do it again, I would send it back to him, he would say, “Okay”, I would send it to the back bench, the back bench would subedit it, I would get the subediting version – because plainly, you’re going to write about 1,000 words which are going to come down to about 800 words, say. I would then check that I was happy with the subediting. I would send that back to John for his final say-so before it was put in the paper, including the headlines.”*

**4.66** Lord Stevens terminated the contract with the NoTW in October 2007, explaining that he had had no further dealings with Mr Wallis or the newspaper since then.<sup>603</sup> He said:<sup>604</sup>

*“... I didn’t complete that contract because of the conviction that took place of the two people in the News of the World, and I saw Colin Myler and Neil Wallis and told them I didn’t want to continue. I never gave them specific reasons, but from that night on, I never saw them again ... when the convictions were taking place, certain other information was coming to my ears which just – I didn’t just want to do it.”*

**4.67** As to his original rationale for writing the articles, Lord Stevens suggested that:<sup>605</sup>

*“It did not seem like an unusual step to take at the time and I was aware that countless*

<sup>598</sup> p32, lines 13-24, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>599</sup> pp32-33, lines 25-3, *ibid*

<sup>600</sup> p33, lines 4-11, *ibid*

<sup>601</sup> p33, lines 19-24, *ibid*

<sup>602</sup> pp34-35, lines 12-5, *ibid*

<sup>603</sup> pp16-17, para 47, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>604</sup> pp95-96, lines 14-6, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>605</sup> pp16-17, para 47, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

*politicians had done exactly the same thing. It gave me the opportunity to promote policing and talk about the difficulties MPS police officers and staff had to deal with.”*

With respect to Lord Stevens, I am not sure that the roles of Commissioner and politician should be viewed as being particularly analogous in this context. Public confidence in the police is a critical element in the concept of policing by consent, and therefore there is a risk, and I put it no higher than that, that public media commentary on police matters by a former senior officer may undermine the authority of those presently in command and that may be contrary to the public interest. This is an important issue, and one to which I will return in greater detail later in this Section of the Report.

- 4.68** At least from Mr Wallis’ perspective, the articles under the banner “The Chief” would not appear to have been designed as a completely neutral, benign and objective commentary on the Police Service. As well as choosing the subject matter and ghost-writing the articles, Mr Wallis confirmed that he had also played a part in the naming of the column.<sup>606</sup> Although Mr Wallis denied it to be true,<sup>607</sup> it could certainly be argued that the title of the column was deliberately provocative. Mr Wallis himself suggested that Lord Blair, Commissioner of the MPS during the period that the articles appeared in the NoTW, had been unhappy that his predecessor was featuring in the column, he said:<sup>608</sup>

*“There was a bit of gossip about it. It had been around, may have even been in a gossip column. But when we actually met him – I was trying to recollect how this happened, but one day he ended up in our office. I think he may have been visiting another newspaper and had been invited, if you like, by whoever was accompanying him, to do a tour of the building, and he ended up on our floor ... But he came in and it came up in conversation and he said, “I don’t know how you can call him the chief – he’s not the chief any more; I am”, which was vaguely funny, I thought.”*

- 4.69** Mr Wallis conceded that Lord Blair’s displeasure was not in the least bit surprising, and perhaps tellingly in this regard said *“mischief is a significant component of newspapers, particularly tabloid newspapers”*.<sup>609</sup> In fairness to Lord Stevens, in hindsight, he recognised that this was a contract that he should not have entered into in the first place. He said:<sup>610</sup>

*“I think knowing what I do now, I certainly wouldn’t have entered into it, and that’s a fact. By terminated [sic] the contract with five more articles to write, I was throwing away money, but that didn’t worry me.”*

- 4.70** As may now be obvious, the relationship between Mr Wallis and Lord Blair was in stark contrast to his interaction with the previous incumbents in the role of Commissioner, Lord Condon and Lord Stevens. Mr Wallis said of Lord Blair:<sup>611</sup>

*“I did not really know Ian Blair. He made absolutely no effort to forge any relationship with me or anyone else at the News of the World or to my knowledge any other mass market editor or deputy editor at the time on Fleet Street.”*

<sup>606</sup> p95, lines 12-15, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>607</sup> p95, lines 16-20, *ibid*

<sup>608</sup> pp94-95, lines 24-11, *ibid*

<sup>609</sup> p95, lines 24-25, *ibid*

<sup>610</sup> p97, lines 17-20, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>611</sup> p7, para 1(b), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

It is of interest that, in describing his relationship with Lord Blair, Mr Wallis also suggested that:<sup>612</sup>

*“... he took a different view from John Stevens. He decided that he wasn’t interested in the views of either the tabloid or mid-market press. He was a very cerebral man. He saw himself very much as somebody who didn’t want to pursue those sorts of contacts, so, you know, he didn’t.”*

**4.71** Mr Wallis’ analysis of Lord Blair’s attitude towards the press would appear to have mandated their relationship. He went further by suggesting that Lord Blair’s apparent failure to establish good relationships with senior editorial figures in the press was partly responsible for the generally negative coverage he received as Commissioner of the MPS.<sup>613</sup> If true, this may inevitably lead the Commissioner of the day, or other senior police figures, to the conclusion that they must have a very open and receptive relationship with the media to ensure that the coverage of them personally, and their forces, is fair and balanced. Mr Wallis denied this to be the case, and said:<sup>614</sup>

*“... anybody who ever thinks they have a sort of free pass from the press is fooling themselves. It’s a symbiotic relationship, but it is one that always can go both ways. So Ian Blair couldn’t have rescued himself with the press simply by buying us drinks and being friendly. What he needed was some good advice to say, “Look, this is an issue. This is what you need to do about the issue. If you got that wrong, don’t be self-justifying about it. Face up to it. This is how you should face up to it. These are some PR leads, if you like. These are some attitudes you could strike. These are some things you could do to try to repair that damage.” One of those, without doubt, would be sitting down with – whether it’s Paul Dacre, Ian McGregor at the Telegraph, Andy Coulson or Colin Myler at the News of the World, and explaining to them where he was coming from, what his thoughts were, and taking their view about, you know, what he was doing that – you know, in a way, newspapers have constituencies, you know? The Sun has a distinct constituency. So when its editor speaks, it’s telling you what the perception is – the editor’s perception of what the constituency thinks. So what you can take out of it is if I want to reach out to that constituency, then I need to take this, that or the other into account.”*

**4.72** There is an element of circularity to Mr Wallis’ argument and it is perhaps unsurprising that Sir Paul Stephenson said this when describing his approach to the media on becoming Commissioner of the MPS:<sup>615</sup>

*“... It was quite clear that during my predecessor’s term of office, Sir Ian Blair, now Lord Blair, that there was a good deal of commentary in the media, and much of it negative. My belief was that that reflected quite poorly and unfairly on the Metropolitan Police Service and indeed on Sir Ian Blair, Lord Blair now, himself. Not only that; it was extremely distracting to senior officers, constantly having to deal with this sort of list of headlines, much of which I felt were unfair at the time, which actually distracted us from what should be the main purpose of the Met, which really is about doing the job we’re supposed to be doing on behalf of Londoners, and I came to a very strong view that what we needed to have in our relationship with the media*

<sup>612</sup> pp92-93, lines 24-4, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>613</sup> pp93-94, lines 25-9, *ibid*

<sup>614</sup> pp100-101, lines 13-13, *ibid*

<sup>615</sup> pp7-18, lines 12-5, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

*is to try and effect the situation where the story was much more about what we do and less about who we were as senior officers, and that was something reflected to me when I met many junior officers when I took up office.”*

**4.73** Sir Paul would appear to have succeeded from Mr Wallis’ perspective. The latter described his relationship with Sir Paul as following *“the same blueprint as my relationship with Sir John Stevens.”*<sup>616</sup> The extent to which this may or may not have been true is analysed below.

**4.74** Although it is not something from which it is necessarily possible to draw any firm conclusions, it is certainly the case, as Mr Wallis himself confirmed, that the pattern of the relationship between the police and the newspapers for which Mr Wallis worked was generally one of convergence. He said: *“I think that it is absolutely true, that for many years I have been lucky enough to have my newspaper’s interest and the Metropolitan Police’s interests on occasion converge to our mutual benefit ...”*<sup>617</sup> This is not of course to say that from time to time critical pieces were not written, as can be evidenced, for example, from some of the stories that appeared during Lord Blair’s period as Commissioner.<sup>618</sup> However, Mr Wallis agreed that the usual approach was one that tended to be pro-police:<sup>619</sup>

*“... I think that’s true. I worked for the Sun and then I went to ... edit the left of centre Sunday People, but it’s essentially a populist approach, really. Believe it or not, most people out there do support the police and the Army, and so it seemed to me that it’s very often that those interests converge.”*

**4.75** Mr Wallis’ most enduring relationship with any of the senior figures at the MPS was Mr Fedorcio. Mr Fedorcio confirmed that they had known each other since 1997, having first met at a dinner in the December of that year in the presence of Lord Condon and Stuart Higgins, then Editor of The Sun.<sup>620</sup> Mr Wallis explained that in Mr Fedorcio’s capacity as the MPS’ Director of Public Affairs, he would *“speak to him on the phone on a frequent basis, often with weekly frequency”* and he would meet him for *“dinner or a drink about six times every year.”*<sup>621</sup> Mr Wallis suggested that he had enjoyed a *“good relationship”* with Mr Fedorcio, and that on occasions he had provided him with public-relations or media advice. He said:<sup>622</sup>

*“... I remember two examples of that. Once, going back to a Condon era, when there was a bombing at Canary Wharf and – I was editing the Sun at the time and there was going to be a press conference on the Sunday and I heard from our reporters when this was going to be, and it was – I think something like a February. And I rang [sic] the press office and said, “Look, the light is failing ... the most dramatic thing about this in your PR terms are going to be the amazing pictures, so bring it forward an hour, do the photo-shoot before you do the press conference, and then you will get a bigger show in all the newspapers.”*

<sup>616</sup> p8, para 1(c), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>617</sup> p12, lines 2-5, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>618</sup> p79, lines 11-13; pp95-97, lines 24-13, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>619</sup> p12, lines 10-15, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>620</sup> pp24-25, lines 22-3, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>621</sup> p11, para 1(f), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>622</sup> pp13-14, lines 15-11, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

*After the 7/7 bombings, I had a very similar conversation with Dick Fedorcio about getting footage or getting stills from inside the tunnels of where the explosions had been, because I knew that they would be the best pictures and I knew they would dominate all the front pages and therefore that what the Met would get was what it needed, was those harrowing images, and it was sort of giving Dick the support to be able to go on to whoever he needed to speak to to try to get those pictures and that footage, and it worked.”*

- 4.76** Taking the level of Mr Wallis’ apparent assistance to the MPS on public-relations and media matters as a whole, some might conclude that the Director of Public Affairs, and the MPS more generally, were not particularly competent in this area, and therefore for his own professional and strategic reasons, Mr Wallis was filling a gap. As to this, Mr Wallis said:<sup>623</sup>

*“Well, I contributed where I felt that it was worth contributing and it was up to them what they took out of it.”*

Certainly it would appear once again that the advice provided by Mr Wallis to Mr Fedorcio was not simple altruism on his part. Their relationship would appear to have provided Mr Wallis with access to the very senior echelons of the MPS. By way of example, he said:<sup>624</sup>

*“I didn’t really often want to speak to anybody, because that wasn’t my sort of role, but certainly, for instance, I would go to Dick and say, “Look, we are instituting the Police Bravery Awards. It would be a big help to us if John Stevens would agree to be on the judging panel”, and so we got: “Yes, thanks very much.”*

- 4.77** Mr Wallis also described a sting operation in which the NoTW were seeking to set up someone whom they believed to be a paedophile and had asked for Mr Fedorcio’s assistance, which he provided. He said:<sup>625</sup>

*“... I remember there was an occasion where we had a paedophile investigation and it had nothing to do with me, but for some reason – and usually the Met are brilliant on these things, I have to stress but for some reason, on that Saturday we had this sting about to happen with a paedophile who thought he was going to pick up a 12-year-old girl and we weren’t getting any help locally. So what I would have done in that circumstance is ring Dick and say, “Look, we’re about to do this. We’re not getting any reaction from whoever it is we’ve spoken to. I think it’s worth it for the Met.” And if he did or he didn’t, then we did get the help on that situation and a man ended up in jail for trying to groom a 12-year-old child as a paedophile.”*

- 4.78** Despite the apparent closeness of Mr Wallis to some of the senior figures at the MPS, he said that:<sup>626</sup>

*“With the exception of the very occasional odd exclusive interview given to the News of the World by Sir Paul Condon and Sir John Stevens I was not provided with any information as a result of my relationship with these officers which they did not seek to be published. I was never provided with information from them which they were not authorised to divulge.”*

In un-packing this statement, Mr Wallis acknowledged that at times he had been provided

<sup>623</sup> p18, lines 23-25, *ibid*

<sup>624</sup> p15, lines 5-11, *ibid*

<sup>625</sup> p16, lines 4-17, *ibid*

<sup>626</sup> p14, para 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

with off-the-record information in the recognition that it would not be published save with the express agreement of the person providing it,<sup>627</sup> and that this had taken place because, in his own words, *“we had a relationship of trust”*.<sup>628</sup>

- 4.79** The receipt of this background information enabled Mr Wallis to gain a better understanding of how the police worked, or as he put it *“I felt I was well briefed, yes, inasmuch as whatever they chose to brief me about.”*<sup>629</sup> It might be argued that the receipt of this sometimes privileged information was the entire purpose of Mr Wallis’ carefully crafted relationships with a number of very senior police officers and staff. As to this, he said:<sup>630</sup>

*“I’m a journalist. You know, journalists live or die by their contacts. I was a very senior journalist. I had good relationships with people that enabled us both to benefit out of it. And, yes, I nurtured those contacts because that’s what journalists do. Incidentally, there is just one point – you know, there seems to be almost a presumption that it’s somehow wrong, the idea that people like senior journalists should not have access to senior opinion-formers. Well, you know, I don’t think I agree with that ... you could take the view that ... it’s actually quite important to a free press that people can – you know, a senior journalist can sit down and have off-the-record conversations with a whole variety of people, whether they be judges, whether they be police officers, whether they be politicians. I have done all of those things. All of those three things I’ve just said, I have done, and I think that’s a pretty healthy way to look at the idea of a democracy and a free press, frankly.”*

- 4.80** Perhaps the most powerful illustration of what Mr Wallis described as his mutually beneficial relationship with the MPS was his procurement of the exclusive footage of what impact the ‘shoe-bomb’ would have had if it had exploded in 2001.<sup>631</sup> Andy Hayman, formerly ACSO within the MPS, recalled this example as being one that *“epitomises the relationship”* with the NoTW.<sup>632</sup> He suggested that he had attended a meeting at the NoTW offices to:<sup>633</sup>

*“... ask the newspaper to show on their internet site a reconstruction of what could have been achieved by the airline plotters in blowing up an aircraft. I was accompanied at this meeting by Dick Fedorcio, the Director of DPA. It led to the newspaper agreeing to put the reconstruction video on their website, allowing members of the public to access it. It was promoted within the body of an article which they ran inside the newspaper.”*

- 4.81** Mr Wallis’ recollection was that the idea came from him, not Mr Hayman. He said:<sup>634</sup>

*“I can recall on one occasion in late 2005 that I was instrumental in the release of footage which was broadcast on the News of the World website of the effect that the “show bomb” which failed to detonate would have had in the event of it being successful. I was persistent with my advice to Hayman that this footage would have*

<sup>627</sup> p19, lines 11-19, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>628</sup> p20, line 20, *ibid*

<sup>629</sup> p21, lines 2-3, *ibid*

<sup>630</sup> pp21-22, lines 7-1, *ibid*

<sup>631</sup> pp10-11, para 1(e), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>632</sup> p10, para 28, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Andy-Hayman1.pdf>

<sup>633</sup> *ibid*

<sup>634</sup> pp10-11, para 1(e), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

*a profound affect if released into the public domain as a result of which he provided to the News of the World.”*

**4.82** This would also appear therefore to be an example of the nurturing of a contact by Mr Wallis, in this case, Mr Hayman. He explained:<sup>635</sup>

*“I think it is an example of how I had spent X number of months where I would talk and whatever with him about a variety of things. My crime reporter, Lucy Panton – crime editor, Lucy Panton, I was talking to her one day about police issues, as I quite often would do if I was passing her desk. I would sit on it and chat, and she told me that Andy had mentioned to her this DVD, this video, because he’d said ... something to her like: “If only people could really see what damage a shoe bomb could do”, because there was a little bit of – not scepticism in the world, but: “A shoe bomb? What could that do?” So I said to her: “Ask him if we can actually come and see it so we can see whether it would be worth producing.” So he said yes, so we went to see it. It was staggering. I said to him: “In my view, you really should put this out. I’d like you to do it through us.” He said, “You could get some video grabs.” I said, “Yes, we could get some video grabs, but one of the things we could do is put it on our website – put it openly on our website, and it will go viral worldwide.” So he then thought about it for a few days, came in to see Andy Coulson, the editor, showed it to Andy Coulson, and we did all of those things and it went round the world and is being shown to this day.”*

**4.83** Mr Wallis explained that it had not occurred to Mr Hayman that this was an exclusive or that he had thought:<sup>636</sup>

*“Oh, where can I place this? I know, I’ll go to the News of the World.” He mentioned it in passing to Lucy. Lucy then mentioned it in passing to me. I thought that would have two things: (a) it would be interesting for my newspaper, but (b) it was also a very good piece of PR for the Met.”*

Given the clear national public interest of this video, there is a question as to whether it was appropriate or sensible for it to have been offered by the MPS to one newspaper alone. However, Mr Wallis argued that:<sup>637</sup>

*“This was an asset they didn’t know they had. It hadn’t occurred to them that this was worth putting out. It was mentioned to me, so I went and pursued it and suggested to them that they release it to us. If I hadn’t have made that pursuit, it would not have been released because it didn’t occur to them.”*

**4.84** Certainly no criticism can be levelled at Mr Wallis or his newspaper in this instance; he was simply utilising his carefully built relationship with the MPS to procure an exclusive story. I have already addressed the relationship of trust that exists between the police and the press elsewhere,<sup>638</sup> an important part of which is the police’s respect for exclusives, and Mr Wallis argued that the principle applied in this instance:<sup>639</sup>

*“... This was not an asset that they saw as a PR asset. I, as a journalist, saw that I could turn it into a PR asset and therefore it was no different, I guess, than from me going to them and saying, “We have a story about X or Y or Z”, and them then putting*

<sup>635</sup> pp8-9, lines 2-1, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>636</sup> p9, lines 4-10, *ibid*

<sup>637</sup> p10, lines 5-10, Neil Wallis, *ibid*

<sup>638</sup> Part G Chapter 2

<sup>639</sup> p10, lines 15-24, Neil Wallis, *ibid*

*it out to everybody. It wouldn't have been published in any way if it hadn't have been my newspaper's idea."*

- 4.85** It could be argued that this was qualitatively different from the hypothetical situation where the MPS, appreciating the importance to the public of such a video and its value to a particular newspaper, had offered it for exclusive publication. The line, however, is a very fine one. This example certainly adds to the perception that the NoTW, and NI more generally, were provided with more favourable access to police information. It again also points to an apparent gap in the media expertise of the DPA and the MPS, whose failure to recognise the potential importance in public interest terms of this footage was surprising to say the least. Ed Stearns, Head of Media for the renamed Directorate of Media and Communication, appeared to have recognised this point. He said:<sup>640</sup>

*"That was before my time in the directorate, but I'd absolutely hope that ... if I was aware of that footage, that I would have thought about the possibility of putting it out into the public domain because it was something that might be of use to show the damage that that bomb may have caused, and it's certainly something that I would like to consider in my role if that had come across my desk. I'm not sure if the directorate knew with that footage, or at what stage they did, but certainly that would be something that I would at least consider and perhaps challenge officers on the possibility of getting that out there into the public domain."*

- 4.86** This example would appear to have been another demonstration of the convergence in interests of the police and Mr Wallis, who said:<sup>641</sup>

*"The upshot of us publishing it was that video appeared in other newspapers, on television, and went around the world. It was a rather good idea ... We both won."*

That may have been true in this instance, but was this all simply part of a long term-strategy to place himself at the heart of the MPS? The following exchange with Mr Wallis was important in this regard:<sup>642</sup>

*"Q. If you were to stand back from all of this and you were to take into account the hospitality, all the phone calls with different commissioners and assistant commissioners, writing of these articles, would you agree that it might be said to be part of an over-arching strategy to place the News of the World in a special position with the Metropolitan Police Service?"*

*A. I think it is an example of how journalism worked well to our mutual benefit.*

*Q. That's a bit of a non-committal answer. I wouldn't want to flatter you too much, Mr Wallis, but if the implication is that you're rather good at your job in this respect, surely you would agree that that's what you were, in fact, trying to do: using your skills, all of your skills – and we've heard the full range of them – to achieve for the News of the World a special relationship with the Metropolitan Police Service? Although you may not like the sharp way in which that was put, that's what you were trying to do, wasn't it?"*

*A. In a way, but the problem is if I say yes, then it sounds too crude again. I mean, I was – plainly, I am a journalist. My job is journalism and, yes, I work with people,*

<sup>640</sup> p37, lines 5-17, Ed Stearns, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>641</sup> p11, lines 9-22, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>642</sup> pp35-36, lines 6-8, *ibid*

*but this relationship that lasted from 1998 through – right, and with other people for different lengths of time – worked because it was a good, balanced, trusting relationship that both sides felt they got stuff out of.”*

- 4.87** The fact that Mr Wallis was seeking to place himself in a special position with the MPS is unsurprising, given the obvious potential benefits to him and to the newspapers for which he worked. Those benefits, at the very least, would appear to have taken the form of privileged background information which aided Mr Wallis’ understanding of the MPS and helped to contribute to stories that appeared within his newspapers.<sup>643</sup> The fact that Mr Wallis carefully built relationships with some of the most senior figures at the MPS is not something for which he should be criticised; many will argue that he was simply a very effective journalist. From the perspective of the MPS, however, and looking forward to the future, it should ensure that its relationship with the media, in general, and individual journalists in particular, is kept within appropriate bounds and completely transparent to all.

### *Chamy Media Ltd*

- 4.88** The relationship that Mr Wallis had with the MPS continued beyond his resignation from the NoTW in June 2009. The background to the use of Chamy Media Ltd by the MPS starts with the fact that, from spring 2009 onwards, Mr Fedorcio had been considering whether he needed to engage some external support due to the long term illness of his deputy director, who had been on sick leave since mid-February 2009.<sup>644</sup> The issue was then formally raised during Mr Fedorcio’s appraisal process, he said:<sup>645</sup>

*“I remember some sort of previous interactions with the Commissioner during my internal appraisal. The Commissioner in there asked how I was coping wouldn’t [sic] a deputy in place, whether I needed any additional support, and at that stage I said it was my aim not to do it, in the hope that he would return shortly. The issue arose again when I had the second stage of that appraisal with the Commissioner and the chairman of the police authority, and again it was my view that I would try and cope without the deputy. The trigger, I suppose, to act on this was that probably about the third week of August, my deputy found that the treatment had not been successful and was therefore now going to have to undergo further treatment, which gave us some quite serious concern about his health and the prospect of him ever returning. It was my decision that I would not want to take any pre-emptive action to replace him ... So my assessment was that I wasn’t looking to replace my deputy, I was looking to find some support, second opinion, guidance, you know, a reference point, for some of things that I did, to make sure that I wasn’t missing the sort of opportunities that might be around that I should do. So that led me then to think about what sort of resource I might take on within the sort of budget that I might have available within all of this, and came to the view there was a need for ... someone, but not for a lot of time, that I needed on a retainer basis so that I could access it if or when I felt I needed that support.”*

- 4.89** That decision having been taken, Mr Fedorcio took the view that he needed someone who had:<sup>646</sup>

<sup>643</sup> pp19-21, lines 11-3, *ibid*

<sup>644</sup> pp16-17, para 78, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>645</sup> pp30-31, lines 1-10, *ibid*

<sup>646</sup> pp32-33, lines 21-1, *ibid*

*“... worked as an adviser at a senior level in an organisation, who had relevant media, speech-writing, public affairs experience, had knowledge, contacts, strong awareness of policing issues, and I wanted him to be available to give advice, possibly at short notice, which I thought was sort of reliable, credible advice.”*

**4.90** In the meantime, and on leaving the NoTW, Mr Wallis had formed two companies; these were Neil Wallis Media Ltd and Chamy Media Ltd.<sup>647</sup> Through Neil Wallis Media Ltd, Mr Wallis applied his trade as a *“freelance journalist selling tips and stories to news media organisations.”*<sup>648</sup> Through Chamy Media Ltd he *“provided PR advice which could be described as in some cases sensitive due to the identity of the client – for instance a number of senior politicians, also PR agencies and corporate bodies received my advice on PR matters through Chamy.”*<sup>649</sup> Mr Wallis suggested that having told Mr Fedorcio that he was intending to leave the NoTW, he had been made aware that the MPS were looking to recruit someone to provide PR advice, and that furthermore:<sup>650</sup>

*“I believe I said to him that although I was leaving the News of the World if he wanted to continue to avail himself of my advice he was free to do so. I stated that this would be on a “pro bono” basis.”*

**4.91** Mr Fedorcio’s recollection was that he had met with Mr Wallis for lunch on 12 August 2009, and it was there that Mr Wallis had told him of his *“new line of work as a media consultant and offered his services to me and the MPS.”*<sup>651</sup> Mr Fedorcio explained that over the following few days he came to the conclusion that Mr Wallis met the selection criteria and would be available to start almost immediately.<sup>652</sup> He then informed Sir Paul Stephenson, then Commissioner of the MPS, that he was considering engaging the services of Mr Wallis.<sup>653</sup> As to whether Sir Paul had expressed a view on the potential appointment at that stage, Mr Fedorcio said:<sup>654</sup>

*“He didn’t express a view. I was having one of my regular meetings with him and we had a long list of things to talk about, and I think towards the end I just said to him: “I’ve considered your encouragement about finding some additional support, I think I now need to to [sic] it, and I’ve had a look around and ... I’m considering Neil Wallis.” He didn’t make any comment on Neil Wallis. I think he was just pleased that I’d thought about taking on some support.”*

**4.92** For his part, Sir Paul could not recall any discussion with Mr Fedorcio regarding Mr Wallis before he was recruited, although he was clear that:<sup>655</sup>

*“... if Mr Wallis was coming out of that process as somebody who was either going*

<sup>647</sup> pp24, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>648</sup> pp24, para 22, *ibid*

<sup>649</sup> pp25, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>650</sup> pp26, para 22(a), *ibid*

<sup>651</sup> p17, para 81, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>652</sup> p17, para 81, *ibid*

<sup>653</sup> p17, para 83, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>654</sup> p34, lines 16-24, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>655</sup> pp54-55, lines 22-2, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

*to be invited to tender or likely to get the job coming through a very proper process, I would not be discomfited by that because I had no reason to doubt – sort of doubt that he wasn't a fit and proper person."*

- 4.93** Mr Fedorcio recalled that he had also spoken to John Yates, formerly an Assistant Commissioner in the MPS, about the proposal to engage the services of Mr Wallis as:<sup>656</sup>

*"I knew he was expected to deliver a number of public speeches and presentations in his role and could make use of this support service. I thought he might also be prepared to co-finance the contract."*

Mr Yates confirmed that "one or two" meetings took place with Mr Fedorcio and Mr Wallis relating to potential work for Mr Wallis.<sup>657</sup>

- 4.94** Mr Fedorcio was aware that Mr Yates and Mr Wallis knew one another through work but "did not understand them to have any significant contact outside of work."<sup>658</sup> I examine Mr Yates' relationship with Mr Wallis in much greater detail elsewhere.<sup>659</sup> At this stage, it is sufficient to say that there is some debate as to Mr Fedorcio's knowledge of the true extent of Mr Yates' friendship with Mr Wallis. Mr Fedorcio suggested that had he been fully aware of the fact that the two had been "good friends", then that would have affected his decision to seek Mr Yates' advice on the potential appointment. He said:<sup>660</sup>

*"... I would have sort of moved away from John Yates in terms of seeking his views on the appointment, the selection. I may have gone elsewhere, to one of his deputies ..."*

- 4.95** Moreover, Mr Fedorcio went as far to suggest that had he been fully cognisant of the nature of Mr Yates' relationship with Mr Wallis, then he may have taken the view that it would have been inappropriate to hire Mr Wallis.<sup>661</sup> Nevertheless, and having approached him for his view on the matter, Mr Fedorcio suggested that Mr Yates did not express enthusiasm for Mr Wallis, but rather:<sup>662</sup>

*"... I don't think he expressed a view as to whether ... the person involved was better than anybody else. I think he was just prepared to take my view on who I should approach."*

- 4.96** An added benefit for Mr Fedorcio in seeking the input of Mr Yates at this stage was that, as Assistant Commissioner Specialist Operations (ACSO), the latter had inherited responsibility for the phone hacking investigation.<sup>663</sup> In those circumstances, Mr Fedorcio felt that Mr Yates was:<sup>664</sup>

*"... well placed to advise me on any potential risks to the organisation if Neil Wallis*

<sup>656</sup> p17, para 83, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>657</sup> pp21-22, lines 3-1, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-2012.pdf>

<sup>658</sup> pp17-18, para 84, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>659</sup> paragraphs 5.45-5.51 below

<sup>660</sup> p35, lines 16-21, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>661</sup> pp35-36, lines 22-1, *ibid*

<sup>662</sup> p35, lines 4-10, *ibid*

<sup>663</sup> pp17-18, para 84, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>664</sup> *ibid*

*was engaged by the MPS in view of the News of the World involvement in the phone hacking case.”*

- 4.97** It is arguable that the very fact that the potential risk had been recognised should have ruled out Mr Wallis from consideration for the role. Mr Fedorcio had certainly read the Guardian article of 9 July 2009 and was aware of the allegations made within it.<sup>665</sup> Moreover, and despite Mr Yates’ press statement of 9 July 2009 following his establishment of the facts exercise,<sup>666</sup> the story had not disappeared, with the MPS engaged in an ongoing debate with the Guardian.<sup>667</sup> As to this point, Mr Fedorcio said:<sup>668</sup>

*“... I don’t think there had been anything new or different that the Guardian had pulled out in that period from the July story. It was reinforcement of that original story, rather than any new lines or direction. There was nothing going on within the Met to say, “Do we need to have another look operationally at this?” So, you know, I, in the same way, was not seeing any change that I needed to reflect.”*

- 4.98** Despite his apparent confidence that there was nothing of substance in the Guardian article of 9 July 2009 and the coverage beyond, Mr Fedorcio suggested that, absent the assurance that he subsequently received from Mr Yates, he would himself have raised the matter with Mr Wallis.<sup>669</sup> Even with the added benefit of hindsight, I am afraid that this represents a failure on his part properly to recognise and heed the reputational risks to the MPS of engaging the services of Mr Wallis. As to the assurance referred to, Mr Yates spoke to Mr Wallis on 31 August 2009, and a note of the conversation was recorded in Mr Yates’ day book at the time. The note read:<sup>670</sup>

*“Wanted absolute assurance that there was nothing in the previous phone hacking matters still being reported and chased by Nick Davies that could embarrass him, me, the Commissioner or the Metropolitan Police Service. I received categorical assurances that this was the case.”*

- 4.99** One could certainly question the substance of such an assurance, particularly given Mr Yates’ role as a very senior police officer. It is only necessary to pose the question whether Mr Wallis could realistically have answered in any other way. Mr Yates, however, considered the assurance of value, and said:<sup>671</sup>

*“It was the proper assurances and the proper due diligence, as it were, is of course done through the normal channels of the procurement branch in the Met. It was a type of formal reassurance to me that there was nothing. I wanted to be doubly certain. I knew the rumours that were swilling around potentially, and I just wanted to be absolutely certain ... because I think it is me saying, “Come on, Neil, is there anything, anything, anything, that’s going to embarrass you, me or the Met in the future?” I felt it was valuable. You know, it would – if anything, it would put him off taking the job if he thought there was something, rather than say, “Oh yes, lots to*

<sup>665</sup> p37, lines 19-23, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>666</sup> Part E, Chapter 4

<sup>667</sup> pp38-39, lines 8-7, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>668</sup> p39, lines 8-15, *ibid*

<sup>669</sup> p40, lines 7-14, *ibid*

<sup>670</sup> pp21-21, para 67, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>671</sup> pp39-40, lines 20-16, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

*embarrass you.” He might just say, “Do you know what, I don’t think it’s worth it”, or something. So it was me sort of reinforcing those facts with him.”*

**4.100** Mr Fedorcio explained that he subsequently came to the view that, on a professional basis, Mr Wallis fully met his requirements.<sup>672</sup> Further, following the assurance obtained by Mr Yates, he felt that there were no reasons as to why he should not go ahead and discuss the possibility of engaging his services.<sup>673</sup> He therefore arranged to meet with Mr Wallis to discuss a draft speech being prepared for the Commissioner as he was *“interested in hearing his views on how we could improve its content and presentation and generate positive media coverage.”*<sup>674</sup> Mr Fedorcio explained:<sup>675</sup>

*“We met for lunch on 3 September 2009 and discussed the possibility of him providing strategic support to me and likely costs. He offered to do some work on the speech at no cost to demonstrate the sort of help he could provide. He proposed a considerable number of useful changes and re-writes. I was very impressed with what he had advised and felt that we should go ahead and seek to engage his services as soon as possible.”*

**4.101** Mr Wallis understandably agreed with Mr Fedorcio’s assessment of his suitability for the role, as he put it *“I thought that I could do the job that they wanted doing, yes.”*<sup>676</sup> Although in a different context, Mr Wallis explained that:<sup>677</sup>

*“Mr Fedorcio would know that I was a close associate of a number of senior figures past and present at New Scotland Yard including Commissioners, officers of other senior rank and civilians such as himself.”*

This point was exemplified by Mr Wallis’ description of his input into the preparation of the Commissioner’s speech referred to above, he said:<sup>678</sup>

*“All I was doing there ... was continuing to do what I’d done many times before for them ... I was simply continuing to do what I’d done for years for them. Sometimes they asked me for my thoughts on things.”*

In summary, Mr Wallis agreed that the relationship he had developed with the MPS was such that they would see the great value in employing him to fulfil this particular position.<sup>679</sup>

**4.102** On 7 September 2009, Mr Fedorcio asked his staff to *“request a single tender process on the grounds of urgency for the period from then to the end of March 2010.”*<sup>680</sup> Mr Fedorcio

<sup>672</sup> p18, para 85, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>673</sup> p18, para 88, *ibid*

<sup>674</sup> p18, para 88, *ibid*

<sup>675</sup> p18, para 88, *ibid*

<sup>676</sup> p39, lines 20-21, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>677</sup> pp26, para 22(c) and 22(d), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>678</sup> p40, lines 2-6, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>679</sup> p40, lines 13-18, *ibid*

<sup>680</sup> pp18-19, para 89, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

agreed, therefore, that this was going to be a tendering process with only one applicant,<sup>681</sup> however he explained:<sup>682</sup>

*“... what happened and what I discovered, of course, is that they should have advised that that wouldn’t have been possible at that stage. The procurement advice I was given was that this could be done in this manner. Subsequently they came back and said, “No, we couldn’t”, but I think the advice should have been that in the first place.”*

**4.103** Following the revised procurement advice, Mr Fedorcio informed Mr Wallis that he was “unable to put a contract in place at that time but would be inviting him to submit a quotation, if he wished, as part of a competitive tender process.”<sup>683</sup> He explained that he took the decision to invite Peter Bingle, Charles Lewington and Mr Wallis to submit quotes by email,<sup>684</sup> choosing Mr Bingle and Mr Lewington because:<sup>685</sup>

*“They’re both people that I’ve known for some time professionally, and in my selection criteria, they met it. In particular, both of them had previously been advisers to the Police Federation, so I was aware of their work for the Police Federation and their knowledge of policing matters.”*

The invitation to quote sought strategic communication support and advice; Mr Fedorcio described this as taking the form of:<sup>686</sup>

*“... verbal advice on the presentation of current policy matters in the areas of public affairs, media relations and speeches, mainly over the telephone but with occasional meetings.”*

**4.104** Mr Bingle was employed by Bell Pottinger Private Public Relations, and Mr Lewington by Hanover.<sup>687</sup> Some may argue therefore that the tendering process was immediately balanced in favour of Chamy Media Ltd in terms of the fees likely to be charged. Mr Fedorcio denied this to be the case, and said:<sup>688</sup>

*“... I’ve never had to let a contract like this, so this was new territory for me. My reference points, I suppose, were two in a way. One, I was aware of a colleague who had a daily contract with a London borough at a figure of about £800 a day, and ... the Met had a London PR agency working on property matters whose cost, depending on who did the work, varied between £125 and £250 an hour. So that’s what my reference was. But I had no idea what either of them were going to pitch ... Bell Pottinger recommended one of their – not their top people, one of their junior people to do the work ... I was of the view ... as I said, previously, I’d been looking at potential suppliers. I’d had a list in my mind, which included these two. It included a couple of others as possibilities, but I decided on these at the end of the day. I felt*

<sup>681</sup> pp41-42, lines 22-2, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>682</sup> p42, lines 2-8, *ibid*

<sup>683</sup> pp18-19, para 89, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>684</sup> pp18-19, para 89, *ibid*

<sup>685</sup> p43, lines 19-24, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>686</sup> pp18-19, para 89, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>687</sup> p44, lines 1-2, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>688</sup> pp44-45, lines 6-7, *ibid*

*they could do what I was looking for. I knew of them, and I would trust any of them. I would have chosen any of them to do the work.”*

**4.105** It was certainly the case that more could have been done to source PR companies of a comparable size to Chamy Media Ltd. Mr Fedorcio conceded this point,<sup>689</sup> but said:<sup>690</sup>

*“There is such a place to go to, but I didn’t go there, I knew Mr Bingle, I knew Mr Lewington, I’ve known them for a number of years. I both felt that they were ... the sort of people that I would trust their judgment and their support.”*

**4.106** Notwithstanding the above, Mr Fedorcio denied that the tender process had been set up to get a particular result, namely the engagement of Mr Wallis.<sup>691</sup> He explained that he had received prompt responses to the tender and that the quote from Chamy Media Ltd had been considerably lower than the other two bids, by a factor of 50 per cent.<sup>692</sup> Mr Fedorcio therefore arranged for a contract to be issued for the period 1 October 2009 to March 2010 with options for extensions.<sup>693</sup>

**4.107** It was Mr Fedorcio’s evidence that Mr Wallis never had unescorted access to MPS premises, and the matters discussed or advised on were all matters of public record, either put there by the MPS or in the published or broadcast media. Furthermore, he suggested that Mr Wallis’ role did not cover any operational or investigative matters, and that he had no access to any MPS systems. Mr Fedorcio did not believe, therefore, that personal vetting was necessary, and the point was never raised by anyone else.<sup>694</sup> He also explained that despite Mr Wallis’ expectation that he was not to be paid for the advice that he had provided in relation to the Commissioner’s speech in September 2009 given that it was effectively a trial for the role, a receipt for that work was requested and subsequently arrangements were made for him to be paid.<sup>695</sup> Mr Fedorcio provided his rationale for the retrospective payment:<sup>696</sup>

*“I thought someone had done work for the Metropolitan Police, then the police should be prepared to pay them for it. I didn’t think we should take a freebie ... I was of the view that I didn’t think we should be in debt to or owing for that relationship. I thought it was quite reasonable that he’d spent the time on it and that we should recognise that.”*

**4.108** Once appointed to this temporary position, there was some question as to the transparency and internal visibility of Mr Wallis’ role within the DPA. Sara Cheesley, the senior information officer on the specialist operations press desk in the DPA, indicated that, on occasions, she would interact with the deputy director, ostensibly the role being filled by Mr Wallis, but had only become aware of the existence of Mr Wallis’ contract with the MPS in July 2011,

<sup>689</sup> p50, lines 18-23, *ibid*

<sup>690</sup> p51, lines 2-6, *ibid*

<sup>691</sup> p47, lines 16-20, *ibid*

<sup>692</sup> p46, lines 4-7, *ibid*; pp18-19, para 89, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>693</sup> pp18-19, para 89, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>694</sup> p19, para 90, *ibid*

<sup>695</sup> p19, para 91, *ibid*

<sup>696</sup> pp48-49, lines 14-1, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

by which time the contract had been terminated.<sup>697</sup> As to why she had not been aware, Ms Cheesley said:<sup>698</sup>

*“I really couldn’t say why I wasn’t told, but clearly the decision was that there was a strategic gap, which I wouldn’t necessarily feel ... my role is for operational matters, and the decision obviously was not to make me or others aware.”*

The fact that somebody of relative seniority within the DPA had not been aware of Mr Wallis’ recruitment is slightly odd in itself, and rather adds to the air of lack of transparency surrounding the way in which the contract was awarded and fulfilled.

**4.109** Moving forward, on 14 July 2011, Mr Wallis was arrested as part of Operation Weeting.<sup>699</sup> Mr Fedorcio explained that it was only on the day of his arrest that he first became aware that Mr Wallis was of interest to the MPS in relation to phone hacking and said:<sup>700</sup>

*“I discussed with the Commissioner how we should make public the details of the MPS contract with Chamy Media without compromising the phone hacking investigation or Mr Wallis. The Commissioner advised me that, because of my involvement in awarding the contract, I should not be involved in any decisions on this and it should be left to the deputy commissioner and my deputy director.”*

**4.110** The details of Mr Wallis’ contract were leaked to the media during the course of the day of the arrest,<sup>701</sup> and the following MPS press release was issued in relation to the use of Chamy Media:<sup>702</sup>

*“Chamy Media, owned by Neil Wallis, former Executive Editor of the News of the World, was appointed to provide strategic communication advice and support to the MPS, including advice on speech writing and PR activity, while the Met’s Deputy Director of Public Affairs was on extended sick leave recovering from a serious illness.*

*In line with MPS/MPA procurement procedures, three relevant companies were invited to provide costings for this service on the basis of two days per month. Chamy Media were appointed as they were significantly cheaper than the others. The contract ran from October 2009 until September 2010, when it was terminated by mutual consent.*

*The Commissioner has made the Chair of the police authority aware of this contract.”*

**4.111** With the benefit of hindsight, Sir Paul expressed regret that the MPS had entered into a contract with Mr Wallis and it is not difficult to understand why he took that view. He said:<sup>703</sup>

<sup>697</sup> p24, lines 6-20, Sara Cheesley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>; p8, para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sara-Cheesley.pdf>

<sup>698</sup> p25, lines 15-19, Sara Cheesley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>699</sup> pp58-59, lines 22-3, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>700</sup> p19, para 93, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>701</sup> pp32-33, para 84, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>702</sup> pp7-8, para 16, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sara-Cheesley.pdf>

<sup>703</sup> p60, lines 4-7, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

*“... without any presumption of guilt or innocence around Mr Wallis’ current position, but quite clearly the hiring of Wallis played very, very badly in the way that the perception of this story was taken.”*

**4.112** The perception referred to by Sir Paul was perhaps best illustrated by a statement made by Mr Wallis himself, when he said:<sup>704</sup>

*“I do recall at some stage reference being made that the Metropolitan Police Service would now be paying me for the service which I had been providing free of charge for many years.”*

Whilst there was no evidence that Mr Wallis’ work for the MPS had any effect on operational decisions, whether in respect of the phone hacking investigation or any other case, a damaging perception was created that the contract awarded to Chamy Media Ltd was simply an extension of Mr Wallis’ carefully built relationship with the MPS. This was a relationship which appeared to be overly close; and one which created a perception of influence.

**4.113** In respect of Mr Fedorcio, a perception was also clearly created that his long standing relationship with Mr Wallis had influenced the appointment process. There is no evidence to suggest that the process itself, once instituted, was not conducted fairly, but whatever its adequacy, the fact remained that there was an appearance of bias, particularly given that Mr Wallis had already completed work for the MPS. On 29 March 2012, the Independent Police Complaints Commission (IPCC) announced that Mr Fedorcio had a case to answer upon gross misconduct charges for offering a contract to Chamy Media Ltd following which Mr Fedorcio resigned.<sup>705</sup> In light of the IPCC’s investigation report into this matter, I do not intend to address this issue any further.<sup>706</sup>

### The recruitment by the MPS of Neil Wallis’ daughter<sup>707</sup>

**4.114** On 27 January 2009 Mr Wallis, then Executive Editor of the NoTW, sent an email to Mr Yates with the CV of his daughter attached. Mr Wallis said that in early 2009 he had become aware that there were a number of unfilled low grade casual clerical positions within the MPS and it was this knowledge which precipitated his email.<sup>708</sup> Mr Wallis explained that he had sent the email to Mr Yates because he did not know the head of human resources at the MPS and said that, in effect, asking a friend or a contact to pass on a CV of your child was *“the way of the world”*, noting that on occasions he had given work experience to the children of journalists from other newspapers.<sup>709</sup>

**4.115** Rightly or wrongly, the practice of referring friends and relatives for appointment on a temporary or permanent basis within the MPS would appear to be have fairly commonplace

<sup>704</sup> pp26, para 22(b), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>705</sup> IPCC Statement following resignation of Dick Fedorcio from Metropolitan Police Service, [http://www.ipcc.gov.uk/news/Pages/pr\\_290312\\_dick.aspx](http://www.ipcc.gov.uk/news/Pages/pr_290312_dick.aspx)

<sup>706</sup> IPCC Report - Investigation into the decision to employ Mr Neil Wallis of Chamy Media Ltd. as a specialist advisor to the Metropolitan Police Service, published April 2012, [http://www.ipcc.gov.uk/Documents/investigation\\_commissioner\\_reports/inv\\_report\\_chamy\\_media\\_report\\_120412.pdf](http://www.ipcc.gov.uk/Documents/investigation_commissioner_reports/inv_report_chamy_media_report_120412.pdf)

<sup>707</sup> Although I recognise that many names are included in this Report of people who have done absolutely nothing wrong in dealing with this issue of employment, there is no reason to add to them

<sup>708</sup> pp28, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>709</sup> pp43-44, lines 17-5, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

although there may be an important difference between paid (even temporary) employment and unpaid work experience (which I discuss below). Martin Tiplady, the then Director of Human Resources for the MPS, said in an email to Mr Yates in relation to this potential recruitment of Ms Wallis to the effect that a number of senior officers in the MPS had referred relatives and friends to them in order that they might be considered for temporary employment.<sup>710</sup>

**4.116** Mr Yates described his involvement in this matter as being limited to “*acting as a post-box and forwarding her expression of interest to ... Martin Tiplady. I had no influence over the decision to offer [Mr Wallis’ daughter] work with the MPS and I did not encourage anyone else to do so.*”<sup>711</sup> Mr Fedorcio also said that he played no part, formally or informally, in Ms Wallis obtaining work at the MPS and did not encourage the offer of work to her.<sup>712</sup> The email from Mr Yates to Mr Tiplady, sent on 29 January 2009, stated:<sup>713</sup>

*“Bit of advice plse [sic] – the attached CV belongs to the daughter of Neil Wallis, the Dep Editor of the News of the World. You probably know that Neil has been a great friend (and occasional critic) of the Met in past years and has been a close advisor to Paul [Stephenson] on stuff/tactics in respect of the new Commissionership.*

*Mr Wallis’ daughter is looking for a change of direction and something steady – a bit along the lines of the work that my son did recently – although she looks eminently qualified to do something more demanding. I have met her on several occasions and although would not claim to know her well she is clearly bright, very personable and presents well.*

*Clearly there is a vetting issue which would prob [sic] have to go through normal channels unless you advise me otherwise.*

*Be grateful for an early response so I can manage expectations with both Neil and his daughter.”*

**4.117** Mr Yates’ description of Mr Wallis is interesting in itself. However, and specifically in relation to his involvement in this matter, Mr Yates disagreed that there was at least the perception of influence created by the fact that Mr Wallis’ daughter did ultimately obtain a position within the MPS, pointing out that the recipient of the email, Mr Tiplady, was a peer on the management board “*who had a reputation for telling it as it is*”.<sup>714</sup>

**4.118** That said, on 15 July 2011 Ms Wallis declared her connection to Mr Wallis in line with MPS policy following her father’s arrest the previous day, and on 18 July 2011 the Metropolitan Police Authority (MPA) recorded the conduct of Mr Yates’ role in the employment of Ms Wallis and the matter was referred to the IPCC for investigation.<sup>715</sup> I make it abundantly clear

<sup>710</sup> p3, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY4.pdf>

<sup>711</sup> p22, para 74, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>712</sup> p19, para 94, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>713</sup> IPCC Report – Investigation into the involvement and actions of Assistant Commissioner John Yates in the recruitment process for the daughter of Mr Neil Wallis, published April 2012, p5, para 12 [http://www.ipcc.gov.uk/Documents/investigation\\_commissioner\\_reports/inv\\_report\\_employment\\_report\\_wallis\\_120412.pdf](http://www.ipcc.gov.uk/Documents/investigation_commissioner_reports/inv_report_employment_report_wallis_120412.pdf)

<sup>714</sup> p41, lines 19-25, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>715</sup> IPCC Report – Investigation into the involvement and actions of Assistant Commissioner John Yates in the recruitment process for the daughter of Mr Neil Wallis, published April 2012, p3, paras 3-4, [http://www.ipcc.gov.uk/Documents/investigation\\_commissioner\\_reports/inv\\_report\\_employment\\_report\\_wallis\\_120412.pdf](http://www.ipcc.gov.uk/Documents/investigation_commissioner_reports/inv_report_employment_report_wallis_120412.pdf)

that Mr Wallis' daughter was not, herself, the subject of any investigation and there is (and never has been) the slightest suggestion that she had acted inappropriately in relation to the manner in which she obtained employment with the MPS.

**4.119** The IPCC on 19 October 2011, and in their final report published in March 2012, found no evidence that Mr Yates had directly influenced the appointment of Ms Wallis and accordingly concluded that there was no evidence that his actions and involvement amounted to misconduct. The IPCC went on to say, however:<sup>716</sup>

*"... it is however evident that the email chain between two members of the MPS senior management board was perceived by more junior staff to be in the nature of an instruction to find a job for Ms Wallis – and this should have been foreseeable both to Mr Yates and Mr Tiplady. Whether or not it was "routine" for senior officers to pass on CVs it was poor judgement to do so, bearing in mind the appearance of favouritism. Mr Yates's claim that he was "simply a post box" should be read alongside the full text of his email which refers to the relationship of the owner of the CV to Neil Wallis, described as "... a great friend (and occasional critic) of the Met in past years and has been a close advisor to Paul [Stephenson] on stuff/tactics in respect of the new Commissionership."*

**4.120** For the purposes of this Inquiry, and in relation to this specific issue, I am satisfied that I have heard nothing which would cause me to come to a different conclusion to that of the IPCC.

### *Work experience students*

**4.121** In 2003 or 2004 Mr Fedorcio approached the then editor of The Sun, Rebekah Wade (now Brooks), to see if his son (who was considering a career in journalism) could undertake a week's relevant work experience. He explained that the arrangements were made between his son's school and the HR department of The Sun and that when he was there:<sup>717</sup>

*"... he spent some time on the Bizarre desk. I think he spent some time on the general news desk. I think he also spent some time on the online version of the paper. I'm not totally sure, but that's my recollection."*

After Mr Fedorcio's son had successfully completed this period of work experience he was invited to return if he wished. He took up that offer after university, completing a further four-week placement in 2007.<sup>718</sup> Mr Fedorcio acknowledged that The Sun was aware that the initial placement was for his son but strongly denied that this was an example of "favours being called in", he said:<sup>719</sup>

*"I don't believe it was at all. Not as far as I was concerned. And the arrangement at that stage in 2007, I was not involved in. That was a matter between my son and the Sun direct."*

<sup>716</sup> IPCC Report – Investigation into the involvement and actions of Assistant Commissioner John Yates in the recruitment process for the daughter of Mr Neil Wallis, published April 2012, pp12-13, para 75, *ibid*

<sup>717</sup> p7, lines 7-18, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>; p20, para 97, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>718</sup> p7, lines 20-25, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>; p20, para 98, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>719</sup> p8, lines 6-11, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

**4.122** In July 2005 Lord Blair's son also undertook a week's work experience at The Sun. Lord Blair explained that:<sup>720</sup>

*I arranged through Dick Fedorcio ... for my 15 year old son to do a week's work experience at the Sun newspaper. Arranging work experience for young people in this manner was perfectly commonplace at that time; the current debate about formalising arrangements for internships had not then begun. I had a whole series of young people do attachments, although none of them to my knowledge were from press-related families."*

As to why The Sun newspaper in particular, Lord Blair said:<sup>721</sup>

*"... I think that Mr Fedorcio mentioned that Paul Condon's son had done work experience at the Sun, so I said, "Oh, well, that's the kind of thing that would excite most 15-year-olds, so I think that should be a good idea". That's all I thought about it ..."*

As Lord Blair noted, this kind of arrangement was commonplace at the time, and moreover, The Sun was not known for being particularly favourable towards, or close to, Lord Blair during the period of his Commissionership. As Michael Sullivan, the crime editor of The Sun, put it:<sup>722</sup>

*"... the Sun ... had a fairly ambivalent approach to Sir Ian, as he then was. I don't think he was our cup of tea and I dare say we wouldn't have been his cup of tea ..."*

**4.123** I do not believe that there is anything of substance in the instances detailed above. It is, indeed, commonplace for parents in any walk of life to seek to arrange work experience for their teenage children in places that they will find attractive and to do so by contacting those whom they know. Today, there is much greater awareness of the potential disadvantage suffered by those whose parents do not have any such contacts but I do not consider that this sort of interaction creates any concern. I am not surprised that a teenager would find work experience on a tabloid of real interest: there is no basis even for any perception of undue closeness as a result.

#### *Loan of a horse to Rebekah Brooks*

**4.124** A similar conclusion can be reached in relation to this issue, which was the cause of some public comment. It came to light initially through the evidence of Lord Blair, who explained that the MPS maintained an arrangement whereby members of the public could apply to be given a horse which had been retired from the MPS mounted branch. He said:<sup>723</sup>

*"The Met has about 100 horses, of which I assume a regular proportion are released, and this is a regular event, because the horse is still well but it is not strong enough to do the work that it's required to do, and the Met, I presume, quite understandably, doesn't want to put them down. So I think this is quite regular ..."*

Lord Blair reported his understanding that at some point during his period as Commissioner,

<sup>720</sup> p12, para 28, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>721</sup> p30, lines 15-19, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>722</sup> p39, lines 4-10, Michael Sullivan, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-15-March-2012.pdf>

<sup>723</sup> pp29-30, lines 23-4, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>; pp11-12, para 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

Ms Brooks made such an application.<sup>724</sup>

**4.125** Mr Fedorcio was able to elaborate on the circumstances which led, ultimately, to the loan of a MPS horse to Mrs Brooks. He recalled that Mrs Brooks approached him about the scheme and expressed interest in offering a home to a retired police horse in September 2007.<sup>725</sup> Mr Fedorcio placed her in contact with the relevant officer of the mounted branch and said that he *“felt this could possibly lead to some positive coverage about the care of retired police horses.”*<sup>726</sup> Furthermore, Mr Fedorcio agreed that he would arrange for Mrs Brooks to visit the Imber Court stables and introduce her to Inspector Hiscock who was in charge of the scheme.<sup>727</sup> He subsequently made the then Commissioner, Lord Blair, aware of the approach and the action taken. He said:<sup>728</sup>

*“I spoke to the Commissioner because on the day that I was due to take her to Imber Court, we were having lunch with Rebekah Wade, and I thought it would be wrong for Rebekah Wade to turn up at the lunch, having been at the Metropolitan Police Stables that morning and had such a discussion with the officer, and I assumed one of her first lines would be: “I’ve had a very interesting morning at stables”, and the Commissioner would have looked blank. I thought he needed to be briefed on what might come up over lunch.”*

**4.126** The visit to the stables took place on 19 September 2007 and thereafter, neither Lord Blair nor Mr Fedorcio had any dealings with Mrs Brooks in respect of her interest in the loan of the MPS horse and she was left to deal directly with Inspector Hiscock.<sup>729</sup> Mr Fedorcio explained that there was then a nine month gap between the initial meeting and Mrs Brooks receiving the horse, which was some time in July 2008.<sup>730</sup> In the intervening period it transpired that a suitable horse had been identified and that Inspector Hiscock had visited and checked the facilities being offered by Mrs Brooks for the care of the animal.<sup>731</sup> In relation to his role in this affair, Mr Fedorcio said that he was *“keen that if she was able to enter the scheme like any other member of the public, then she should be able to.”*<sup>732</sup>

**4.127** I am quite sure that Mr Fedorcio’s initial assistance in this matter went beyond what a member of the public could expect in similar circumstances, however, I have heard nothing to suggest that there was anything irregular about the loan of the horse given the standard checks that were apparently performed by Inspector Hiscock. For her part, Mrs Brooks strongly denied that there was any connection or exchange between the work experience placement offered to Mr Fedorcio’s son, and the acquisition of the police horse.<sup>733</sup> I have no reason to believe that there is.

<sup>724</sup> pp11-12, para 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>725</sup> p14, para 61, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>726</sup> p14, para 62-63, *ibid*

<sup>727</sup> p14, para 62-63, *ibid*

<sup>728</sup> p4, lines 14-23, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>729</sup> p5, lines 12-18, *ibid*

<sup>730</sup> p3, lines 10-12, *ibid*

<sup>731</sup> pp5-6, lines 25-10, *ibid*

<sup>732</sup> p3, lines 16-18, *ibid*

<sup>733</sup> p29, lines 1-6, Rebekah Brooks, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-11-May-2012.pdf>

### *DPA staff and media employment*

- 4.128** The fact that Mr Wallis and his daughter were employed by the MPS, and that Mr Hayman and Lord Stevens were engaged to write articles for the Times and the NoTW respectively gave rise to the allegation that there was a ‘revolving door’ of employment between the MPS and NI. This in turn raised more general questions as to the appropriateness of former journalists being employed by the Police Service. The ‘revolving door’ allegation was made by Brian Paddick, formerly a Deputy Assistant Commissioner in the MPS, and was echoed by James Murray, Associate News Editor of the Sunday Express, who asserted that *“the Metropolitan Police did have a lot of ex News Of The World journalists but I could not understand why. It was exceptional.”*<sup>734</sup>
- 4.129** On examination, however, these assertions would not appear to be borne out by the facts. Mr Fedorcio told the Inquiry that within the DPA, of 32 members of staff with a media background, there were 12 who had previously worked for NI titles.<sup>735</sup> Of these only three had worked for the NoTW and all were part time staff.<sup>736</sup> Mr Fedorcio explained that:<sup>737</sup>

<sup>734</sup> p11, para 41, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-James-Murray.pdf>; p6, para 15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Brian-Paddick1.pdf>

<sup>735</sup> Broadly reflecting the national coverage of the NI titles

<sup>736</sup> pp7-8, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>737</sup> p70, lines 6-21, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

*“... I’ve looked through the data that’s provided those raw numbers, and I find it quite interesting the three staff who have worked for the News of the World, one of them worked on some freelance shifts there between 1988 and 89, so over 20 years ago. The second one had a four-month contract in 1995, so 15 years ago, and the third worked some freelance shifts between 2001 and 2004. So there is no one within the department who has worked for the News of the World since 2004. on the wider Murdoch media, the other nine, as it were, four of those worked for Sky News, one for the London Paper and the Sun had worked for both the organisations, two had worked for the Sun, one for six months, one for five weeks, and one had one week’s work experience on the Times ...”*

**4.130** Mr Stearns, who had worked for the Daily Mail for seven years and for two years at a PR agency prior to joining the DPA,<sup>738</sup> defended the employment of former journalists as police press officers. He said:<sup>739</sup>

*“In my view, if I want to recruit the most capable press officers then I want people with the right skills, such as news sense, good writing skills, good interpersonal skills and good overall communication skills. When we advertise jobs we get a wide range of people applying – including reporters. Sometimes, but not always, ex-reporters are the strongest candidates and therefore I do not feel it is right to exclude a strong candidate on the basis that they have been a reporter.”*

**4.131** Mr Stearns also pointed out that all DPA staff were recruited by the MPS in open competition and in accordance with the process laid down by the Government Communication Network (GCN).<sup>740</sup> He went on to say that:<sup>741</sup>

*“In general those that have worked in the news media have worked for multiple organisations – for example, of the six staff who have paid employment for the Sun or News of the World (mainly on a freelance shift basis) all have worked for between three to seven news organisations before joining the MPS. In addition, four of these staff left the media over ten years ago. Other staff have worked for a wide range of local newspapers and other national media groups.”*

**4.132** This would not appear to be particularly unusual within the Police Service. The West Midlands Police had a communications team of 30, of which five were trained journalists and four had a background within local journalism.<sup>742</sup> Similarly, in South Wales Police three members of the 20 staff in its communication team had previously worked for the media.<sup>743</sup> Perhaps more striking in this regard was the example of Surrey Police. The experience of managing the media interest generated by the Milly Dowler investigation led to a number of changes to its Media Relations Team. This included increasing the number of ex-journalists who were recruited, to the point that by 2012, all Surrey Police Media Relations Officers had experience of either local or national journalism. It was said that these staff brought with them a better understanding of the demands placed upon journalists and the knowledge of how to build

<sup>738</sup> pp10-11, para 26, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>739</sup> p11, para 28, *ibid*

<sup>740</sup> pp11-12, para 29, *ibid*

<sup>741</sup> pp11-12, para 29, *ibid*

<sup>742</sup> p89, lines 2-6, Chief Inspector Sally Seeley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-20-March-2012.pdf>

<sup>743</sup> p3, lines 22-23; p5, lines 15-21, Catherine Llewellyn, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-21-March-2012.pdf>

an effective and professional relationship that met the needs of both parties.<sup>744</sup> As Lord Blair put it *“if they don’t have experience of the media, how good are they going to be to you as press officers?”*<sup>745</sup>

**4.133** This viewpoint was shared by Stephen House, Chief Constable of Strathclyde Police, who said:<sup>746</sup>

*“We actively recruit into our media department from journalists ... and to say we won’t accept journalists into our media department would be the wrong decision because we’re looking for people who understand what journalists are looking for and are there to assist them in getting what they need within the requirements of our organisation ...”*

Similarly, Jerry Kirkby, Assistant Chief Constable of Surrey Police, said:<sup>747</sup>

*“... Personally, I think having professionally trained individuals who come from that background [i.e. journalism] is a good way of actually doing it and it works for us ...”*

**4.134** Broadly speaking, it would appear that movement from the print media to public relations or communications specialism (within the Police Service) was in practice a one-way street. Mr Fedorcio, for example, could only recall one member of DPA staff joining the media, but this in his view *“never caused any problems or concerns.”*<sup>748</sup> Mr Stearns’ evidence was of a similar nature, he said that *“my colleagues in DPA and I can only recollect one individual in over 20 years who has moved back into journalism. I believe this illustrates that there isn’t, generally, a two way movement between these jobs.”*<sup>749</sup> Part of his explanation for this position was that an employed job in PR or communications provides greater job security for those who have been previously working on shifts at a newspaper, and that generally the level of pay is better. He said:<sup>750</sup>

*“Once someone in journalism has taken a decision to leave to take an employed job, such as working for the DPA, these lifestyle choices mean that they rarely go back. Obviously, I’m not saying it never happens, but as the experience at the DPA shows, it is far from common.”*

**4.135** Mr Stearns also suggested that the concept of journalists working for the Police Service, amassing contacts and confidential information, then returning to the media with a plethora of unethically sourced exclusives was a myth. He said:<sup>751</sup>

*“It is extremely common for people entering a range of PR jobs to have had a media background as the skill set needed to work in communications has many similarities to working in the news media. In my view and experience, this does not mean that*

<sup>744</sup> pp11-12, para 21, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Assistant-Chief-Constable-Jerry-Kirkby.pdf>

<sup>745</sup> p40, lines 14-18, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>746</sup> p74, lines 7-13, Chief Constable Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>747</sup> pp19-20, lines 25-3, Assistant Chief Constable Jerry Kirkby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>748</sup> p8, para 28, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

<sup>749</sup> p12, para 30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Ed-Stearns.pdf>

<sup>750</sup> *ibid*

<sup>751</sup> pp10-11, paras 26-27, *ibid*

*those leaving behind a media career continue to have allegiance to their previous employer ... although I have friends and acquaintances who are journalists that I have known throughout my working life, this does not mean that I reveal confidential information to them over a pint in the pub. It is normal for any individual working in a particular job to have both friends and acquaintances who do the same job; these are the people you meet and develop working relationships and friendships with. It is not unusual; it is the same the world over in any profession. But this does not mean that when I, or any other journalist, leave a newspaper that suddenly we have no respect for duties of confidentiality or integrity and are leaking information back to our former employer ... To suggest otherwise shows a lack of understanding of those who regard journalism and PR as a profession and take pride in their work. Most journalists in my experience have a due and proper regard for the bounds of confidentiality; not least because of our experience in protecting sources for whom public identification could be devastating.”*

**4.136** Similarly, Mr House said that he would not be concerned about a former journalist leaving the Police Service to return to journalism, he said:<sup>752</sup>

*“... If someone from the media comes into our organisation and then goes back out again into the media, you are reliant upon professional code of ethics, both journalists and the police. I have to say that we have a number of people within our media department who have been journalists and worked in the media and we experience no problem. If they were to turn around and go back into the media, would I be concerned? Actually, I wouldn't be, because they're good at what they do and if they go and work for someone else, they'll be good ...”*

**4.137** There were other slightly differing views as to what limitations, if any, should be placed on former journalists now working within the Police Service rejoining the media. Lord Blair was of the view that it would not be appropriate to put a restriction on a journalist working for the MPS going back to the print media because *“that is his or her profession”*.<sup>753</sup> Similarly, Sir Paul Stephenson said that:<sup>754</sup>

*“... I would be very reticent about recommending a restriction around junior officers. It seems to me that's not the problem that we've had and I think that would be a disproportionate response ...”*

Mr Fedorcio on the other hand thought that a cooling off period may be appropriate but this would depend on the type of work undertaken whilst in the Police Service.<sup>755</sup>

<sup>752</sup> p74, lines 14-23, Chief Constable Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>753</sup> p40, lines 2-8, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>754</sup> p50, lines 16-20, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>755</sup> p8, para 28, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

**4.138** I set out my reflections and conclusions on this issue in Part G Chapter 4 below.

*Former senior MPS staff taking media jobs, writing books and articles*

**4.139** Of greater concern from the standpoint of perception and good practice is the issue of former senior police officers and staff taking media jobs, or writing books (to be serialised in the press) or newspaper articles, shortly after the conclusion of their tenure within the Police Service. It is true to say that the issues that arose concerning former MPS police officers and staff taking on such work was largely limited to those who attained the highest office. Of those who gave evidence to the Inquiry who have written books or regular newspaper columns, all but one was either a former Commissioner or Assistant Commissioner in the MPS. The exception was Mr Paddick, who subsequently sought to develop a political career.<sup>756</sup>

**4.140** As has been described, in 2006, Lord Stevens published his autobiography, “Not for the Faint-hearted”, and the book was serialised in the NoTW and The Times.<sup>757</sup> From that contract came a further contract to write seven articles for the NoTW. The contract for these articles was then renewed for a further year with a maximum of nine articles, but Lord Stevens terminated the contract in October 2007, with only four articles having been written that year.<sup>758</sup> Lord Blair began writing and broadcasting for payment about a year after he left office, publishing “Policing Controversy” in 2009.<sup>759</sup> Mr Hayman, having left the MPS in April 2008, entered into a contract with The Times in the August of that year and continued writing until July 2011.<sup>760</sup> He also wrote a book (with the journalist Margaret Gilmore) titled “The Terrorist Hunters” which was published in 2010.<sup>761</sup>

**4.141** There were certainly differing attitudes to the issue of writing books or performing the role of a media commentator or columnist after leaving office. Lord Condon said that he had personally declined all offers to write a book about his time as Commissioner. Similarly, he declined all offers to be a columnist or retained commentator for particular newspapers, television or radio. He said that he had declined offers:<sup>762</sup>

*“... not because I saw anything morally or ethically wrong per se ... having spent my career sort of trying to major on integrity, independence, being apolitical, it just seemed that I would have to take decisions and be partial and be drawn into favouring or working with one group over another ... my view is there is nothing inherently wrong in that, it just ... would have taken me out of my comfort zone ...”*

**4.142** Sir Paul Stephenson expressed doubts about officers publishing soon after leaving office and said:<sup>763</sup>

<sup>756</sup> pp1-3, paras 1 and 5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Witness-Statement-of-Brian-Paddick1.pdf>

<sup>757</sup> p16, para 46, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>758</sup> pp93-96, lines 9-2, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>759</sup> pp14-15, para 35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>760</sup> One of his articles (in connection with Operation Caryatid and published shortly after the Guardian article of 9 July 2009) is the subject of detailed analysis in paras 5.28-5.32 below

<sup>761</sup> pp127-129, lines 7-19, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>762</sup> pp39-40, lines 18-14, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>763</sup> pp52-53, lines 21-8, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

*“... I am nervous about restraining people when they leave public office because we shouldn’t discourage people from coming into public office in the first place. But I am not a fan of people going into print so soon after leaving public office, perhaps for another reason that’s not really relevant to the Inquiry, and that is it makes it very difficult for existing post holders if they think that every discussion might suddenly find its way into print shortly after somebody leaves office. I think it’s a debate that has many sides and I don’t say I’m right on this. I just simply say I’m not a fan ...”*

**4.143** I have previously made the point that I can identify a potential risk, in terms of the public interest, in recently retired senior police officers immediately providing a commentary on policing matters, given its capability to undermine legitimately taken operational decisions, even where an alternative approach might also have been appropriate. Sean O’Neill, Crime Editor of The Times, who was instrumental in the hiring of Mr Hayman for his newspaper, accepted that such employment ran the risk of undermining those who were then in command:<sup>764</sup>

*“I see the risk where someone with recent experience of the management board is writing about it, I can see that. I can see that if a person has a score to settle, that might be done.”*

**4.144** Despite this, Mr O’Neill believed that former senior police officers offered:<sup>765</sup>

*“... a valuable insight into the workings of the police and the way the police behave. Any imposition of a “cooling off period” between leaving the police and commenting in the media would reduce their relevance. The policing world can change very quickly (as we have seen in the wholesale transformation of the leadership of the Met recently) and it is most helpful to the readers to have relevant and contemporary voices writing and commenting on it.”*

**4.145** HMIC, in their review report “Without fear or favour – a review of police relationships”, recorded that there was “little evidence of “cooling off” periods being required for senior staff leaving to take up posts with commercial or other bodies with related interests.”<sup>766</sup> This is certainly the case in relation to the MPS, which generally does not impose restrictions as to the future employment which police officers or staff can accept on leaving the organisation. Police officers are governed by Police Regulations, which do not include such a restraint in respect of any future employment.<sup>767</sup>

**4.146** The terms and conditions of employment for ACPO-ranked officers issued by the Metropolitan Police Authority (MPA) had a clause concerning post authority employment and appointments. It provided that before accepting any appointment which would start within one year of leaving the MPS, the approval of the Chief Executive of the MPA was necessary in cases where the employment was with (a) an organisation, firm or business providing any commercial or contractual services to the MPS or to the Authority, or (b) where the organisation, firm or business intends to tender for the provision of such services. The clause further stated that the approval of the MPA would not be “unreasonably withheld.”<sup>768</sup> However, Catherine

<sup>764</sup> p32, lines 5-8, Sean O’Neill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>765</sup> p15, para 70, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-ONeill.pdf>

<sup>766</sup> p51, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>767</sup> pp12-13, para 30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>768</sup> p5, para 25, Catherine Crawford, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-CC6.pdf>

Crawford, formerly Chief Executive of the MPA (now the Mayor’s Office for Policing and Crime or MOPC), confirmed that the clause was directed towards procurement contracts rather than employment with the media, and that furthermore, there was currently no contractual impediment to prevent an ACPO officer on leaving the MPS to begin to work immediately for the press.<sup>769</sup>

**4.147** There were varying opinions as to the need to contractually prevent officers from taking media related jobs for a set period of time. Commissioner Hogan-Howe confirmed that he or the MOPC could seek to introduce such a restriction for senior officers of ACPO rank or above, particularly for those who are appointed on fixed term contracts or whose service is terminated on agreed terms.<sup>770</sup> He suggested that any “*restraint of trade clause*” should be restricted to a reasonable period.<sup>771</sup> On this he said:<sup>772</sup>

*“... it seems to me that something of the order between 12 months and two years is probably where this might settle, but I certainly would advise a cooling-off period.”*

Lord Blair said that the lack of any restriction on future employment, beyond the duty of confidentiality that police officers and staff are subject to pursuant to the Official Secrets Act, was a source of concern.<sup>773</sup> He said:<sup>774</sup>

*“I am sure this is a situation that should be changed, even though that might have meant that there was some limitation on me writing and broadcasting for payment ... It is my view that a restriction period of two years would be appropriate.”*

This two year period would apply to “senior staff who have access to the most sensitive and detailed information.”<sup>775</sup>

**4.148** Similarly, Sir Paul Stephenson said:<sup>776</sup>

*“... all senior officers do have what’s called a fixed-term appointment, which is a kind of pseudo-contract, which allows for discussion between the employer and that senior officer, which doesn’t exist with junior officers, to actually put certain conditions in there of their employment ... And it might be worthy of consideration in terms of engendering public confidence – and of course I’m thinking of the perceptions that come out of this very matter itself – it might be worthy of consideration for further thought to be given to: should there be some sort of time bar or should there be some sort of consideration before a senior officer – and we’d have to discuss the level of seniority – takes up full-time direct employment with the media?”*

<sup>769</sup> p69, lines 2-23, Catherine Crawford, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-29-March-2012.pdf>

<sup>770</sup> pp12-13, para 30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>771</sup> *ibid*

<sup>772</sup> p61, lines 18-21, Commissioner Bernard, Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>773</sup> pp14-15, para 35, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>774</sup> pp14-15, para 35, *ibid*

<sup>775</sup> p38, lines 17-24, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>776</sup> pp50-51, lines 21-12, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

**4.149** However, Sir Paul was slightly more equivocal on this matter than the current Commissioner and Lord Blair, for he went on to say:<sup>777</sup>

*“... I’m nervous about it because I’m nervous about any restraint of trade, and I’m nervous about stopping people making a contribution, but I do think that this particular Inquiry and the whole matters that have been deeply distressing for many people and the difficult position for the Met, it’s worthy of consideration. I simply say that ...”*

**4.150** Mr House took a slightly different view. He certainly saw risks in senior officers moving on to a writing or media career following retirement but said:<sup>778</sup>

*“... I think if it’s done in the right way, it’s done authoritatively about technical issues to inform the public, to provide a useful inject of experience and done for positive reasons, it’s a good thing. If it’s done for revenge and settling of some scores, and “let me tell you what really happened”, then it’s disappointing.”*

He did not feel that a cooling off period was the “*right thing to do in many respects*” because “*one has to trust senior police officers and 99 per cent are completely trustworthy*”.<sup>779</sup>

**4.151** Whilst mindful of the concerns expressed by Sir Paul Stephenson and Mr House in particular, on balance I have come to the conclusion that consideration should be given to the terms on which ACPO rank officers are engaged and, in particular to whether these terms should be amended to prevent employment by media organisations in much the same way as the previous MPA contracts prevented employment by those with a contractual relationship with the MPS. I appreciate that regard must be had to issues of restraint of trade and, the rights to seek employment to freedom of expression and, additionally, to the public interest in receiving information. With this in mind, it seems to me that a time bar of twelve months would be sufficient to provide an appropriate balance between the rights of the individual and public interest concerns relating to future employment by the media.

**4.152** As I am not in a position to consider all the ramifications of such a proposal my recommendation is, therefore, limited. I set this out in Part G Chapter 4 below.

## 5. The problems of friendship

### Andy Hayman

**5.1** Andy Hayman joined Essex police in 1978, serving in a variety of uniform and CID roles as he worked his way through the ranks. He was Chief Constable in Norfolk from January 2002 to February 2005 when he transferred back to the MPS as an Assistant Commissioner in charge of Specialist Operations (ACSO). Mr Hayman therefore had overall responsibility for Operation Caryatid having been ACSO during the relevant period of time.<sup>780</sup> In around 2003 he was selected to be Head of the ACPO Media Committee. Mr Hayman announced his retirement from the MPS in December 2007 and left the organisation on 17 April 2008.<sup>781</sup>

<sup>777</sup> p51, lines 13-19, *ibid*

<sup>778</sup> p75, lines 2-10, Chief Constable Stephen House, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>779</sup> p76, lines 7-9, *ibid*

<sup>780</sup> Part E, Chapter 4

<sup>781</sup> pp1-3, paras 4-10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Andy-Hayman1.pdf>

**5.2** Mr Hayman told the Inquiry that, in his view, it was important for the MPS and all police forces to maintain a healthy, collaborative working relationship with the media so that they could build and maintain public confidence in the police.<sup>782</sup> On entering ACPO, Mr Hayman described his challenge to the more reserved position of some of his colleagues who he said preferred to keep the media at arms length; it was his view that the public expected a senior officer to be visible.<sup>783</sup> In analysing the relationship between the police and the media, Mr Hayman concluded that there was a benefit to both sides in having a professional relationship, but that the terms of engagement between the two had to be clearly understood.<sup>784</sup> Mr Hayman said:<sup>785</sup>

*“I came to this work with the background ... of being very reserved towards the media. I didn’t feel I needed to engage, because I felt that sometimes that kind of relationship was difficult. There was some – if you went and speak [sic] with colleagues, there were probably experiences where it wasn’t particularly positive on either side. So I saw that at worst there could be the media’s objective to try and get exclusives and cross a line, and on the other side at worst, from the police side, the danger would be that maybe people would cosy up and start leaking inappropriately [sic] information to the media. But I didn’t feel that that was necessarily an obstacle to embark on this work. That was just something that we needed to manage. I have to say, trying to drive this nationally was difficult, because I think people always went to their default position of this is just too difficult, I’m not going to do it.”*

**5.3** Despite this initially reserved stance towards the media, Mr Hayman confirmed that he would meet with journalists where he believed that it would benefit the MPS and its mission.<sup>786</sup> He described his professional relationship with the media as becoming “more intense”,<sup>787</sup> as he performed the national roles as ACSO and the ACPO Media Lead. As his professional relationship with the media developed, Mr Hayman clearly understood that their contact with him may have been for a broader purpose than simply to better their understanding of the policing challenges of the time. He said:<sup>788</sup>

*“... I think if you look at the media in its broadest sense, which just doesn’t include the written media, it includes radio and TV, is that there’s not one type, there’s all different styles and approaches, just as there are with senior police officers or junior police officers. It would be a lot easier, wouldn’t it, if everyone was operating in the same way, but they don’t, and therefore I think what I’m trying to say there diplomatically is there may be – I would like to think that the mainstream would see it for what it is, that relationship, but I hope I’m not naïve to realise that there may be other agendas playing which people might seek to exploit.”*

**5.4** This difference in style and approach to the media by senior individuals within the Police Service, as described by Mr Hayman, has certainly become evident during the course of this

<sup>782</sup> p4, para 11, *ibid*

<sup>783</sup> p5, para 15, *ibid*

<sup>784</sup> pp5-6, para 16, *ibid*

<sup>785</sup> p110, lines 1-19, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>786</sup> p11, para 31, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Andy-Hayman1.pdf>

<sup>787</sup> p11, para 33, *ibid*

<sup>788</sup> pp111-112, lines 25-13, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

Inquiry. There was clearly a social element to the interaction between Mr Hayman and the media. He described his attitude to these more social encounters:<sup>789</sup>

*“... I can’t remember whether I inherited it or not, but there was a structure in place where with this Crime Reporters Association there were regular lunches which my colleague, Peter Clarke, would go to, and when I joined the Met, that’s something that I did as well. And it’s on a regular basis. The purpose of those lunches was to develop and foster the relationship I tried to describe earlier where you just didn’t pick up when you wanted something. Of course I was operating here with two hats on, and I was trying to do the same nationally with the ACPO media group hat on, and therefore what I felt there was an awful lot of benefit in probably going the extra mile with that ACPO hat on, because I wanted to get traction not just in London but also elsewhere, and I wanted to support the media officers within each force accordingly. So that would extend beyond a lunch, and I would have meetings in the evening at dinner, not necessarily in London, it could be elsewhere. And I remember one event ... with the Society of Editors where I think I spoke at their conference, so it would be beyond just those CRA lunches, but I would want to make sure everyone understood that the social scene of interacting was businesslike, but it was also to develop the relationship which hopefully I could have built on around that plan I set out.”*

**5.5** It might be said that it is incumbent upon whoever has the role of ACPO Media Lead and ACSO to foster relations with the media in this way. However, the level and type of interaction with the media in these two roles does appear to be individualistic in nature. Chief Constable Trotter, the current ACPO Media Lead, told the Inquiry that although from time to time he met with editors and journalists to discuss any areas of current concern, the contact was fairly sporadic and would “*very infrequently*” encompass a lunch or a dinner.<sup>790</sup> Assistant Commissioner Dick, the current Assistant Commissioner responsible for Specialist Operations, confirmed, to the best of her knowledge, that in the 11 years that she had been an ACPO officer in the MPS, she had had just one lunch with a journalist, and on that occasion she had been accompanied by a press officer. She also confirmed that on one occasion she had attended a charity dinner paid for by the CRA, and had attended three of the CRA annual drinks party with the MPS in those 11 years; she emphasised that she would always decline alcohol at those events.<sup>791</sup> The stark difference in approach to their interaction with the media between Mr Hayman and Ms Dick would also appear to have been recognised internally within the MPS; Sara Cheesley, for example, agreed that Mr Hayman’s approach was somewhat more expansive than Ms Dick’s.<sup>792</sup>

**5.6** That is not necessarily to say that a less expansive approach to interacting with the media is preferable; however, there are clear dangers involved for police officers and other senior public officials in developing overly close social relationships with journalists where there is a pre-existing professional relationship, particularly where hospitality and alcohol are engaged. Jane Furniss of the Independent Police Complaints Commission succinctly articulated the potential dangers in this way:<sup>793</sup>

<sup>789</sup> pp112-113, lines 17-21, *ibid*

<sup>790</sup> p68, lines 6-12, Chief Constable Andrew Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>; p3, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Andrew-Trotter1.pdf>

<sup>791</sup> pp12-13, para 31, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-AC-Cressida-Dick.pdf>

<sup>792</sup> pp27-28, lines 10-6, Sara Cheesley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>; at all material times, she has been civilian media lead within the DPA in this area

<sup>793</sup> pp30-31, lines 23-21, Jane Furniss, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

*“... I do think it’s very unwise to develop social relationships between people who have a professional relationship. Of course friendships develop and ... one wouldn’t want to restrict that, but being very clear about the boundaries. As I said earlier, I don’t think journalists wine and dine senior public officials because they like them. They do it because they want something. They want to influence decisions. As I said earlier, alcohol in those circumstances makes that even riskier, because the risk is that all of us become more indiscreet, more relaxed in those circumstances. The biggest problem about alcohol is it impairs your judgment and it leads you to believe your judgment isn’t impaired, so it makes it doubly risky, doesn’t it? So in my – from my point of view ... this is something you do when you’re with friends, not something you do when you’re at work, and the perception is a really important part of it because public confidence in bodies like mine and in the police is based on the belief that we are doing our job in the public interest, with integrity and without any bias. Those are really important principles that we should all feel very strongly that we should protect.”*

- 5.7** Perhaps the best illustration of this point was made during John Twomey’s evidence to the Inquiry. He described meeting Mr Hayman for lunch on two or three occasions with a view to learning more about the general context of counter-terrorism police operations.<sup>794</sup> Mr Twomey admitted that given the social nature of the interaction, the conversations went wider than simply a discussion about counter-terrorism policing:<sup>795</sup>

*“Well, there might be references to – I don’t think they occurred really that often. I think – because they were social occasions, there would be a portion – a large portion of the conversation would be about, say, anti-terrorism, putting it in the context. There would be other general matters you might talk to people about over lunch, subjects like the news of the day, anything that was – that had captured people’s attention that morning, in the morning’s newspapers perhaps.”*

- 5.8** Mr Twomey also provided the Inquiry with an insight into the behaviour of Mr Hayman following the consumption of alcohol:<sup>796</sup>

*“He was freer in the way he expressed himself. I think if – unguarded – if you mean if he gave away secrets, no, I don’t think he did. He certainly didn’t do in my presence, not when he was talking about counter-terrorism or anything else, for that matter, and it was always clearly – I’m sorry if I’m repeating myself, but it was always – on those social occasions, there was this strict rule anyway that applied: it was non-reportable.”*

- 5.9** Lord Blair would appear to have recognised the dangers inherent in this type of social interaction. He described in his book, ‘Policing Controversy’, his view that Mr Hayman appeared to be spending a great deal of time with the press, and that there were rumours that he was briefing in an inappropriate manner and had developed a lifestyle of late evenings which could be a danger to his professional standing. To be fair to Mr Hayman, however, Lord Blair acknowledged that he never had any proof that Mr Hayman was briefing inappropriately.<sup>797</sup> Mr Hayman provided this response to Lord Blair’s assertions:<sup>798</sup>

<sup>794</sup> pp32/-33, lines 24-7, John Twomey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>

<sup>795</sup> p33, lines 12-20, *ibid*

<sup>796</sup> pp38-39, lines 23-6, *ibid*

<sup>797</sup> pp113-114, lines 25-25, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>798</sup> pp114-115, lines 11-8, *ibid*

*“If you viewed it as my primary role in the Met, I can understand why he might say that, his opinion. But if you put my other hat on as well, I would argue that that was a proportionate amount of time being spent. He’s expressed a view there about information that was being shared. I completely disagree with that and I think it’s important that he does qualify that at the end ... I am not saying that there weren’t meetings in the evening with the press. I’m sure that they could be found. What I will say is that the hours that were being worked through that period between 2005 and beyond, even after I retired, were on a scale that no other – none of us in our team had experienced before, to the point where fatigue across the team, both junior and senior levels, was a regular facet of work.”*

### Hospitality

**5.10** During his evidence to the Inquiry, Mr Hayman was taken through a number of entries in the MPS gifts and hospitality register and his personal diary concerning his contact with the media, particularly in respect of NI personnel, for the period March 2005 to April 2007.<sup>799</sup>

**5.11** Mr Hayman confirmed that following an offer from the NoTW newspaper he had what was described as a working dinner with the journalist Lucy Panton on 8 November 2005.<sup>800</sup> His attendance was in his capacity as ACSO and he described what might have been discussed:<sup>801</sup>

*“... I can’t be 100 per cent sure about this, but what I can – so I’m in a way speculating, but given the timing of this and it was shortly after the attacks, we were keen – sorry, the News of the World were keen to run campaigns to help tackle the threat from terrorism. They had some rough ideas of what they wanted to do, and I recall trying to guide and give advice on that ... So when we talk about working dinner, I can’t accurately remember what that was about, but it was certainly in line with my recollection that the paper was being proactive about trying to tackle the whole issue of this unfolding home-grown threat from terrorism.”*

**5.12** This working dinner was followed three days later by a meeting at the NoTW offices, again with Ms Panton.<sup>802</sup> Ms Panton described Mr Hayman as a “work friend” and suggested that she had shared “a couple of lunches, a breakfast meeting, coffees and drinks meetings with him”.<sup>803</sup>

**5.13** Neil Wallis (Deputy Editor of the NoTW from 2003-2007, and thereafter Executive Editor until 2009) told the Inquiry that he first met Mr Hayman in 2005 and that they subsequently met for a drink about six times a year.<sup>804</sup> Mr Wallis suggested that he was able to offer Mr Hayman a level of insight into the way the police were interacting with the media, he said:<sup>805</sup>

*“Andy, as I think he said in his evidence to you, was particularly interested in police/press relations. He had very strong views on it. He had views particularly in light of ACSO and of the pressure of anti-terrorism operations at the time, and it was of*

<sup>799</sup> pp115-116, lines 9-5, *ibid*; p2, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-AH2.pdf>

<sup>800</sup> p116, lines 2-10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>801</sup> pp116-117, lines 14-9, *ibid*

<sup>802</sup> pp117-118, lines 10-2, *ibid*

<sup>803</sup> p3, para 1e, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Witness-Statement-of-Lucy-Panton.pdf>

<sup>804</sup> p5, lines 15-21, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>805</sup> pp5-6, lines 24-10, *ibid*

*interest to him, I think – there was a very strong debate, I think, about how much of that should be in the public domain and how much should not be in the public domain. Now, I have always held the view, both personally and as a journalist, that the public deserves to be informed more. However, there was obviously the operational constraints ...”*

- 5.14** Mr Wallis explained that Mr Hayman “*was interested in how the national media reacted to and the effect of the levels of information that would come out*”,<sup>806</sup> and that Mr Hayman used Mr Wallis as a sounding board in this context so that he could provide a view on “*how are the media reacting to this? What do you think is the reality behind the media perception of that? What could we do to change a view, for instance?*”<sup>807</sup> Mr Wallis suggested that over time he became friendly with Mr Hayman and that they enjoyed each others company, to the extent that no persuasion was needed when he invited Mr Hayman to meet for a drink, he said “*well, I never noticed I had to arm-twist him, no.*”<sup>808</sup>
- 5.15** Moving forward, Mr Hayman confirmed that he had attended a dinner at the NoTW’s expense on 25 April 2006 at Soho House with Andy Coulson and Mr Wallis, at the time editor and deputy editor of the paper; Dick Fedorcio also attended.<sup>809</sup> Mr Hayman suggested that this event may have been organised by Mr Fedorcio to enable him to meet Mr Coulson and Mr Wallis for the first time, although he acknowledged that his recollection of what transpired at the dinner was not perfect.<sup>810</sup> If this was simply an introductory meeting then the timing was unfortunate to say the least. Operation Caryatid (which came within Mr Hayman’s command) was at this time entering a critical juncture; Detective Chief Superintendent Williams, the Senior Investigating Officer for the operation, had sought advice from the CPS on 20 April 2006 regarding searches at the NoTW, and that advice was provided to the police on the day that the dinner took place. The decision was taken to proceed with the investigation on the following day, 26 April 2006.<sup>811</sup> Mr Hayman confirmed that he had been aware of Operation Caryatid at the time of the dinner but not of its possible scope.<sup>812</sup>
- 5.16** Being entertained by the editor and deputy editor of a newspaper which was becoming the focus of a criminal investigation was, at its lowest, extremely unwise. I am prepared to accept (as everyone involved has made clear) that nothing untoward took place during the course of this meal insofar as the police investigation is concerned. Having said that, however, I have no doubt that the perception that this social engagement inevitably and understandably created has, in fact, damaged the reputation of the MPS in general and Mr Hayman in particular. By way of one example only, it has undoubtedly fuelled the expressed perception that the failure to pursue Operation Caryatid beyond the prosecution of Glenn Mulcaire and Clive Goodman was a specific consequence of that relationship.
- 5.17** The same might be said of further meetings which took place with Mr Wallis and Ms Panton over the course of the next year. Mr Hayman confirmed that he met alone with Mr Wallis for an early evening meeting on 24 October 2006 although he could not recall what was discussed.<sup>813</sup> In addition, he attended a working lunch at a restaurant, Santini’s, with Mr Wallis

<sup>806</sup> p6, lines 20-22, *ibid*

<sup>807</sup> pp6-7, lines 23-4, *ibid*

<sup>808</sup> p7, lines 9-12, *ibid*

<sup>809</sup> p118, lines 3-19, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>810</sup> pp118-119, lines 21-13, *ibid*

<sup>811</sup> Part E Chapter 4

<sup>812</sup> p119, lines 14-20, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>813</sup> p121, lines 5-14, *ibid*

and Ms Panton on 29 March 2007. Mr Hayman again could not recall the exact purpose of the lunch but stressed that nothing inappropriate was discussed.<sup>814</sup> The lunch meeting was not recorded in the hospitality register for which the public paid; Mr Hayman used the MPS American Express card with which he had been provided.<sup>815</sup> I appreciate that the criminal prosecution had concluded and that the work of engaging with the media had to go on: in the light of the events of the previous year and the difficulties that the police had experienced, however, with Burton Copeland, it is somewhat surprising that Mr Hayman felt that it was appropriate for him to entertain staff of the News of the World to lunch at public expense.

**5.18** Two entries for 1 February 2007, again not recorded in the MPS hospitality register, are worthy of particular note. The first concerned a lunch for nine people at Shepherd’s Restaurant. Again, payment for the lunch was by Mr Hayman’s MPS American Express card, with the bill coming to £566, of which £181.50 was spent on alcohol. Mr Hayman explained that the lunch had been to mark the promotion of a colleague and to reward his senior team for their hard work and sacrifices during what was evidently a very busy and pressurised period for counter-terrorism policing.<sup>816</sup> Whether or not this was a legitimate expense for the public purse to bear is not a matter upon which it is necessary for me to express an opinion; the amount spent on alcohol, however, together with the fact that it was not recorded in the relevant hospitality register is perhaps illustrative of the culture in place within the MPS at the time.

**5.19** The second entry concerned a Crime Reporters Association business dinner at the Oriel Wine Bar and Bistro. During the course of the evening Mr Hayman, again using his MPS American Express card, spent £47 on a bottle of champagne for a CRA representative, possibly from the NoTW.<sup>817</sup> Mr Hayman could not recall who that representative might have been;<sup>818</sup> it has been suggested that the individual concerned was Lucy Panton, although she denied this in her evidence to the Inquiry.<sup>819</sup> She did however confirm that on occasions she had shared a bottle of champagne with Mr Hayman in a large group setting, such as the CRA Christmas party.<sup>820</sup> Mr Hayman argued that in his judgment this form of entertainment was legitimate given “*the work it was producing*” in terms of the support from the NoTW for the police’s anti-terror campaign.<sup>821</sup>

**5.20** With all due respect to Mr Hayman, this is not a satisfactory explanation. The risk created by this type of social interaction with members of the press in general (and, even more so, with one title in particular) created a perception of a relationship that was more than capable of undermining public confidence in the Metropolitan Police. The fact that one title (or its journalists) was being given preferential treatment not only underlines and justifies that perception; it also gives rise to a legitimate concern from other journalists that the particular title had a special and favoured position in police circles.

**5.21** Mr Hayman attended two further working lunches with Mr Wallis in September and November 2007, both of which were recorded in the hospitality register, and a CRA lunch with Ms Panton in attendance in August 2007, again recorded in the hospitality register.<sup>822</sup> Regarding the risk

<sup>814</sup> pp121-122, lines 15-5, *ibid*

<sup>815</sup> p122, lines 6-23, *ibid*

<sup>816</sup> pp122-124, lines 24-1, *ibid*

<sup>817</sup> p124, lines 2-18, *ibid*

<sup>818</sup> pp124-125, lines 22-8, *ibid*

<sup>819</sup> p20, lines 1-2, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>820</sup> pp18-20, lines 20-6, *ibid*

<sup>821</sup> p125, lines 12-13, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>822</sup> p125, lines 14-25, *ibid*

that a perception of impropriety had been created by the level and nature of his contact with certain sections of the media, Mr Hayman said this:<sup>823</sup>

*“On reflection and I want to go back and think, well, what was my thinking at the time. I was very enthusiastic about the whole national build for counter terrorism. We wanted to be much better than we were in 2007, 2005. That meant building a national picture, counter terrorism units, both covert and overt, across the country from scratch. What had to go hand in glove with that was a media strategy, and inevitably a lot of that was centred in London because that’s where the hub of the media was. So it was nothing but enthusiasm and a ... bit hasty, because we didn’t know when the next attack was going to come. But the point you’re making in hindsight as we pour over this, at the time it was absolutely well intended, honourable, but on reflection I can see what people can see.”*

I am not at all sure that hindsight was necessary. To anyone who was acquainted with the facts (as Mr Hayman should have been, even if he was not), the risk and the potential danger was obvious.

### *Contract with The Times*

**5.22** Mr Hayman told the Inquiry that he first began working for The Times in 2008.<sup>824</sup> He explained that when it became more widely known that he had retired from the MPS in the middle of April 2008, he had received several invitations from both the print media and television industry to consider being a commentator on contemporary policing issues.<sup>825</sup> To this end he sought the help of a specialist agency to represent his position in negotiating any future roles and met with an agent.<sup>826</sup>

**5.23** Mr Hayman said that he was approached by Sean O’Neill, the crime and security editor of The Times, and then subsequently was interviewed by the editor and deputy editor of the newspaper. Mr Hayman could not be sure of the timing but suggested that it was certainly not any earlier than two months after his retirement in April 2008. Following the interview, Mr Hayman said that he discussed the opportunity with his agent, compared it with other invitations and decided to accept the terms being offered. Mr Hayman confirmed that this was shortly followed by employment with ITN, NBC and more latterly LBC.<sup>827</sup>

**5.24** Mr O’Neill described the hiring of Mr Hayman from his perspective, strongly refuting the suggestion that this was a favour being done by NI for past deeds:<sup>828</sup>

*“... The initiative to contact Andy Hayman was mine, to be honest. He was – I don’t think he knows this, but he was second choice. I approached Peter Clarke first of all. We had a relatively new editor, he had a new style whereby a news story – he liked to have a news story accompanied by a commentary or an analysis, something like that. I quite often felt uncomfortable writing the news story and then commenting on it, I didn’t think that was appropriate, so I suggested we find an expert commentator. We do the same with health, we have a doctor who writes routinely, and I thought it*

<sup>823</sup> pp126-127, lines 15-4, *ibid*

<sup>824</sup> p15, para 42, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Andy-Hayman1.pdf>

<sup>825</sup> p15, para 43, *ibid*

<sup>826</sup> pp15-16, para 44, *ibid*

<sup>827</sup> *ibid*

<sup>828</sup> pp30-31, lines 18-13, Sean O’Neill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

*might be – you know, I knew Clarke and Hayman had retired in fairly quick order, one after the other, and we had at the time a huge terror trial going on, the airline plot trial, and I thought if there were more terror trials in the pipeline, it would be good to get one of these guys to give an expert commentary on terrorism issues and then more broadly on policing issues. So it was 2008. Hacking wasn't in the news, wasn't an issue."*

- 5.25** Mr O'Neill confirmed that Mr Hayman was paid a £10,000 per annum retainer at The Times,<sup>829</sup> but denied that this was a quid pro quo for any assistance that he may have given to NI whilst he was Assistant Commissioner for Specialist Operations. He said:<sup>830</sup>

*"... I had very limited contact with him, and he had media contracts with ITV News, with LBC, with NBC, and we nabbed him just before he signed up – he was being pursued by the Daily Telegraph. Frankly now I wish I'd let the Daily Telegraph sign him up. It would have been better for him and for us."*

- 5.26** Mr Hayman provided the Inquiry with his views on the contract with The Times:<sup>831</sup>

*"... Once I'd retired, I didn't do an awful lot, just tried to sort of make the transition into retirement, and so effectively on paper I wasn't entering the Yard from December 2007, and it was towards the beginning of the summer I was approached not by a News International outlet, but by someone else, another paper, and also TV outlets who were interested to sign me up, as it were. In hindsight I think probably because there were a lot of activities going on with trials around terrorism and they would want someone to perhaps offer an opinion on it. This was something that I'd never really thought would happen, and I therefore went to an agent to get some advice and help, and I let the agent deal with all the negotiations. The point that I now find out is that News International, the Times ... got wind of the other person's interest and then that's how we ended up having two outlets, as it were, wanting to sign me to write. Now, I did give this long thought, and I thought what is the difference here – set phone hacking aside just for one minute, if we may. What is the difference here between a retired police officer, of which there are others who have written, doing commentary and hopefully working alongside a journalist who can do a factual journalistic reporting, but a police commentator can give more of an insight to the reader, and working hand in glove, that could actually produce some good reportable material, which would also enhance this profile and contact with the police as well. I made the comparisons in my mind, albeit they're not directly comparable, between sportsmen who retire, maybe politicians and maybe financiers, and I honestly did not make the connection that I was embarking, if I made that choice rather than that choice, into a stable that was part of the News of the World. I just didn't make that connection. I didn't know the people, didn't know the editor, the deputy editor. I was formally interviewed. Never met them before. Throughout the whole relationship, never any hint of trying to exploit what may be my contacts, what may be a relationship there. My experience was it was completely above board. However ... if I had my time again and I was able to make that link, presentationally that is difficult and it's difficult to people to probably in a way believe that account, but that is the account as it happened and there are many people who were involved in those*

<sup>829</sup> p15, para 70, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-ONeill.pdf>

<sup>830</sup> pp32/-33, lines 23-3, Sean O'Neill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>831</sup> pp127-129, lines 19-19, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

*negotiations that I think can corroborate what I've said."*

**5.27** Leaving aside whether it is appropriate for a recently retired senior police officer to move almost immediately into a role commenting on police operations and practices, again there is, as Mr Hayman acknowledged,<sup>832</sup> an issue of perception. Mr Hayman confirmed what is clearly the reality, namely, that The Times and the NoTW were entirely separate entities and made the point that:<sup>833</sup>

*"... I can honestly say I can't remember in that building bumping into anyone that I had professional contact with when I was in the police service."*

**5.28** The problem is neatly evidenced by one particular article written by Mr Hayman that has understandably been the cause of some concern. The piece, published in The Times on 11 July 2009, was effectively a rebuttal of the Guardian newspaper's assertion that phone hacking had been widespread. To recapitulate, the Guardian article claimed that the police file demonstrated that between 2,000 or 3,000 individuals had been the subject of mobile phones hacking which was far more than was ever officially acknowledged or mentioned by the police during the investigation and eventual prosecution of Glenn Mulcaire and Clive Goodman. Mr Hayman, however, suggested that his recollection of events was different, and that the list of those people targeted, which was put together from records kept by Mr Mulcaire, ran to several hundred names. Furthermore, Mr Hayman went on to suggest that of those targeted, there was only a small number, perhaps a handful, where there was evidence that phones had actually been tampered with.<sup>834</sup>

**5.29** To be clear, Mr Hayman told the Inquiry that when he wrote The Times article he had:<sup>835</sup>

*"Absolutely no reference to any documents. Indeed, when I left the Met, that would be absolutely inappropriate for me to either try and elicit that or have any conversation about that. This was on what I understood from my recollection, my general broad recollection, of how events were."*

Mr Hayman suggested that his reference to 'a handful' of tampered phones accorded with his interpretation of what the evidence had shown and what he had been told at the time.<sup>836</sup> His evidence was that the reference in his article to the list of those targeted came from his recollection of a brief conversation while Operation Caryatid was taking place with Commander John McDowall, who was standing in for the temporarily absent Peter Clarke.<sup>837</sup> Mr Hayman could not recall why Commander McDowall had come to him with the list of names and said:<sup>838</sup>

*"... John was a sort of guy who would just turn up to the office, and if I wasn't either busy or in a meeting he would probably then literally say "good morning", "good afternoon". He was a very sort of sociable guy, and he also kept me – I suppose in his mind – I don't know what he was thinking, but I guess he thought he's been told that and he's briefing me but it wasn't anything substantial."*

**5.30** As to the substance of what had been said to him by Commander McDowall, Mr Hayman conceded that it had clearly had some impact on him given that he was able to recall it

<sup>832</sup> p129, lines 20-22, *ibid*

<sup>833</sup> p130, lines 17-20, *ibid*

<sup>834</sup> p142, lines 12-25, *ibid*

<sup>835</sup> p142, lines 6-11, *ibid*

<sup>836</sup> p144, lines 15-23, *ibid*

<sup>837</sup> p143, lines 8-23, *ibid*

<sup>838</sup> p145, lines 8-15, *ibid*

within his Times article some three years later.<sup>839</sup> Mr Hayman also agreed that the very fact that Commander McDowall had taken the time to raise this with him suggested that it was something of importance.<sup>840</sup> However, Mr Hayman did not accept that it necessarily followed from what had been said to him that the evidence gathered by the police at that stage demonstrated that the practice of phone hacking extended far more widely than the Royal Family. He said:<sup>841</sup>

*“... I think the distinction was being drawn at the time between what’s the difference between a journalist or someone who works for a journalist having telephone numbers, which is sensibly an address book, versus it going beyond just an address book into something more sinister. And my recollection was this is a number of people who could just be part of the address book as opposed to something that had been more sinister or attacked.”*

**5.31** This account highlights the difficulty of trying retrospectively to analyse interactions of this type and any decisions taken thereafter. It would certainly appear odd in the extreme for Commander McDowall to have troubled Mr Hayman with such a prosaic piece of information, and Mr Hayman himself accepted that *“if the judgment there is that that could have been a trigger that should have been acted upon, I hear what you say.”*<sup>842</sup> The unfortunate perception created by this episode is exacerbated by the assertion within Mr Hayman’s article that had there been phone tampering in other cases, then that would have been investigated by the police, as would the slightest hint that others were involved.<sup>843</sup> As to this, Mr Hayman said:<sup>844</sup>

*“Well, they weren’t investigated and I don’t understand – you know, I’ve written that as part of an article, and to go back to in that office and that interaction to remember why things were or weren’t done, I just can’t do.”*

**5.32** I deal with the police approach to Operation Caryatid, the analysis undertaken and the decisions made in considerable detail elsewhere in this Report.<sup>845</sup> There is no doubt, however, that The Times article, written by Mr Hayman, led to the perception that a defence of NI was more important to him than any proper investigation of the allegations in the Guardian article. Whether that perception is justified, however, must be judged in the light of the facts. In particular, although high in the chain of command for this investigation, Mr Hayman’s involvement in Operation Caryatid was minimal, as was his level of knowledge of the evidence in the possession of the police. By way of example only, at the time that he wrote the article, he did not know that the police investigation had obtained information about PIN numbers used to gain access to the voicemails of ‘targets’.<sup>846</sup>

**5.33** In the light of all the circumstances, I am prepared to accept that with the passing of time, the absence of any of the relevant police documentation and his natural allegiance to the MPS and his former colleagues, in writing The Times article, Mr Hayman was simply reacting peremptorily to the substance of the Guardian article. Unfortunately, in doing so, he helped to create the impression that the MPS and its former employees were engaged in deliberate obfuscation of the full circumstances surrounding the original phone hacking investigation.

<sup>839</sup> p146, lines 7-12, *ibid*

<sup>840</sup> p146, lines 13-22, *ibid*

<sup>841</sup> p147, lines 2-10, *ibid*

<sup>842</sup> p147, lines 17-19, *ibid*

<sup>843</sup> pp147-148, lines 24-6, *ibid*

<sup>844</sup> p148, lines 8-12, *ibid*

<sup>845</sup> Part E Chapter 4

<sup>846</sup> pp149-150, lines 1-16, Andy Hayman, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

## John Yates

- 5.34** John Yates is a former Assistant Commissioner in the MPS. Mr Yates joined in September 1981 and spent his entire 30 career with that force. Mr Yates told the Inquiry that he was promoted to the rank of Assistant Commissioner in 2006 and in April 2009 he became the national lead for Counter-Terrorism (CT).<sup>847</sup> Mr Yates confirmed that he resigned from the Police Service in July 2011 and officially left on 7 November of that year.<sup>848</sup> Given the context to this Module of the Inquiry, it is important to point out (as Mr Yates confirmed) that he had no role in relation to any aspect of counter terrorism during the period of the investigation in Operation Caryatid, that is to say from its inception in 2005 to the sentencing of Mr Goodman and Mr Mulcaire in January 2007. He therefore played no part in the original investigation and had no direct or personal knowledge of the facts.<sup>849</sup>
- 5.35** Using his experience of the culture of relations between the MPS and the media over the years, Mr Yates suggested that for the vast majority of the time there had been a healthy and transparent relationship at all levels.<sup>850</sup> Mr Yates told the Inquiry that, in his view, that relationship would include more informal transactions, such as lunch or dinner with individual journalists.<sup>851</sup> Mr Yates described how he ensured that those more informal transactions remained healthy and transparent:<sup>852</sup>

*“It’s a matter for one’s professional judgment and discretion. The vast majority of my dealings with the media would be around the sort of strategic policy issues that I was exposed to in my service at the senior rank. So in terms of the big issues of the day, be it counter terrorism legislation, be it data retention, be it rape policy, for which I was responsible nationally for a number of years, the very vast majority would be around that ... I think there’s a great value in that in terms of both educating myself, testing hypotheses, testing views, and getting the views back as well, so the last thing I think we would want is policing to be in a bubble and in a vacuum where one isn’t connecting to other thinking.”*

- 5.36** Mr Yates explained that the nature of the roles and investigations he had been asked to undertake meant that he had received significant exposure into how all sections of the mainstream media interacted with the police.<sup>853</sup> Mr Yates described how he had often become the “*public face*”<sup>854</sup> for policing and policy matters, and that he considered that the media were seeking, through their contact with him, fully to understand the context around policing issues or particular events.<sup>855</sup> As to whether this might be a slightly naïve or benign view of the media’s expectation of their dealings with him, Mr Yates said this:<sup>856</sup>

*“No ... because I do think many of those dealings, the vast majority, as I said, had been around understanding the context. If you take, for example, the government’s desire to legislate around data retention and the use of police data in its general*

<sup>847</sup> pp2-3, paras 3-7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>848</sup> p2, lines 9-14, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>849</sup> p3, lines 10-14, *ibid*

<sup>850</sup> p3, lines 15-21, *ibid*

<sup>851</sup> p4, lines 11-13, *ibid*

<sup>852</sup> pp4-5, lines 17-10, *ibid*

<sup>853</sup> pp3-4, para 9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>854</sup> p6, paras 15-16, *ibid*

<sup>855</sup> p9, para 23, *ibid*

<sup>856</sup> p7, lines 6-17, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

*sense, there was a fundamental misunderstanding about how important that was. So if you have the opportunity to explain that and explain the full context and the value of those sort of issues, then I think I'm doing it in what I believe, and I still believe, was in the best interests of the public and the best interests of policing."*

**5.37** The level of Mr Yates' contact with the media was the cause of some comment. As Mr Yates himself admits, on becoming the head of counter-terrorism within the MPS, the Security Services were "*understandably concerned*" about the degree of his media contact in his previous roles.<sup>857</sup> Mr Yates suggested that this concern arose in part because of "*all the briefing against me in the cash for honours investigation*,"<sup>858</sup> and that once they saw how he worked in his new role he felt that the Security Services knew "*any such concerns were clearly unfounded*".<sup>859</sup>

**5.38** Mr Yates also confirmed that Tim Godwin, the then Deputy Commissioner, had advised him, as he did other management board members, to reduce his contact with the media.<sup>860</sup> Mr Yates accepted that this advice was of particular relevance to him given his 'establishing the facts' role in the developing phone hacking story,<sup>861</sup> and said:<sup>862</sup>

*"... I think it was generally well-known and by many people in a perfectly proper way that I had and had had good relationships with the media going back a number of years, so it was very well known and, as I say, but I absolutely accept what you're saying in terms of it may have been directed to me than, say, the director of resources."*

**5.39** When asked about his advice to Mr Yates, Mr Godwin told the Inquiry:<sup>863</sup>

*"I thought at a point when, having become the Deputy Commissioner, I thought the frequency of those meetings and the manner of those meetings could be misinterpreted and the perception would be wrong, and as a result I did disapprove at that point."*

Both Mr Godwin and Mr Yates sought to explain this disagreement as a difference in style rather than a difference in values insofar as interaction with the media was concerned. Mr Yates said:<sup>864</sup>

*"I think Tim was of the view that the media were the enemy and we shouldn't be in contact with them. Now, I don't concur with that view, never have done, and I've had some healthy dialogue, debate, with Tim on those points. He took it [sic] a different view to me and others."*

**5.40** Mr Godwin sought to elaborate on this point and said:<sup>865</sup>

*"I think ... to be fair we pretty much had common values about honesty, integrity in terms of conduct ... I think the difference, with respect, would be that there was one*

<sup>857</sup> pp8-9, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>858</sup> pp8-9, para 22, *ibid*

<sup>859</sup> pp8-9, para 22, *ibid*

<sup>860</sup> p11, lines 5-15, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>861</sup> p11, lines 16-20, John Yates, *ibid*

<sup>862</sup> pp11-12, lines 25-6, John Yates, *ibid*

<sup>863</sup> p54, lines 12-17, Tim Godwin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-7-March-2012.pdf>

<sup>864</sup> p12, lines 12-17, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>865</sup> pp55-56, lines 21-1, Tim Godwin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-7-March-2012.pdf>

*style that was favoured by some members of the management board of the Met and there was another style, which was my style, where I didn't feel comfortable in that environment. So I wouldn't say it's a values difference, it's a difference of style."*

- 5.41** This difference in style and approach has been evident during the course of the Inquiry. Mr Godwin accepted the organisational difficulties which flowed from maintaining a position whereby very senior police officers were each able to develop their own unique, and perhaps conflicting, relationship with the media, and said:<sup>866</sup>

*"... I think that as a result of this Inquiry and as a result of the events as they unfolded last year in the Metropolitan Police whilst I was still there and as the Acting Commissioner, we did actually take action to make sure that we had a common style in terms of our interaction with the media. I think in those days about openness, transparency, not wanting to be seen as in a siege mentality scenario, as has been the case in the past, I think there were different styles as to how we could be open, transparent, approachable, accountable, and as a result of that, there were different styles that developed. But the values of the organisation were still the same in terms of honesty, integrity, value human rights, et cetera."*

- 5.42** Mr Godwin's view, and it is one that I fully share, was that the inherent danger in adopting Mr Yates' approach or style in relation to his interaction with the media was that it created the potential for a reputational risk and, in particular, the prospect of having to face suggestions of impropriety, such as leaking to the press, however ill-founded the suggestions might be. This mandated Mr Godwin's own approach to his interactions with the media. He told the Inquiry:<sup>867</sup>

*"I think I was more concerned about the perceptions where you have media stories that are gossip stories or embarrassing stories or leaks, then the sheer fact that you've engaged in that sort of behaviour does make you vulnerable to being accused of misconduct, et cetera, so I thought that that was probably not the right environment, but that was purely a style issue for me ... Naturally it would follow that those that are frequently meeting with the press, frequently engaging in social events with the media, would be the ones that would automatically be looked at as potential sources ... But obviously they may well not be, of course."*

### **Hospitality and News International**

- 5.43** Mr Yates explained that he accepted hospitality, mainly in the form of lunch or dinner, from the media in accordance with the relevant MPS guidance of the time, and that it was declared in the Hospitality and Gifts register.<sup>868</sup> Mr Yates went on to explain that this *"would not include any occasion when I met casually with a journalist and drinks and coffee were bought on a reciprocal basis"*,<sup>869</sup> so it would be accurate to say that the register only recorded a proportion of Mr Yates' social contact with the media. Mr Yates told the Inquiry that an arrangement to have lunch or dinner or attend a social function was *"considered perfectly acceptable and had many benefits."*<sup>870</sup> Mr Yates confirmed that it was his practice to drink alcohol on these

<sup>866</sup> p56, lines 7-20, *ibid*

<sup>867</sup> p57, lines 2-18, *ibid*

<sup>868</sup> p14, para 41, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>869</sup> *ibid*

<sup>870</sup> p15, para 43, *ibid*

occasions in sensible quantities, which (as he accurately pointed out) was perfectly acceptable under the hospitality guidance in place at the time.<sup>871</sup>

**5.44** It is right to record that Mr Yates' contact with the media was not limited to NI or NoTW personnel; there were a large number of meetings with other sections of the media.<sup>872</sup> In relation to NI more generally, Mr Yates told the Inquiry that he had never met James Murdoch or Rupert Murdoch.<sup>873</sup> He recalled twice being a guest at Rebekah Brooks' table at the Police Bravery Awards, which were sponsored by The Sun, and he may also have had lunch with her at The Sun together with the newspaper's crime editor in January 2009.<sup>874</sup> Mr Yates recalled meeting Andy Coulson for the first time in late 2009 at the Evening Standard 1000 Most Influential Londoners Event, by which time Mr Coulson was the Director of Communications for the Conservative Party.

### *Neil Wallis*

**5.45** Neil Wallis and Mr Yates were friends. Mr Yates accepts that Mr Wallis was a "good friend"<sup>875</sup> of his, and his diary recorded a number of private appointments with Mr Wallis, Nick Candy, a property developer, and (on occasions) a friend who worked in PR.<sup>876</sup> An example of this type of contact was dinner at a restaurant called Scalini's on 3 June 2009.<sup>877</sup> Mr Yates explained that the purpose of these occasions was "to go out with friends and enjoy a dinner", and that they were purely social events.<sup>878</sup> Mr Yates' evidence was that on this particular occasion Mr Candy paid for the meal although "there were many times I paid for dinner."<sup>879</sup>

**5.46** Mr Yates also confirmed that on two or three occasions he had attended a football match with Mr Wallis.<sup>880</sup> He fairly accepted that there would have been some discussion in relation to their professional lives in the margins of these social encounters<sup>881</sup>, but said that:<sup>882</sup>

*"As I say, completely in the margins. Of course there must have been, but ... I know a number of lawyers, and count them as good friends, and we can talk about the legal system without talking about particular cases. I know bankers, you can talk about banking systems and not talk about individual accounts. You'd have to accept there's a sort of element of professionalism and sound judgment that stops you going into areas where you shouldn't go into, and ... the inferences shouldn't be there."*

<sup>871</sup> pp10-11, lines 22-3, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>872</sup> pp1-30, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-MPS-61-John-Yates-meetings-with-the-Media.pdf>

<sup>873</sup> p17, para 54, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>874</sup> p18, para 55, *ibid*

<sup>875</sup> p20, line 25, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>876</sup> p19, lines 24-20; p20, lines 17-21, *ibid*

<sup>877</sup> pp15-16, lines 24-3, *ibid*

<sup>878</sup> p17, lines 3-6, *ibid*

<sup>879</sup> p16, lines 18-20, *ibid*

<sup>880</sup> p17, line 25, *ibid*

<sup>881</sup> pp18-19, lines 25-3, *ibid*

<sup>882</sup> p19, lines 7-17, *ibid*

**5.47** Mr Wallis for his part told the Inquiry that he first encountered Mr Yates when he had been a staff officer to Lord Condon, and that over the years he had come to regard him as a good friend.<sup>883</sup> He said that:<sup>884</sup>

*“We socialised together by attending football matches and we shared in common a keen interest of sport in general, lived in a similar area of West London, we had families of a similar age and we got on very well.”*

Mr Wallis described how he was enlisted by Mr Yates to help to formulate an anti-rape campaign, sponsored by the NoTW, in order to publicise the good work being carried out by Mr Yates in his role as ACPO lead on this area, although he insisted that it was not done as a means of showcasing him.<sup>885</sup>

**5.48** When asked about the private dinners with Mr Yates and Mr Candy, Mr Wallis reiterated that the discussions did not stray into policing matters. He suggested that Mr Candy was *“not interested in the police”*<sup>886</sup> and they tended to discuss issues of the day, sport and current affairs.<sup>887</sup> Mr Wallis also refuted any suggestions that, on the occasions that Mr Candy was not present, he and Mr Yates discussed the internal politics of the management board of the MPS.<sup>888</sup>

**5.49** The transparency or otherwise of Mr Yates’ relationship with Mr Wallis was the subject of some debate. Dick Fedorcio described his understanding of the nature of their friendship as follows:<sup>889</sup>

*“... I was aware that they knew each other. I was aware that they got on quite well. I understood their contact to be mainly work. I was aware of what I would call sort of banter between them over football matters. Occasionally, John would show me a text that he’d received from Neil Wallis, which would have been passing comment, shall we say, on a recent football result, which Liverpool, John’s team he supported, had played in. So I was aware of that sort of interaction. Through that, I think I was aware that on one occasion they went to a football match together, but I couldn’t say when I heard that or where it was.”*

He considered that they had developed a business friendship and *“that they’d once been to a match together. But beyond that, I wasn’t aware of anything else that took place.”*<sup>890</sup>

**5.50** Mr Fedorcio therefore expressed some surprise to have read about the extent of the out-of-hours contact between Mr Wallis and Mr Yates, indicating that *“it was a revelation to me.”*<sup>891</sup> Mr Fedorcio suggested that it would have been helpful for him to have been aware of this level of personal contact in his capacity as the Director of Public Affairs, not least because of

<sup>883</sup> pp8-9, para 1(d), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>884</sup> *ibid*

<sup>885</sup> pp108-110, lines 24-8, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>886</sup> p4, lines 5-16, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

<sup>887</sup> pp4-5, lines 17-5, *ibid*

<sup>888</sup> p5, lines 6-11, *ibid*

<sup>889</sup> p25, lines 6-17, Dick Fedorcio, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-13-March-2012.pdf>

<sup>890</sup> p26, lines 3-9, *ibid*

<sup>891</sup> p27, lines 20-24, *ibid*

his need to be kept informed of issues that might create a reputational risk for the MPS.<sup>892</sup> Given his lack of knowledge of the level of personal contact between Mr Wallis and Mr Yates and with an eye to the future, Mr Fedorcio said this:<sup>893</sup>

*“... I didn’t think that I would expect to know people’s personal contact, if that sort of thing was going on ... I mean, at the time I didn’t, and I didn’t think really of it, but I look at it now and say, “That’s the sort of information I think that the Met should know from senior people, and that people in my job perhaps should know as well”, especially if it’s a relationship with the media.”*

**5.51** Similarly, Sara Cheesley told the Inquiry that during a number of conversations with Mr Yates the impression was given by Mr Yates that he saw Mr Wallis a “few times a year” but that he didn’t class him as a “very close friend”.<sup>894</sup> Mr Yates, on the other hand, suggested that Mr Fedorcio would have been aware of the extent of his friendship with Mr Wallis, he said:<sup>895</sup>

*“... I would absolutely know that Dick would know that Neil and I would be fighting about football and that would be absolutely in his knowledge, I would have thought.”*

As to the level of his social contact with Mr Wallis, Mr Yates said that he would “imagine”<sup>896</sup> that Mr Fedorcio would have been aware, and said “there’s nothing I’m trying to hide around it. It’s in my diary, even a private appointment.”<sup>897</sup> Sir Paul Stephenson, Commissioner during the relevant period, explained that he:<sup>898</sup>

*“... knew Mr Yates was a friend of Mr Wallis. I can’t in all honesty say I knew the extent of the friendship, but I did know he was a friend, yes.”*

### *Lucy Panton*

**5.52** Mr Yates told the Inquiry that he had known Ms Panton professionally for about 10 years and “was on very good terms with her, I also considered her a friend.”<sup>899</sup> He said that she was married to a Metropolitan Police officer and he had been a guest at their wedding. He described Ms Panton as:<sup>900</sup>

*“... one of the most active members of the Crime Reporters’ Association (CRA) and was one of the reporters that followed every major crime-related story.”*

Mr Yates said that as a consequence Ms Panton “had regular dealings with the police at a number of levels, including with me.”<sup>901</sup>

<sup>892</sup> p27, lines 8-19, Dick Fedorcio, *ibid*

<sup>893</sup> p28, lines 2-9, Dick Fedorcio, *ibid*

<sup>894</sup> p20, lines 16-20, Sara Cheesley, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-13-March-2012.pdf>

<sup>895</sup> p99, lines 11-14, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-2012.pdf>

<sup>896</sup> p99, line 17, *ibid*

<sup>897</sup> p99, lines 19-20, *ibid*

<sup>898</sup> p70, lines 20-22, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>899</sup> p19, para 61, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-John-Yates.pdf>

<sup>900</sup> p19, para 61, *ibid*

<sup>901</sup> p19, para 61, *ibid*

**5.53** He said that like most senior journalists working in this area, Ms Panton had his mobile telephone number and sometimes called him directly if there was a matter or an issue that she wanted to discuss.<sup>902</sup> Mr Yates said that he occasionally met Ms Panton for a drink, as he did other journalists, and that sometimes he met her on her own but more normally with several other journalists, press officers and other police officers present; and that Mr Fedorcio, in his capacity as Director of Public Affairs, was nearly always there.<sup>903</sup>

**5.54** Ms Panton could not recall exactly when she had first met Mr Yates but estimated that *“it would have been about a decade ago when I was on the Sunday People, and it would have been at briefings at the Yard in a group crime reporter setting.”*<sup>904</sup> Ms Panton confirmed that Mr Yates had been a guest at her wedding *“along with many other police officers”*,<sup>905</sup> and given this fact described the nature of their relationship:<sup>906</sup>

*“There were a few people at my wedding who I would class as working friends, who I did socialise with outside of work, and Mr Yates falls into that category. I certainly got on well with him. I had a good rapport with him, but we didn’t socialise outside of work. The wedding was the only occasion. There were a lot of people at my wedding.”*

**5.55** Interestingly, and despite this ‘working friendship’, Ms Panton was clear that she regarded all police officers she knew as *“confidential contacts”*.<sup>907</sup> This is obviously understandable given her job as a journalist but does appear to reaffirm the requirement for complete transparency in the relationship between the police and the press so that there can never be any question of impropriety in respect of either side. This requirement becomes all the more apparent when examining some of the interaction between Mr Yates and Ms Panton.

**5.56** There were a number of examples of both recorded and un-recorded contact between Mr Yates and Ms Panton in a more social setting.<sup>908</sup> On 5 November 2009, Mr Yates attended a dinner meeting with Colin Myler, then Editor of the NoTW, and Ms Panton at the Ivy Club restaurant.<sup>909</sup> The entry within the gifts and hospitality register suggests that the dinner was to *“improve understanding of each other’s operational environment.”*<sup>910</sup> It appears that this formulation was one commonly used in the register where senior officers were meeting with a news organisation. Mr Yates said:<sup>911</sup>

*“... I had nothing to do with the formal words, but that was the formal words that appeared to sort of encapsulate it and satisfy the police authority.”*

The Ivy Club is one of the more exclusive and expensive restaurants in London. Despite this, Mr Yates maintained that this interaction was appropriate at the time that it took place, he said:<sup>912</sup>

*“... I mean, in terms of what we know now, yes ... as I say, in terms of what has happened in the last three or four months, yes, I suppose it is [inappropriate], but it*

<sup>902</sup> p19, para 62, *ibid*

<sup>903</sup> p19, para 63, *ibid*

<sup>904</sup> p3, lines 12-15, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>905</sup> p4, lines 14-17, *ibid*

<sup>906</sup> p5, lines 12-18, *ibid*

<sup>907</sup> p5, lines 25-16, *ibid*

<sup>908</sup> p28, lines 4-28, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>909</sup> p23, lines 2-22, *ibid*

<sup>910</sup> p23, lines 5-11, *ibid*

<sup>911</sup> p23, lines 13-16, *ibid*

<sup>912</sup> p25, lines 14-24, *ibid*

*certainly wasn't at the time in terms of what we knew about the events, Mr Myler's position, he was the new editor who'd come in, and I go back to what I said at the start. I think it's hugely important that senior police officers have a relationship and interact with the media, that they are not the enemy, they are occasionally critical friends and occasionally much worse."*

**5.57** The importance of perception in this context and the potential damage that can be done to an individual or organisation's reputation is perhaps best illustrated by an internal NoTW email which was produced in evidence to the Inquiry.<sup>913</sup> The email, sent on 30 October 2010, was from James Mellor, then the number two on the news desk at the NoTW, to Ms Panton.<sup>914</sup> The email related to the Al-Qaeda inkjet plot, and conveyed Mr Mellor's view that Mr Yates could be crucial in helping to corroborate the facts around the story.<sup>915</sup> Within the email Mr Mellor asks Ms Panton whether she had yet spoken to Mr Yates and suggests that the newspaper really needed an "exclusive splash line";<sup>916</sup> and so it was time "to call in all those bottles of champagne."<sup>917</sup> The inference is obvious. Ms Panton provided her view on the email's contents:<sup>918</sup>

*"I don't think it was necessarily light-hearted. I think he was putting pressure on me to get a story. I would call that banter. It's the way that people spoke to each other in the office. I would read that at that time as banter mixed with a bit of pressure."*

**5.58** Metaphorical or otherwise, and Ms Panton denied the reference to be true,<sup>919</sup> the use of the term "call in all those bottles of champagne" does at least appear to convey a perception within the editorial staff of the NoTW that Ms Panton's relationship with Mr Yates enabled her quickly to obtain information from him. As to this, Ms Panton said:<sup>920</sup>

*"I think they hoped that you would be able to ring these people up and ... bring in exclusives every week. The reality is they know that doesn't happen, unfortunately, otherwise we would have had bigger and better crime stories than we did. My recollection of this is that I did phone Mr Yates and I don't believe I actually got to speak to him. That was the reality, week in, week out."*

**5.59** Despite being unable to contact Mr Yates in this instance, Ms Panton did admit that he would have been her first port of call within the Police Service if she were looking for somebody to provide her with the material to assist in producing an exclusive splash line.<sup>921</sup> Mr Yates provided the context to the email:<sup>922</sup>

*"... the background is the weekend of that 30 October was – I think it was about two or three days beforehand there had been a printer cartridge bomb found on a DHL flight up in the West Midlands Airport, so there was a lot of interest around what had happened that weekend."*

<sup>913</sup> p1, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-JMY2.pdf>

<sup>914</sup> p15, lines 6-9, Lucy Panton, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/lev030412am.pdf>

<sup>915</sup> p15, lines 14-20, Lucy Panton, *ibid*

<sup>916</sup> p15, lines 24-25, Lucy Panton, *ibid*

<sup>917</sup> *ibid*

<sup>918</sup> p16, lines 3-7, Lucy Panton, *ibid*

<sup>919</sup> p16, lines 8-12, Lucy Panton, *ibid*

<sup>920</sup> pp16-17, lines 25-7, Lucy Panton, *ibid*

<sup>921</sup> p17, lines 8-19, Lucy Panton, *ibid*

<sup>922</sup> p37, lines 1-6, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

As to the contents of the email itself, Mr Yates strongly refuted the inference that his receipt of hospitality from the NoTW previously meant that he was in some way beholden to them, saying:<sup>923</sup>

*“... firstly I have no clue who James Mellor is, I never met him in my life. Secondly, it’s not my e-mail and it’s a turn of phrase, and thirdly, it would indicate even by October 2010 that those perceived favours had never been called and I hadn’t provided them with anything before and that’s the position ...”*

**5.60** Mr Yates also reiterated the point made by her that he “*hadn’t been plied with champagne by Lucy Panton*”,<sup>924</sup> although he did admit to drinking champagne with Ms Panton on occasions, and said that:<sup>925</sup>

*“... there may well have been the very odd occasion, yes, when a bottle was being shared with several people ...”*

He denied any impropriety.<sup>926</sup> In the light of the evidence, I am prepared to accept that nothing untoward actually took place but this level of interaction does add to the perception that Mr Yates had developed an overly close relationship with NI and he should not be surprised if concern is expressed that perception quite frequently represents or can lead to reality.

### *A perception of bias*

**5.61** This Report contains a detailed analysis of the reconsideration of Operation Caryatid undertaken by Mr Yates in 2009 and subsequently.<sup>927</sup> Although somewhat repetitive, at this stage, it is also appropriate to deal with the allegation that Mr Yates’ friendship with Mr Wallis and Ms Panton (along with whatever relationship he had with NoTW) affected the way in which he went about making decisions as more and more allegations were publicly advanced.

**5.62** First and foremost, Mr Yates accepted that the general thrust of the article in the Guardian in July 2009 was to the effect that phone hacking involved a conspiracy which embraced others at the NoTW and one which possibly went quite high up in that organisation.<sup>928</sup> Furthermore, it is also correct to note that, at the time of the events, his friend Neil Wallis was the deputy editor of the paper and at the time of the article, he was the executive editor.<sup>929</sup> Given these facts, it might be argued that it was inadvisable for Mr Yates to have been involved in any way in any exercise of review, reconsideration or reflection upon Operation Caryatid: in short, it can be said that he was simply too close to at least one person who, involved or not, was at the very centre of the organisation. Mr Yates explained why in his view this was not the case:<sup>930</sup>

*“Well, you might as well ask that to the Commissioner as well and others who knew full well that I had a relationship with Neil Wallis, and, you know, I was looking at this dispassionately from the evidential perspective and I had people advising me on*

<sup>923</sup> p37, lines 18-24, John Yates, *ibid*

<sup>924</sup> p38, lines 10-12, John Yates, *ibid*

<sup>925</sup> p38, lines 15-17, John Yates, *ibid*

<sup>926</sup> *ibid*

<sup>927</sup> paras 8.12-8.29 of Part E Chapter 4

<sup>928</sup> p59, lines 2-6, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

<sup>929</sup> p59, lines 12-13, John Yates, *ibid*

<sup>930</sup> pp60-61, lines 15-3, John Yates, *ibid*

*that, and we went through an exercise, and we got to the point we got to. To suggest that I would be influenced otherwise ... is wrong. You know, you're talking to a person ... who investigated serving government on which the Home Secretary has the final say on my career. I have a reputation and a track record of doing difficult things and doing them in a dispassionate and evidence-based way and that's exactly what I did in this case."*

**5.63** This may all be true in substance although there is a real difference, in my view, between investigating a government minister (who is then unlikely to be allowed 'the final say on [his] career') and investigating an organisation at which a personal friend holds a relevant and senior position who may be affected. Having said that, however, and irrespective of how ill-judged some of those decisions might have been,<sup>931</sup> I have heard no evidence that, in fact, any of the decisions taken by Mr Yates were influenced by his relationship with Mr Wallis or more broadly with staff at NI.

**5.64** That is not an end to the matter, because I have no doubt that there is and has been a clear perception that the decisions made by Mr Yates may have been affected by these relationships. Furthermore, that perception has proved to be extremely damaging both to the professional standing of Mr Yates and to the reputation of the MPS. Neither is this a small matter. Lord Blair suggested that the issue of public perception should form part of the police decision making process when determining who should lead on a particular investigation or matter of contention, and certainly where personal friendships are in play.<sup>932</sup> He said:<sup>933</sup>

*"... I think it's at that point one has to consider whether somebody else should make the decision. I mean, as an example, and it was a term of art only lawyers would know, I discovered the word "recuse", and I commented on that in relation to cash for honours, that I recused myself from the decision-making process because I was meeting the people involved on a very regular basis in the shape of the Prime Minister and other senior ministers. It's a very difficult place if you were trying to make decisions."*

Assistant Commissioner Dick made a similar point and suggested that where potential issues of personal conflict arise, then that fact should at least be the subject of discussion at the appropriate level before any final decision on who led a piece of work was taken.<sup>934</sup> In relation to this particular case, and with the acknowledged benefit of hindsight, Ms Dick said:<sup>935</sup>

*"... I do think that he should – looking back, I think – certainly, we wouldn't be sitting here in this manner if he had gone and discussed this in more detail, perhaps, with Sir Paul. I don't know how much Sir Paul knew about the relationship, but I think at a minimum, a conflict like that should be discussed ..."*

**5.65** Sir Paul acknowledged that at the time that he tasked Mr Yates with the establishment of the facts exercise following the 9 July 2009 Guardian article he:<sup>936</sup>

*"... didn't connect it with Mr Wallis. I didn't give it any particular thought ..."*

<sup>931</sup> Part E, Chapter 4

<sup>932</sup> pp78-79, lines 21-6, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>933</sup> p78, lines 7-16, *ibid*

<sup>934</sup> p59, lines 4-19, Assistant Commissioner Cressida Dick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

<sup>935</sup> p60, lines 5-10, Assistant Commissioner Cressida Dick, *ibid*

<sup>936</sup> p71, lines 5-15, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

As to whether he would have expected Mr Yates to have appreciated this issue of ‘conflict’ and raised it with him, Sir Paul said:<sup>937</sup>

*“Well, I would expect Mr Yates to consider – if he felt in any way conflicted, to have reflected it back to me, or done what any other chief constable around the country would do, including provincial forces, where if you can’t put it somewhere [else], you are “it”. There are various devices one can put in place to ensure that any conflict of interest doesn’t become an issue.”*

- 5.66** Given the subject matter of the exercise to be undertaken following the Guardian article, on the face of it it was logical to have asked Mr Yates to deal with it. He was not, however, the only choice available to Sir Paul: there were a number of other very senior police officers at his disposal. Sir Paul explained his likely reaction in the event that Mr Yates had asked to recuse himself from the exercise because of his friendship with Mr Wallis:<sup>938</sup>

*“Had he come back to me with this, I might have done [given the task to another officer], or ... he had a very large business group. I might have expected him to get somebody within his business group to deal with it and ensure there could be no allegations of impropriety against him. I do have to say – this is hypothesis and we’re speculating just a little ... that probably Mr Yates would have felt that he was more than equipped to deal with it. It is not as if, in our professional lives, that we don’t actually, as chief constables and senior officers, investigate people who have been friends, and to actually say somebody else has to deal with it would almost be saying that I do not have sufficient integrity to deal with it. Whether, with hindsight, it might have been wise to do that, I think that’s an entirely different question. I can understand why he didn’t do it, but with hindsight it might have been wise.”*

- 5.67** I entirely agree with Sir Paul’s analysis in hindsight, although I think that to focus on the sufficiency of Mr Yates’ integrity in this matter rather misses the point. Given the allegations in the Guardian article, this was very much more than an investigation which might implicate someone who has been a friend. One of the main concerns of the article was the role of the Metropolitan Police and this, therefore, was an important reputational issue. The additional potential risk of further damage created by the perception that any reconsideration was being conducted by ‘a friend’ became all the more important. Sir Paul now accepts this to be true and he offered this explanation of his thinking and that of the MPS at the time:<sup>939</sup>

*“... there clearly was a perception of risk ... But I would come back – the reason for giving – it’s a little too grand to call it analysis, but some level of thinking around why I think we might have got this wrong, that defensive mindset – I suspect that defensive mindset set in very early, for all the reasons I outlined, that stopped us going back and challenging what was the reason for the original investigation stopping short, albeit we didn’t know it stopped short. I think that is the more likely reason why Mr Yates didn’t decide that he had a conflict or not.”*

- 5.68** In fairness to Mr Yates, I believe that he does now also recognise this point:<sup>940</sup>

*“... I think the benefit of hindsight once again comes into play because in July 2009 there was nothing to suggest that Wallis was involved in any way whatsoever, and*

<sup>937</sup> p72, lines 12-18, Sir Paul Stephenson, *ibid*

<sup>938</sup> pp73-74, lines 9-1, Sir Paul Stephenson, *ibid*

<sup>939</sup> p75, lines 7-21, Sir Paul Stephenson, *ibid*

<sup>940</sup> pp61-62, lines 19-4, John Yates, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-1-March-20122.pdf>

*what's happened in the last few year [sic], and of course nothing has been proven yet, but in July 2009 ... there was no indication at all, and I did this very dispassionately, and I take your point about the perception, but it didn't appear to me to be a problem then and it didn't appear to others to be a problem then. It is clearly a problem now ... and I accept that ... I completely take that as a perception, but what this was on July 9, 2009, was a newspaper article. It didn't present evidence. Newspaper articles as we all know, can have basis in facts and they can have lots of flour [sic] put around them to make them more interesting. I can only go on what the evidence was that day and that's where I got to."*

- 5.69** This comment tends to assume that what was being challenged (namely the extent of the involvement of others at NoTW) was not the case because the article did not provide evidence that it was so (as opposed to identifying potential lines of enquiry back into the original material). Further, the view of others (including the Commissioner) depends on precisely how much they knew of the relationship and friendships. Taken in the round, and given, in particular, his friendship with Mr Wallis and Ms Panton, it is very difficult to avoid the conclusion that Mr Yates ought to have recused himself from any exercise whether to establish the facts or to consider whether the article justified revisiting the original material revealed by Operation Caryatid in 2009 and thereafter. A perception was clearly created that the decisions made by Mr Yates were affected by his relationship with NI personnel, and whilst the evidence that I have heard does not bear that out (and I am happy to make that clear)<sup>941</sup> the damage done to the reputation of the MPS as a consequence has been significant.

### Sir Paul Stephenson

- 5.70** Sir Paul joined the Lancashire Constabulary in 1975 and, having worked his way through the ranks, was appointed Chief Constable of that force in 2002. Sir Paul joined the MPS as Deputy Commissioner in March 2005, and was appointed as Commissioner in January 2009.<sup>942</sup> He was Deputy Commissioner at the time of Operation Caryatid but played no role in that investigation. At the time of the publication of the Guardian phone hacking article in July 2009, he was travelling to the North of England to attend a conference and he spoke to Mr Yates on the telephone asking him to undertake an exercise to establish the facts; this was not an unusual reaction to articles in the press and although he received periodic updates from Mr Yates thereafter, there is no suggestion that he was personally involved in any of the decisions that were made. For reasons that will be examined, Sir Paul gave notice of his intention to resign from the MPS on 17 July 2011 and formally left office on 26 July 2011.<sup>943</sup>
- 5.71** Sir Paul described his personal contact with the media as taking the form of meetings, functions and attendance at events run by various organisations such as the CRA. He would also on occasions meet with editors at drinks receptions or for meetings over lunch or dinner.<sup>944</sup> In relation to his dealings with the media, Sir Paul explained how he ensured that the interaction remained healthy without it becoming an overt attempt to garner favour:<sup>945</sup>

*"... I think you do it by being honest, by being as open as you can. Actually, without wishing to sound too pompous, by remembering sort of known seven principles of*

<sup>941</sup> As I have already done in my conclusions to Part E, Chapter 4

<sup>942</sup> p2, paras 3-7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>943</sup> p2, para 9, *ibid*

<sup>944</sup> pp10-11, para 28, *ibid*

<sup>945</sup> pp8-9, lines 11-1, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

*public life: honesty, openness, leadership, accountability, selflessness, integrity and objectivity. They're not bad guidelines about how we should have a relationship with the media, and by having that dialogue, by trying to ensure that there is a context there, so when editors and journalists are reporting they can refer back to that context, and actually trying to give the message that there's 50-odd thousand people working for the Met, most of whom strive to do a very good job, so having some balance in the headlines is a fair thing to asked [sic] for."*

**5.72** It was Sir Paul's perception that he did not favour any particular section of the media,<sup>946</sup> although he admitted that there were complaints from journalists about the amount of access to him they were given.<sup>947</sup> As to this, Sir Paul suggested that:<sup>948</sup>

*"... I think if you look at the ... whole range of my engagement with the media, I think it will be difficult to make that allegation in terms of the way in which I divided my time."*

Sir Paul confirmed that during his tenure as Deputy Commissioner there were very few interactions with the press and none, in fact, with NI.<sup>949</sup> Sir Paul explained that this was, in part, due to his lack of any previous background in the MPS; he said:<sup>950</sup>

*"... I think we have to remember that I was this – I hesitate to say exotic creature from the provinces suddenly arrived in London who nobody really knew, and it was quite a novelty having a deputy commissioner without any Metropolitan Police background or indeed any connectivity. So that might explain why I met fewer people; I knew fewer people."*

**5.73** The MPS gifts and hospitality register records that Sir Paul's interaction with the media slowly gathered pace as he moved towards taking the post of Commissioner.<sup>951</sup> On becoming Commissioner in 2009, Sir Paul suggested that there was "*no hiding place*"<sup>952</sup> in his dealings with the media and he began what he described as a strategy to acquaint himself with editors in different sections of the press.<sup>953</sup> To provide a flavour of the level of Sir Paul's engagement with the media in 2009, he confirmed, for example, that he met with the editor of the Sunday Telegraph on 19 February; he had drinks with the editor of the Daily Telegraph on 10 March; he met with the Mirror Group on 18 March and with the editor-in-chief of the Daily Mail on 24 March. On 20 April, he had lunch with the editor of The Sun (at that stage Rebekah Wade, as she then was) in Wapping and on 28 April with Mr Witherow of The Sunday Times. There was a business dinner with Mr Myler, editor of the NoTW, on 14 May and a News Corporation reception at OXO Tower on 17 June. On 27 June, there was a meeting with Richard Littlejohn and Stephen Wright of the Daily Mail.<sup>954</sup>

<sup>946</sup> p20, lines 2-21, *ibid*

<sup>947</sup> pp20-21, lines 22-4, *ibid*

<sup>948</sup> pp20-21, lines 25-4, *ibid*

<sup>949</sup> p22, lines 3-6, *ibid*

<sup>950</sup> pp22-23, lines 24-5, *ibid*

<sup>951</sup> Exhibit – Sir Paul Stephenson – Gifts and hospitality register, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-SPS2-to-ws-of-Sir-Paul-Stephenson-20.02.12.pdf>

<sup>952</sup> p25, line 16, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>953</sup> p26, lines 9-15, *ibid*

<sup>954</sup> pp26-27, lines 1-5, Sir Paul Stephenson, *ibid*; MPS 61, John Yates meetings with the Media, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-MPS-61-John-Yates-meetings-with-the-Media.pdf>

**5.74** The rest of that year followed a similar pattern with Sir Paul meeting with the majority of the national press,<sup>955</sup> apart from the Northern & Shell titles, the Daily Express and the Star. As to this omission, Sir Paul explained:<sup>956</sup>

*“It’s certainly not through any design ... I would certainly be guided by the head of [DPA], Mr Fedorcio, and my Chief of Staff as to who I should meet and when I should meet them. I can’t think why we didn’t meet with the editor of the Daily Express but it’s not something that I would go through and monitor and audit. But it does seem to me, when I look at it, it was generally a broad spread, but it does seem to me they’re absent. I did know the crime reporter from the Daily Express and met him quite a number of times, but he was quite a senior member of the Crime Reporters Association.”*

**5.75** Sir Paul suggested that the reason for the sheer number of meetings with the media in the early part of his Commissionership was to enable him to introduce himself and his ideas to some very important opinion makers and commentators.<sup>957</sup> He added to this and said:<sup>958</sup>

*“... I think I would be a little naïve if I thought that one meeting alone would suffice for my entire commissionership. I think some reinforcement is necessary in re-meeting [sic] various people because, whilst I might have an agenda in terms of how I saw the context of policing, I would then be conscious that editors would have their own views and that re-engagement was useful ...”*

I can readily understand why this would have been a valuable exercise for Sir Paul, however, given the level of contact, there is the associated risk of a view being formed that there was, at least, the potential for too close a relationship with the media developing.

**5.76** Sir Paul recognised this potential double-edged sword, but made a further entirely reasonable point when he said:<sup>959</sup>

*“There is a risk of perception ... That I will acknowledge. But I find it difficult to see how the Commissioner could do his job or her job properly without engaging pretty heavily with the media at the right level because if the reportage of the story of the Met continues to be unbalanced, which very often it is, then I have a duty on behalf of the 50,000-odd people I lead to try and continue to [affect] that balance to be a fairer balance and a more accurate balance.”*

**5.77** Similarly, Sir Paul rejected any suggestion that the level of his contact with the media was, in some way, an attempt to seek to reduce the number of negative headlines and stories published relating to the MPS; he said:<sup>960</sup>

*“... My experience of the media is one could have a perfectly good and decent relationship with an editor, but if there was bad news, there was bad news, and they would report it anyway ... if you’d done something wrong, if you’d got something wrong, that same paper would report it. It would be naïve to think otherwise.”*

<sup>955</sup> pp28-29, lines 23-6, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; MPS 61, John Yates meetings with the Media, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-MPS-61-John-Yates-meetings-with-the-Media.pdf>

<sup>956</sup> pp35-36, lines 24-10, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>957</sup> p27, lines 6-24, *ibid*

<sup>958</sup> p27, lines 14-24, *ibid*

<sup>959</sup> p28, lines 2-10, *ibid*

<sup>960</sup> p28, lines 15-22, *ibid*

**5.78** This evidence serves to underline the difficult tightrope that Commissioners of Police for the Metropolis have to walk. On the one hand, engagement with the press is an important part of the job for all the reasons that Sir Paul (and other Commissioners) have given. On the other hand, great care must be taken to ensure that the line is not crossed not only because of the possibility that a perception of proximity might be created but also because of the importance of providing an appropriate example to other ranks within the police service.

### *News International and Neil Wallis*

**5.79** Sir Paul stated that approximately 30% of his engagements with media figures were with NI representatives, at a time when NI commanded some 42% of the total United Kingdom newspaper readership.<sup>961</sup> Sir Paul said that he had met James Murdoch twice and Rupert Murdoch once. He met both James and Rupert Murdoch at a NI drinks party which was also attended by senior members of the Government, including the Prime Minister; he said that his conversation with James Murdoch at this function amounted to no more than cursory greetings.<sup>962</sup> Dick Fedorcio advised Sir Paul which functions of this sort he should attend and was present alongside Sir Paul on this occasion.<sup>963</sup> Sir Paul's list of meetings and engagements with the media record that during his tenure as Commissioner he had a meal once or twice with the editor of each NI title<sup>964</sup>; he also had lunch with Rebekah Brooks, then Chief Executive of NI, in 2010.<sup>965</sup>

**5.80** Sir Paul recalled that he first met Mr Wallis, who was at that time deputy editor of the NoTW, in September 2006.<sup>966</sup> A number of social or semi-social interactions followed this initial meeting,<sup>967</sup> generally with Mr Fedorcio present; Sir Paul suggested that through these initial interactions he came to know Mr Wallis *"I think in the same way that you'll see ... other media representatives I've met several times, that I'm getting to know them better."*<sup>968</sup> Sir Paul described the type of issues that would be discussed on one of these occasions:<sup>969</sup>

*"... from a professional perspective, it would be about the context of policing, the way in which government policy might affect policing, the issues around resourcing, all the sort of things that one would wish to ensure that when people are reporting on policing, there was at least a context, a background, so they could judge in a fair and balanced way. I think it was that, but there would also be some social interaction as well, as there would be with anybody else I would meet."*

<sup>961</sup> p12, para 33, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>962</sup> p12, para 34, *ibid*

<sup>963</sup> p12, para 34, *ibid*

<sup>964</sup> MPS 61, John Yates meetings with the Media, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-MPS-61-John-Yates-meetings-with-the-Media.pdf>

<sup>965</sup> pp32-33, lines 6-3, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>966</sup> p30, para 79, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>967</sup> p23, lines 6-18, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; and Sir Paul Stephenson – Gifts and hospitality register: not on the Inquiry website, but available on [http://www.met.police.uk/foi/pdfs/disclosure\\_2011/may/2011030004623.pdf](http://www.met.police.uk/foi/pdfs/disclosure_2011/may/2011030004623.pdf)

<sup>968</sup> p24, lines 6-8, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>969</sup> p24, lines 13-22, *ibid*

**5.81** As has become clear, Mr Wallis was known to previous Commissioners,<sup>970</sup> and Sir Paul considered him to be a “good contact”,<sup>971</sup> because he was a “commentator on how the Met looked.”<sup>972</sup> As Sir Paul explained, one of his purposes for seeking to engage with the media was:<sup>973</sup>

*“... to continually seek feedback of how does the Met look. How do you see us at this time? I think that’s part and parcel of the leadership, to ask people outside the Met, including media and people who have long experience of the media, of how they view the Met so that you can reflect on it.”*

Despite this, Sir Paul suggested that he always took a cautious approach when meeting with Mr Wallis. He said:<sup>974</sup>

*“Outwith Mr Wallis, I would say for every journalist I’ve ever met, they would be delighted if I was indiscreet. It was my job to ensure I wasn’t.”*

**5.82** During late 2009 and 2010 the MPS gifts and hospitality register and Sir Paul’s diary itemise a number of what are described as ‘private appointments’ with Mr Wallis,<sup>975</sup> who by that stage had resigned from the NoTW.<sup>976</sup> Sir Paul, for example, confirmed that he had attended a dinner with Mr Wallis and Mr Fedorcio in April 2010 at the Bbar restaurant; the dinner was marked as a private appointment and the diary records that no expenses were claimed. Sir Paul explained:<sup>977</sup>

*“I would have either paid the whole or my share for a drink. I was always uncomfortable with the idea – not exclusively, but with the idea of billing the public purse for alcohol. So more often than not, I would pay if it wasn’t being a gift and hospitality.”*

**5.83** As to why this type of occasion was recorded at all given that there was no claim on the public purse, Sir Paul said:<sup>978</sup>

*“... I think it’s better to be transparent and put as much in there as possible rather than leave things out. These matters were left to my private office and I think they did their level best to manage an extraordinary busy diary that changed on a daily basis, to try and record things so that it would not look like I was behaving in any way improper.”*

**5.84** There is a discrepancy in the recollections of Sir Paul and Mr Wallis in respect of the level and nature of their contact. Mr Wallis suggested his relationship with Sir Paul essentially followed

<sup>970</sup> p30, para 79, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>971</sup> p29, line 19, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>972</sup> p29, lines 19-20, Sir Paul Stephenson, *ibid*

<sup>973</sup> pp29-30, lines 22-2, Sir Paul Stephenson, *ibid*

<sup>974</sup> p25, lines 2-4, Sir Paul Stephenson, *ibid*

<sup>975</sup> p29, lines 7-17, Sir Paul Stephenson, *ibid*; and Exhibit – Sir Paul Stephenson – Gifts and hospitality register, not on the Inquiry website, but available on DN: [http://www.met.police.uk/foi/pdfs/disclosure\\_2011/may/2011030004623.pdf](http://www.met.police.uk/foi/pdfs/disclosure_2011/may/2011030004623.pdf)

<sup>976</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>977</sup> p30, lines 20-24, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>978</sup> p31, lines 3-9, Sir Paul Stephenson, *ibid*

*“the same blueprint as my relationship with Sir John Stevens”.*<sup>979</sup> This included his providing Sir Paul with advice relating to his “campaign” to become Commissioner; he said that:<sup>980</sup>

*“... if we were together and the subject came up, I would tell him my view ... If it came up, he asked my opinion, and I have opinions, so I wouldn’t have been hesitant about sharing them.”*

Mr Wallis said that he met Sir Paul approximately six times a year while he was the Commissioner, and that these occasions would be for dinner and also for the odd glass of wine. He also estimates that he spoke to Sir Paul over the telephone on average about once a month.<sup>981</sup>

**5.85** Mr Wallis describes the basis of his contact with Sir Paul as being *“the provision of informal PR advice, unpaid and often solicited by him.”*<sup>982</sup> Mr Wallis refuted any suggestions that he had exaggerated the level and nature of his contact with Sir Paul, saying, *“I think what I’ve put in my statement was my memory of it. If his memory of it is different, then that’s unfortunate.”*<sup>983</sup> For his part, Sir Paul said of Mr Wallis:<sup>984</sup>

*“I think over the months he’s become an acquaintance. His company would have been enjoyable, like other people, but to say I was a friend, I think that would be taking it too far ...”*

As to the level of his contact with Mr Wallis, Sir Paul said:<sup>985</sup>

*“... I met Mr Wallis, I think, on the records ... once in 2008, three times in 2009 and twice in 2010, according to the records.”*

**5.86** Sir Paul was absent from work through injury and illness between mid-December 2010 and early April 2011.<sup>986</sup> Operation Weeting had commenced during his period of absence<sup>987</sup> and Sir Paul described his general stance towards NI on his return.<sup>988</sup>

*“... I wouldn’t have refused to engage with anybody from News International, but I do think that once – Weeting was mounted. I was briefed on it briefly when I returned and realised that this was of a different order than we’d, for whatever reason, realised before. I’d have been much more circumspect in meeting with News International, yes.”*

<sup>979</sup> p8, para 1(c), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>980</sup> pp101-103, lines 23-4, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>981</sup> p8, para 1(c), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Second-Witness-Statement-of-Neil-Wallis.pdf>

<sup>982</sup> *ibid*

<sup>983</sup> p103, lines 23-25, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Morning-Hearing-2-April-2012.pdf>

<sup>984</sup> p31, lines 14-17, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>985</sup> p35, lines 11-18, *ibid*

<sup>986</sup> p34, lines 4-7, *ibid*

<sup>987</sup> Part E Chapter 5

<sup>988</sup> p34, lines 12-18, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

**5.87** Specifically in respect of Mr Wallis, Sir Paul acknowledged that following his return to work in April 2011 he:<sup>989</sup>

*“... wouldn’t have wanted to do anything to compromise Weeting by a significant change in behaviour that allowed somebody who may be become a suspect to suddenly see that and start making preparations, but I think it is fair to say that I think it would have been rather clumsy to meet with Mr Wallis after his name entered into my consciousness around these matters. I think that would have been a little clumsy, so I would have tried to avoid that.”*

### Champneys

**5.88** In the event, this incident is entirely irrelevant to the Inquiry but given the allegations which swirled around Sir Paul at the time when this Inquiry was set up, it is necessary to address the issue. Additionally, it forms the background to Sir Paul’s resignation as Commissioner of the MPS in July 2011. In short, Sir Paul underwent surgery to remove a cancerous tumour from within his femur; this was followed by his accidental fracture of the same bone.<sup>990</sup> In January 2011, he accepted an offer to stay at Champneys that was made as an act of kindness by the owner, Steven Purdue, a business acquaintance and close friend of his daughter’s father-in-law.<sup>991</sup>

**5.89** Sir Paul explained that although this was a private arrangement through a family friend, and Champneys Healthcare had no procurement history or activity with the MPS, he nevertheless instructed that it be entered into the Gifts and Hospitality Register.<sup>992</sup> The entry, made on 4 March 2011, was as follows:<sup>993</sup>

*“Provision of accommodation and food at Champneys Medical over five-week period in support of post-operative rehabilitation (provided by a friend through Sir Paul’s family and not in connection with the office of Commissioner).”*

The register, at Sir Paul’s insistence, also noted the person concerned, Stephen Purdue.<sup>994</sup>

**5.90** Sir Paul described his rationale for accepting the offer to stay at Champneys, he said:<sup>995</sup>

*“... I was made the offer, through a close friend of my daughter’s father-in-law, somebody I knew, to assist. He’d heard about my illness and he wanted to assist. I have to say I was initially reluctant to accept it because I think one is generally reluctant very often to accept a very kind offer, but it’s also the case that I was advised medically that I wasn’t fit at that time to attend any other rehabilitative facility. I was still in a wheelchair and still on significant medication, and this possibly represented my best chance of getting back to work as early as possible. That’s the reason I did it ... I felt under significant pressure to get back to work. I think in total I was off for the*

<sup>989</sup> p35, lines 2-18, *ibid*

<sup>990</sup> p17, para 45, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>991</sup> p33, lines 14-15, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; p17, para 45, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>992</sup> pp18-19, para 50, *ibid*

<sup>993</sup> p32, lines 19-24, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>994</sup> pp32-33, lines 25-3, *ibid*

<sup>995</sup> pp40-41, lines 12-16, *ibid*

*best part of four months. I felt under significant personal pressure to return to work as soon as possible, and my clear view was: if I didn't get back within that time, then I wouldn't go back at all, because I do not think you can leave an organisation like the Met, as good as your deputy is – and I think he did a fabulous job in my absence, but I do not think the leader of the Met can be absent for any longer than that and already there was reporting in the media about the absence of the Commissioner and the effect it was having on the Met. I felt I had to get back quickly. If I didn't, I wasn't going to get back at all and I desperately wanted to come back."*

**5.91** It transpired that Champneys had in the past engaged Chamy Media, the public relations firm that Mr Wallis had set up after he left the NoTW, in order to provide it with strategic communication advice and support it. Sir Paul explained that he had no knowledge of any connection between Mr Wallis and Champneys either before or during his stay, and he was not aware of anyone at the MPS who would have been aware of such a connection.<sup>996</sup> Sir Paul stated that he first became aware of the link between Mr Wallis and Champneys on the morning of 16 July 2011, following a telephone call from a member of the DPA after there had been a media enquiry about it.<sup>997</sup>

**5.92** Despite his previous lack of knowledge of any connection between Mr Wallis and Champneys, Sir Paul explained why the disclosure of this information precipitated his resignation:<sup>998</sup>

*"... I've always held a view – and the view was very much influenced by my experience as Deputy Commissioner – that if the story becomes about the leader as opposed to what we do, then that is a bad place to be. For whatever reason, that's where I seemed to be ..."*

He added that:<sup>999</sup>

*"... I think in different circumstances, had I not had the health issue, without wishing to over play it, I might have come to a different conclusion, but it was clear to me that my reaction to the pressures was not in the same way I'd reacted to many pressures in the past and I didn't think I had any alternative out of all sense of honour."*

**5.93** Sir Paul described the connection between Mr Wallis and Champneys as *"damnably unlucky"*<sup>1000</sup> and I fully agree with that assessment. Any suggestion that Sir Paul's stay at Champneys was in some way influenced by its connection with Mr Wallis, or that this was a reward in kind from Mr Wallis for previous favours, is simply not borne out by any consideration of the facts. There is no evidence that Mr Wallis played any role in these events, and this would appear simply to be an unfortunate confluence of circumstances. The Home Secretary and the Mayor of London both expressed surprise and regret at the resignation; Sir Paul described how they expressed full support for him to stay in office.<sup>1001</sup> For her part, the Home Secretary said:<sup>1002</sup>

*"... I'd already had a conversation that weekend with Sir Paul when he'd spoken to me*

<sup>996</sup> p19, para 51, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>997</sup> p19, para 51, *ibid*

<sup>998</sup> p42, lines 14-19, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>999</sup> p43, lines 13-19, Sir Paul Stephenson, *ibid*

<sup>1000</sup> p42, lines 8-9, Sir Paul Stephenson, *ibid*

<sup>1001</sup> p53, para 128, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>1002</sup> p73, lines 6-19, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

*about the allegations that appeared in the newspaper about his stay at Champneys and therefore – he’d given no hint in that conversation at a possible resignation, therefore when he rang me later that weekend to say that he had resigned, obviously that was a surprising turn of events. I feel that he led the Metropolitan Police well when he was Commissioner, and I think ... the organisation at the end of it was stronger for his leadership and it was in that context that I expressed regret that matters had come to this point.”*

- 5.94** Similarly, the Deputy Mayor for Policing, Kit Malthouse did not see any reason why Sir Paul had to resign and said:<sup>1003</sup>

*“... I had been reassured by him and Mr Godwin that the coincidence of the Champneys hospitality and the involvement of Mr Wallis in the PR of that particular establishment was unfortunate, but that the two together had created a perception which Sir Paul obviously didn’t feel he could live with. I personally felt that the good of the organisation and the good of the city, in terms of keeping it safe, outweighed that particular consideration.”*

- 5.95** This part of the story can be concluded with further words from Mr Malthouse who added:<sup>1004</sup>

*“... I don’t think I’m revealing too much confidence in that it became apparent to me that Sir Paul Stephenson was completely shocked when it was revealed that Wallis was involved in Champneys. It seemed to take him totally by surprise, and therefore the coincidence of those two, which ultimately created the public perception which Sir Paul didn’t feel he could continue with, seemed very unfortunate. Unfair.”*

## 6. Calibrating the harm: the views of Commissioners

### Lord Condon

- 6.1** In putting this part of the Inquiry into context, Lord Condon described the history of police malpractice as being cyclical in nature, with the cycle generally taking place over a twenty year period and being something akin to “*scandal, inquiry, remedial action, relaxation, complacency, scandal, inquiry.*”<sup>1005</sup>
- 6.2** Against this backdrop, Lord Condon gave his general views, based on the evidence provided to this part of the Inquiry, about the way in which the relationship between the police and the press had altered since his Commissionership:<sup>1006</sup>

*“Based on what is in the public domain, primarily from what has happened in your Inquiry ... I have been very disappointed and concerned by some of the issues that have emerged, and ... had I still been involved in the service, I would have been probably very angry.”*

- 6.3** In analysing the altering in the relationship between the press and the police, Lord Condon rightly acknowledged the transformational advances in personal communications and the

<sup>1003</sup> pp51-52, lines 19-6, Kit Malthouse, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-29-March-2012.pdf>

<sup>1004</sup> p52, lines 14-21, *ibid*

<sup>1005</sup> p47, lines 18-21, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1006</sup> p46, lines 18-23, *ibid*

ability of the Police Service and the media to interact ethically and unethically since his time as Commissioner. However, he suggested that some things were enduring and transcended technology or ephemeral crises.<sup>1007</sup>

- 6.4** When considering the extent to which the relationship was in need of recalibration, and the methods by which that might be achieved, Lord Condon cautioned against a massive box ticking or bureaucratic approach to any reform.<sup>1008</sup> Lord Condon also suggested that the very public nature of this Inquiry had already generated “*massive corrective action*”<sup>1009</sup> within the Police Service, and said:<sup>1010</sup>

*“... it’s a question of what more needs to be done to be built on that, and so I think I would be confident that ... the Police Service now already feels very different around these issues than it did in the recent, very recent past. I would think that behaviour is fundamentally different now than even the very recent past. And so ... I would be worried about anything which suggested that any contact between police and the media was almost inherently wrong, that the media are given some sort of pariah status, that almost by being in the same room as them is somehow bad, and a massive box-ticking, that every time a policeman was in the same room or within 50 yards of a journalist, they should have to write up an entry ... they would probably do it electronically now, but some sort of record. So I think there could be a massive bureaucratic overreaction which won’t actually help anyone but will be seen as some sort of generalised panacea to the challenge. I think it is about strong leadership, it is about clear guidance, and it’s about the culture of the organisation ...”*

- 6.5** That being said, Lord Condon recognised the danger of simply accepting that the mere existence of the Inquiry had in fact provided a solution to some of the very important issues raised by the evidence that has been heard. This is particularly true given his diagnosis of the Police Service’s historical cycle of malpractice, for he went on to conclude:<sup>1011</sup>

*“... history tells us that unless your report [the final Inquiry report] has within it things which are not ephemeral but are enduring, that do demand checks, that do demand action, that do allow auditing and monitoring and checking of these relationships, then the default position is in 10, 15 years’ time to get to that complacency point on that cycle again ... I think the challenge is to find that something which avoids the massive bureaucracy, which will be superficial, and something that really hits the spot, that does encourage change that is lasting ... there are issues around very strong national guidance around police behaviour in relation to the media, reinforcement of what is appropriate, condemnation of what is wrong, and so on.”*

## Lord Stevens

- 6.6** Although recognising the difficulty in providing an accurate commentary on the current relationship between the MPS and the media given his retirement from the Police Service in 2005, Lord Stevens felt that the culture between the two had changed significantly and understandably in light of the events which precipitated this Inquiry. His perception was

<sup>1007</sup> p24, para 67, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Condon.pdf>

<sup>1008</sup> *ibid*

<sup>1009</sup> p43, lines 22-25, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1010</sup> pp43-44, lines 22-25, *ibid*

<sup>1011</sup> pp48-49, lines 8-3, *ibid*

that the Police Service as a whole was now highly sensitive. He felt that any contact or relationship with the press was likely to be adversely construed and lead to criticism although, parenthetically, he accepted that this was perhaps inevitable given that one of the allegations made against the police had been that there had previously been an overly close relationship with the media.<sup>1012</sup>

- 6.7** Lord Stevens considered this state of affairs to be extremely damaging for British policing given his view that it was absolutely essential to have transparency and openness. He said:<sup>1013</sup>

*“What I’ve heard, people are absolutely terrified of picking up a phone or speaking to the press in any way, [shame sic] shape or form and I don’t think that’s healthy. The press have a job to do. They deliver, on occasions, some outstanding work, especially investigative journalism sometimes. There has to be a relationship between the police and the media for the right reasons.”*

- 6.8** Lord Stevens’ assertion that it is absolutely essential for there to be transparent and open relationship between the police, the press and the public is a view that I both share and endorse. Perhaps, however, he went one stage further by suggesting that there may be a causal relationship between the heightening of community tensions and public concern over the actions of the police exacerbated by a lack of community engagement through the media.<sup>1014</sup> Lord Stevens told the Inquiry:<sup>1015</sup>

*“... in my time as Commissioner, I had two high profile shootings, one down at Brixton and the other was, of course, Mr Stanley at Hackney. One, it’s very important to get down there as quickly as you can and sometimes take a fair bit of abuse, as I certainly did in Hackney when I went down there. But secondly, you have to get your message out through the media, which most people are looking at, especially in this day and age ... in terms of Twitter and the rapidity of communication. If you do not deal with that very, very quickly indeed, in terms of saying why you have been involved in a shooting or why you’ve done the actions you’ve done, then the whole thing will just escalate in a way that leads to massive public disorder, and any kind of research and knowledge of what takes place in these issues, whether it be in America or other parts of the world, comes out with a specific lesson that the message must be out there as quickly as you can of why the police did what they did and the media have to be the major part of doing that.”*

- 6.9** Lord Stevens concluded his evidence by summarising the current position in light of the evidence heard by the Inquiry with an eye also on the future policing landscape. He said:<sup>1016</sup>

*“... I’m sure everyone ... believes in freedom of the press, but there needs to be some structure and some monitoring processes ... Something has to come out in terms of the monitoring and some kind of reinforcement of how the police act, I think.”*

<sup>1012</sup> pp99-100, lines 24-4, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>; p18, para 51, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>1013</sup> p99, lines 16-23, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1014</sup> pp18-19, paras 52-53, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>1015</sup> pp100-101, lines 5-6, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1016</sup> p14, lines 4-10, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-6-March-2012.pdf>

## Lord Blair

- 6.10** Lord Blair’s general reaction to evidence provided to the Inquiry was similar to that of Lord Condon, for he said:<sup>1017</sup>

*“If you’re referring to the level of contact with the media, then yes, I have concerns about that and I particularly have concerns, if it’s true, and I believe it is ... that there were a large number of dinners and large amounts of alcohol, and that would worry me.”*

Lord Blair described the overarching nature of his concerns in these terms:<sup>1018</sup>

*“... I think it’s twofold. One is the perception not only of the public but of the more junior officers, who must look at this and wonder whether this is a proper use of public time and public money. And secondly, the very perception ... that it is very difficult not to put these two situations together in terms of the failure to investigate [a reference to Operation Carylaid] and the levels of contact, and not see a reference between them ...”*

- 6.11** As for a solution to the issues raised by this part of the Inquiry, Lord Blair questioned whether further specific guidance, other than a requirement for absolute transparency, was necessary. He argued that the more complicated the codes of conduct or practice in any organisation become, the more complex is the task of enforcing them. Lord Blair stressed that it was important that any regulation did not become too over-prescriptive and said that what mattered more was the establishment of proper boundaries and the inculcation of a culture that would then impose an expectation that officers would act professionally and responsibly. Moreover, he suggested that any set of regulations covering the media would rapidly be overtaken by the developments of social media and citizen journalism. Lord Blair therefore argued for a set of principles which would guide practice.<sup>1019</sup>

- 6.12** Lord Blair expanded on this point and told the Inquiry:<sup>1020</sup>

*“... I am of the view that for too much of the police’s time over the years there has been an emphasis on disciplinary codes and regulations rather than on the values of the organisation. One of the things that I did when I became Commissioner was to ask 5,000 members of staff what kind of organisation they wanted to belong to and what should its values be, and that was what we used in terms of the training of our senior officers, the transformational values of an organisation, and I would want to emphasise that it’s this aspiration to professional propriety that seems to me to be so important, rather than a set of regulations about what you mustn’t do.”*

- 6.13** In making this point, Lord Blair acknowledged the extreme difficulty in achieving a cultural shift, particularly in an organisation as large as the Police Service, and agreed therefore that what may be required was a combination of that element with some clear ground rules which were not overly prescriptive and thereby, because of their complexity, unworkable.<sup>1021</sup>

<sup>1017</sup> pp76-77, lines 24-4, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>1018</sup> p77, lines 7-15, *ibid*

<sup>1019</sup> pp28-29, para 67, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>1020</sup> p81, lines 7-20, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>1021</sup> pp81-82, lines 21-13, *ibid*

## Sir Paul Stephenson

- 6.14** Sir Paul considered HMIC’s report ‘Without Fear or Favour – A review of police relationships’ to be a “*sound piece of work*” and he agreed with the conclusions contained within.<sup>1022</sup> In moving forward, Sir Paul argued that the issue was one of “*personal and organisational values, professionalism and integrity accompanied by effective communication and appropriate checks and balances for the creation and maintenance of confidence.*”<sup>1023</sup> This he suggested must come from within the Police Service and could not be imposed from outside.<sup>1024</sup>

## Commissioner Hogan-Howe

- 6.15** Commissioner Hogan-Howe reinforced Lord Stevens’ view that the future relationship between the police and the media must be based on a principle of openness. This, he suggested, would allow the public and their representatives to hold the police to account for their relationships with the media and would also serve to remove any suspicion about that relationship.<sup>1025</sup> The Commissioner candidly admitted in his evidence to the Inquiry that concerns about the relationship between the MPS and the press generally were clearly an issue on his arrival into the role in September 2011.<sup>1026</sup>
- 6.16** The Commissioner confirmed that there was an organisational concern that the relationship between certain sections of the MPS and the media had become overly close, and that view corresponded with feedback the organisation was receiving both internally and externally. He said:<sup>1027</sup>

*“That was the concern that seemed to be in the public mind. I think even within the Met there were concerns about that. I think people have acknowledged that over time – although, in my view, the policy I think Sir John, now Lord Stevens, had established during his time, I think, in spirit was the right spirit, that probably the practice of that strategy had led to ... too close a relationship with the press, and that was the feedback I was getting both from within the organisation and from those who cared about it from the outside.”*

- 6.17** Given these facts, Commissioner Hogan-Howe acknowledged that there was a clear need to review the existing procedures governing the relationship between the MPS and the media.<sup>1028</sup> He also put forward his belief that as an organisation, the MPS had already begun to reset that relationship in the recognition that in future it needed to be more open and transparent with the public.<sup>1029</sup>
- 6.18** In seeking to tackle these wider organisational issues, Commissioner Hogan-Howe accepted the broader point that the relationship of the police with the media was only one element of the problem and that, to truly bring about long lasting cultural change, the Police Service

<sup>1022</sup> p42, para 107, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>1023</sup> p42, para 108, *ibid*

<sup>1024</sup> *ibid*

<sup>1025</sup> p10, para 22, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>1026</sup> p2, lines 2-25, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>1027</sup> p4, lines 3-13, Commissioner Bernard Hogan-Howe, *ibid*

<sup>1028</sup> p10, para 23, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>1029</sup> p12, para 28, *ibid*

generally must have a clear sense of what was right and what was wrong. He expanded on this point and said:<sup>1030</sup>

*“I think Elizabeth Filkin says if we only concentrate on our relationship with the press, we will probably miss the point in terms of some of the issues we have to address. So I accept that broad point. This is a symptom of something that we have to address. I suppose we have many guides in coming to that integrity issue of ... what standard do we apply. So we have the Nolan principles. We have the oath that we swear to uphold the palace impartially. And ... ACPO has carried out various pieces of work about ethics. So therefore there is a body of knowledge which we can use as points for referral, but I don't think they're too unique. You can say that, but I'm not sure they're unique to the police. I think there are other organisations which would observe similar principles of integrity and probity. So for me that's important. Probably the second point for me is that – I know I'm going to refer a little to Merseyside, but I've only been back in the Met for a few months, so my most profound experience of leading an organisation was in Merseyside, but within a year we'd come to our own judgment about what our values were and the only guide I gave was I didn't want us to have more than four. You can have a long list which no one can remember or you can have some that can really guide people in the moral dilemmas that sometimes policing delivers. So we agreed four that the organisation consulted on and we came up with four that certainly I could stand by, and we'll do something similar in the Met. I'm not sure it's right always to impose values, but I think there are things that you, as an organisation, stand for ...”*

## 7. The question of corruption

7.1 In setting the historical context to this issue, Lord Condon observed that:<sup>1031</sup>

*“History suggests that corruption in the MPS is cyclical. Sir Robert Mark as Commissioner confronted this issue and 20 years later I was confronted with a similar challenge.”*

Lord Condon went on to explain that within days of taking office he was made aware by his senior team of the challenges the organisation faced. He also described the types of corruption that were identified:<sup>1032</sup>

*“... in any major big city police service in the world, whether it's London or equivalent major cities anywhere in the world, there will always be a small number of police officers, sadly, who are drawn into corrupt criminal practice, and it can vary from relatively minor right the way up to the most serious criminal offences.”*

7.2 The corruption described by Lord Condon was motivated primarily by financial gain and was not, at this stage, linked to the media.<sup>1033</sup> He explained that from taking office in 1993, it took him until 1997/98 successfully to lobby for changes to the police disciplinary regulations to make it easier to deal with corrupt officers.<sup>1034</sup>

<sup>1030</sup> pp42-43, lines 4-11, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>1031</sup> para 48, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Condon.pdf>

<sup>1032</sup> pp4-5, lines 20-1, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1033</sup> p5, lines 6-18, Lord Condon, *ibid*

<sup>1034</sup> pp5-6, lines 25-13, Lord Condon, *ibid*

*“... Part of my agreeing to become Commissioner was an acceptance that I wanted to be and needed to be a reforming Commissioner around a number of issues. One of them was police discipline, which I felt at the time made it very difficult or unnecessarily and unwisely difficult to deal with bad officers ... Via evidence to the Home Affairs Select Committee and lobbying politicians and the media generally ... the police discipline regulations were eventually changed, for the better, I believe, in the public interest, and ... it took until 1999, and then the amended police regulations made it easier to deal with bad officers.”*

- 7.3** Lord Condon also introduced a number of policies aimed at maintaining integrity within the MPS which culminated in the launch of an anti corruption strategy in December 1998. It was contained in Special Notice 36/1998, ‘Corruption and Dishonesty Prevention Strategy’.<sup>1035</sup> In relation to the strategy, he said:<sup>1036</sup>

*“... this was really the culmination of a number of years. 1997, 1998 were particularly busy ... Early in 1998, I remember, with warrants, we raided the homes of about 30 serving and retired police officers and started some major corruption inquiries into criminal matters. And then I wanted, before the end of 1998, to draw together in one document our ongoing determination to deal with malpractice, however it manifested itself, and so this document, clearly though not perfect, was an attempt to bring together and make it absolutely clear to people what the rules of engagement were.”*

- 7.4** An anti-corruption strategy was certainly not a new concept within the Police Service and other versions had existed prior to the implementation of this particular Special Notice.<sup>1037</sup> As Lord Condon explained:<sup>1038</sup>

*“... All police forces are against corruption, aren’t they? They wouldn’t be for it. And so I’m not being trite, but there would have been rules in all police forces at all times which would embrace the criminal law for dealing with criminal behaviour by police officers. There would have been disciplinary measures. But this was bringing it together in a special order, reinforcing the importance of it, rebriefing every senior officer in the service, down to and including chief superintendents, with briefings about what we were doing, how serious we were, and then briefings beyond that, so that everyone in the Met, by the end of 1998, would have been in no doubt, in no doubt, how serious we were about dealing with these issues.”*

- 7.5** The strategy identified six strands – Prevention and Detection; Inclusion; Focus and Accountability; Supervision and Leadership; Security, Screening and Vetting; and Corruption and Dishonesty Proofing. Each strand identified a number of delivery objectives with the initial phase designed to last three years. The philosophy of the strategy was *“that the MPS will continuously invest effort and resources into assuring the highest levels of integrity for all time.”*<sup>1039</sup> Lord Condon confirmed that the strategy had been intended to last beyond

<sup>1035</sup> pp6-7, lines 14-21, Lord Condon, *ibid*; Special Notice 36/98, ‘Metropolitan Police Service – Corruption and Dishonesty Prevention Strategy (December 1998), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-26-Special-Notice-36-98-MPS-Corruption-and-Dishonesty-Prevention-Strategy.pdf>

<sup>1036</sup> p8, lines 10-23, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1037</sup> p8, line 25, *ibid*

<sup>1038</sup> pp8-26, lines 25-13, *ibid*

<sup>1039</sup> Special Notice 36/98, ‘Metropolitan Police Service – Corruption and Dishonesty Prevention Strategy (December 1998), <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-26-Special-Notice-36-98-MPS-Corruption-and-Dishonesty-Prevention-Strategy.pdf>

his tenure as Commissioner. His successor to that role, Lord Stevens, had been Deputy Commissioner at the time that the policy was promulgated and was said by Lord Condon to have been *“fully supportive of it and carried it forward.”*<sup>1040</sup> As to whether he believed it to have been a success, Lord Condon said:<sup>1041</sup>

*“Yes, I believe it was. If it hadn’t been, I would have taken, with senior colleagues, remedial action. I honestly believed at the time that this was probably one of the most demanding and appropriate sets of policies for dealing with malpractice of any major city in the world, and in fact we were visited by police forces from around the world who sought to replicate parts of it.”*

**7.6** Lord Stevens explained that having been appointed Deputy Commissioner of the MPS in 1998, he had been given specific responsibility for the modernisation of the organisation and for overseeing the fight against corruption within the MPS.<sup>1042</sup> On becoming Commissioner, Lord Stevens recorded that there were concerns within the organisation about bribery of personnel by the media and suggested that it had been a continual battle to fight this form of corruption.<sup>1043</sup> He said:<sup>1044</sup>

*“Corruption is always there in a Police Service the size of the Metropolitan Police, and every now and again I was hearing stories that people either within the service or who had retired from the service might well be paid for newspaper reports, or tipping people off as to where certain raids were taking place, and therefore a strong anti-corruption strategy and squad was essential.”*

**7.7** Lord Stevens explained that the concerns were expressed at quite a high level of generality and did not relate to any specific sections of the media. Despite these ongoing concerns, Lord Stevens believed that the Corruption and Dishonesty Prevention Strategy implemented during Lord Condon’s period as Commissioner had achieved *“a great deal”*, and had brought about a change in culture *“through making sure there was a process by which corruption could be reported and ensuring that any personnel involved were arrested and prosecuted.”*<sup>1045</sup>

**7.8** During the course of the Inquiry there were a small number of references to historic corruption within the Police Service. Sir Harold Evans, former editor of The Times, gave evidence that The Times had made a surreptitious recording of a transaction:<sup>1046</sup>

*“... between a corrupt policeman and a crook, and that led to the complete reform of Scotland Yard, and then Sir Robert came in, Robert Mark came in, and Scotland Yard began rooting out really massive corruption ...”*

**7.9** Perhaps of more relevance to the Inquiry was the evidence of Jeff Edwards, former chief crime correspondent of the Daily Mirror, who alleged that whilst working as a staff reporter for the NoTW (he worked for that newspaper between 1981 and 1985) he was in effect asked to use

<sup>1040</sup> p11, lines 1-6, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1041</sup> p12, lines 16-23, *ibid*

<sup>1042</sup> pp3-4, para 10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>1043</sup> pp30-31, para 84, *ibid*

<sup>1044</sup> p109, lines 6-13, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>1045</sup> p31, para 86, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Stevens.pdf>

<sup>1046</sup> p6, lines 8-20, Sir Harold Evans, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-17-May-20124.pdf>

the newspaper's funds to bribe police officers for information. He suggested that this had taken place in late 1983 or the beginning of 1984 and described the circumstances relating to the request:<sup>1047</sup>

*"... the world of working in a Sunday paper environment is quite different from that, I discovered, working for, say, a London evening paper, as I had been previously, and I found the adjustment quite difficult. And it became apparent, I suppose, that I wasn't doing the job to the satisfaction of my then boss, my news editor, and he became quite animated about this issue and we had a discussion one day ... it's one of these things that you never forget, frankly, and he said to me, "Look, you have to up your game, you have to up your performance", and I said, "Well, it's really difficult. You know, I'm struggling to make the adjustment to this different world" and so forth, and he said to me, "Look, there's money available; you should be out there spending it on your contacts" ... I can't remember exactly how the dialogue flowed now, but I said, "I'm sorry, but are you suggesting?" and he said, "Well, you know, you need to sort of put some inducements out there", and I said, "Right, okay", and I sort of recoiled from this, but he was my boss so I dealt with it in a measured way and I went away and I thought: did I hear this correctly? Anyway, about three or four weeks later, clearly my performance was still not satisfactory, and he took me to one side and he was quite cross me, I suppose it's fair to say, and he said to me, "Look, have you taken up my suggestion? I don't see anything here. You're not invoicing me for money to be splashed about. You should be essentially bribing more police officers." At the time, and I realised it was probably an unwise thing to do, but I said, "I don't think I came into journalism to do that sort of thing, and also, isn't there a contradiction here? Part of what we're about is exposing wrongdoing in public life, and here you are suggesting ..." you know, anyway clearly the debate was over at that point, and a couple of weeks later I was removed from the post and replaced. I wasn't removed from the company, I was simply moved to work away from crime reporting. It was 30 years ago, I can't talk about how things proceeded after that, but I thought it was indicative of the culture in that particular organisation at the time."*

- 7.10** This reported exchange would appear to suggest that the practice of providing inducements to police officers was relatively commonplace at that time, although Mr Edwards asserted that he did not observe any of his colleagues participate in such behaviour.<sup>1048</sup> Given that nearly 30 years have elapsed since this purported incident took place, I provide it as a historical illustration only. It is certainly not evidence of a culture that currently exists within the Police Service or the media, although recent events (investigated in Operation Elveden) suggest that there remain legitimate concerns that payments by journalists to police officers have continued in some form.
- 7.11** Of a more contemporaneous nature was the evidence of Bob Quick. Mr Quick joined the MPS as a police officer in 1978 and served in a variety of roles during his career in the Police Service.<sup>1049</sup> Of most relevance to this section of the Report was his time spent within the MPS' Anti-Corruption Command. In 1999, Mr Quick was appointed Detective Superintendent Operations at the newly formed Anti-Corruption Squad, and then in February 2000 he was appointed the Commander of CIB, which included the investigation arm of Anti-Corruption

<sup>1047</sup> pp105-107, lines 10-2, Jeff Edwards, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

<sup>1048</sup> p107, lines 3-7, *ibid*

<sup>1049</sup> pp1-3, paras 1-7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Bob-Quick.pdf>

Command and Complaints within the MPS.<sup>1050</sup> The new Command was established in response to significant intelligence indicating serious corruption was being perpetrated by a minority of officers within the MPS.<sup>1051</sup> Mr Quick explained that through a long term covert operation named ‘Operation Othona’, which ran between 1993 and 1998, a strategic picture of the corruption threat within the MPS was formed. One of the identified threats was the unauthorised disclosure of sensitive information by police officers to journalists for payment.<sup>1052</sup>

- 7.12** Of direct relevance to this threat was ‘Operation Nigeria’, a covert investigation conducted by Anti-Corruption Command during 1999, which infiltrated the office premises of a private detective agency, one of the proprietors of which was a former police officer. Mr Quick explained that during the course of Operation Nigeria, it became clear that, amongst other activities, the agency was acting as a ‘clearing house’ for stories for certain newspapers. He suggested that many of the stories were being leaked by police officers who were already suspected of corruption, or by unknown officers connected to officers suspected of corruption, who were found to have a relationship with Southern Investigations.<sup>1053</sup> To the best of Mr Quick’s recollection, this involved newspapers from more than one group.<sup>1054</sup> He said:<sup>1055</sup>

*“During the operation it became clear that officers were being paid sums of between £500 and £2,000 for stories about celebrities, politicians, and the Royal Family, as well as police investigations.”*

- 7.13** Mr Quick explained that as a result of the intelligence garnered from Operation Nigeria, in about 2000, he had written a short report highlighting the role of journalists in promoting corrupt relationships with, and making corrupt payments to, police officers for stories about famous people and high profile investigations in the MPS.<sup>1056</sup> Given the passage of time the report is no longer available, however, Mr Quick described his purpose in writing it:<sup>1057</sup>

*“... I and others in my command became concerned about these relationships between journalists and police officers who were suspected of corruption, and it became apparent that some officers were being bribed to provide stories; some of the officers were providing them directly or from their own contacts within the Metropolitan Police, and I formed the view that that was a threat to the organisation and compiled a short report, to my recollection, proposing that we might deal with that by way of an investigation that looked at the financial transactions.”*

- 7.14** Furthermore, Mr Quick said that he believed:<sup>1058</sup>

*“... that the journalists that were paying the bribes were not paying them from their own funds, and the intelligence and evidence revealed payments of between £500 and £2,000, and therefore we believed that they were claiming that money back from their employers, and that one of two possibilities arose: that they were falsely claiming that money back by purporting it to be for a reason other than payments*

<sup>1050</sup> p1, para 2, *ibid*

<sup>1051</sup> pp3-4, para 8, *ibid*

<sup>1052</sup> pp3-4, para 8, *ibid*

<sup>1053</sup> p4, para 9, *ibid*

<sup>1054</sup> p86, lines 2-8, Bob Quick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>1055</sup> p4, para 9, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Bob-Quick.pdf>

<sup>1056</sup> p5, para 12, *ibid*

<sup>1057</sup> pp87-88, lines 21-6, Bob Quick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>1058</sup> p88, lines 10-19, Bob Quick, *ibid*

*to police officers, or indeed the newspapers were in some way complicit in those payments.”*

**7.15** Mr Quick recalled that he submitted the report to Andy Hayman, who was at that time his direct report as the head of the MPS Professional Standards Department.<sup>1059</sup> Mr Quick said that Mr Hayman *“had reservations based on potential evidential difficulties pertaining to privileged material (journalistic material)”*.<sup>1060</sup> As has become clear, similar concerns were advanced in relation to Operation Caryatid and the application of PACE.<sup>1061</sup>

**7.16** Mr Quick was unable to say whether Mr Hayman referred this issue further up the command chain *“although I was under the impression he had.”*<sup>1062</sup> He said:<sup>1063</sup>

*“... it was an issue that he took time to think about, and I think the conversation went over a number of days, if not more than that, and I do recall a conversation with Commander Hayman about the evidential challenges. Did we have a perfect case upon which to launch the investigation? Well, no, but we certainly had material that gave us a very strong suspicion that these journalists were making these payments, and therefore we debated the strength of the evidence and some of the complexities related to journalistic privilege or journalistic material. I was of the view that the offences we were looking at were essentially fraud offences and that it wouldn’t necessarily offer any protection or be relevant, but in the end the discussion resulted in the decision that at that moment in time it was too risky to launch an investigation at that time.”*

**7.17** Mr Quick made clear that he felt that Mr Hayman was entirely sincere in his reservations at the time but he did not necessarily agree with his conclusions:<sup>1064</sup>

*“I don’t think we agreed. I proposed it firmly in the belief that there was a line of inquiry into what appeared to be a significant threat to the integrity of the organisation. I accept there were many practicalities and risks with taking that action, and I do feel that Commander Hayman prosecuted his arguments with all sincerity.”*

Beyond what he had learnt through Operation Nigeria, Mr Quick said that by the end of 2000 it was his belief that there was a common understanding within the MPS of the threat that tabloid journalists posed to the integrity of police officers. He said that there was a *“considerable ground to believe”* that journalists from tabloid newspapers were:<sup>1065</sup>

*“... corrupters, driven by intense competitive pressures to use unethical and unlawful means to secure stories that included corrupting police officers through payments.”*

**7.18** Mr Quick went on to say:<sup>1066</sup>

*“... I think to the best of my recollection the Metropolitan Police had accumulated a*

<sup>1059</sup> pp5-6, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Bob-Quick.pdf>

<sup>1060</sup> pp5-6, para 13, *ibid*

<sup>1061</sup> Part E Chapter 4

<sup>1062</sup> pp5-6, para 13, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Bob-Quick.pdf>

<sup>1063</sup> p89, lines 8-24, Bob Quick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>1064</sup> pp89-90, lines 25-11, Bob Quick, *ibid*

<sup>1065</sup> p6, para 15, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Bob-Quick.pdf>

<sup>1066</sup> pp91-92, lines 14-2, Bob Quick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

*huge volume of intelligence relating to the integrity of the organisation from a wide range of sources. We'd had the Operation Othona running for five years, and as time passed, a picture began to emerge of a serious threat ... involving ex-officers who had left the service, possibly having been prosecuted or left after a discipline case, and journalists, so the officers that had moved into the private investigation arena, and there was an example here with [this private detective agency], but there were others, and journalists, and the trading of stories. And that picture slowly emerged in the late 1990s and early part of the last decade."*

**7.19** The behaviour referred to was frank corruption, that is to say a belief was formed that money was changing hands for stories. It would appear that this threat has not dissipated over time. From a perception standpoint (albeit again with the benefit of hindsight), it is perhaps concerning that this historical understanding of the threat posed by the nexus between serving or former police officers and journalists, and the methods by which certain journalists were obtaining stories was not heeded, particularly in the context of Operation Carylind and the police's understanding of the scale of the problem during the course of that investigation.<sup>1067</sup>

**7.20** Moving matters forward, the extensive scrutiny of how the police handled the phone hacking affair understandably led to concerns about police integrity and corruption more generally. As I have already covered in various sections of the Report, a series of reports were commissioned in parallel to this Inquiry: one from Her Majesty's Chief Inspector of Constabulary on police integrity; one from Elizabeth Filkin on the relationship between the MPS and the media; and the IPCC were asked by the Home Secretary to report on its experience of investigating complaints of police corruption.

**7.21** Her Majesty's Inspector of Constabulary, Roger Baker, informed the Inquiry that HMIC, through its review, did not find:<sup>1068</sup>

*"... evidence to support any contention of endemic corruption in Police Service relationships, either in relation to the media or more generally, with the majority of police officers and staff striving to act with integrity."*

However, HMIC concluded that many forces were insufficiently risk aware. He identified as specific weaknesses the *"absence of clear boundaries"* regarding outside relationships and the *"lack of consistent standards, policies and procedures"* across forces.<sup>1069</sup> In so doing, Mr Baker noted the importance of public perception as well as the reality, and called for a *"nationally agreed"* approach to proactive governance and oversight of this issue.<sup>1070</sup>

**7.22** The ACPO lead on Professional Standards, Chief Constable Mike Cunningham, said that he believed that the *"out and out bribery"* of police personnel by the media was confined to *"rare and isolated"* occasions.<sup>1071</sup> His basis for this assertion was the *"evidenced ability and willingness of the service"* to identify the potential for corruption.<sup>1072</sup> He also cited the advent

<sup>1067</sup> Part E Chapter 4

<sup>1068</sup> p9, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1069</sup> pp12-13, para 56, [http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker\\_HMIC.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker_HMIC.pdf)

<sup>1070</sup> pp75-76, lines 14-8, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>1071</sup> p12, para 14, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Mike-Cunningham.pdf>

<sup>1072</sup> p12, para 14, *ibid*

of the Bribery Act 2010 as reinforcing HMIC’s findings that there was no evidence of endemic corruption in police relationship with the media.<sup>1073</sup>

**7.23** Similarly, the overriding message that can be drawn from the second report of the IPCC (Corruption in the police service in England and Wales which is based on the IPCC’s experience from 2008 to 2011) is that corruption within the Police Service is not widespread, nor is it considered to be so. Quite rightly, however, the report points out that where corruption exists, it is corrosive of the public trust that is at the heart of policing by consent.<sup>1074</sup> Largely as a result of the findings contained within the aforementioned reports, the Home Secretary concluded that:<sup>1075</sup>

*“... looking at these issues, the vast majority of police officers and staff are striving to act with integrity, and instances where there are questions to be raised are very limited.”*

**7.24** Mrs Filkin in her report stated that:<sup>1076</sup>

*“Most inside the MPS think that payment for information is received by few. This conflicts with what some journalists have told me and with what some have now said to the Leveson Inquiry. The facts may be clearer when the current MPS enquiries are completed.”*

Mrs Filkin recorded suggestions of frank corruption, that is to say police officers receiving payment for information; she accepted, however, that she could not confirm whether or not the allegations were true given that they were made in very general terms.<sup>1077</sup>

**7.25** It is in this context that it is necessary to consider Operation Elveden,<sup>1078</sup> which is an investigation commenced by the MPS on 20 June 2011 when News International disclosed material that indicated that police officers had allegedly been receiving payments from journalists from the News of the World for the provision of confidential information.<sup>1079</sup> In attempting to quantify the breadth of the problem, Assistant Commissioner Cressida Dick observed that she did not think that corruption was *“widespread or endemic”*,<sup>1080</sup> and described how she had come to form that view:<sup>1081</sup>

*“I suppose it’s based on ... a quite considerable length of service now, and a fairly considerable interest in these issues. So I have, you know, over the years, read quite a lot of research on the subject. I have spoken to colleagues in our police forces, I’ve worked with and in professional standards, and I know, from colleagues and surveys,*

<sup>1073</sup> p12, para 14, *ibid*

<sup>1074</sup> IPCC Report - Corruption in the police service in England and Wales: Second report – a report based on the IPCC’s experience from 2008 to 2011, published May 2012, p4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/IPCC-Corruption-in-the-Police-2nd-Report.pdf>

<sup>1075</sup> p71, lines 1-9, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

<sup>1076</sup> p16, para 3.1.4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>1077</sup> pp110-111, lines 23-15, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>1078</sup> Part E Chapter 5

<sup>1079</sup> p1, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Second-Witness-Statement-of-DAC-Sue-Akers1.pdf>

<sup>1080</sup> pp18-19, para 47, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-AC-Cressida-Dick.pdf>

<sup>1081</sup> pp45-46, lines 18-12, Assistant Commissioner Cressida Dick, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

*how absolutely appalling the vast majority of officers and staff regard such behaviour, but I do acknowledge that there has been and no doubt is some of this going on. I don't think we'll be unique in that. We have to try to reduce it to a minimum and I think hopefully get rid of it, but as Lord Condon said, we have to then keep the pressure on ... I genuinely believe that the Police Service that I am now in is less corrupt than it has ever been, and I hope that continues. This is an element which is causing concern within the service and to the public, and we need to really ... assess the full extent and then deal with it."*

**7.26** In a similar vein, Peter Clarke, formerly an Assistant Commissioner in the MPS, suggested that in his 30 years of service he could not recall *"ever being involved in a case or incident where bribery of a police officer by the media was suspected."*<sup>1082</sup> Lord Blair said that he was sure that bribery by the media of police officers *"has happened and does happen."*<sup>1083</sup> However, he believed that the number of officers taking money would be *"relatively small and they will be of relatively low rank."*<sup>1084</sup> On this later point, he explained:<sup>1085</sup>

*"... we did an analysis some years ago of what the corruption problem being faced by the Met was, it was reasonably clear that we had broken network corruption of networks of officers, but the individuals were still out there and one of the trades was information ... sitting in front of computers and so on is more likely to be somebody of a lower rank and quite often not a police officer, but a police employee. But I think also, most importantly of all is that senior officers have been through a long process of training and of inculcation of organisational values and I would be very concerned if I was seeing that senior officers were amenable to corruption in the same way as somebody else, somebody more junior. We would have failed."*

**7.27** He therefore found it *"inconceivable that senior colleagues would be taking money directly in this day and age. I just don't think that is possible."*<sup>1086</sup> Even in respect of the most junior officers and staff, Lord Blair was confident in his belief that they would have *"understood the stance of the organisation against bribery and other forms of corruption, the lengths to which the organisation would go to uncover it and the penalties for being caught in corrupt activities."*<sup>1087</sup> Lord Blair concluded by observing:<sup>1088</sup>

*"I accept Lord Condon's remark that the MPS is the 'cleanest big-city police force in the world', although I also accept that corruption is not cyclical but a permanent and evolving threat. I believe that, in the countering of that threat, the MPS is amongst the finest forces in the World."*

**7.28** Specifically in relation to police staff. Dick Fedorcio, former Director of Public Affairs for the MPS, suggested that he had no *"specific evidence or experience of bribery of DPA personnel."*<sup>1089</sup> Moreover, he said that because he had been closer to DPA personnel and their activities than police officers he had been in a better position *"to spot suspicious activity"* and therefore he

<sup>1082</sup> p24, para 49, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Peter-Clarke.pdf>

<sup>1083</sup> p19, para 47, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>1084</sup> *ibid*

<sup>1085</sup> pp47-48, lines 21-13, Lord Blair, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-7-March-2012.pdf>

<sup>1086</sup> p43, lines 1-3, Lord Blair, *ibid*

<sup>1087</sup> pp19-20, para 48, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>1088</sup> *ibid*

<sup>1089</sup> p11, para 44, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Dick-Fedorcio.pdf>

did not believe that *“any personnel with the DPA have received bribes from the media.”*<sup>1090</sup> That being said, Mr Fedorcio suggested that whilst he had no specific evidence or experience of bribery of police officers or staff by the media it would be *“naïve to assume it has not taken place at some time.”*<sup>1091</sup>

**7.29** Sir Paul Stephenson said that he had *“no doubt that incidents of bribery do occur.”*<sup>1092</sup> He also agreed with the IPCC’s analysis that where incidents of corruption do take place *“they undermine the integrity of the force and damage the reputation of the service significantly.”*<sup>1093</sup> However, like others, he was confident that corruption involved *“only a tiny fraction”* of MPS staff.<sup>1094</sup> As to this, he said:<sup>1095</sup>

*“I think there is very little one can do in terms of normal rules and governance to stop people behaving badly or corruptly. To deal with that, I think you have to do many other things, including right lines and various ways of investigating and looking in intelligence. So I don’t think there’s a great deal you can do if people are determined to behave unprofessionally. What you can do is put in place a sensible system and approach that reminds people that they should be behaving professionally. And the vast majority did. It was just a small minority, in my view.”*

**7.30** The current Commissioner of the MPS, Bernard Hogan-Howe, said that the MPS *“works very hard to drive out corruption.”*<sup>1096</sup> He recognised, however, that:<sup>1097</sup>

*“... there will be a very small minority of staff who act corruptly. We do not underestimate the damage this does to policing. It undermines the good work of the vast majority of honest and hard working MPS employees.”*

He also explained that any member of MPS personnel found to have accepted bribes:<sup>1098</sup>

*“will, where the evidence allows, be subject to criminal charges or disciplinary procedures depending on the legal advice at the time.”*

**7.31** Training and guidance are obviously important preventive tools in seeking to address this issue. The relevant overarching guidance in this area is provided, first, through the ACPO Counter Corruption Advisory Group (ACCAG), whose ‘Guidance for the Investigation of Corruption’ was first published in 2003 and last formally revised in 2006 – this guidance has been adopted by all chief officers;<sup>1099</sup> secondly, the recognised ‘Standards of Professional Behaviour’ are set out in the Schedule to the Police (Conduct) Regulations 2008 and the related Home Office guidance (026/2008) on police unsatisfactory performance and misconduct procedures, and Standards of Professional Behaviour for Police staff, as agreed by the Police Staff Council –

<sup>1090</sup> p11, para 44, *ibid*

<sup>1091</sup> p11, para 43, *ibid*

<sup>1092</sup> p25, para 67, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>1093</sup> *ibid*

<sup>1094</sup> *ibid*

<sup>1095</sup> pp14-15, lines 17-3, Sir Paul Stephenson, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>1096</sup> p23 para 63, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>1097</sup> *ibid*

<sup>1098</sup> p23 para 62, *ibid*

<sup>1099</sup> pp4-6, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Mike-Cunningham.pdf>

again, this guidance has been adopted by all police forces, including the MPS.<sup>1100</sup> Both sets of guidance are currently under review and are dealt with in more detail below.

- 7.32** Commissioner Hogan-Howe explained that training is provided to MPS staff via its Professional Standards Support Programme (PSSP) which was established in 2009-2010. This saw training delivered to a proportion of the operational front line staff *“as to how to deal with a corrupt approach, using case studies, as well as debt awareness training.”*<sup>1101</sup> The training was not mandatory, but Mr Hogan-Howe estimated that it was delivered to *“12,500 members of operational staff and various other business groups, including the Information and Resources Directorate.”*<sup>1102</sup> Similar evidence was provided by other forces. Simon Ash, Chief Constable of Suffolk Constabulary, for example, said that its Professional Standards Department delivered training regarding *“the expected standards of professional behaviour.”*<sup>1103</sup> Chris Sims, Chief Constable of West Midlands Police, said that all of his officers had *“received significant training around culture and values and all supervisors receive technical training on anti-corruption measures.”*<sup>1104</sup>
- 7.33** In summary, the best present analysis would suggest that although corruption is not widespread in the Police Service, where it does exist it has a corrosive effect on public confidence in the service as a whole. Until the outcome of the investigations contained within Operation Elveden, however, it is not possible to go further.
- 7.34** Evidenced by the guidance and training currently in place, and the vigour with which individual police officers and police staff are pursued where criminality is identified, it is clear that the Police Service takes this issue seriously. There are, however, gaps and weaknesses in the collective approach to the issue a number of which have been identified by HMIC. Having said that, I am in no doubt that the Police Service is genuine in its desire to tackle corruption head on, with the ACPO led response to the HMIC report being particularly important in this regard. For my part, I would whole heartedly adopt the HMIC recommendations relating to the need for consistent national standards and guidance, enhanced training and awareness, and more robust corporate governance arrangements. From the stand-point of sanctions, corruption is a criminal offence with serious penalties, I do not feel it necessary therefore, to recommend any additional statutory or regulatory tools to assist in dealing with this important issue.

## 8. Independent Police Complaints Commission (IPCC)

### Functions, remit and powers

- 8.1** Jane Furniss, Chief Executive Officer and Accounting Officer of the Independent Police Complaints Commission (IPCC), explained that the Commission was established by the Police Reform Act 2002 (PRA) and became operational in April 2004. Its primary statutory function

<sup>1100</sup> *ibid*; MPS 36 – The Police (Conduct) Regulations 2008, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-36-The-Police-Conduct-Regulations-2008.pdf>; and CCMC 11: Home Office Guidance – Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (not available on the Inquiry website)

<sup>1101</sup> p22, para 59, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>1102</sup> *ibid*

<sup>1103</sup> pp23-24, para 36, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Simon-Ash.pdf>

<sup>1104</sup> p9, para 38, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Chris-Sims.pdf>

is to secure and maintain public confidence in the police complaints system in England and Wales. In addition to this statutory responsibility, part of its guardianship role involves an obligation to measure, monitor and where necessary, seek to improve the current system. Ms Furniss makes clear that the IPCC is independent by law, and that its Commissioners cannot have worked for the Police Service in any capacity. The IPCC makes its decisions independently of the police, Government, complainants and interest groups.<sup>1105</sup> Ms Furniss described its broad remit in these terms:<sup>1106</sup>

*“It is the body that provides oversight of the complaints system for the police. There are other organisations we also have responsibility for [Since 2004 the IPCC’s remit has been extended to include serious complaints and conduct matters relating to staff at the Serious Organised Crime Agency (SOCA), Her Majesty’s Revenue and Customs (HMRC) and the UK Border Agency (UKBA)],<sup>1107</sup> but ... I’ll focus on the police. It’s a slight misnomer, a name that Parliament gave us, which gives the impression, of course, that we deal with complaints against the police. In fact, we don’t, largely. Matters come to us in three different ways. The public can seek our advice and assistance in making a complaint against the police, but those complaints are the responsibility of the Police Service to deal with. The public can then make – they have a right of appeal to us if they’re dissatisfied with how the police dealt with their complaint, and we get about 7,000 of those each year. Perhaps most importantly, the police are required under law to refer matters to the IPCC, so certain categories of misconduct by the police or incidents that have caused concern are required by statute to be referred to us. To illustrate the point, when someone dies as a result of police action or as a result of police inaction or allegedly so, they’re required to refer it to us. Other serious misconduct. The police can also choose to refer matters to us if they believe it would be in the public interest to do so ...”*

**8.2** Furthermore, Ms Furniss explained that although the IPCC had responsibility for the police complaints system overall, the Commission investigated only a very small proportion of cases themselves, usually only the most serious complaints and allegations of misconduct against the police in England and Wales. Each Police Force had its own Professional Standards Department (PSD) which dealt with the vast majority of complaints and conduct matters against police officers and police staff.<sup>1108</sup> Ms Furniss told the Inquiry how the IPCC fulfilled its remit:<sup>1109</sup>

*“In relation to complaints and appeals, our process is that a member of staff, suitably trained, will assess the matter that comes to our attention. In an appeal, they have the responsibility to determine – there are different kinds of appeals, which makes it even more complicated to explain, but different kinds of appeals against, for example, the Police Service’s decision not to record a complaint against how they’ve handled it and against the findings or outcome of how they’ve handled it, and what my staff do is review the evidence – it’s a paper exercise, the appeal. They would review how the matter had been dealt with and determine whether the police had actually come to the right decision based on the evidence, and as a result of that, we can require the police to take further action. We can uphold the appeal and require the service to*

<sup>1105</sup> p2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jane-Furniss.pdf>

<sup>1106</sup> pp2-3, lines 9-8, Jane Furniss, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1107</sup> pp2-3, lines 9-8, *ibid*

<sup>1108</sup> p2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Jane-Furniss.pdf>

<sup>1109</sup> pp3-4, lines 20-11, Jane Furniss, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

*reinvestigate, for example.”*

**8.3** As well as the appeals and complaints element of the IPCC, there is also an investigative arm. The IPCC has its own team of investigators, about 150 staff, who support the investigative work, none of whom are currently serving police officers, although a proportion have worked as police officers or police staff prior to joining the IPCC.<sup>1110</sup> Most, however, are individuals that the IPCC has recruited from outside of the policing world, including some lawyers, and a training programme is in place for those investigators. Ms Furniss told the Inquiry that the IPCC’s investigators had similar powers to that of a constable, and could arrest and interview suspects under caution: these powers are used on a regular basis.<sup>1111</sup> Ms Furniss described the use of this investigative element:<sup>1112</sup>

*“... one of the most important decisions that the Commission makes is the mode of investigation for a matter that’s been referred to us. So a decision needs to be made as to how this matter should be investigated, and we have three options ourselves, and a fourth one that the IPCC can decide that the matter should be independently investigated by our own staff, fully by our own staff. [Secondly i]t can decide to manage the investigation under our direction and control but where most of the work will be done by local police staff and usually Professional Standards Department police officers. Thirdly, we can supervise it, where the direction and control is with the force, but the IPCC receives the report at the end of it. Fourthly, we can decide that it’s perfectly capable of being investigated by the police without our intervention ...”*

#### **Corruption in the Police Service in England and Wales**

**8.4** It was within this context, and following the concerns about the propriety of relationships between some police officers and the media, including allegations of illegal payments by journalists in exchange for confidential information, that the terms of reference for this part of the Inquiry were formulated. In addition, using her statutory powers under Section 11 (2) of the Police Reform Act 2002, the Home Secretary asked the IPCC to prepare a report on their experience of investigating corruption in the Police Service.<sup>1113</sup>

**8.5** The first part of this two stage report, ‘Corruption in the Police Service in England and Wales’ was published by the IPCC in August 2011.<sup>1114</sup> It described the role of the IPCC, the definitions of corruption and the issues arising from it. Based on its experience, the IPCC concluded that it seemed likely that corruption amongst police officers was relatively rare by comparison with some other jurisdictions. However, the report rightly recognised that any allegation or finding of corruption impacted on the standing of all forces. Furthermore, it suggested that the damage that could be done to all of the professional, hard-working and dedicated police officers and staff by the corrupted few should not be underestimated.<sup>1115</sup> The IPCC’s second and final report, ‘Corruption in the Police Service in England and Wales: Second report – a report based on the IPCC’s experience from 2008 to 2011’,<sup>1116</sup> was published on 24 May 2012. Part two of the report sought to set the current concerns in the context of police corruption

<sup>1110</sup> pp5-6, lines 22-9, *ibid*

<sup>1111</sup> p6, lines 1-9, *ibid*

<sup>1112</sup> pp4-5, lines 19-15, *ibid*

<sup>1113</sup> p8, lines 3-23, *ibid*

<sup>1114</sup> IPCC Report – Corruption in the Police Service in England and Wales (Part 1), published August 2011, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Exhibit-DG2.pdf>

<sup>1115</sup> pp7-8, para 10, *ibid*

<sup>1116</sup> IPCC Report – Corruption in the police service in England and Wales: Second report – a report based on the IPCC’s experience from 2008 to 2011, published May 2012, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/IPCC-Corruption-in-the-Police-2nd-Report.pdf>

more broadly. It examined the public view of the nature, extent and effect of corruption in the police, and analysed corruption-related complaints recorded by police forces in England and Wales and those cases that are referred to them by the IPCC. The report also provided case studies of the serious corruption investigations carried out by the IPCC.<sup>1117</sup>

**8.6** Given the broader concerns about police integrity and corruption, the report was commissioned alongside that of the HMIC report, ‘Without Fear or Favour’, and Elizabeth Filkin’s report on the relationship between the MPS and the media, all of which have run parallel to this Inquiry. Along with the other reports, those presented by the IPCC provided a very useful window on this general topic. At the same time, the IPCC had been carrying out or supervising investigations into allegedly corrupt relationships between police officers, mainly in the MPS, and the media. To such extent as is possible without prejudicing ongoing investigations, I deal with the product of those investigations elsewhere.

**8.7** In summarising the view of the IPCC, Dame Anne Owers, its Chair, concluded that although the overriding message was that corruption within the Police Service was not widespread, nor considered to be widespread, where it did exist, it was corrosive of the public trust which was the central tenet of policing by consent. She asserted, and I entirely agree, that public confidence in and acceptance of the police exercising their considerable powers over the population was heavily dependent on a belief in the integrity of individual officers.<sup>1118</sup> Having said that, Ms Owers reports that some of the investigations undertaken by the IPCC had revealed serious corruption within the Police Service, sometimes at a senior level and sometimes preying upon precisely those vulnerable individuals whom the police were required to protect. On the other hand, providing a measure of reassurance, she pointed out that many of these cases had come to light as a direct result of the action taken by local forces and police authorities.<sup>1119</sup>

**8.8** The report provides a summary of the outcome of all police corruption cases investigated by the IPCC between the period 2008/9 and 2010/11:<sup>1120</sup>

- Of the 104 independent and managed investigations considered during this period, the IPCC referred 47 (45%) cases to the CPS. In the 42 of those cases completed [at the time of the report’s publication], involving 51 officers, 18 officers were charged and prosecuted, 13 were found guilty and 10 were imprisoned. In terms of rank, most of the officers were constables, with one being a sergeant and one being of ACPO rank.
- Of the 113 officers subject to completed IPCC investigations, 87 (77%) were the subject of misconduct proceedings. These resulted in a finding of gross misconduct or misconduct for 76 (87%) of officers. In 18% of cases, officers were dismissed or required to resign, 34% of officers were given a written warning and 29% were subject to management action.

**8.9** Although concluding that there was nothing to suggest that police corruption was endemic, or that police forces and authorities were not making serious efforts to identify and deal with it when it did occur, the report did however identify a number of suggested areas for change. These included:<sup>1121</sup>

- It was suggested that there was a need for clearer information for the public on what

<sup>1117</sup> p4, *ibid*

<sup>1118</sup> p4, *ibid*

<sup>1119</sup> pp4-5, *ibid*

<sup>1120</sup> pp43-44, *ibid*

<sup>1121</sup> pp48-49, *ibid*

constituted police corruption. To this end the IPCC would produce a regular analysis of the corruption cases that it had dealt with, identifying any emerging themes.

- The report concluded that there should be a requirement for Chief Constables to ensure greater consistency in the recording and referral of corruption cases to the IPCC. The Commission had written to Chief Constables making clear its expectations; this would be reinforced in the Statutory Guidance it intended to issue later in 2012.
- The report suggested that there was a need for a more effective national system for handling allegations against very senior officers i.e. those of ACPO rank. The IPCC reported that it would work with HMIC, the new National Crime Agency (NCA) and the CPS to establish a more formalised and robust system for escalating such complaints.
- Given that most corruption allegations would continue to be dealt with by the individual forces concerned, including by their own standards and anti-corruption units, the IPCC would consider whether its oversight of these processes needed to be strengthened, and what resources would need to be available to do so.
- The report understandably concluded that the public expected serious corruption to be investigated by an organisation independent of the police. The IPCC recorded that it stood ready to take on more corruption cases if additional resources could be made available. Moreover, the report made clear that within existing resources, the IPCC would continue to conduct a small, but increased, number of independent investigations into corruption cases, prioritising those involving senior officers, serious criminal allegations and gross abuse of police powers.
- Finally, the IPCC suggested that additional powers were necessary to enable it to conduct the most effective corruption related investigations. They identify that this was particularly so in respect of contractors, access to third-party data and the power to require the police and other responsible bodies to respond formally to their recommendations. The IPCC recorded that discussions were under way with Home Office officials and Ministers to take this forward.

**8.10** The Home Secretary confirmed that last point and provided the Inquiry with her summary of the key findings. She said:<sup>1122</sup>

*“I think the key findings that come out of this in many ways chime in with those previous work that’s been done, particularly by the HMIC, about the need for greater clarity both for the public in terms of what’s police corruption and therefore what is appropriate to bring to the IPCC, but also greater clarity in terms of – perhaps greater consistency in recording incidents that have taken place from force to force. They identify that different forces appear to have ... different levels of reporting of complaints about corruption and the question is raised as to whether that’s because of a different definition being used rather than the behaviour in relation to the forces. Crucially, it refers again to the issue of additional powers and also about resources, and these are issues that we intend, when legislative time allows, to be able to make changes to the powers to the IPCC and we are looking at the case that they’ve put forward in relation to additional resources.”*

<sup>1122</sup> pp63–64, lines 25–19, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

**8.11** I certainly support these proposed changes and share the IPCC’s view that in order for the system to work as it should, it is vital that all police forces are both alert to allegations of corruption and are capable of dealing with them effectively and appropriately.<sup>1123</sup> I also agree that this is an area in which independent oversight is essential, particularly from the standpoint of public perception, not least because the confidence of the public in the police is fundamental to its legitimacy and to the absolutely critical co operation and compliance that, as an organisation, it needs both to expect and also to achieve.

## 9. HMIC report: ‘Without Fear or Favour’

### Functions, remit and powers

**9.1** An inspectorate of police was established pursuant to the provisions of the County and Borough Police Act 1856, and the first Her Majesty’s Inspectors (HMIs) were then appointed for the purpose of inspecting the efficiency and effectiveness of individual police forces. In 1962, the Royal Commission on the Police formally acknowledged the contribution to policing made by Her Majesty’s Inspector of Constabulary (HMIC) and established the Inspectorate as both a monitor of, and a catalyst for, policing change.<sup>1124</sup>

**9.2** Between 2004 and July 2012,<sup>1125</sup> HM Chief Inspector of Constabulary was Sir Denis O’Connor who had himself served both as an Assistant Commissioner in the Metropolitan Police and then as Chief Constable of Surrey. He made the point that, over the last two decades, there has been a notable acceleration in the pace of police reform, which had served to broaden the scope of the Inspectorate to the role it performed today.<sup>1126</sup> Currently, HMIC independently assesses police forces and policing activity ranging from neighbourhood teams, serious crime and the fight against terrorism. Sir Denis told the Inquiry that in preparing their reports, HMIC asked the questions which informed citizens would ask, and published the answers in accessible form, using their expertise to interpret the evidence. HMIC also provide authoritative information to allow the public to compare the performance of their force against others and their evidence is then used to drive improvements in the service provided to the public.<sup>1127</sup> HM Inspector (HMI) Roger Baker, formerly Chief Constable of Essex, who now has responsibility for police forces in the Northern Region, described the functions of HMIC in his own terms:<sup>1128</sup>

*“I think it’s a police watchdog, in that it assesses policing and police forces in the public interest. So that can range from looking at local efficiency and effectiveness of a police force to broader policing issues such as the riots of last summer ... we ask questions that the public would want us to ask and we report it back to the public in hopefully straightforward terms.”*

<sup>1123</sup> IPCC Report – ‘Corruption in the police service in England and Wales: Second report – a report based on the IPCC’s experience from 2008 to 2011, May 2012, p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/IPCC-Corruption-in-the-Police-2nd-Report.pdf>

<sup>1124</sup> pp1-2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Witness-Statement-of-Sir-Denis-OConnor1.pdf>

<sup>1125</sup> The appointment of the current Chief Inspector (Mr Tom Windsor) commenced in October 2012 after the conclusion of the evidence gathering phase of the Inquiry

<sup>1126</sup> pp1-2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Witness-Statement-of-Sir-Denis-OConnor1.pdf>

<sup>1127</sup> pp1-2, para 2, *ibid*

<sup>1128</sup> p32, lines 15-22, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

**9.3** HMIs are appointed by the Crown on the recommendation of the Home Secretary and report to HM Chief Inspector of Constabulary, who is independent of both the Home Office and the Police Service.<sup>1129</sup> There are currently four HMIs in addition to the Chief Inspector: only two of the five have a background in policing. Mr Baker described the make-up of the team at the time of the Inquiry:<sup>1130</sup>

*“... it’s a broad church ... There should be four inspectors and one chief inspector. Of the four, two of us are ex-chief constables. One is now the Commissioner of the Metropolitan Police. Bernard went across. He was an inspector. He’s now the Commissioner of the Metropolitan, and the other two inspectors currently don’t have a police background. One was a chief crown prosecutor in London and one worked for the Audit Commission. So there’s a mixed range of skills.”*

**9.4** In addition to HMIs, the Inspectorate has a workforce of 150 staff, of which 44% are permanent, 41% are seconded and 15% are casual, agency or contract staff. Sir Denis told the Inquiry that this enabled HMIC to bring a wide mix of skills and disciplines to the organisation in order for them to carry out work across a diverse range of subject areas and areas of expertise.<sup>1131</sup>

**9.5** HMIC’s principal statutory duties are set out in the Police Act 1996 (as amended in 2002) and the Police and Justice Act 1996.<sup>1132</sup> Within this statutory framework, Sir Denis described HMIC’s role as providing an incentive for police forces to improve effectiveness and value for money in a monopoly sector.<sup>1133</sup> Unlike many regulators, HMIC does not have the power to impose standards or prices but instead seeks to secure improvement through the provision of an independent, professional assessment of police work.<sup>1134</sup> Against this backdrop, Sir Denis described HMIC’s powers over individual police forces:<sup>1135</sup>

*“HMIC has the power to inspect the efficiency and effectiveness of police forces and currently police authorities. That will change in November. It will be restricted to the police forces. Since January 2, I have sought and at my behest, we have had power to seize documents and to enter premises, in order to pursue our duties. Not, dare I say, that we have been challenged, but it is best to be prepared, not just legislate for good times.”*

**9.6** Sir Denis told the Inquiry that in normal circumstances, police authorities and, in future, Police and Crime Commissioners (PCCs) would regulate the activities of police forces. However, in extreme circumstances of sustained failure, HMIC could provide advice to the Home Secretary who had powers to direct the authority (or the IPCC).<sup>1136</sup> When an issue emerged as being of national importance or one which was clearly systemic in nature, the Home Secretary may ask HMIC to conduct a review or, with a degree of independence, HMIC may initiate one

<sup>1129</sup> pp1-2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Witness-Statement-of-Sir-Denis-OConnor1.pdf>

<sup>1130</sup> p33, lines 1-9, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>1131</sup> pp1-2, para 2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Witness-Statement-of-Sir-Denis-OConnor1.pdf>

<sup>1132</sup> *ibid*; pp2-4, Annex A, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Exhibit-SDOC1-toWitness-Statement-of-Sir-Denis-OConnor1.pdf>

<sup>1133</sup> pp2-3, para 3, *ibid*

<sup>1134</sup> pp2-3, para 3, *ibid*

<sup>1135</sup> p102, lines 5-13, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

<sup>1136</sup> pp2-3, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Witness-Statement-of-Sir-Denis-OConnor1.pdf>

itself.<sup>1137</sup> Sir Denis told the Inquiry that, by emerging convention, if a clear and present issue emerged, HMIC could tackle that issue whether or not required to do so by the Home Office or identified within the business plan.<sup>1138</sup> By way of example, he referred to the G20 summit and Anti-Social Behaviour.

- 9.7** Sir Denis told the Inquiry that HMIC did not have any formal coercive legal powers in relation to any recommendations they might make, but, as an organisation, had considerable influence over police forces and currently police authorities. He said:<sup>1139</sup>

*“... depending on the nature of the recommendations, the seriousness of the issue, we will pursue it, but what we try to do is seek agreement from the chief officer and the chair of the authority, depending on what the recommendations are ... We have some influence, and we try to know our place as well. The only other thing I would say is it is sometimes mistaken from – externally that the publication of a view by an independent body like ourselves is a matter of some significance to chief constables and police authorities and there is ... I suppose a degree of leverage that flows from the publication of what you’ve found and then any follow-up is still found to be wanting. It may sound rather like soft power. It is obviously less of an obvious sanction that [sic] some other regulators, but it has its place.”*

#### *‘Without fear or favour – a review of police relationships’*

- 9.8** Immediately following her statement to the House of Commons on 18 July 2011 about the MPS and the associated matters of police integrity and public confidence,<sup>1140</sup> and in addition to her request to the IPCC, the Home Secretary formally asked Sir Denis to carry out a review to consider instances of undue influence, inappropriate contractual arrangements and other abuses of power in police relationships with the media and other parties, with a view to HMIC making recommendations to her about what needed to be done.<sup>1141</sup>
- 9.9** On 22 July 2011, the Home Secretary wrote to all Chief Constables to inform them that she had asked HMIC to conduct such a review, but also to make clear that this work, as well as that of the IPCC and Elizabeth Filkin, was not intended to pre-empt the outcome of this Inquiry. Rather it was to ensure that any lessons that were capable of being applied immediately could be identified sooner rather than later.<sup>1142</sup>
- 9.10** Sir Denis asked Roger Baker to lead the review, which was conducted over a period of three months. A draft was provided to the Home Office in November 2011, and the final report was published in December 2011.<sup>1143</sup> As well as gathering evidence from stakeholders within the Police Service and liaising with media experts, including the CRA, HMIC looked at the issue from the perspective of the public. Quantitative and qualitative research was conducted with

<sup>1137</sup> pp2-3, para 3, *ibid*

<sup>1138</sup> pp2-3, para 3, *ibid*

<sup>1139</sup> p103, lines 4-23, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-12-March-2012.pdf>

<sup>1140</sup> HC Hansard, 18 July 2011, Volume 531, Columns 622-624, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110718/debtext/110718-0001.htm#1107184000001>

<sup>1141</sup> pp33-34, lines 15-3, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>; p3, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1142</sup> pp1-2, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM1.2.pdf>

<sup>1143</sup> pp33-34, lines 15-3, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>; p60, lines 1-13, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

members of the public from across England and Wales, in an attempt to ascertain the public's perception of what represented integrity (with corruption as the antithesis of integrity), how prevalent the public thought corruption was within the Police Service, and whether their attitudes had been affected by recent events.<sup>1144</sup> Sir Denis provided the Inquiry with his views on the value of public opinion in this domain:<sup>1145</sup>

*"... it's another anchor point, I suppose, in police legitimacy ... With a measure of public sentiment, anything is possible. Without it, progress is very difficult. In relation to this, I was actively interested to see, frankly, whether what had occurred last summer had made a real dent in the police reputation, in the public's belief in them and the trust, and that's why myself and Mr Baker undertook this work ..."*

**9.11** The internal Police Service evidence gathering included 500 interviews with affected personnel, and approximately 100 focus group sessions were conducted within the forces and police authority's that HMIC visited during the course of the review.<sup>1146</sup> Mr Baker explained why this exercise was important and summarised the general views expressed during these evidence gathering sessions:<sup>1147</sup>

*"... we wanted to get a view from the workforce on how they saw these issues, and I think it's right to say here that their moral compass was very strong on these things. They were very clear that lots of these things, in their view, were not acceptable ... The staff were clear in two parts ... One, where there was clear leadership from the top, they understood what the rules were and were happy to go along with that. And secondly, where it was less clear and when they were talking about what gratuities and hospitalities it was right to receive, in my words their moral compass was very strong. There was a clarity of, you know, most things were not acceptable. Teas and coffees were; beyond that then the Police Service shouldn't be engaging in it."*

**9.12** HMIC also undertook a number of benchmarking exercises across the public and private sector, both nationally and internationally.<sup>1148</sup> Mr Baker provided a summary of the findings:<sup>1149</sup>

*"... we contacted not only police forces, nationally and internationally, but other organisations to take a view on all of the component parts of this report. So what were their relationships with the media and how did they manage it, some of which is cited in the report. So the New South Wales Police media policy, how New York Police Department dealt with integrity testing, because they have a 650-strong team on internal affairs that are separate from the police, if you like. I don't necessarily advocate that model. But also other organisations such as banks, charity organisations – so third sector – on how they were dealing with inappropriate disclosures of information and relationships. So not just about policing, but added the Police Service benchmark, and we didn't find the cure for this in any other organisation. In fact, in many parts, the Police Service in England and Wales was a lot stronger than many*

<sup>1144</sup> pp8-9, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1145</sup> p7, lines 5-17, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>1146</sup> p8, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1147</sup> pp71-72, lines 16-11, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>1148</sup> p8, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1149</sup> pp72-73, lines 15-22, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

... organisations, nationally and internationally, that we spoke to. So if you took in appropriate disclosure of information recorded by the Information Commissioner, there are far more complaints about other organisations than there are about policing, for example. So the police came out of that strongly. I know it's easy to put them in the spotlight with this, but whilst they have a way to go, whilst you'd find on policies and procedures 70 or 80 per cent of forces would have some sort of policy, if you applied that to most of the sectors, you were down to 20 and 30 per cent had got policies around it. In some cases, the Police Service were outshone by other organisations, but generally in just one component part of what we looked at."

### Summary of key findings

**9.13** The report neatly set out the essence of the issue that it was seeking to evidence and address in these terms:<sup>1150</sup>

*"The aftermath of the phone hacking affair has generated a number of enquiries into the relationships between the media, the police and others, and the conflict of interests that can arise from them. A conflict of interest arises where police officers or staff give (or appear to give) preferential treatment to one interest over others. At best, this behaviour may be regarded as inappropriate; at worst, as corrupt. Potential conflicts of interest include:*

- *The access and influence accorded to individuals and organisations;*
- *Inappropriate disclosure of information to the media and others, whether for financial gain or otherwise;*
- *Excessive or inappropriate hospitality, especially when offered to senior officers and other decision makers;*
- *Question marks over contractual arrangements and police-supplier relationships; and*
- *Secondary business interests which may conflict or be perceived to conflict with the integrity of the police role (including employment taken by staff while serving with a force, and employment taken up immediately after leaving the Police Service)."*

**9.14** The report found that whilst corruption was not endemic in the Police Service, forces and authorities were generally unsighted of the risks and vulnerabilities associated with relationships with others, including the media. The report noted that the absence of clear boundaries for police relationships with others was a cause for concern, as was the lack of consistent standards, policies and procedures across forces and authorities.<sup>1151</sup> Of particular significance as far as I am concerned, the point is also made that from the perspective of the public, the Police Service needed not only to act fairly, but must also be seen to be acting fairly.<sup>1152</sup> Mr Baker told the Inquiry that he placed perception at almost the same level of importance as reality, and said:<sup>1153</sup>

*"... I think it was particularly important that – not only as a regulator but all of us, that*

<sup>1150</sup> pp7-8, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1151</sup> pp12-13, para 56, [http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker\\_HMIC.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker_HMIC.pdf)

<sup>1152</sup> pp12-13, para 56, *ibid*

<sup>1153</sup> p53, lines 20-25, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

*we take the public's view, particularly if you're talking about the public interest, and that's what, on this occasion, 3,500-plus members of the public who were surveyed said, "That's what we think."*

**9.15** HMIC found that the public associate integrity with being treated fairly by the police. Mr Baker pointed out that the public association of integrity with fairness suggested that they saw inappropriate relationships, and the conflicts of interest that might arise as a consequence, to be one, but not the only, dimension of police integrity. He suggested, entirely correctly in my view, that this had implications for the police if they were seeking to tackle corruption and inappropriate relationships from the perspective of the service user or the public more generally. This clearly included the relationship between the police and the media.<sup>1154</sup>

**9.16** The term "corruption" obviously covers a broad spectrum of behaviour and the report makes it clear that frank corruption, that is to say, money passing hands and clearly at one end of the spectrum, is thankfully relatively rare. At the other end of the spectrum, however, is what Sir Denis described as 'soft corruption'. He explained the type of behaviour which would encapsulate this concept and the importance that the public places on it in these terms:<sup>1155</sup>

*"... it's doing favours, treating something much more favourably, one institution than another, you know, a place where hot dogs or something are served, one particular franchise much more favourably than another. That would raise a question in their mind because they're obviously seeing things on the street every day, and it kind of anchors us a little bit that even at the lower end, as some people would see it, of what happens, there is an expectation of the police, thankfully, which is hugely inspiring. 89 per cent of the public think that they should be better than others in regard to their mission and what they do and be very even-handed about it ..."*

**9.17** Given the importance of perceptions, the report suggested that the over-arching principle of police relationships with the media was that the Police Service should not seek to constrain the media but rather allow them to accurately report news so that the principal beneficiary was the public. However, the report makes equally clear that forces should take account of the level and intensity of these relationships and not least how they would be perceived by the public.<sup>1156</sup> Sir Denis elaborated on this point:<sup>1157</sup>

*"... if the relationships become, as it were, visible and particularly focused on one or two individuals or one particular news organisation – this really is in more of a national level than a local level, where very often, frankly, there is only one local newspaper – then the point is that people may have the wrong perceptions of it, or maybe the right perception, but ... it may cause them to become concerned."*

**9.18** There has been much debate during the course of this Inquiry as to the differences between the position of the MPS compared with that of regional police forces. HMIC suggested that this debate missed the point. The report argued that we were living in a world of virtual

<sup>1154</sup> pp13-14, para 58, [http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker\\_HMIC.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker_HMIC.pdf)

<sup>1155</sup> pp7-8, lines 24-11, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>1156</sup> p27, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1157</sup> p9, lines 9-16, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

communications, with issues being followed in real-time through a range of new technology and social media.<sup>1158</sup> Sir Denis said:<sup>1159</sup>

*“I think intense inquiries which will generate competition for information can happen anywhere in this country. That’s a fact. If you look at Cumbria – you know, think of the last couple of years. Cumbria, Northumbria, Bristol. So those kind of inquiries which draw the most intense scrutiny can happen anywhere and with that potential conflicts of interest and issues, but running alongside that is a whole new world which is unwrapping around us, as people twitter this Inquiry and as people engage in a huge range of social media, and that includes people who are serving police officers and members of staff who may or may not be aware of just how much of themselves they are revealing, and we did not find that that issue was restricted to the Metropolitan Police.”*

**9.19** The report described as the key contributor to promoting integrity “visible consistent leadership”. Mr Baker said that the evidence to support that conclusion lay in the Inspectorate’s visits to forces where they found:<sup>1160</sup>

*“... the chief officer and the chief officer team were very clear on what was right and what was wrong and that was being articulated in not only bits of paper but the way they behaved, you would get that feedback from the staff, but you’d also see it when you tested some of those areas of business. Where they would bring in that clarity to it, we found a difference.”*

**9.20** The report also made clear that visible and consistent leadership was a key factor in ensuring good force corporate governance and oversight. HMIC argued that this was more than just systems and processes, but also required those in charge of the organisation and those who represented it to be consistent in demonstrating appropriate behaviour: they should promote its values in pursuit of its objectives.<sup>1161</sup> As Sir Denis put it, “they are stewards of the reputation of the organisation.”<sup>1162</sup>

**9.21** To that end, the report suggested that:<sup>1163</sup>

*“... chief officer teams should review their corporate governance and oversight arrangements to ensure that they were fulfilling their function in helping promote the values of their force and the delivery of its objectives, and that they were, through their actions and behaviours, promoting the values of the organisation and making sure good corporate governance was seen as a core part of everyday business.”*

Sir Denis elaborated on the key issues to be considered by forces in looking to manage the

<sup>1158</sup> p29, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1159</sup> p14, lines 10-24, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>1160</sup> p75, lines 3-11, HMI Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>1161</sup> p55, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1162</sup> p32, lines 17-18, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>1163</sup> p56, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

risks in this area:<sup>1164</sup>

*“... there are patterns and lessons to be learnt in the way relationships can develop, and something that started relatively innocently can become more problematic. It’s bound to be associated with particular kinds of posts, the targeting of individuals and particular kinds of posts, and with individuals’ own obligations, whether they’re financial—for example, currently it’s been assessed about 8.8 per cent of police officers and staff are financially stressed. There are ways of looking at people who work for your organisation and what they do, and looking at the potential to safeguard, as it were, them, to prevent things happening, and during the 1990s, when it was looked at in relation, as it were, to conventional corruption, criminal activity, they profiled the shape of this so that there was, if you like, an intelligence profile of the most vulnerable areas. I guess what we’re looking at is if you want to avoid conflicts of interest, if you want to avoid a slippery slope, it is worth considering how you profile vulnerabilities of your organisation and its relationships with whatever other people or sectors you engage with.”*

### Recommendations

**9.22** HMIC stressed that at the heart of the issues that it considered within its review was the importance of integrity, both personal and organisational, which they say was evident and transparent in the way individuals behaved and how forces and authorities conducted their business.<sup>1165</sup> It was against this backdrop that HMIC made the following principal recommendations:<sup>1166</sup>

- **“Forces and authorities institute robust systems to ensure risks arising from relationships, information disclosure, gratuities, hospitality, contracting and secondary employment are identified. Monitored and managed. They should ideally do so on the basis of national standards and expectations – there are no geographical variables when it comes to integrity and there should not be local differences in standards. This work on national standards should be encouraged by the Home Office and promoted by leaders in the Service locally.**
- **There should be clear boundaries and thresholds in relation to these matters. Such limits should be consistent and Service wide. This in effect means identifying a clear message for staff on these issues as to what is acceptable, what is unacceptable and what areas of vulnerability to avoid. ACPO should lead this work in partnership with staff associations and those involved in police governance.**
- **Training courses should include appropriate input in relation to integrity and anti-corruption. In particular, given the importance of leadership to securing high standards of integrity (a theme which runs through this review), the Strategic Command Course (in January 2012) and the High Potential Development Scheme should encompass these issues. Chief Constables should review how much effort is being put into briefing their staff on the standards as to what is acceptable, unacceptable and on the areas of potential vulnerability.**
- **Chief officer teams should review their corporate governance and oversight**

<sup>1164</sup> pp33-34, lines 11-8, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

<sup>1165</sup> p19, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1166</sup> p19, *ibid*

*arrangements to ensure that those arrangements are fulfilling their function in helping promote the values of their force in the delivery of its objectives, and that they are, through their actions and behaviours, promoting the values of the organisation and making sure good corporate governance is seen as a core part of everyday business.*

- *HMIC expects the Service to have detailed proposals in the above areas ready for consultation with all relevant parties by April 2012.*
- *An assessment relating to these matters should be conducted by HMIC by October 2012 to inform incoming Police and Crime Commissioners and Police and Crime Panels.”*

**9.23** Having received a draft version of the report in late November 2011, the Home Secretary wrote to Sir Denis on 6 December 2011 setting out her initial views on the findings and recommendations. The Home Secretary understandably welcomed HMIC’s finding that corruption was not endemic in British policing, but stressed that, more generally, the conclusions of his report presented an urgent wake up call for police leaders. She accepted the proposed recommendations of HMIC as “valuable steps” towards addressing the concerns raised by the review.<sup>1167</sup> However, the Home Secretary also pushed for a greater sense of pace and urgency from the Police Service in developing more robust and consistent arrangements, and requested that a more direct challenge be made to current police leaders to make the point that dealing with the findings of the report was their personal responsibility, individually as well as collectively.<sup>1168</sup> These two points were addressed within the final version of the report published in December 2011, and encapsulated within the recommendations reproduced above.

**9.24** Having identified a number of recommendations to tackle the issues identified by the HMIC report, in his evidence to the Inquiry Sir Denis synthesised the key steps that now needed to be taken by the Police Service to recalibrate its relationship with the media in this way:<sup>1169</sup>

*“... I take the view that there does need to be a significant revision in the way the relationship operates, but I would absolutely want to reassert with you: not actually in order to shrink the relationship but to put it on the right footing. Now getting it right means putting, to me, as a starter at least ... some kind of framework for integrity in those dealings, which would have three components ... These are some considerations in developing the right relationship, and I think that’s probably the best one can say about them, but they’re based on the idea that you put some kind of framework of integrity in place and then you support it in a number of ways ... Three considerations in that would be: in their interactions with the media, there must be a legitimate policing purpose, whether it’s a constable or a chief constable, and it should be more than relationship-building and relate to the core values and standards of policing. That’s why I think it’s important to establish those values, standards ... part of the challenge is there are several sets around from the attestation, which I think, if you are familiar with it, you know, is quite moving, all the way through to – covers professional conduct to a statement of professional values. My instinct is that they’re all worthy and as long as they crystallise what we hope from the police, they’re a reference point in whether you actually have a legitimate policing purpose, which is likely to prevent crime and help people and help the investigation, than not ...*

<sup>1167</sup> pp1-2, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM1.9.pdf>

<sup>1168</sup> pp1-2, *ibid*

<sup>1169</sup> pp50-53, lines 17-23, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-12-March-2012.pdf>

*The second consideration is how; the manner in which the relationship is conducted. In essence, I think it should operate without favouritism and with integrity, and I say this is about integrity of the mission policing. So that kind of questions exclusive contact. It doesn't eliminate it, but it questions it. So it has real bite in that sense, and it also accepts that because of the police mission to investigate, you will consider what's presented to you, as it were, even if the media are presenting it to you as a real prospect. Now, what will need to happen underneath that is some very practical things for people who perhaps won't have all the time to watch this Inquiry or read all of these papers. That can be converted – "without favourite, with integrity" – to something a police force does about the range of contact it thinks is acceptable, about records, about briefing, authorisation ... so it [is] establishing some boundaries ... And then the third consideration is [how] the police handle information and access to it. They must seek to avoid a conflict of interest, given their obligations around confidentiality in particular but unexclusively. I think that those three points will help. If developed, can help. I'm quite prepared to accept – and there is a dialogue going on with people in the Police Service and elsewhere – that this actually may be a prompt for a better set of ideas, but they're designed to be specific, although they may appear at first blush rather general ..."*

- 9.25** Sir Denis also suggested that there may need to be some mechanism whereby a police officer or member of police staff who was particularly concerned about an aspect of police behaviour (such as, for example, the suppression of an investigation) was able to report that concern and have it seriously considered without having to use the press as a vehicle to expose the wrongdoing.<sup>1170</sup> The value of a route for whistle-blowing is that serious concerns could be addressed without prompting an allegation of disloyalty to the police although, ultimately, always leaving open the ability to go to the press in the public interest.
- 9.26** Sir Denis accepted that in providing an alternative route to raising concerns with the press, in parallel, the police would have to be more ready to admit where things had not gone as well as they might have done.<sup>1171</sup> Sir Denis also accepted an obvious potential danger with such a system: that by moving to a stronger framework which tightened down the basis for contact, there was a risk of closing off an important avenue for revealing wrongdoing.<sup>1172</sup> This "*public interest safety valve process*"<sup>1173</sup> as it was described by Sir Denis, is obviously a very important part of what the press is in a position to achieve and one of the responsibilities that it has in our society: it is a role which I have no doubt that they should be able to continue to perform. This is an important issue and one to which it will be necessary to return in the concluding sections of this chapter.

### *The response*

- 9.27** The HMIC report and its recommendations have generally been well received and welcomed from those within the policing world. Commissioner Hogan-Howe, for example, told the Inquiry that the MPS had "*actively contributed to the HMIC review and welcomes the national picture their report provides*",<sup>1174</sup> and Chief Constable Vaughan felt that it had been a "*valuable*

<sup>1170</sup> pp54-56, lines 18-25, Sir Denis O'Connor, *ibid*

<sup>1171</sup> pp57-58, lines 13-2, Sir Denis O'Connor, *ibid*

<sup>1172</sup> pp57-58, lines 21-2, Sir Denis O'Connor, *ibid*

<sup>1173</sup> p58, lines 12-13, Sir Denis O'Connor, *ibid*

<sup>1174</sup> p36, para 98, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

*publication within this area of business.*<sup>1175</sup> Similarly, Lord Condon thought that the report was a *“valuable contribution to the debate”*<sup>1176</sup> and Lord Stevens felt that it was *“in the right space”* with the challenge in its implementation.<sup>1177</sup>

**9.28** Julie Norgrove, the Director of Audit, Risk and Assurance for the Mayor’s Office for Policing and Crime (MOPC), also fully endorsed all of HMIC’s principal recommendations.<sup>1178</sup> Ms Furniss for the IPCC expressed a degree of surprise that some of the recommendations were necessary given that, in her view, some of what was said *“ought to have been fairly obvious”* to the Police Service.<sup>1179</sup> However, that point having been made, she said of the HMIC report’s recommendations *“given that it clearly has been necessary, then I think they will be very helpful, actually.”*<sup>1180</sup> That is not to say that there were not concerns expressed at some of the recommendations, particularly in relation to the potential creation of additional bureaucratic burdens for the Police Service. Lord Blair for example was *“reasonably content with the thrust of the recommendations”*<sup>1181</sup> but felt that they were overly complicated.<sup>1182</sup>

**9.29** As could perhaps be expected, the reaction to the report and its recommendations from the media was mixed. Sandra Laville thought that the HMIC report highlighted some *“very sensible broad principles for police forces”*<sup>1183</sup> and applauded its emphasis on integrity, both personal and organisational. She said:<sup>1184</sup>

*“If police forces can instil integrity and a strong moral compass into its police officers this is far more effective for tackling corruption than any amount of top down rules and regulations.”*

**9.30** Sean O’Neill considered the report to be a *“largely reasonable document”*<sup>1185</sup> but had strong views on the recommendation that all contact between police officers and journalists be formally noted; he suggested that this was *“bureaucratic, unworkable and ultimately a threat to legitimate whistleblowing and freedom of expression.”*<sup>1186</sup> Jon Ungoed-Thomas shared this viewpoint, to the extent that he objected to the recording of contact between police officers and the media. He told the Inquiry:<sup>1187</sup>

*“... some officers are already wary of dealing with journalists, and I think that the key is the training of officers, and they understand the parameters in which they have exchanges with journalists. I think the difficulty is whenever you put in an audit*

<sup>1175</sup> p29, para 98, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Peter-Vaughan.pdf>

<sup>1176</sup> p25, para 68, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Condon.pdf>

<sup>1177</sup> p30, lines 7-18, Lord Stevens, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-6-March-2012.pdf>

<sup>1178</sup> p26, lines 1-8, Julie Norgrove, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-29-March-2012.pdf>

<sup>1179</sup> pp28-29, lines 25-6, Jane Furniss, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1180</sup> p29, lines 6-7, *ibid*

<sup>1181</sup> p27, para 65, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Lord-Blair.pdf>

<sup>1182</sup> *ibid*

<sup>1183</sup> pp16-17, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sandra-Laville.pdf>

<sup>1184</sup> *ibid*

<sup>1185</sup> p12, para 61, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-ONeill.pdf>

<sup>1186</sup> *ibid*

<sup>1187</sup> p95, lines 4-21, Jonathan Ungoed-Thomas, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-14-March-2012.pdf>

*trail, for whatever it is, you have to have a very, very good understanding of the possible impact and the amount of work that it generates, and what I'm concerned at is that it will be easier for police officers just to say no, and not bother with the monitoring procedures, rather than just have a quick conversation with a journalist. For an organisation which is – ie the police, which is so reliant on an inflow of public information, I think that would be a mistake to unnecessarily restrict exchanges between journalists and police officers, and I think that the consequence of that kind of mechanism would be a restriction of exchanges.”*

- 9.31** John Twomey agreed with Mr Ungood-Thomas and felt that any requirement for police officers to record their contact with journalists would “*have kind of a freezing effect.*”<sup>1188</sup> James Murray was even more strident in his criticism; he argued that the report “*lacked credibility as the evidence of any wrongdoing between journalists and the police was not evident.*”<sup>1189</sup> In respect of the recommendations, he said that they:<sup>1190</sup>

*“... seem overly wordy and lacking in clarity. My view is that police officers and journalists are sensible people who have intelligent interaction and both sides have high ethical standards ... Sensible officers know what corruption is and will not need to go on a long course to be told what it is.”*

The issue of recording contact between police officers and the media and the possible consequences of such a requirement is clearly extremely important, and one which is raised again in the context of Elizabeth Filkin’s report and recommendations. Again, it will be necessary to return to it in the concluding section of this chapter.

- 9.32** ACPO is leading the response to the HMIC report on behalf of the Police Service<sup>1191</sup> and, by October 2012, HMIC will have conducted a further assessment of the progress made by police forces and authorities in addressing the recommendations contained within the report.<sup>1192</sup> In relation to the general response by the police to the issues raised by this report, and with an eye to the future, the Home Secretary said:<sup>1193</sup>

*“... I'm very keen that ACPO take the lead in this, as they are now beginning to do. The only thing I would add is that of course, in the future, there will be a different structure available within which these sorts of matters can be considered by the police, namely the police professional body which the government is establishing, which will be established by the end of this year, which will be looking at standards across a whole range of activities in relation to policing, for police officers and police staff.”*

<sup>1188</sup> p44, lines 12-16, John Twomey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>

<sup>1189</sup> p11, para 43, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-James-Murray.pdf>

<sup>1190</sup> p11, para 44, *ibid*

<sup>1191</sup> pp8-9, para 12, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

<sup>1192</sup> pp14-15, para 60, [http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker\\_HMIC.pdf](http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Roger-Baker_HMIC.pdf)

<sup>1193</sup> As at the date of publication of this Report, the HMIC follow-up report is still awaited

## 10. Elizabeth Filkin’s review of the relationship between the MPS and the Media

**10.1** After the fallout from the phone hacking that took place at the NoTW in July 2011, concerns were raised that the Metropolitan Police Service (MPS) may have failed to thoroughly investigate the matter, particularly after the discovery that the practice had been more widespread than initially perceived.<sup>1194</sup> There was also much speculation regarding the ‘cosy’ relationships which existed between some senior MPS officers and NoTW journalists, and whether this was simply a general perception, or a matter of fact.<sup>1195</sup>

**10.2** With these concerns in mind, the then Commissioner of the MPS, Sir Paul Stephenson, appointed Elizabeth Filkin to conduct a review into the relationship between the MPS and the media.<sup>1196</sup> Mrs Filkin has explained to the Inquiry that these concerns were “*largely the reason that Sir Paul Stephenson had invited me to do this piece of work, it was obviously very pertinent to the piece of work*”.<sup>1197</sup> The perception issue was of key importance for the MPS, who felt that the relationship between the force and the media had damaged public confidence in the MPS. Mrs Filkin has said in this regard that the MPS were:<sup>1198</sup>

*“... embarrassed by much of the coverage, who were concerned that it might turn out to be true, who felt that they had done their duty throughout their careers and this was being now seriously undermined, and they were worried that public trust would be undermined.”*

**10.3** As such, the purpose of Mrs Filkin’s review was to provide recommendations to Sir Paul and the MPS Management Board, in relation to: general issues around the ethics of police and media relationships; the purpose of this relationship across all levels in the MPS; methods of improving public confidence in police and media relations; the issue of transparency of such relations; the rules and acceptance of hospitality between the police and the media; and whether any evidence in relation to any of these issues should be led by the MPS to this Inquiry.<sup>1199</sup>

**10.4** Although Mr Stephenson and the then Assistant Commissioner, John Yates, resigned shortly after the commission of the report, Mrs Filkin commenced with her work in August 2011 under the oversight of the incoming Commissioner, Bernard Hogan-Howe.<sup>1200</sup> The final report was published and presented to the MPS on 5 January 2012.<sup>1201</sup>

<sup>1194</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Statement-of-Elizabeth-Filkin1.pdf>

<sup>1195</sup> p8, para 2.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>1196</sup> p95, lines 10-16, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>; p6, para 17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Paul-Stephenson2.pdf>

<sup>1197</sup> p100, lines 3-5, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>1198</sup> p100, lines 9-14, *ibid*

<sup>1199</sup> pp5-6, para 1.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>1200</sup> p1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Statement-of-Elizabeth-Filkin1.pdf>

<sup>1201</sup> <http://content.met.police.uk/News/Elizabeth-Filkin-report-published/1400005701012/1257246745756>

## The Filkin Report: the ethical issues arising from the relationship between police and media

- 10.5** Mrs Filkin conducted her evidence gathering process over the course of five months. This process comprised of interviews with a range of sources across the Metropolitan Police; stakeholders within the newspaper industry; as well as politicians and reputable business individuals. Mrs Filkin has told the Inquiry to this effect that:<sup>1202</sup>

*“I put out a request on the internal intranet for the Metropolitan Police asking anybody within the Metropolitan Police who would like to give me information, evidence or opinion to be in contact with me, either in writing or in person, and I offered to do that in confidence if people wished that. I requested interviews with a range of people across the Metropolitan Police Service, all of whom I’m very pleased to say agreed to be interviewed by me, and I did the same with a list ... who were journalists, editors, politicians, business people, who I though might have something to give me. I also sat down with a number of internal groups in the Metropolitan Police ... a range of staff groups, of different groups, different ethnic backgrounds, et cetera, to get their opinions, too.”*

- 10.6** As well as gathering evidence from these interviews with 137 people, and the consideration of written material, Mrs Filkin also consulted with MPS officers working on Operations Weeting, Elveden and Tuleta; and this Inquiry. She told the Inquiry that she exercised *“my own judgement about whether people were trustworthy when I talked to them.”*<sup>1203</sup> These interviews were presented as confidential conversations, and Mrs Filkin has only attributed quotes to those interviewed, with their consent, in her final report. Where she has questioned the validity of some of the views expressed through her interviews, Mrs Filkin has made this clear in the report. She told the Inquiry that:<sup>1204</sup>

*“... as you will have seen, a large number of people did allow me to attribute their quotations to them, but some did not. And I have respected that, but I didn’t quote people without making any comment about it where I didn’t think – I didn’t support people unless I thought that what they were saying was trustworthy. That didn’t mean to say I didn’t also include some quotes from people whose views I did not accept.”*

- 10.7** Mrs Filkin has also explained to the Inquiry that her report sought to consult as wide a view as possible, in order to ensure that the evidence was representative across the board, particularly given that there were different opinions held by the media and the MPS on the key findings of her report. She has stressed to the Inquiry that the report is entirely a reflection of her own findings.

### Summary of key findings

- 10.8** The Filkin Report conveyed four key issues which became evident over the course of Mrs Filkin’s research. These issues were reported to the MPS Management Board and the Commissioner’s Policy Forum at the time of her Inquiry. They covered:<sup>1205</sup>

<sup>1202</sup> pp95-96, lines 22-15, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>1203</sup> p97, lines 24-25, *ibid*

<sup>1204</sup> p98, lines 5-13, *ibid*

<sup>1205</sup> p7, para 1.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

- *“The core principles to be established to govern the relationships between the MPS and the media.*
- *The changes necessary to the leadership and management of the MPS to put these into practice.*
- *The changes necessary to the Directorate of Public Affairs (DPA).*
- *The prevention of unethical relationships between the police and the media in the future.”*

**10.9** Mrs Filkin has described the key problems around the perception of leaks from the MPS to the media, interlinked with the ‘cosy’ relationships which have developed between the two. She concluded that this disclosure of information; the context of the relationship which fosters this disclosure; and the extent to which these relationships are regulated, should be addressed by the MPS in order to ensure complete oversight of an ethical practice, which would restore any damage to the public trust.<sup>1206</sup> She elaborated on the issue of excessive hospitality and favours to the Inquiry, and reflected the view of many of the lower ranks within the MPS, in relation to the relevantly recent introduction of hospitality register publication:<sup>1207</sup>

*“... many of the police officers and staff that I interviewed were obviously highly shocked by the amount of hospitality that the senior people appeared to be receiving; either hospitality in the sorts of things of dinners and lunches and so forth at rather expensive restaurants, but also some of them were receiving very large numbers of tickets to very expensive sporting events, so there were a set of things which some senior people had been receiving, others had not, others had not accepted, and that was clear.”*

The issue of perception was raised again in this respect, as Mrs Filkin explained that *“people across the Met saw these things all as one and thought they should all be described as corruption”*.<sup>1208</sup>

**10.10** In addressing these issues, Mrs Filkin produced seven key findings and recommendations, which focussed on: the methods of communication between the MPS and the public; the infrastructure within the MPS for such communications; corporate issues including leadership and trust within the MPS, as well as the management of ethical issues; the core principles outlining methods of contact with the media; and the transparency, and prevention of further unethical practices.<sup>1209</sup>

**10.11** Mrs Filkin concluded that there was too much reliance on the print media by the MPS, which has affected the impartiality and independence of the force in the public eye.<sup>1210</sup> The role of the Directorate of Public Affairs (DPA) has also come under scrutiny through the interviews conducted for the report. Mrs Filkin has expressed her concerns about the reluctance of information provision to the DPA, which have been shaped by two particular perceptions. She reported that there is a view that *“the DPA is unwilling in some instances to provide information to the public. Secondly that information is sometimes misused”*. Mrs Filkin has

<sup>1206</sup> p37, para 3.5, *ibid*

<sup>1207</sup> p106, lines 4-14, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-5-March-2012.pdf>

<sup>1208</sup> p107, lines 11-13, *ibid*

<sup>1209</sup> pp39-48, paras 4.1-4.7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>1210</sup> p39, para 4.1, *ibid*

argued that the current infrastructure of communications is damaging any attempts at a *“transparent corporate response in providing information to the public”*.<sup>1211</sup>

- 10.12** The report has also recognised a disparity in rules for senior leaders and lower ranks of police officers, in relation to the policy of receiving gifts and hospitality from the media. The report found that there *“has been no clear standard set by the senior team for police officers and staff to use as a guide for their own behaviour and in some instances the standards set have been poor and have led to consequent damage.”*<sup>1212</sup> This particular issue was noted as a requirement for a change in the culture across the MPS, with clearer systems in place to monitor the exchange of hospitality between the media and the police. In this regard, the report also found that there has been a lack of consistent leadership in relation to the handling of information between the MPS and the media, particular the increased risk of *“improper disclosure to the media”*.<sup>1213</sup>
- 10.13** In her summary of findings, Mrs Filkin has referred to the problems identified by Sir Denis O’Connor’s report on the review of police relationships. She has argued that the MPS should map ethical risks in order to *“keep such issues consistently on the agenda”*.<sup>1214</sup> This would improve the corporate management of the MPS and provide guidance to staff for understanding appropriate conduct when faced with decisions on their interactions with the media.
- 10.14** As well as the issue of leadership and corporate management, the report concluded that the lack of transparency has also fuelled the perception that the relationship between the MPS and the media is secretive in nature. Mrs Filkin has reported on the fear expressed by journalists in relation to the suggestion for a greater degree of transparency in their contact with the police. Some, such as Nick Davies, have argued that this transparency risks stifling genuine investigative journalism in the public interest. Mrs Filkin has told the Inquiry that this is *“a real fear, and certainly journalists have expressed it very forcefully to me.”*<sup>1215</sup>
- 10.15** Lastly, Mrs Filkin concluded on the issue of prevention. Some of the sources she interviewed for the purpose of the report have expressed their views that the culture of leaks within the MPS is generally tolerated by the force. Mrs Filkin adds that she *“accept[s] that leak investigations are costly and often unproductive”*.<sup>1216</sup> In this regard, Mrs Filkin has said that officers would welcome a *“stronger stance”* in the challenging, publication and deterrence of improper disclosure to the media.

### *Recommendations of the Filkin Report*

- 10.16** In light of the key findings of the report, Mrs Filkin has made the following recommendations to Commissioner Hogan-Howe and the MPS Management Board, in response to the terms of reference set out at para 10.3 above:<sup>1217</sup>
- *“A new approach to communication based on more extensive, open and impartial provision of information to the public is needed. Relationships with the media need*

<sup>1211</sup> p46, para 4.6, *ibid*

<sup>1212</sup> p39, lines 4.2, *ibid*

<sup>1213</sup> p41, para 4.2, *ibid*

<sup>1214</sup> p41, para 4.3, *ibid*

<sup>1215</sup> p21, lines 24-25, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>1216</sup> p47, para 4.7, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>1217</sup> pp49-56, *ibid*

*to be part of this but not the driving force. I recommend that the Commissioner delegates responsibility and resources to a member of his senior team to champion a new approach to providing public information. Increasing openness with the public should be monitored through performance indicators.*

- *The MPS senior team must signal a change in culture and set a consistent example for all staff on the ethical standards they expect, including how they relate to the media and the interpretation of the gifts and hospitality register.*
- *I recommend that the Commissioner delegates responsibility and resources to a member of his senior team to initiate change in the way the MPS approaches integrity and ethics issues at all levels. This role will provide the support and direction for staff to implement change and ensure improvements are tracked. This role holder will collaborate with the Public Information Champion. Responsibility for leadership on these issues is shared by all as peer pressure is the most effective way of improving behaviour.*
- *I recommend that all police officers and staff who provide information to the media should make a brief personal record of the information they provide. This record should be available if required by a line manager. Some of these records will be audited on a random basis. Wherever possible, published information should be attributed to the person giving it or more generally to the MPS.*
- *The MPS must establish the core principles which should underpin contact with the media. I recommend that contact with the media is **permissible but not unconditional**. This should be the overarching principle. Police officers and staff need to have new guidance that helps them understand the value of providing information to the public and supports them in making ethical decisions when doing so. Advice on contact with the media is an essential part of this. So are improved training, supervision and appraisal to ensure the principles become embedded.*
- *The MPS must reinforce the public service responsibilities of the Directorate of Public Affairs (DPA) and local communications work. These functions must operate collaboratively and with equal status. The MPS must make better use of alternative routes for communicating with the public and there must be a predisposition to release much more information than in the past both to the external and internal audience.*
- *The MPS must create an environment where the improper disclosure of information is condemned and deterred. Senior managers should make messages of deterrence strong and effective. Where leaks cannot be proved to the evidential standard required for a criminal prosecution, robust management action should nevertheless be pursued. However, whether there has been genuine harm should always be assessed before proportionate action is taken. Investigations should be seen as an important but subsidiary part of a broader preventative approach.”*

### **MPS response to the Filkin Report**

**10.17** The Filkin report and its specific recommendations have been positively received by the Metropolitan Police Service. Commissioner Hogan-Howe confirmed that the MPS would be

implementing the recommendations set out by Mrs Filkin. He has told the Inquiry that the report is:<sup>1218</sup>

*“... being considered by the new Deputy Commissioner Craig Mackey, who will provide an organisational response. This means that all the current policies concerning contact with the media and hospitality are to be reviewed and, as appropriate, amended to address the recommendations made in the Filkin Report. Fundamentally I want a principle of openness to be established. If we communicate with the press we need to be open about it, explain what contact there is and why.”*

**10.18** In his evidence to the Inquiry, he also expanded on the MPS’s response to the report and said specifically that *“we accept the findings. The conclusion that Elizabeth Filkin draws, we accept”*.<sup>1219</sup> He explained that there would be some practical discussions in relation to the implementation of these recommendations. In this regard, the MPS are:<sup>1220</sup>

*“... doing a little more work just to make sure that we operationalise that, and there was an appendix to Elizabeth’s work which was trying to make more practical some of the principled findings. There are one or two areas in that which probably we want to discuss a little more before we actually say that we accept that in total, but on the whole the broad thrust of the report we accept.”*

### **Media response to the Filkin Report**

**10.19** There have, however, been some criticisms by the media in response to the Filkin Report. Sean O’Neill, the crime editor of The Times, has strongly disapproved of the recommendations and the general tone of the report, using the term *“East German Ministry of Information”*<sup>1221</sup> as a description of the language used by Mrs Filkin. He disagreed with the overall recommendations which *“give more power over the control of information, which it calls transparency.”*<sup>1222</sup> Mr O’Neill specifically questions the accountability of the senior officers, who are *“the same senior officer class who have brought all these problems upon the Met’s head in the first place. It doesn’t seem to me a sensible course of action.”*<sup>1223</sup> He has said that the report has already contributed to a climate of fear and discouraged police officers, making them afraid of talking to the press.

**10.20** Mr O’Neill also elaborated on how the report has perceived women reporters, and has told the Inquiry that, *“if I were a female crime correspondent I would be furious, because it seems to imply they’re just a bunch of women in short skirts who are out flirting with people, and I don’t think that’s the case.”*<sup>1224</sup> John Twomey, crime reporter of the Daily Express, has also told the Inquiry that the ‘ideas for practical guidance’ were largely condescending and *“didn’t*

<sup>1218</sup> pp11-12, para 27, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Commissioner-Bernard-Hogan-Howe1.pdf>

<sup>1219</sup> p40, lines 9-10, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

<sup>1220</sup> pp40-41, lines 19-1, Commissioner Bernard Hogan-Howe, *ibid*

<sup>1221</sup> p12, para 62, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sean-O'Neill.pdf>

<sup>1222</sup> p30, lines 1-3, Sean O’Neill, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-21-March-2012.pdf>

<sup>1223</sup> p30, lines 4-8, *ibid*

<sup>1224</sup> p29, lines 20-24, *ibid*

*quite go with the seriousness of the earlier part of the report”.*<sup>1225</sup> He also agreed that *“I think there’s some condescending remarks about women in there.”*<sup>1226</sup>

- 10.21** Commissioner Bernard Hogan-Howe has firmly disagreed with the suggestions that the Filkin report has been ‘patronising’ or ‘condescending’ to police officers, and has told the Inquiry that:<sup>1227</sup>

*“... I didn’t take it in that way, and I thought it was written in a sensible style and encouraged people to think differently about something that had become a problem. So I couldn’t see that myself. I didn’t take it as patronising for police officers, but I can’t speak really, I suppose, for the journalists who did.”*

## 11. Association of Chief Police Officers (ACPO)

- 11.1** Sir Hugu Orde, President of the Association of Chief Police Officers (ACPO), in describing the body’s functions, said: *“ACPO brings together the expertise and experience of chief police officers from England, Wales and Northern Ireland. It provides a professional forum to share ideas and best practice, coordinate resources and help deliver effective policing which keeps the public safe.”*<sup>1228</sup>

- 11.2** ACPO is an independent, professionally-led strategic body.<sup>1229</sup> Sir Hugh explained that in the public interest, and in equal and active partnership with Government and the Association of Police Authorities (APA) (although in relation to the APA, the position will change with the election of Police and Crime Commissioners in November 2012), ACPO leads and coordinates the direction and development of the Police Service in England, Wales and Northern Ireland. The Police and Justice Act 2006 confirms ACPO as a statutory consultee, and, as Sir Hugh explained:

*“... We are a company limited by guarantee. We had to have some legal position so we can employ people and rent buildings, for example, but the office of president is also enshrined in primary legislation in the Police Act 2002 but apart from that we have no statutory basis.”*<sup>1230</sup>

- 11.3** Sir Hugh described the functions of ACPO as including the facilitation of decision making by Chief Constables at a national level. It also provides national policing coordination, national policing communication, the national development of professional policing practice and oversight, through chief officers, to some national policing units. Sir Hugh explained that in the absence of a federal model of policing ACPO *“provides a voluntary structure to secure national agreements which underpin the ability of all forces to deliver consistent and interoperable policing to keep citizens safe and secure.”*<sup>1231</sup> It is worthy of mention that ACPO’s

<sup>1225</sup> p59, lines 14-19, John Twomey, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-19-March-20121.pdf>

<sup>1226</sup> *ibid*

<sup>1227</sup> p31, lines 13-18, Commissioner Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf><http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/IPCC-Corruption-in-the-Police-2nd-Report.pdf>

<sup>1228</sup> p2, para 2.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

<sup>1229</sup> p2, para 2.2, *ibid*

<sup>1230</sup> pp82-83, lines 23-3, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1231</sup> p1, para 2.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

current role and responsibilities are subject to change as the Government plans to introduce a new professional body for policing. Sir Hugh reported that it was not yet clear how ACPO's functions will be delivered in this new landscape but until that point it will continue in their current guise.<sup>1232</sup>

**11.4** ACPO is currently composed of 340 chief officers holding a rank at or above Assistant Chief Constable (or the MPS equivalent: Commander). It also includes senior police staff colleagues of equivalent status, for example heads of human resources and finance, and in some forces the heads of communication and legal services.<sup>1233</sup>

**11.5** The ACPO membership elects a full-time President, who holds the office of constable and the rank of Chief Constable under the Police Reform Act 2002.<sup>1234</sup> Sir Hugh was elected President of ACPO in 2009: the term of office is four years and the incumbent cannot stand for re-election.<sup>1235</sup> As President, Sir Hugh chairs a Council of Chief Constables and acts as the spokesperson for the profession of policing on national issues.<sup>1236</sup> Sir Hugh described how his responsibilities differed from that of the MPS Commissioner, for example:

*"... I have no operational responsibility or indeed authority at all. My job is to really bring together and through negotiation ... get consistent national policies through what we call the Chief Constables' Council, which meets four times a year ... My only technical operational responsibility, for example, if the fuel strike comes off, I will be responsible for making sure government is fully informed through Cobra and the Cabinet Office briefing room and my office will be responsible for co-ordinating any necessary movements of police officers around the country, as happened in the serious disturbances in August and as will happen in the pre-planned events around the Olympics. We co-ordinate the movement but the movement is given permission or authority by individual chief constables."<sup>1237</sup>*

**11.6** As Sir Hugh made clear, each police force operates independently of one another and manages communications with the media in respect of its own local policing. The role of ACPO is to provide a national voice for the Police Service to "explain, inform and defend the operational work of the police service to cut crime and protect life."<sup>1238</sup> Sir Hugh described this role in more detail:

*"It's very much providing a facility that enables the national media to go ... to a single point of contact on matters that are of national interest, so in that sense we try and support the local forces where necessary. ACPO itself I describe very much as almost a band of volunteers. The business area work which is undertaken by chief constables ... is to try and provide continuity, consistency and at the top end of our business, a consistent approach to the serious threats this country faces, be it terrorism, international crime, public order, those sorts of issues, where you have to have a*

<sup>1232</sup> p11, para 16.2, *ibid*

<sup>1233</sup> p2, para 2.4, *ibid*

<sup>1234</sup> pp2-3, para 3.1, *ibid*

<sup>1235</sup> pp83-84, lines 24-2, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1236</sup> pp2-3, para 3.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

<sup>1237</sup> pp84-85, lines 9-9, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1238</sup> p3, para 4.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

*consistent approach.*<sup>1239</sup>

**11.7** There are 14 of the business areas referred to above within ACPO, covering 336 separate policing functions or types of crime (known as ‘portfolios’ within ACPO) that are nationally led and coordinated by a Chief Officer. Sir Hugh explained that the Chief Officer led ‘portfolios’ cover *“every sphere of police activity from police use of firearms to metal theft and are supported inside and outside the police service by an ACPO communications team which responds to national media enquiries concerning policing and crime reduction.”*<sup>1240</sup> Sir Hugh went on to explain that the ACPO portfolio lead, through his or her national role, can draw on policing colleagues of all ranks and that with their support they can *“offer an informed view on behalf of the police service as a whole, rather than a single force.”*<sup>1241</sup>

**11.8** ACPO has its own press office which works in support of the body’s national communications role. Sir Hugh said that the press office works in close cooperation with *“police force press offices but takes the lead in supporting the police service’s strategic response to national policing issues.”*<sup>1242</sup> In expanding on this point, he said:

*“It’s very important that I’m very keen that the president of ACPO, whoever holds this position, doesn’t speak on all policing matters, we simply don’t have the capacity to have a detailed knowledge. But what we do have for example are 14 business areas, for example crime is run currently by the chief constable of Merseyside, uniform operations matters is run by the chief constable of Norfolk. So if there was a matter pertaining to their specialism I would defer or my press officer would certainly make sure that someone from that business area was available to the national media to speak with authority on behalf of the association but with the depth of knowledge that’s required to give a proper and informed answer.”*<sup>1243</sup>

**11.9** ACPO also continues to play a coordinating role across areas of policing where the national interest requires that *“police forces act together and agree joint strategies.”*<sup>1244</sup> Sir Hugh explained that this allows for Chief Constables to come together and develop a *“single approach nationally, being cheaper and more efficient than developing 44 strategies across each police force in England, Wales and Northern Ireland.”*<sup>1245</sup> However, he pointed out that any national approaches remain subject to the *“local interpretation and implementation of operationally independent Chief Constables.”*<sup>1246</sup> Furthermore, each individual Chief Constable remains entirely responsible for delivering at the local level; Sir Hugh argued therefore that it makes sense *“that a single voice for the service is available at the national level to explain the strategic implications of such policies.”*<sup>1247</sup>

**11.10** It is also important to make clear at this stage that although national policing practice produced through ACPO is endorsed through the Chief Constables Council, its status remains one of guidance. As Sir Hugh made clear, ACPO has no role in securing compliance and any

<sup>1239</sup> p83, lines 10-23, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1240</sup> p3, para 4.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

<sup>1241</sup> p3, para 4.3, *ibid*

<sup>1242</sup> p6, para 9.1, *ibid*

<sup>1243</sup> p88, lines 1-14, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1244</sup> pp10-11, para 16.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

<sup>1245</sup> *ibid*

<sup>1246</sup> *ibid*

<sup>1247</sup> *ibid*

guidance produced does not “supersede decisions of Chief Constables who are operationally responsible for the direction and control of policing within their own force area.”<sup>1248</sup>

**11.11** Given its national coordination role, ACPO was tasked with providing the Police Service response to the recommendations contained within HMIC’s report: ‘Without fear or favour – a review of police relationships’ (“the HMIC report”), which was published in December 2011.<sup>1249</sup> One of the key themes running through HMIC’s recommendations was the need for national standards to ensure consistency of practice across individual force areas. The Home Secretary expanded on this point and said:

*“... What obviously became clear, particularly from the work that I commissioned from HMIC, was the variation in guidance that was being issued and being operated, and variation in systems that were being operated from police force to police force. The importance of a police force being able – and a chief constable being able within his police force – to have that independence of deciding how that force operates is part of the structure of policing that we have in the UK. Obviously, having now looked at the situation, the chief officers following HMIC’s report have felt that it is appropriate to put some more national guidance in place, but that obviously will still be operated by each of the police forces.”<sup>1250</sup>*

**11.12** Sir Hugh concurred with this assessment. He said:<sup>1251</sup>

*“... There’s always a tension between, you know, the clear steer of the current government towards a local bespoke style of policing and localism and driving down responsibility and there’s always that tension between local agendas, local policies, local procedures, and the national central agenda. So it’s always a robust debate. I think certainly within the Police Service there’s common agreement, it makes absolute sense that you can have one consistent approach, for example in relation to gifts and hospitality. The public will not understand why the standards are different across the country ...”<sup>1252</sup> In relation to ACPO taking the lead on the Police Service’s response to the HMIC report, he made the point that: “... ACPO can mobilise quite quickly in response to HMI, for example, when it’s seen as critical to delivering a new policy, a new consistent policy which is important in terms of public confidence ...”*

**11.13** Sir Hugh reported that the main element of the ACPO response relating to Police Service integrity and corruption was being led through the national lead for Professional Standards, Chief Constable Mike Cunningham. The ACPO response to those HMIC recommendations which specifically dealt with media relationships has been addressed under the leadership of Chief Constable Andy Trotter.<sup>1253</sup> I will deal with each in turn.

<sup>1248</sup> p4, para 4.6, *ibid*

<sup>1249</sup> p9, para 12.2, *ibid*; and see <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1250</sup> pp9-10, lines 11-3, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

<sup>1251</sup> p90, lines 19-23, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1252</sup> pp90-91, lines 24-11, Sir Hugh Orde, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1253</sup> p9, paras 12.2-12.3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Sir-Hugh-Orde.pdf>

*ACPO's response to the HMIC Report: 'Without Fear or Favour – A Review of Police Relationships'*

**11.14** Mike Cunningham was appointed as the Chief Constable of Staffordshire Police in 2009 and he took the lead of the ACPO Professional Standards Portfolio in June 2011 – this portfolio sits within the Workforce Development Business Area of ACPO.<sup>1254</sup> Mr Cunningham explained that the Professional Standards Portfolio *“is dedicated to raising and maintaining professional standards in the police service.”*<sup>1255</sup> Given its centrality to the issues at hand, Mr Cunningham set out in broad terms his remit as portfolio lead:

- “(i) strategic responsibility to identify and address emerging threats and respond to national issues which impact on the police service’s professional standards
- (ii) leading for ACPO on the development of preventative strategies to combat risk and emerging threats to operational policing and the reputation of the police service
- (iii) receiving and commissioning the work of the three Professional Standards Portfolio sub-groups, (Complaints and Misconduct, Counter Corruption, and Vetting). To address strategic issues and challenges in response to the ACPO & Serious Organised Crime Agency (SOCA) National Strategic Threat Assessment to UK Law Enforcement from Corruption
- (iv) identifying commonality with other ACPO business areas, (such as the Ethics portfolio), where reducing instances of and improved handling of public complaints can achieve improved public satisfaction and confidence through the quality of service provision, and overseeing the integration of professional standards issues into the strategies, policies and procedures of other business areas as appropriate
- (v) identifying opportunities to more closely integrate unsatisfactory performance of officers and staff into professional standards, with a clear emphasis on ethical policing behaviour as opposed to mere compliance with regulations, and to improve public confidence in the police service through organisational learning
- (vi) monitoring ethical standards as they relate to aspects of policing such as the use of discretion, case management and the administration of justice, the use of force and other policing powers, custody and detention matters, gifts and gratuities, secondary employment and business interests, information confidentiality, personal standards of conduct and cooperation with partner agencies.”<sup>1256</sup>

**11.15** In discharging these responsibilities, Mr Cunningham chairs a quarterly meeting of the ACPO Professional Standards Portfolio which comprises the chief officer leads of the ACPO Complaints and Misconduct Working Group, ACPO Counter Corruption Advisory Group (ACCAG) and the ACPO Vetting Group together with staff association leads. The Independent Police Complaints Commission (IPCC) is represented by the Chief Executive – Special advisers from within the service are invited as appropriate.<sup>1257</sup>

**11.16** Mr Cunningham explained that the ACCAG Guidance for the Investigation of Corruption (first published in 2003, formally revised in 2006 and currently under review) identifies a number of common factors as potential corrupters. These include *“former police officers, particularly those in the security or private investigation sectors, family members and friends with criminal*

<sup>1254</sup> pp48-49, lines 18-11, Chief Constable Mike Cunningham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-29-March-2012.pdf>

<sup>1255</sup> p2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Mike-Cunningham.pdf>

<sup>1256</sup> pp2-3, *ibid*

<sup>1257</sup> p3, *ibid*

*associations, informants and other criminal contacts established through policing activity.*<sup>1258</sup> Mr Cunningham confirmed that the media was also identified as a source of corruption when *“confidential, sensitive or secret information is sought by journalists, in return for financial inducements or payment through gifts and hospitality.”*<sup>1259</sup> Mr Cunningham went on to explain that what are described as ‘payments through gifts and hospitality’ was not in itself identified as a significant risk.<sup>1260</sup> He expanded on this point and said:

*“... The assessment has identified that the police officers have broadly two commodities with which they would trade, if I could put it that way. One is influence and the other is information. It seems from a chief officer from ACPO perspective that we need to put safeguards in place in order to handle safely the information that we hold and the relationships that officers have and develop, which could become corrupt. And so in terms of assessing the risk, the unauthorised handling of information is a significant risk for the service. And that’s been identified in the SOCA strategic assessment of corruption. In order to deal with the handling of information and protecting information, a number of safeguards have been put in place ... but contingent upon all of those are relationships which officers subsequently develop. Family and friends was identified as the highest risk in terms of the unlawful disclosure of information. Former colleagues, particularly those in the private security industry, was also a risk. At the point in which the strategic assessment was done in the summer of 2010, journalists were identified as a risk, but not as high as those other groups.”*<sup>1261</sup>

**11.17** In relation to the identified risk of family and friends and the unlawful disclosure of information, Mr Cunningham confirmed that this would on occasions be inadvertent disclosure, but *“... On other occasions it would be criminal. So there are examples of ... an officer checking out the daughter’s new boyfriend through to officers who have criminals who are part of their family and actively seeking intelligence and information from police systems and passing that on.”*<sup>1262</sup>

**11.18** Specifically in relation to gifts and gratuities, Mr Cunningham explained that the policies in place were intended to provide instruction and guiding principles to enable staff to make *“correct decisions and to act in compliance with widely recognised Standards of Professional Behaviour as described in the Schedule to the Police (Conduct) Regulations 2008 and related Home Office guidance (026/2008) on police unsatisfactory performance and misconduct procedures, and Standards of Professional Behaviour for Police Staff, as agreed by the Police Staff Council (PSC).”*<sup>1263</sup> The relevant standards for police officers and police staff are described under the heading relating to Honesty and Integrity. Given their relevance I will reproduce the section in full:

*“Police officers never accept any gift or gratuity that could compromise their impartiality. During the course of their duties police officers may be offered hospitality (e.g. refreshments) and this may be acceptable as part of their role. However, police officers always consider carefully the motivation of the person offering a gift or gratuity of any type and the risk of becoming improperly beholden to a person or organisation.*

<sup>1258</sup> p4, *ibid*

<sup>1259</sup> p51, lines 1-10, Chief Constable Mike Cunningham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-29-March-2012.pdf>

<sup>1260</sup> p51, lines 8-12, *ibid*

<sup>1261</sup> pp51-52, lines 12-11, *ibid*

<sup>1262</sup> p52, lines 12-21, *ibid*

<sup>1263</sup> p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Mike-Cunningham.pdf>

*It is not anticipated that inexpensive gifts would compromise the integrity of a police officer, such as those from conferences (e.g. promotional products) or discounts aimed at the entire police force (e.g. advertised discounts through police publications). However, all gifts and gratuities must be declared in accordance with local force policy where authorisation may be required from a manager, Chief Officer or Police Authority to accept a gift or hospitality. If a police officer is in any doubt then they should seek advice from their manager.”<sup>1264</sup>*

**11.19** This guidance has been adopted by all police forces, including the MPS.<sup>1265</sup> Mr Cunningham also confirmed that all forces have mechanisms by which advice and guidance on interpretation can be provided.<sup>1266</sup> He said that *“there are formal regional structures for Heads of Professional Standards Departments which underpin and support each of the three ACPO Professional Standards Portfolio working groups. In addition, the Police Federation and the Police Superintendents’ Association of England and Wales (PSAEW) have misconduct leads and Panel of Friends with an ability to seek guidance from and to influence the formulation of policy and procedure to drive forward improvements in professional standards.”<sup>1267</sup> Any breach of the standards set out above would be deemed a disciplinary offence, which *“... would be measured against the standard, in the police conduct regulations, and the guidance ... would assist the person who’s making a judgment in relation to that breach in order to form a view as to the severity of that breach.”<sup>1268</sup>**

**11.20** In leading on the response by ACPO to the HMIC report ‘Without Fear or Favour – A Review of Police Relationships’, Mr Cunningham confirmed that three principal sets of guidance were being developed to address the report’s recommendations; the first relates to the acceptance of gifts and hospitality; the second relates to officers taking secondary employment or having business interests; and the third relates to the police’s relationship with the press and the media, on which Chief Constable Andy Trotter is leading.<sup>1269</sup> Mr Cunningham candidly admitted that the delivery of national guidance would be a *“challenge for the service.”<sup>1270</sup>* He expanded on this point and said:

*“... We clearly, I think, acknowledge and agree with HMIC that national guidance is required in these areas ... What will be a challenge will be to phrase that guidance in such a way as it can be applied to very different circumstances in different places. It needs to be sufficiently high level to be applicable to those different circumstances, yet sufficiently detailed to be meaningful. That’s the balance we’re trying to strike.”<sup>1271</sup>*

**11.21** ACPO also clearly recognised that the issues raised by HMIC’s report were important ones for the Police Service as a whole. Mr Cunningham said:

*“... ACPO is approaching these issues with real energy and the reason for that is we do recognise that the issues under examination at the moment have potential and have been immensely damaging to public confidence. Immensely damaging to the relationship upon which we build effective policing. Because of that corrosive nature of the issues that we’re dealing with, we need to approach this very quickly. We are*

<sup>1264</sup> p5, *ibid*

<sup>1265</sup> p6, *ibid*

<sup>1266</sup> p6, *ibid*

<sup>1267</sup> p6, *ibid*

<sup>1268</sup> p53, lines 14-19, Chief Constable Mike Cunningham, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-29-March-2012.pdf>

<sup>1269</sup> p57, lines 5-15, Chief Constable Mike Cunningham, *ibid*

<sup>1270</sup> p60, lines 15-21, Chief Constable Mike Cunningham, *ibid*

<sup>1271</sup> pp60-61, lines 20-5, Chief Constable Mike Cunningham, *ibid*

*heartened but absolutely not complacent by the fact that HMIC, IPCC and other people who have scrutinised the police agree that corruption and malpractice is not endemic or systemic. However, the actions of individuals, particularly senior individuals, has been and can be highly damaging. That's why we need to act with the urgency with which we're addressing this.*<sup>1272</sup>

- 11.22** On 11 May 2012, Mr Cunningham wrote to the Home Secretary to provide her with an update on ACPO's response to the HMIC report. He reported that following a meeting on 20 April 2012, Chief Constable's Council had *"strongly endorsed a comprehensive paper addressing HMIC's main recommendations."*<sup>1273</sup> A copy of the paper was annexed for her information. Furthermore, Mr Cunningham said that following a meeting with the former Chief Inspector of the Constabulary, Sir Denis O'Connor, and Her Majesty's Inspector of the Constabulary Roger Baker on 3 May 2012 to discuss the ongoing work, he was *"pleased to report an encouraging endorsement of the paper, its content, the guidance we have adopted and are continuing to develop, and the direction of travel."*<sup>1274</sup>
- 11.23** I have already dealt in more detail with the HMIC report and its recommendations elsewhere (see section 9 above). In summary form, the first two principal recommendations related to the institution of robust systems to identify, monitor and manage the risks identified in the report on the basis of national standards and expectations, and the need for the expression of clear, consistent and service wide boundaries and thresholds of acceptability.<sup>1275</sup> The ACPO response paper records that *"significant consultative work has taken place (and is set to continue) with key stakeholders, including HMIC, the Home Office, Staff Associations, the IPCC, and the APA. Over the course of the past months, heads of professional standards departments and chief officers with delegated responsibility as Appropriate Authority have been increasingly focused on more robust governance of the risks from the matters reported upon in without Fear or Favour."*<sup>1276</sup>
- 11.24** The ACPO response paper further records that *"three specific guidance documents have been drawn up to assist and inform decision making within and between forces ... which will engender a consistency of approach in defining and establishing boundaries of acceptable practice over matters of personal and professional integrity."*<sup>1277</sup> The first piece of guidance referred to relates to the management of business interests and additional occupations for police officers and police staff. The ACPO response paper notes that a *"more robust decision making framework has been prepared"* to promote a consistency of approach to the approval and regulation of business interests and additional occupations.<sup>1278</sup> Importantly, the framework makes clear that *"adverse reputational impact"* is the key and over-riding consideration for decision makers, rather than *"personnel or health and safety factors"* as was previously the case.<sup>1279</sup>
- 11.25** Further changes to the guidance previously in place include *"a more definitive confirmation that the decision maker on the approval of business interests should be the appropriate authority or head of professional standards."*<sup>1280</sup> The updated guidance in this area also

<sup>1272</sup> p62, lines 3-20, Chief Constable Mike Cunningham, *ibid*

<sup>1273</sup> p1, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

<sup>1274</sup> *ibid*

<sup>1275</sup> p19, Sir Denis O'Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1276</sup> p4, paras 2.1-2.2, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

<sup>1277</sup> p4, para 2.3, *ibid*

<sup>1278</sup> p5, para 2.4, *ibid*

<sup>1279</sup> p5, para 2.4, *ibid*

<sup>1280</sup> p5, para 2.5, *ibid*

provides “a more specific set of criteria to assist decision making which should be taken into account when determining the appropriateness of a prospective business interest or secondary occupation for compatibility with the role or duty of the officer or member of staff, namely impartiality (predicted, expected or evidenced); impact on the force (potential and perceptions); the applicant’s current performance, proportionality (in relation to seniority and role); equality and diversity; and health, safety and well-being.”<sup>1281</sup> Finally, it is said that the revised guidance simplifies the previously overly bureaucratic procedures relating to the right of appeal against non-approval of a business interest.<sup>1282</sup> The ACPO response paper makes clear that the guidance in this area is “currently subject to further and final consultation in the Police Advisory Board working party.”<sup>1283</sup>

**11.26** In relation to the issue of gifts, gratuities and hospitality, the ACPO response paper reports that “for the first time, ACPO guidance has been drafted to provide a more consistent service-wide approach” to this issue.<sup>1284</sup> Fundamentally, the guidance is based on a shift to a “blanket non-acceptability save for certain circumstances of a common sense approach to the provision of light refreshments, and trivial and inexpensive gifts of bona fide and genuine gratitude from victims or communities.”<sup>1285</sup> The guidance also makes clear the expectation that a single force register of gifts and hospitality will exist under the direct “governance and scrutiny” of the head of professional standards.<sup>1286</sup>

**11.27** The key guiding principles governing the acceptance of gifts, gratuities and hospitality are mandated within the revised guidance. The guidance, for example, reminds police officers and police staff that they should “demonstrate the highest standards of professional behaviour, honesty and integrity. In particular they should not compromise or abuse their position by soliciting the offer of gifts, gratuities, favours or hospitality in any way connected to, or arising from, their role within the police service, whether on or off duty.”<sup>1287</sup> Furthermore, the guidance states that “police officers and police staff should not accept the offer of any gift, gratuity, favour or hospitality unless it complies with the circumstances and considerations as set out [within the guidance] ... as to do so might compromise their impartiality or give rise to a perception of such compromise.”<sup>1288</sup> Importantly in my view, the guidance also makes clear that the offer of a gift, gratuity or hospitality should be declared “irrespective of whether or not it is accepted or rejected by the recipient.”<sup>1289</sup> This level of transparency is of particular relevance in instances where there is a concern over the motivation behind the original offer.

**11.28** More definitive detail and practical examples on the boundaries of acceptability and non-acceptability are also included. For example, the guidance makes clear the distinctions that exist “in a spectrum whereby one extreme can properly be considered to be a breach of the criminal law (The Bribery Act 2010) through to the low-level of hospitality which could in no way be considered as a breach of integrity on any party involved.”<sup>1290</sup> Again, consultation in relation to this guidance has continued with “the concept of a public conscience test to such

<sup>1281</sup> p5, para 2.6, *ibid*

<sup>1282</sup> p5, para 2.7, *ibid*

<sup>1283</sup> p5, para 2.4, *ibid*

<sup>1284</sup> p5, para 2.8, *ibid*

<sup>1285</sup> p5, para 2.8, *ibid*

<sup>1286</sup> p5, para 2.8, *ibid*

<sup>1287</sup> p1, para 2.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/11/ACPO-Guidance-Gifts-ans-Hospitality.pdf>

<sup>1288</sup> p1, ACPO Guidance on Gifts, Gratuities and Hospitality, para 2.2, *ibid*

<sup>1289</sup> p2, para 2.10, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/11/ACPO-Guidance-Gifts-ans-Hospitality.pdf>

<sup>1290</sup> p5, para 2.9, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

*matters*” said to be a further aspect informing the debate.<sup>1291</sup> I deal with the third piece of guidance in relation to media relationships in more detail below.

- 11.29** HMIC’s third principal recommendation sought to ensure that sufficient regard was paid to the issues of integrity and anti-corruption in police training courses. In particular, and given the importance of leadership in securing high standards of integrity, it recommended that the Strategic Command Course and the High Potential Development Scheme should encompass these issues.<sup>1292</sup> The ACPO response paper reported that *“Chief Officers have taken steps to address this recommendation and have secured and delivered enhanced input on integrity and counter corruption to participants of the Strategic Command Course which concluded in March 2012 and also into the High Potential Development Scheme. This work will continue and will be refined in future courses and in other aspects of leadership development and training.”*<sup>1293</sup> Furthermore, it is reported that ACCAG will *“commence the collation of data from across the service which will provide a refreshed analysis of strategic threats to law enforcement from corruption.”*<sup>1294</sup> It is said that this work will assist chief officers in further improving governance around *“risks to integrity”* and will help to prevent and deter those engaged in corrupt practices. This work stream will also further inform the training and briefing of police officers and police staff at all levels.<sup>1295</sup>
- 11.30** Parenthetically on the issue of police training, I would endorse the Home Secretary’s view that *“confidence and competence in communicating through various media channels are important at all levels – chief constable, borough commander and neighbourhood officer, for example. But so too is a clear understanding of how relationships with those who work in the media should be conducted in a professional, open and transparent way.”*<sup>1296</sup> On this issue, the Home Secretary reported that *“the new police professional body will consider where there are gaps in existing training and how this should be built into police officer and staff learning and development.”*<sup>1297</sup> This certainly strikes me as an area of priority for the new body once instituted.
- 11.31** HMIC’s fourth substantive recommendation related to the promotion of improved corporate governance as a core part of everyday police business.<sup>1298</sup> The ACPO response paper reports that *“chief officer teams and heads of professional standards have conducted force reviews of their governance and oversight arrangements to ensure that those arrangements are fulfilling their function in helping promote the values of their force in the delivery of its objectives.”*<sup>1299</sup> Following this exercise it was said to be evident that *“chief officer teams need to be clear on their responsibility for ensuring Professional Standards Departments routinely scrutinise and provide governance over business interests, additional occupations, gifts and hospitality registers and oversight of procurement and contracts, and to ensure that this governance integrates with and promotes the values of the individual force and the wider service.”*<sup>1300</sup>

<sup>1291</sup> p5, para 2.10, *ibid*

<sup>1292</sup> p19, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1293</sup> p6, para 3.1, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

<sup>1294</sup> p7, para 3.4, *ibid*

<sup>1295</sup> *ibid*

<sup>1296</sup> pp22-23, para 95, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Theresa-May-MP.pdf>

<sup>1297</sup> pp22-23, para 95, *ibid*

<sup>1298</sup> p20, Sir Denis O’Connor, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>

<sup>1299</sup> p7, para 4.1, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

<sup>1300</sup> p7, para 4.2, *ibid*

**11.32** ACPO also suggest that there is scope for individual forces and the Police Service more generally to *“obtain increased synergy from the values espoused within the Statement of Common Purpose and the firmly embedded Standards of Professional Behaviour.”*<sup>1301</sup> The Statement of Common purpose was revised in July 2011 and includes, for example, the aspirational principle that the police *“will act with integrity, compassion, courtesy and patience, showing neither fear nor favour in what we do.”*<sup>1302</sup> Chief Officers are also encouraged to ensure that the *“aspects of integrity examined and reported upon in Without Fear or Favour are subject to more regular scrutiny and oversight as matters affecting force reputation.”*<sup>1303</sup> In concluding, ACPO suggest that the *“collective police service can best demonstrate its legitimacy, ethics and values by being seen to be leading by example by instilling regular and consistent governance and oversight of integrity and wider professional standards as part of the wider governance and as part of everyday business of the force.”*<sup>1304</sup> I would obviously agree with this assessment and it is a subject to which I will return in my concluding remarks.

**11.33** One matter raised through HMIC’s report in relation to which there is not yet a collectively agreed ACPO view is that of the *“perception of the prospect of personal gain where senior leaders (including those within ACPO and at other levels of seniority) retire and either immediately or shortly thereafter take up posts with commercial companies keen to take advantage of a working lifetime of experience in policing, community safety, specialist investigations or ethical organisational leadership.”*<sup>1305</sup> ACPO suggest that further debate and analysis is needed to manage the question of public perception when *“morally, ethically, and legally there are no barriers to prevent a retired officer from contributing to the wider policing framework as they see fit once free of obligations to public service.”*<sup>1306</sup> I deal substantively with this particular issue elsewhere.

#### *Interim ACPO guidance for relationships with the media*

**11.34** This guidance is of particular relevance to the Inquiry given the detailed evidence that has been taken from a number of Chief Officers, other witnesses from within the Police Service, policing stakeholders and journalists relating to concerns over the police’s relationship with the media. The guidance itself was published in April 2012 following its approval by Chief Constables’ Council. Its described purpose is to *“provide a framework for police officers and staff with an interim approach on the relationship of the police service with the media, in all its forms.”*<sup>1307</sup> Its interim status reflects the fact that it was anticipated that further changes to the document would be required as a result of this Inquiry.

**11.35** The person principally responsible for the production of this document was Chief Constable Andy Trotter, Chair of the ACPO Communications Advisory Group (CAG).<sup>1308</sup> In describing the role of CAG, Mr Trotter said: *“That is to bring together the heads of communications from the various police forces, England, Wales and Northern Ireland, plus others who come along as observers from time to time, to discuss recent best practice, discuss recent incidents, debrief*

<sup>1301</sup> p7, para 4.4, *ibid*

<sup>1302</sup> <http://acpoprofessionalethics.org/default.aspx?page=somav>

<sup>1303</sup> p7, para 4.4, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

<sup>1304</sup> p7, para 4.6, *ibid*

<sup>1305</sup> p7, para 4.7, *ibid*

<sup>1306</sup> p7, para 4.7, *ibid*

<sup>1307</sup> p2, Interim ACPO Guidance for relationships with the Media, <http://www.acpo.police.uk/documents/reports/2012/201204IntGuiMediaRels.pdf>

<sup>1308</sup> p1, para 1.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Andrew-Trotter1.pdf>

*matters, also to formulate policy, which we then circulate to forces around the country.*<sup>1309</sup> As Chair of CAG, Mr Trotter acts as the ACPO professional lead for media relations.<sup>1310</sup> He explained that *“as such I represent the views of the police service to media organisations and representative bodies such as the Society of Editors, Newspaper Society and National Union of Journalists. Accordingly from time to time I meet with editors and journalists to discuss any areas of current concern. I also liaise on media issues with other organisations who work with police forces such as the Independent Police Complaints Commission (IPCC) and the Crown Prosecution Service (CPS).”*<sup>1311</sup>

**11.36** The guidance itself is said to reinforce *“a stance of maintaining open and transparent dealings with the media at all levels of the service for the benefit of the wider public interest”*, provide *“clarity for officers and staff on ensuring they speak on those aspects of policing for which they are specifically responsible”*, and provide *“additional clarity on the speaking terms (what constitutes on and off record and what is for publication) to prevent misunderstanding.”*<sup>1312</sup> A clear expectation is also created that any police officer or member of police staff meeting in private with a journalist *“must make a note of the meeting or disclosure which should be recorded in either a diary or pocket book.”*<sup>1313</sup> In addition, the guidance states that *“where an officer or member of staff speaks to the media about a significant operational or organisational matter, a record of the conversation should be made (unless in a public forum, such as a public meeting or through the internet or a social media feed).”*<sup>1314</sup>

**11.37** A number of key principles underpin the guidance. Given their relevance I will reproduce them in full:<sup>1315</sup>

*“Legitimacy is an essential aspect of the British policing model, based on consent. The press and other forms of media play an important part in assuring police legitimacy and protecting the public interest.*

*Police interaction with the media should be guided by a legitimate policing purpose, which is one related to the core values and standards of policing, set out in the Statement of Mission and Values.*

*The relationship between police and media should be undertaken in a manner which lives up to the highest standards of impartiality and integrity.*

*The police service has a duty to safeguard the confidentiality and integrity of information, which must be balanced against the duty to be open and transparent wherever possible.”*

**11.38** It is clear that a degree of confusion has existed in relation to the terminology used by journalists to establish the basis for a conversation with police officers and police staff (see section 2 above). The guidance attempts to address this issue by providing a set of general definitions:<sup>1316</sup>

<sup>1309</sup> pp38-39, lines 21-2, Chief Constable Andrew Trotter, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-hearing-28-March-2012.pdf>

<sup>1310</sup> p3, para 3.1, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Andrew-Trotter1.pdf>

<sup>1311</sup> p3, para 3.1, *ibid*

<sup>1312</sup> p6, para 2.13, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

<sup>1313</sup> p6, para 2.14, *ibid*

<sup>1314</sup> p6, para 2.14, *ibid*

<sup>1315</sup> p4, paras 2.1-2.4, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/Submission-from-ACPO-Interim-Guidance-for-relationships-with-the-Media.pdf>

<sup>1316</sup> p5, para 3.5, *ibid*

- “(a) On the record – means that a journalist can report, quote and name their source. Where possible, all conversations should be on this basis and it should always be assumed that a conversation is on the record unless expressly agreed otherwise in advance.*
- (b) Background/guidance – means that information provided can be reported without it being attributed to a source, whether named or not. This is sometimes used to provide further context around an on the record statement.*
- (c) Off the record – means that use of information provided is restricted altogether. Occasionally there may be a legitimate reason for an off the record conversation or briefing to take place, such as where news reporting may have an impact on a current investigation or as a means of preventing inaccuracies or misunderstanding.”*

**11.39** Given that the terminology is sometimes misunderstood or used interchangeably, the guidance emphasises the importance of clarifying *“how they will apply before exchanging information.”*<sup>1317</sup> It also suggests that it is *“good practice”* where possible to have a press officer present in circumstances where a police officer is *“meeting or speaking with a journalist privately.”*<sup>1318</sup> This is obviously sensible advice. I deal with the distinct issue of ‘off the record’ conversations elsewhere within this Report (see section 2 above).

**11.40** In relation to the issue of integrity, the guidance reminds police officers and police staff that it is *“essential to the standards of integrity demanded of the police service that police officers and staff should recognise and avoid or respond appropriately to potential conflicts of interest. These can be understood as situations where there may be competing obligations or interests to those which relate to the legitimate policing purpose for engaging with the media.”*<sup>1319</sup> Specifically in relation to the issue of potential conflicts, police officers and police staff are again reminded that any family or personal relationships with members of the media should be disclosed and recorded.<sup>1320</sup> Perhaps most importantly, the guidance makes clear that police officers and police staff *“have a clear duty to report to a line manager any corrupt practice or perception of corruption (e.g. offer of reward for information, any unacceptable level of hospitality, or seeking to engender an inappropriate relationship).”*<sup>1321</sup>

**11.41** In concluding, the guidance is clear that it does not provide the answers to every conceivable situation but rather it provides an approach and ethos to assist those within the Police Service to establish a productive and transparent relationship with the media.

**11.42** The Home Secretary welcomed the ACPO’s proposals and the continuing work taking place to address the recommendations contained within HMIC’s report.<sup>1322</sup> She said that this continuing work will *“need to focus on how the police, including senior leaders and those working in Professional Standards in particular, can play a proactive role in promoting and championing the new sets of guidance and monitoring compliance in order to bring about the real changes in attitudes and behaviours on integrity issues we are seeking.”*<sup>1323</sup> This is obviously a significant point. Transactional change in the form of new guidance and procedures, whilst important, can be rendered relatively meaningless if it is not also aligned with cultural change (in the form, for example, of a more transparent and challenging environment – particularly at ACPO level).

<sup>1317</sup> p5, para 3.6, *ibid*

<sup>1318</sup> p5, para 3.8, *ibid*

<sup>1319</sup> p5, para 4.1, *ibid*

<sup>1320</sup> p5, para 4.2, *ibid*

<sup>1321</sup> p6, para 4.6, *ibid*

<sup>1322</sup> pp1-22, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-4.pdf>

<sup>1323</sup> pp1-2, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Exhibit-TM-5.pdf>

- 11.43** This leads me to an area of specific concern. I am confident that Police Professional Standards Departments, working within the framework of the newly developed guidance, will robustly ensure that those operating below Chief Officer level entirely comply with the policies and procedures in these areas, and will effectively tackle malpractice where necessary. However, I am less confident in their ability to challenge Chief Officers directly on integrity issues – in other words, albeit in a different context to that which I have usually used this phrase, who will be the guardian of these guardians? Neither is this a theoretical issue. It has not gone without notice that there have been a number of incidents of concern recently which may have called into question the robustness of the corporate governance arrangements in place within forces.<sup>1324</sup>
- 11.44** I entirely recognise that any recommendations that I make in this area may be temporary in nature. Police and Crime Commissioners (PCCs) are now in place, and nationally the Home Office will be creating a police professional body which will be responsible for standards, skills and professionalism at all levels of policing. This new body will also play *“a very active role in setting standards of ethics and integrity.”*<sup>1325</sup> That being said, I set out my views and recommendations as to the way forward in Part G Chapter 4 below.

<sup>1324</sup> See for example the findings of the Hillsborough Independent Review Panel, the dismissal of the Chief Constable of Cleveland Police and the suspension of the Chief Constable of Cumbria Police

<sup>1325</sup> p29, para 123, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Witness-Statement-of-Theresa-May-MP.pdf>

# CHAPTER 4

## THE PRESS AND THE POLICE: CONCLUSIONS AND RECOMMENDATIONS

### 1. Introduction

- 1.1** The subject-matter of Module Two of the Inquiry was the contacts and the relationship between the press and the police, and the conduct of each. At the heart of this issue was the straightforward question (which is the same as will be discussed in respect of politicians): did the relationship become too close? In order to arrive at a fair and comprehensive picture, the Inquiry has examined many facets of that way in which press and police interact. It has done so by looking at the overlapping issues of ‘tip offs’, ‘taking media on operations’, ‘off-the-record’ briefings, leaks, whistleblowing, gifts and hospitality, entertainment etc.
- 1.2** This list is lengthy but the issues underlying each of these areas have been similar. The words ‘integrity’ and ‘perception’ are common refrains. Putting the matter at its lowest, if a police officer tips off a member of the press, the perception may well be that he or she has done so in exchange for past favours or in the expectation of some future benefit. At its highest, the issue becomes one of integrity for the police officer: his or her professional standing may be put under scrutiny. And the issue is exactly the same for off-the-record briefings and leaks (to cite just two of these foregoing examples), although separate points – in essence discrete matters of detail – arise in each individual case.
- 1.3** Integrity lies at the heart of policing by consent, and it is damaging enough if there is even the perception that a police officer may not be discharging his or her duty with complete transparency and disinterest. Ultimately, problems of perception lie at the heart of the public concerns regarding the police investigation into phone hacking up to January 2011 and the commencement of Operation Weeting. The full history has been examined at length above,<sup>1</sup> and my conclusions need not be restated here; but what is inescapable is that the harm to the reputation of the Metropolitan Police Service (MPS) in general and certain individual police officers in particular has been immense. I have already referred to the fact that a very damaging perception was created that the NoTW exercised an inappropriate degree of influence over the MPS, including a number of senior police officers and other employees. Public confidence is in the process of being restored by the work of the MPS since January 2011 and, I hope, the transparent process of this Inquiry.
- 1.4** I mention the MPS specifically in the context of the investigation into phone hacking, but I am able to go further. The problems in the relationship between the police and the press covered by the evidence adduced during the course of Module Two of the Inquiry almost exclusively related to the MPS; save for isolated examples, typically arising when an event of national newsworthiness arose in the regions, the 43 police forces<sup>2</sup> outside the metropolis enjoy sound relationships with the press, and the conduct of each gives rise to no concern. I will touch on possible explanations for this later.

<sup>1</sup> Part E Chapter 4

<sup>2</sup> I take the figure of 44 as the total number of police forces in England and Wales. I do not intend to exclude Scotland and Northern Ireland from my general observations on this issue, although I recognise that the Inquiry received much less evidence about them

- 1.5** I will examine each of the issues I have identified above in turn, and set out my conclusions and recommendations under separate headings, but at this stage I dwell on common or generic matters. There are a number of interrelated considerations which need to be set out. First, the scale of the problem needs to be kept in proportion. The Inquiry has not unearthed extensive evidence of police corruption (noting, as it has done, the current position in relation to Operation Elveden which is concerned with payments to public officials generally); nor is there evidence satisfying the standard of proof I am applying to findings of fact in this Inquiry, namely the balance of probabilities, that significant numbers of police officers lack integrity in one or more of the respects I have examined earlier.<sup>3</sup> Speculation, suspicion and legitimate perceptions may abound, and troubling evidence has been identified in a limited number of cases, but the notion that this may be a widespread problem as a matter of fact is not borne out.
- 1.6** Having made that important point, I recognise that breaches of professional standards of the nature under consideration are extremely difficult to prove. Journalists protect their confidential sources, particularly if a briefing is off-the-record; tip offs may be suspected (in some cases, going so far as to generate a reasonable inference) but clear-cut evidence is usually lacking. Further, the difficulties inherent in conducting an effective leak inquiry are legion. These are all factors which I need to continue to bear in mind when examining the issue on a generic rather than a case-specific basis, and I do not overlook the fact that the Terms of Reference require me to approach my responsibilities, so far as is possible, at a reasonably high level of generality.
- 1.7** Another highly relevant consideration is the need to find the right balance between relationships that are overly close and those which are non-existent. The importance of the free-flow of information (that is to say, *appropriate* information) between the police and the press cannot be overstated. The press have an important role in holding the police to account, and this entails building up relationships of trust with police officers thereby allowing the free exchange of information within relevant guidelines. Further, the whole concept of policing by consent requires the engagement of the public, and very often this will be best achieved through the mediation of the press.
- 1.8** There are many respects in which off-the-record briefings operate against the public interest, but in some, the public interest will be well served. By way of example, trusted journalists will benefit from a ‘background’ briefing which enables reporting on specific topics to be placed in their proper context; the press may be warned off pursuing certain lines of inquiry or publishing a story on a particular occasion through concern that a police investigation may be prejudiced. Further, albeit in a different context, although generally speaking drinking alcohol in a professional context amounts to poor judgment, and should not happen, there may well be occasions, admittedly relatively rare, on which it is unobjectionable. The point I am making is a short and simple one; I am addressing the need to find the right balance, the mid-course between policies and practices which are overly prescriptive one way or the other.
- 1.9** In many cases the straightforward application of common sense will be a sufficient guide: the Chief Constable of Avon and Somerset, Colin Port, referred to this as ‘the blush test’. Yet, although that may work perfectly well for the vast majority of police officers working hard and conscientiously in the public interest, some may blush less readily than others. Furthermore, there remains a need for written policy guidance which is clear and directive, and caters for the majority of situations. One issue which the Inquiry has focused on is the variability of such guidance across the Police Service as a whole. There is a need for greater

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<sup>3</sup>Part G Chapter 3

consistency in certain instances, and for an overarching set of principles. I appreciate that both Her Majesty's Inspectorate of Constabulary (HMIC) and the Association of Chief Police Officers (ACPO) are addressing this issue, but further work needs to be done.

- 1.10** Another factor which I bear in mind, and this harks back to what I said about the MPS, is that senior police officers working in London are expected to have a public face: they speak for the organisation as a whole in the public domain, often on issues of huge importance and concern, and in so doing will necessarily engage with the press. I do not overlook the fact that Chief Constables will also need to form professional relationships with their regional titles, but the pressures and expectations are not quite the same. Furthermore, there has been an understandable tendency for senior police officers operating in London – those at the rank of Assistant Commissioner and above – legitimately to regard themselves as akin to political figures in the sense that the nature of their work can regularly place them in the public eye. As I have already pointed out, a number of Commissioners of the MPS have deliberately courted professional relationships with the press, amongst other reasons, in an effort to enhance the standing of the service in the minds of the public. But the distinction between endeavouring to improve the standing of the Service on the one hand, and working in the pursuit of self-interest on the other, may be a fine one.
- 1.11** The Police Service is also a hierarchical organisation with clear command structures and delineations of authority. This has at least two consequences. First and foremost, junior officers will look up to their seniors for professional and ethical guidance; not necessarily by expressly seeking advice, but rather for the example they might set. If a highly ranked officer is known to be wined and dined in expensive restaurants by representatives of the press, that has the potential to set the standard for those underneath him or her. Leading from the front carries with it both its privileges and its responsibilities. Secondly, and even more problematically, the chain of command makes it difficult for junior officers to report their seniors for breaches of professional standards, and at the very least there will be a perception that those in command of the Professional Standards Divisions (PSDs) of police forces may naturally be disinclined to approach concerns drawn to their attention regarding officers of a higher rank, if only because of the natural assumption that senior officers know what they are doing and doubtless can fully justify what, in a more junior officer, might be open to challenge. All this is human nature, and to that extent completely understandable; and pragmatic solutions need to be devised to address potentially intractable problems of this nature.
- 1.12** Another factor I bear in mind is the risk of over-reaction. Lord Condon, a former Commissioner of the MPS, spoke of twenty year cycles, being something akin to “*scandal, inquiry, remedial action, relaxation, complacency, scandal, inquiry.*”<sup>4</sup> What he did not state expressly is that the ‘remedial action’ has the potential of going too far in the direction of disengagement or, speaking more colloquially, battenning down the hatches. Again, this is no more and no less than human nature, but one needs to identify the potential risk in order to guard against it.
- 1.13** Before turning to examine the specific matters which were addressed above,<sup>5</sup> I need to put all of this into perspective by drawing attention to one answer Neil Wallis gave when pressed by Counsel to the Inquiry about his relationship with Lord Stevens when the latter was Commissioner of the MPS:<sup>6</sup>

<sup>4</sup> p47, lines 18-21, Lord Condon, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf>

<sup>5</sup> Part G Chapter 3

<sup>6</sup> pp25-26, lines 12-11, Neil Wallis, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/04/Transcript-of-Afternoon-Hearing-2-April-2012.pdf>

*'A. This is really difficult, because I just find it – John Stevens is an officer who worked for 40-odd years in the police. He lived his life, 20 years, as a target for IRA assassination as he carried out the Stevens 3 Inquiries. He was the man who was the gangbuster in Northumbria. He came down here. He bust corruption in the Met. So the suggestion is that this man of integrity, of experience, of immense crime-fighting ability, is going to be seduced by me taking him down to Cecconi's and having steak and chips and a nice bottle of wine? I just can't begin to see where this comes from. All I'm saying is: have you ever had a working lunch? Have you ever had a working lunch with somebody more than once? Have you ever had a drink at that working lunch? You may well have not. I guarantee everybody in this room just about has and it is the way of the world. That is all I'm saying. I'm not suggesting – I certainly won't accept the idea that me going for dinner with a police officer is any different from a civil servant going for dinner with a businessman. I see no difference in it at all. I might be wrong, but –*

*LORD JUSTICE LEVESON: I'm not sure you are wrong.*

*A. I'm certain I'm not.'*

- 1.14** For ease of reference and understanding, I will set out my conclusions, and then my recommendations, in relation to the specific matters covered above.<sup>7</sup> Often, I will draw on my earlier analysis, expanding it only where I need to place my conclusions into context. I should record that I have had regard to the detailed and helpful closing submissions lodged by the Core Participants in relation to Module Two (as with the other modules): save in isolated instances, I do not refer to these expressly, but they have aided the development of my thinking on these matters.

## 2. Tip offs

- 2.1** By way of overview, the evidence that the Inquiry received on this issue could fairly be described as 'light' in relation to specific incidents (ie it would rarely discharge the standard of proof I am applying to findings of fact), but it is reasonably compelling at a higher level of generality. Looking at the bigger picture, a critical mass of convergent evidence begins to be persuasive. Furthermore, putting the jigsaw together, rather more general inferences may be drawn; these cannot always be explained away by coincidence or invoking some other explanation.
- 2.2** Tip offs are but one aspect of the wider problem of leaks. I have made the point, both in this context and elsewhere, that the more robust the systems and processes in place to mitigate the risks of leaks from within an organisation the better. I have also said<sup>8</sup> that it is sensible to go one stage further. It should be a matter of serious professional concern to the police that information about their activities which should be kept confidential remains so. The presence of the press at a high profile arrest may provide positive coverage although, unless very carefully handled, it may also give rise to difficult issues of fairness within the criminal justice process. Obviously, if for good reason, a decision has been taken to brief the press about a forthcoming arrest and to allow representative attendance, the risks (and the responsibilities to the target of an arrest) should have been calibrated and taken into account. If there is no such authority, however, and there is a legitimate inference that someone (whether police officer or civilian employee of the police) has leaked the information to the press generally or a journalist specifically, I do not take the view that this is 'just one of those things'. It should not have happened.

<sup>7</sup> Part G Chapter 3

<sup>8</sup> Paragraphs 2.18-2.20, Part G Chapter 3 above

- 2.3** The professionalism required of police officers must be sufficiently robust to instil the mindset that such leaks about forthcoming arrests or the involvement of the famous in the criminal justice system are not in the public interest, and that the provision of appropriate briefing as to police activity should only be handled through open and transparent procedures which have taken account of all relevant circumstances: they should not be by the back door.
- 2.4** I do not have any individual recommendations to make which are specific to the issue of tip offs, as opposed to the related issue of leaks. However, police forces should bear in mind what I have said about the importance of adherence to professional obligations and the need for these decisions to be made in a formal and transparent manner, not clandestinely still less involving self-interest.

### 3. Involvement of the press on operations

- 3.1** Here, there are none of the evidential issues I have mentioned in the context of tip offs, in the sense that the fact of a press presence at an arrest or similar operation will be obvious. Nor do I have a sense that such problems that have existed in the past give rise to special concern. Nonetheless, I do recognise that there are issues which could arise of privacy under Article 8 and fair trial under Article 6 of the European Convention on Human Rights (ECHR), particularly in the sort of high-profile case which may be of the most interest to the press. There are also issues of perception and favouritism, although the evidence I have heard falls short of suggesting anything close to an exchange of favours.
- 3.2** I have already pointed out that there is existing ACPO Guidance<sup>9</sup> and formal MPS policy<sup>10</sup> on this issue. The question arises as to whether these documents are sufficient to assuage public concerns in this respect. As I have made clear above,<sup>11</sup> I detected in much of the reflective evidence I heard on this issue a sense that there needs to be a further tightening of the current approach.
- 3.3** Overall I would endorse the general views of the Commissioner, Bernard Hogan-Howe, and Chief Constable Andrew Trotter, of the British Transport Police, on this issue. Police forces must weigh very carefully the public interest considerations of taking the media on police operations against the rights of the individuals who are the subject of such an operation. Forces must also have directly in mind a consideration of any potential and consequential impact on the victims in such cases. More generally, I think that the current guidance in this area needs to be strengthened. For example, I think that it should be made abundantly clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press or the public: these details are not routinely announced by way of press release; that the press were present at the arrest should make no difference.

<sup>9</sup> The ACPO 'Advisory Group 2010 Guidance' <http://www.acpo.presscentre.com/imagelibrary/downloadMedia.ashx?MediaDetailsID=238>, referred to at paragraph 2.23, Part G, Chapter 3 above

<sup>10</sup> MPS Special Notice 6/01 referred to at paragraph 2.23, Part G, Chapter 3 above

<sup>11</sup> Part G Chapter 3 Section 2

## 4. Off-the-record briefings

- 4.1 It has already been noted that this terminology generates a degree of confusion, which in itself has the capability to undermine adherence to professional standards. Given the room for debate about the meaning of this term and others describing the status to be accorded to information supplied by police officers, it is unsurprising that the current ‘Interim ACPO Guidance for Relationships with the Media’ seeks to define the widely deployed terminology expressly:<sup>12</sup>

*“On the record – means that a journalist can report, quote and name their source. Where possible, all conversations should be on this basis and it should always be assumed that a conversation is on the record unless expressly agreed otherwise in advance.*

*Background/guidance – means that information provided can be reported without it being attributed to a source, whether named or not. This is sometimes used to provide further context around an on the record statement.*

*Off-the-record – means that use of information provided is restricted altogether. Occasionally there may be a legitimate reason for an off-the-record conversation or briefing to take place, such as where news reporting may have an impact on a current investigation or as a means of preventing inaccuracies or misunderstanding.”*

- 4.2 I have already recognised that the use of off-the-record briefings, properly understood, may be a valuable resource in the context of an established, trusting relationship between a police officer and a journalist. Without seeking to revisit the terminological debate, background/guidance briefings are also capable of working in the public interest, as opposed to the private interests of the police officer or the journalist. On the other hand, risks clearly exist and these are of a similar nature to those already highlighted in Sections 2 and 3 above: the potential for confidential information to be disseminated and then published; the perception that inappropriate relationships will be created and favours exchanged.
- 4.3 I have already pointed out that Elizabeth Filkin in her report into the ethics of the press and police relationship, agreed that there was value for the Police Service in the limited and responsible use of ‘off-the-record’ communications. She was specific about this:<sup>13</sup>

*“...I have no doubt that the police will have to occasionally do off-the-record briefing, because otherwise they would jeopardise an investigation, and a reporter may have got a bit of a story which, if they ran it, would be very harmful, and the only way to prevent that being run, in a sensible fashion, would be to give them an off-the-record briefing and to tell them that you would inform them as soon as you could when it was possible to let that get out onto the public airwaves.”*

- 4.4 I certainly agree that, in the circumstances outlined above, and for example in the context of counter-terrorism operations or other sensitive police investigations, some form of non-reportable or confidential briefing mechanism should continue to be available as a limited tool for the Police Service in their interaction with the media. I am not sure that any more specific guidance from me in this area is necessary or would be helpful.

<sup>12</sup> Interim ACPO Guidance for Relationships with the Media, para 3.5, <http://www.acpo.police.uk/documents/reports/2012/201204IntGuiMediaRels.pdf>

<sup>13</sup> p30, lines 2-11, Elizabeth Filkin, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

- 4.5 However, I would make the following observations. Given the confusion that clearly exists between journalists and police officers and police staff alike in relation to the term off-the-record, I believe that serious consideration should be given to its removal from the lexicon of police and media contact. Aside from the confusion in actual meaning, a negative connotation has also developed which implies that any exchange of information through 'off-the-record' contact is being done on a surreptitious basis. In my view, greater clarity of thought and consistency of application would be achieved if two descriptors were used. What is critical is that there should be no doubt about the status of all that passes from the officer to the press.

**I recommend that the term 'off-the-record' briefing should be discontinued. The term 'non-reportable briefing' should be used to cover a background briefing which is not to be reported, and the term 'embargoed briefing' should be used to cover a situation where the content of the briefing may be reported but not until a specified event or time.<sup>14</sup> In my judgment, these terms more neutrally describe what are legitimate police and media interactions.**

- 4.6 In their written submissions at the conclusion of Module Two, the MPS set out its position as follows:<sup>15</sup>

*'The current thinking of the MPS is that there should be a requirement that a record be made of every contact between an MPS officer and a journalist. The purpose of that requirement would be to make it possible to ascertain, if the need ever arises, the nature and frequency of the contact, the level of contact and reason for contact. This, it is anticipated, would serve both as an incentive for personal discipline and a means for discovering and discouraging the unauthorised release of information.'*

*The guiding principle for the future regulation of contact with the media should be one of openness, allowing the Police Service to engage constructively with the media whilst ensuring that it can be held to account for its relationship with its media'*

- 4.7 I welcome and endorse almost the whole of this contribution, save for the qualification that I would distinguish between a requirement and good practice in relation to the recording of contact between junior officers and journalists. I would also endorse the comments both of Roger Baker,<sup>16</sup> Her Majesty's Inspector of Constabulary, and Mrs Filkin in relation to the need for transparency in this area. If the police are simply seeking to correct an inaccuracy within a story, for example, then I can see no legitimate reason why that contact should not normally be considered to be 'on-the-record' (there may be rare occasions when the correction needs to be 'off-the-record' to avoid identifying an individual suspect).

- 4.8 More generally, although I would also encourage junior officers and staff to do the same (principally for their own protection),

<sup>14</sup> Briefings may be a combination of the two: for example, part embargoed (i.e. reportable later) and part non-reportable (ie background only, and never to be reported). Equally, a briefing may be in part on the record and, in part, embargoed or non-reportable.

<sup>15</sup> Paragraphs 11.16 and 11.17, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/10/closing-submissions-for-Module-2-from-MPS.pdf>

<sup>16</sup> Paragraph 2.76, Part G, Chapter 3

**I recommend that it should be mandatory for ACPO rank officers to record all of their contact with the media, and for that record to be available publically for transparency and audit purposes. This record need be no more than a very brief note to the effect that a conversation has taken place and the subject matter of that conversation. Where the discussion involves a more significant operational or organisational matter, then it may be sensible for a more detailed note to be retained. Finally, in circumstances where policy or organisation matters may be on the agenda for discussion, it is good practice for a press officer also to be present.**

- 4.9** Given the important role that the press play in assuring police legitimacy and in protecting the public interest I certainly do not want to discourage contact between the police (at all levels) and the media. It also remains important that the appropriate degree of contact is maintained between the press and junior officers. Subject to what I have already said, the latter should be trusted to use their judgment to do what is right and not to do what is wrong, and be accountable for the consequences. However, where there is an incident of unauthorised disclosure, the lack of any record may in itself be a determining factor when assessing the propriety of what has happened in the context of an internal police leak investigation (assuming that there is other probative evidence which links the police officer to the leak).
- 4.10** Finally, and most importantly in my view, police officers at all levels must only communicate with the media within their own area of competence. I would entirely endorse and, thus,

**I recommend as good practice the simple rule included within the ‘Interim ACPO Guidance for Relationships with the Media’ which is:<sup>17</sup>**

***“Police officers and staff should ask: ‘am I the person responsible for communicating about this issue and is there a policing purpose for doing so?’ If the answer to both parts of this question is ‘yes’, they should go ahead.”***

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## 5. Leaks of information

- 5.1** This issue shares many themes in common with the previous topics – in particular, the disclosure of unauthorised, if not confidential, information to the press – but there is often an added dimension, namely a less than selfless motive. Leaks may take place because a police officer genuinely believes that this may be the best way of placing misconduct or impropriety into the public domain, but sometimes the motive is little other than personal disgruntlement or the desire to wound colleagues. Putting to one side the instances where such motives are in play, the issue of leaks clearly overlaps with the issue of whistleblowing which I address in Section 8 below, but at this stage I am looking at the matter more broadly.
- 5.2** I fully accept and understand that the issue is much more nuanced than the foregoing short summary conveys, and I invite attention to my detailed examination of this topic above.<sup>18</sup>
- 5.3** As with ‘tip-offs’, there are serious evidential issues. Leaks are notoriously difficult to investigate, and often a suspected leak turns out to be something different: the press may have obtained relevant information from some other source, or may simply have indulged

<sup>17</sup> Interim ACPO Guidance for Relationships with the Media, para 10.3, <http://www.acpo.police.uk/documents/reports/2012/201204IntGuiMediaRels.pdf>

<sup>18</sup> Part G Chapter 3 Section 2

successfully in an exercise in speculation. More specifically, Mr Baker suggested that leak investigations can be made more difficult “*by the fact that there is a sloppiness of rules around what is permissible and what isn’t...*”.<sup>19</sup> HMIC, through its report ‘Without fear or favour – a review of police relationship, also stressed the need for national standards in this area.<sup>20</sup> I would fully endorse that recommendation and I have dealt with the ongoing response of Police Service fully above.<sup>21</sup>

- 5.4** In Section 4 above, I have recommended that it should be mandatory for ACPO rank officers to record all of their contact with the media, and good practice for junior officers and staff (for their own protection). I entirely accept that this in itself will not prevent a determined individual from leaking. However, as Commissioner Hogan-Howe pointed out,<sup>22</sup> a record of that individual’s account would be a starting place for an investigation.
- 5.5** A degree of lack of transparency in this area is inevitable given the often understandable desire of the media to protect the identity of their sources. Given the reputational damage that can be caused, I can also readily understand the frustration of the Police Service in circumstances where a ‘police source’ is quoted but it then transpires that the information came from an outside individual. There is a balance here and, although I recognise the critical importance of protecting sources, I would certainly encourage the press to be as transparent as possible when using the term ‘source’, so that, where possible, the general provenance of the information is more easily understood: furthermore, to assert that there is a source when, in truth, there is not, both potentially damages the police and is, in any event, misleading on the part of the journalist.
- 5.6** I turn to address the related issue of misuse of the Police National Computer (PNC). This was of particular concern to the Core Participant Victims and I am grateful for their written submissions on this topic. Overall, notwithstanding the problems that there have been, I am satisfied that the MPS and the wider Police Service now treat this issue with sufficient seriousness. However, it is equally clear that there can be no room for complacency in this area given that misuse of the PNC continues to be a problem for the service as a whole. With this in mind,

**I recommend that the Police Service should re-examine the rigour of the auditing process and the frequency of the conduct of audits in relation to access to the Police National Computer (PNC). Additional consideration should also be given to the number of people given access to the PNC and the associated rules which govern its usage.**

## 6. Gifts, hospitality and entertainment

- 6.1** These topics can be addressed under the same heading, although the issue of entertainment in particular has attracted significant public interest and concern. In many ways it is emblematic of the issues of perception which surround, if not encase, the relationship between the MPS and News International (NI) and the history of the investigation of phone hacking between

<sup>19</sup> p49, lines 22-25, Roger Baker, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Afternoon-Hearing-5-March-2012.pdf>

<sup>20</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-4-HMIC-without-fear-or-favour.pdf>, p5

<sup>21</sup> Part G Chapter 3

<sup>22</sup> pp64-65, line 6-1, Bernard Hogan-Howe, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-20-March-2012.pdf>

2006 and January 2011. The mention of expensive restaurants and bottles of champagne has done nothing to enhance the reputation of the MPS in the public mind.

- 6.2** Apart from the evidence bearing directly on the relationship between the MPS and NI, which it is not necessary to recapitulate at this stage, the Inquiry heard of a wide range of approaches and house styles. Much of the variability is no doubt attributable to differing personalities and temperaments, but as Mrs Filkin has concluded more generally, “[t]here has been wide variation in how the senior team interpreted policy on dealing with the media and receiving gifts and hospitality. In some instances this interpretation is seen as inappropriate. There has been no clear standard set by the senior team for police officers and staff to use as a guide for their own behaviour and in some instances the standards set have been poor and have led to consequent damage.”<sup>23</sup> Mrs Filkin recommended that the MPS senior team “must signal a change in culture and set a consistent example for all staff on the ethical standards they expect, including how they relate to the media and the interpretation of the gifts and hospitality register.”<sup>24</sup> I would certainly endorse this finding.
- 6.3** The recent ACPO Guidance<sup>25</sup> sets out the circumstances in which hospitality may, or may not, be accepted. I have set this out in full elsewhere.<sup>26</sup>
- 6.4** I have made it clear that I would certainly endorse the key principles contained within this guidance. Without wanting to be overly prescriptive or puritanical on this issue, in the circumstances

**I recommend that the recent ACPO Guidance should more specifically spell out the dangers of consuming alcohol in a setting of casual hospitality (without necessarily specifying a blanket ban).**

It also strikes me that the concept of an “industry norm” in this context may still allow for a variance in practice from force to force, and may tend to assume what needs to be established. However, I would certainly adopt in full the guidance provided to police officers (at all levels) and police staff in helping them to determine the boundaries of what is acceptable:

*“Is it genuine? Is the offer made for reasons of genuine appreciation for something I have done? Why is the offer being made? What are the circumstances? Have I solicited this offer in any way or does the donor feel obliged to make this offer?”*

*Is it independent? Would the offer or acceptance be seen as reasonable in the eyes of the public? Would a reasonable bystander be confident I could remain impartial and independent in all of the circumstances?”*

*Is it free? Will I feel obliged to do something in return? How do I feel about the propriety of the offer? What are the donor’s expectations of me should I accept?”*

*Is it transparent? Would I be comfortable if my acceptance of this offer was transparent to colleagues, the force, and the public or if it was reported publicly? What could be the outcome for the force if this offer was accepted or declined.”<sup>27</sup>*

- 6.5** It is also vital that transactional change in the form of new policies and guidance is aligned with real cultural change. As the evidence has made clear, leadership can be the key determining factor in this regard. Given this, it is important that a challenging and transparent

<sup>23</sup> para 4.2, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

<sup>24</sup> p41, *ibid*

<sup>25</sup> ACPO guidance on gifts, gratuities and hospitality, paras 2.21-2.26

<sup>26</sup> Part G Chapter 3 Section 11

<sup>27</sup> ACPO guidance on gifts, gratuities and hospitality, para 2.12

environment exists within each force area so that staff at all levels, including those at ACPO rank, understand what is expected of them in terms of issues of integrity.

## 7. Media employment

- 7.1** I have examined this topic from two opposing perspectives: first, from the viewpoint of journalists being recruited to work for the police service; and second, the other way round. Unsurprisingly, the second issue is far more sensitive and problematic than the first.
- 7.2** In brief, I do not believe that there should be any restriction on journalists being recruited to work for the Police Service, save that the process should be conducted in line with the procedures of the Government Communication Network (GCN) in an open and transparent manner. It may in fact be good practice, for the purposes of transparency, for individual forces to publish details of the make-up of their PR or communications departments in generic terms, but I consider that to be a matter for them. There is clearly a need for media expertise and the Police Service should be free to choose the best person for the job in a competitive free market. That is not to say – as a freestanding observation - that forces should not examine their existing media relations training and awareness with a view to increasing skill levels, in relation to which Surrey Police have derived much benefit.<sup>28</sup>
- 7.3** The issue of police officers leaving to work for the media is, I have already said, more difficult. That issue may be sub-divided into two segments. Taking first the position of junior officers, I have concluded that it would be wrong to place restrictions, for example in the form of a ‘cooling off’ period, on police officers and staff below ACPO rank leaving the Police Service, perhaps to return to a career in the media. In practice, the evidence suggests that journalists leaving the police service for an employed job rarely return to journalism. In addition, any restrictions would clearly have to be balanced against the right of any individual to seek employment as and where he or she wishes. In these circumstances, I believe that it would be contrary to the public interest to impose any restrictions of the type described.
- 7.4** The position is different as regards senior officers of ACPO rank. The Inquiry received a considerable body of evidence which reflected public concern of very senior officers taking media jobs (usually on retirement), or writing articles for the press; I do not touch the question of books or memoirs. This issue is intertwined in the public mind with the broader perceptual questions surrounding the relationship between senior officers of the MPS and NI, a topic which I have covered fully elsewhere.<sup>29</sup>
- 7.5** Whilst mindful of the concerns expressed by a number of witnesses, including Sir Paul Stephenson, the former Commissioner of the MPS, and Chief Constable Stephen House, of Strathclyde Police, in particular, on balance I have come to the conclusion that consideration should be given to the terms on which ACPO rank officers are engaged and, in particular to whether these terms should be amended to prevent employment by media organisations in much the same way as the previous Metropolitan Police Authority (MPA) contracts prevented employment by those with a contractual relationship with the MPS. I appreciate that regard must be had to issues of restraint of trade, to the right to seek employment, to freedom of expression, and, additionally, to the public interest in receiving information. But there are counterbalancing public interests that are also important. With this in mind, it seems to me that a time bar of twelve months would be sufficient to provide an appropriate

<sup>28</sup> p20, lines 12-24, Assistant Chief Constable Jeremy Kirkby, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-27-March-2012.pdf>

<sup>29</sup> Part G Chapter 3

balance between the rights of the individual and public interest concerns relating to future employment by the media.

- 7.6 I am not in a position to consider all the ramifications of such a proposal; my recommendation is, therefore, limited. In the circumstances,

**I recommend that consideration should be given to the terms upon which ACPO rank officers are appointed and, in particular, whether these terms should include some limitation upon the nature of any employment within or by the media that can be undertaken without the approval of the relevant authority for a period of 12 months following the cessation of the appointment.**

I understand that should this recommendation be accepted then it may also require a change in the regulations governing the Police Service.

## 8. Corruption, whistleblowing and related matters

- 8.1 I appreciate that the topics of whistleblowing and corruption raise issues which are common to neither, but for the purposes of this Inquiry there is much common ground. It is for that reason that I take them together. Doing so also makes it easier to follow the series of recommendations which I set out below.

- 8.2 I take corruption first. The Inquiry has not been the place to examine the broader issue of corruption within the Police Service; the focus has rightly been on corruption in the specific context of media relations. Additionally, the current position in relation to Operation Elveden has inevitably hampered the ability of the Inquiry to delve into the issue in any depth. Nonetheless, I bear in mind the frank evidence I have heard from senior police officers which has given me a clear sense of the seriousness and scale of the problem. No one underestimates the gravity of the issue as a matter of generality, but it would be wrong for anyone to believe that corruption is endemic in the Police Service.

- 8.3 As I have already pointed out, training and guidance are obviously important preventive tools in seeking to address this issue. The relevant overarching guidance in this area is provided, first, through the ACPO Counter Corruption Advisory Group (ACCAG), whose ‘Guidance for the Investigation of Corruption’ was first published in 2003 and last formally revised in 2006; this guidance has been adopted by all chief officers.<sup>30</sup> Second, the recognised ‘Standards of Professional Behaviour’ are set out in the Schedule to the Police (Conduct) Regulations 2008 and the related Home Office guidance (026/2008) on police unsatisfactory performance and misconduct procedures, and Standards of Professional Behaviour for Police staff, as agreed by the Police Staff Council. This guidance has also been adopted by all police forces, including the MPS.<sup>31</sup> Both sets of guidance are currently under review and are dealt with in more detail elsewhere.<sup>32</sup>

- 8.4 Evidenced by the guidance and training currently in place, and the vigour with which individual police officers and police staff are pursued where criminality is identified, it is clear that the

<sup>30</sup> pp4-6, para 3, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Witness-Statement-of-Chief-Constable-Mike-Cunningham.pdf>

<sup>31</sup> *ibid*; MPS 36 – The Police (Conduct) Regulations 2008, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/MPS-36-The-Police-Conduct-Regulations-2008.pdf>; and CCMC 11: Home Office Guidance – Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures (not available on the Inquiry website)

<sup>32</sup> Part G Chapter 3

Police Service takes this issue seriously. There are, however, gaps and weaknesses in the collective approach to the issue a number of which have been identified by HMIC. Having said that, I am in no doubt that the Police Service is genuine in its desire to tackle corruption head on, with the ACPO led response to the HMIC report being particularly important in this regard. For my part, I would whole heartedly adopt the HMIC recommendations relating to the need for consistent national standards and guidance, enhanced training and awareness, and more robust corporate governance arrangements. From the stand-point of sanctions, corruption is a criminal offence with serious penalties, I do not feel it necessary therefore, to recommend any additional statutory or regulatory tools to assist in dealing with this important issue.

**8.5** The Home Secretary, the Rt Hon Theresa May, confirmed this last point and provided the Inquiry with her summary of the key findings. She said:<sup>33</sup>

*“I think the key findings that come out of this in many ways chime in with those previous work that’s been done, particularly by the HMIC, about the need for greater clarity both for the public in terms of what’s police corruption and therefore what is appropriate to bring to the IPCC, but also greater clarity in terms of – perhaps greater consistency in recording incidents that have taken place from force to force. They identify that different forces appear to have...different levels of reporting of complaints about corruption and the question is raised as to whether that’s because of a different definition being used rather than the behaviour in relation to the forces. Crucially, it refers again to the issue of additional powers and also about resources, and these are issues that we intend, when legislative time allows, to be able to make changes to the powers to the IPCC and we are looking at the case that they’ve put forward in relation to additional resources.”*

**8.6** I certainly support these proposed changes and share the view of the IPCC that, in order for the system to work as it should, it is vital that all police forces are both alert to allegations of corruption and are capable of dealing with them effectively and appropriately.<sup>34</sup> I also agree that this is an area where independent oversight is essential, particularly from the standpoint of public perception, not least because the confidence of the public in the police is fundamental to its legitimacy and to the absolutely critical cooperation and compliance that, as an organisation, it needs both to expect and also to achieve.

**8.7** The issue of corruption overlaps with that of whistleblowing for the obvious reason that the latter is often the route to the former being exposed. I recognise that there are other routes, including of course robust investigative journalism (undeniably in the public interest) as well as the persistent endeavours of leaders within the Police Service, but for present purposes I am focusing on disclosures from within the organisation.

**8.8** I recognise and understand the sensitivity of this issue, and the sentiment expressed by many that the press is a safety valve for genuine grievances and concerns within the Police Service as a whole. However, there remains an important point of principle which I need to come back to: that information which is confidential should remain so, unless there really are exceptional circumstances justifying the placing of that information into the public domain. Additionally, and looking at this more widely, the ends do not usually or, at least necessarily, justify the means.

<sup>33</sup> pp63-64, lines 25-19, Theresa May, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Morning-Hearing-29-May-2012.pdf>

<sup>34</sup> IPCC Report – ‘Corruption in the police service in England and Wales: Second report – a report based on the IPCC’s experience from 2008 to 2011, May 2012, p5, <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/IPCC-Corruption-in-the-Police-2nd-Report.pdf>

- 8.9** My overall assessment is that a series of pragmatic solutions need to be devised to maximise the chance that genuine whistle-blowers will use confidential avenues in which they may have faith, rather than feel it necessary to break confidences by bringing about much wider public dissemination through disclosures to the media. In my view, this strikes the right balance between the competing interests at stake.
- 8.10** As I have already said, the starting point for any police officer or member of police staff wishing to report an issue of concern should be that they first look to their internal procedures, which are buttressed by the law governing protected disclosures. I appreciate that all police forces already have a whistleblowing line of reporting direct to the PSD of that force: typically, this will be headed by a detective chief superintendent – in other words, a senior officer capable of holding the respect of the majority of police ranks. Nonetheless, I also recognise that Mrs Filkin identified a general lack of confidence in the ability of these departments to address their concerns across the board. There may also be some legitimate concern as to the ability (if not the overall willingness) of PSDs challenging the most senior on issues concerning integrity
- 8.11** Apart from the PSDs, the present position is that the Independent Police Complaints Commission (IPCC) already has a Public Interest Disclosure Act telephone line which is available for use in these circumstances, but it does not enjoy a sufficiently high profile. As and when whistle blowers use it, I understand that the IPCC’s practice, if at all possible, is to conduct an interview, in order better to inform its assessment of the merits of the concern being expressed.
- 8.12** Given the apparent lack of trust in the current process, a more independently operated system should be considered. I strongly believe that a more developed structure is required to ensure that the public have absolute confidence that issues of integrity will be appropriately addressed at all levels within the Police Service, and that whistle blowers also have the confidence that their grievances will be addressed.
- 8.13** As I explain below, I have in mind an enhanced role for both the IPCC and HMIC. For a number of reasons I am not in a position to descend into the detail of the structure I have in mind not least because of the changing landscape surrounding police policy and its implementation. I am simply not in a position to forecast precisely how the responsibilities of the newly elected Police and Crime Commissioners (PCCs) will fit into the overall picture alongside the work of the newly created National Crime Agency, ACPO (howsoever designated) or the National Police Improvement Agency (to be superseded by the College of Policing). Neither is it clear to me how the work of the HMIC will be affected, or what (if any) impact there will be on the IPCC. All that I can do is to describe the architecture, and others will need to take it forward by inserting the building-blocks as relationships and responsibilities are established. I recognise that each of the bodies I have mentioned will wish to contribute to that debate and a number have not given evidence to the Inquiry.

**8.14** In the circumstances, I recommend that an enhanced system for protection of whistle blowers and for providing assistance for the Police Service on general ethical issues should at least comprise the following:

- (a) greater prominence should be given to the IPCC's PIDA telephone line;
- (b) there should be an 'ethics line' to the IPCC, available for all serving Police Officers, providing general ethical guidance;
- (c) to avail those at Chief Officer level (Assistant Commissioner level within the MPS), HMIC should identify one of its members, a former Chief Constable, as the designated point of contact for confidential ethics guidance. The Chief Officer seeking and obtaining that advice would be able to refer to it should any issue subsequently arise on a complaint to a PSD, a PCC, or indeed the IPCC itself. The advice would not be determinative of the complaint, but the fact that it was sought and received, as well as its content, would be a matter to be taken into account;
- (d) within the IPCC itself, there is a need for an enhanced 'filter system' whereby the nature of complaints are appropriately addressed at an early stage so that (a) they can be investigated at the right level, and (b) sufficient structures are put in place to maintain confidentiality of the complaint, and differentiate as soon as is appropriate between genuine whistle blowers and those who are merely ventilating a personal grievance;
- (e) the former Chief Constable referred to under sub-paragraph (c) above should also be the recipient of complaints about Chief Constables made to the IPCC. In the event that he or she may already have given informal advice in relation to the subject-matter of the complaint, as per sub-paragraph (c) above, a substitute HMI would be deputed to act; and
- (f) Chief Officers should also be the subject of regular independent scrutiny by HMIC, including through unannounced inspections.

**8.15** As I have said, and for the reasons I have given, I am not addressing the actual mechanics of such a system in this Report. But allied to this, I would also consider it prudent for PCCs and Chief Officers quickly to reassess the corporate governance arrangements in place within each force area to ensure that they are fit for purpose. This would obviously be an important part of ensuring that each of their specific roles and responsibilities in this area are clearly delineated.

## 9. Conclusion

**9.1** It is clear that the Police Service as a whole has responded positively and proactively in the wake of the public concerns which led to the setting up of this Inquiry in July 2011. I welcome the thoroughness and good sense of the changes which have been recommended to date, and the spirit in which the Police Service has demonstrated willingness for implementing appropriate and judicious enhancements of the existing regimes. Ultimately, the Police Service in general and the MPS in particular has understood the importance of such a positive response in terms of allaying public concerns and correction legitimate perceptions.

**9.2** In taking its existing work forward, as supplemented by the recommendations I have made in this Chapter, I fully endorse the judicious contribution made by the Home Secretary to the Inquiry and, in particular, her emphasis on the need for a country-wide series of policies

coordinated through or by ACPO. The majority of the issues at stake here are of universal application. The 'blush test' will continue to work as a sound guide for the vast majority but clear leadership and the setting of the tone from the top is vital. Finally, clear and direct policy guidance is necessary to reinforce these common sense messages.



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