House of Commons
Culture, Media and Sport Committee

Press standards, privacy and libel

Second Report of Session 2009–10

Volume II
Oral and written evidence

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The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Culture, Media and Sport and its associated public bodies.

Current membership

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(Chairman)
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Mr Adrian Sanders MP (Liberal Democrat, Torbay)
Mr Tom Watson MP (Labour, West Bromwich East)

The following members were also members of the committee during the inquiry:

Mr Nigel Evans MP (Conservative, Ribble Valley)
Helen Southworth MP (Labour, Warrington South)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/cmscom.

Committee staff

The current staff of the Committee are Tracey Garratty (Clerk), Arun Chopra (Second Clerk), Elizabeth Bradshaw (Inquiry Manager), Jackie Recardo (Senior Committee Assistant), Ronnie Jefferson (Committee Assistant), and Laura Humble (Media Officer).

Contacts

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Witnesses

Tuesday 24 February 2009

Mr Nick Armstrong, Charles Russell LLP, Mr Tony Jaffa, Foot-Anstey Solicitors, Mr Keith Mathieson, Reynolds Porter Chamberlain LLP, and Mr Marcus Partington, Chairman, Media Lawyers Association

Mr Mark Thomson, Carter-Ruck Solicitors, Mr Jeremy Clarke-Williams, Russell, Jones & Walker Solicitors, Mr Jonathan Coad, Swan Turton Solicitors, and Mr Rod Christie-Miller, Schillings Lawyers

Tuesday 10 March 2009

Mr Max Mosley

Tuesday 10 March 2009

Mr Gerry McCann, Mr Clarence Mitchell, the McCanns’ media adviser and spokesman, and Mr Adam Tudor, Carter Ruck, Solicitors

Thursday 19 March 2009

Mr Anthony Langan, Public Affairs Manager, Samaritans

Mr Tim Fuller

Tuesday 24 March 2009

Mr Jeff Edwards, Chairman, Crime Reporters Association, Mr Sean O’Neill, Crime and Security Editor, the Times, and Mr Ben Goldacre, the Guardian

Sir Christopher Meyer, Chairman, Mr Tim Toulmin, Director, Press Complaints Commission, and Mr Tim Bowdler, Chairman, Press Standards Board of Finance

Tuesday 21 April 2009

Mr Nick Davies, writer and journalist, and Mr Roy Greenslade, Professor of Journalism, City University and columnist and blogger, the Guardian

Thursday 23 April 2009

Mr Paul Dacre, Editor-in-Chief, and Mr Robin Esser, Executive Managing Editor, Associated Newspapers

Tuesday 28 April 2009

Mr Peter Hill, Editor, Daily Express
Tuesday 5 May 2009

Mr Colin Myler, Editor, News of the World, and Mr Tom Crone, Legal Manager, News Group Newspapers

Mr Ian Hislop, Editor, Private Eye, and Mr Alan Rusbridger, Editor, the Guardian

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Tuesday 19 May 2009

Sir Anthony Clarke, Master of the Rolls, and Lord Justice Rupert Jackson, Court of Appeal Judge

Rt Hon Jack Straw MP, Secretary of State for Justice and Lord Chancellor

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Ev 224

Tuesday 2 June 2009

Mr Mark Stephens, Senior Member, Intellectual Property and Media, Finer Stephens Innocent LLP, and Ms Charmian Gooch, Director, Global Witness

Barbara Follett MP, Minister for Culture, Creative Industries and Tourism, Department for Culture, Media and Sport

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Tuesday 14 July 2009

Mr Tim Toulmin, Director, Press Complaints Commission

Mr Alan Rusbridger, Editor, Mr Paul Johnson, Deputy Editor, and Mr Nick Davies, writer and journalist, the Guardian

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Ev 275

Tuesday 21 July 2009

Mr Tom Crone, Legal Manager, News Group Newspapers, and Mr Colin Myler, Editor, News of the World

Mr Andy Coulson, former Editor, and Mr Stuart Kuttner, Managing Editor, News of the World

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Wednesday 2 September 2009

Mr Christopher Graham, Information Commissioner, and Mr David Clancy, Investigations Manager, Information Commissioner’s Office

Mr John Yates, Assistant Commissioner, and Mr Philip Williams, Detective Chief Superintendent, Metropolitan Police Service

Mr Mark Lewis, Solicitor Advocate, Stripes Solicitors

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Tuesday 15 September 2009

Mr Les Hinton, Chief Executive Officer, Dow Jones & Company, and former Executive Chairman, News International Ltd

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1. Charles Russell LLP

2. Foot Anstey Solicitors

3. Media Lawyers Association (MLA)

4. Mark Thomson

5. Russell Jones & Walker, Solicitors

6. Swan Turton Solicitors

7. Schillings Lawyers

8. Max Mosley

9. Times Newspapers Limited

10. Press Complaints Commission


12. Daily Mail

13. Express Newspapers

14. Daily Express

15. Guardian News and Media Ltd

16. Private Eye

17. Master of the Rolls

18. Finers Innocent LLP on behalf of their clients

19. Global Witness

20. Department for Culture, Media and Sport, and the Ministry of Justice

21. News of the World

22. Information Commissioner’s Office

23. Metropolitan Police Service

24. The Campaign for Press and Broadcasting Freedom

25. Press Association

26. National Union of Journalists

27. News International Ltd

28. Society of Editors

29. Article 19

30. Loreena McKennitt

31. Media Standards Trust

32. PAPYRUS

33. Alan Dee

34. Martyn Jones MP

35. Joint Committee on Human Rights

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45 Sense About Science Ev 483
46 Culture, Media and Sport Committee to Mr John Yates, Assistant Commissioner,
  Metropolitan Police Service Ev 486
List of unprinted written evidence

The following written evidence has been reported to the House, but to save printing costs it has not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests to inspect them should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

1. Pow Trust
2. Jonathan Steinberg
3. Peter Burden
4. BOND (British Overseas NGOs for Development)
5. Drew Sullivan, Advising Editor, Center for Investigative Reporting in Bosnia and Herzegovina and the Organised Crime and Corruption Reporting Project
6. The Press Standards Board of Finance Limited
7. Index on Censorship and English PEN
8. Trinity Mirror Plc
9. Which?
10. Farrer & Co LLP
11. Adrian Zuckerman
12. The Madeleine Foundation
13. Elaine Decoulos
14. Brooke M. Goldstein
15. David Wyn Davies
16. Olswang
17. Paul Joslyn
18. College Art Association
19. Terence Ewing
20. Shane Morris
21. The Booksellers Association
22. Duncan Anderson
23. Mario Petrov
24. Culture, Media and Sport Committee, letter to Les Hinton, Chief Executive Officer, Dow Jones & Company, and former Executive Chairman, News International Ltd
25. Culture, Media and Sport Committee, letter to Alan Rusbridger, Editor, the Guardian
26. Culture, Media and Sport Committee, letter to Rebekah Wade (now Brooks), Chief Executive, News International Ltd
27. Les Hinton, Chief Executive Officer, Dow Jones & Company, and former Executive Chairman, News International Ltd, letter to the Culture, Media and Sport Committee
28. Alan Rusbridger, Editor, the Guardian, letter to the Culture, Media and Sport Committee
29. Rebekah Wade (now Brooks), Chief Executive, News International Ltd, letter to the Culture, Media and Sport Committee
30. Culture, Media and Sport Committee, letter to Tim Toulmin, Director, Press Complaints Commission
31. Tim Crook
32. Tom Bower
Oral evidence

Taken before the Culture, Media and Sport Committee

on Tuesday 24 February 2009

Members present

Mr John Whittingdale, in the Chair

Janet Anderson  Alan Keen
Philip Davies  Rosemary McKenna
Mr Nigel Evans  Mr Adrian Sanders
Paul Farrelly  Helen Southworth

Written evidence submitted by Charles Russell LLP

I am a partner in the solicitors’ firm of Charles Russell LLP. I have specialised for over 20 years in media-related litigation. As well as acting for media organisations, largely in the field of TV (such as ITV and Channel 4), I also act for individuals and entities in media-related complaints and litigation. For example I am retained to advise employees and artists of ITV when they come under the media spotlight, and also to advise The FA and its senior employees (including the England Manager) in relation to libel and privacy matters.

Each set of facts in media-related problems demands its own particular strategy for resolution. It is wrong to think that the PCC ought to (or should ever be expected to) provide the sole source of resolution and remedy for each and every press problem, but equally wrong to think that this means the PCC is not a useful organisation, or is in some way failing in its role.

It is the job of those advising individuals and entities with problems concerning the media to decide on the most appropriate and proportionate strategy in each case, combining the various options available to achieve the best result for the client in the particular circumstances. These options include direct negotiation with eg newspaper in-house lawyers (by reference to both the law and the PCC’s code), discussion with the PCC eg in relation to any ongoing intrusion, pre-publication legal remedies such as injunction, and subsequently (following publication) complaint to the PCC, alternative dispute resolution such as a negotiated settlement, or direct litigation.

I have found the PCC and the self-regulatory regime to be a useful element in the armoury available to individuals and companies who have difficulties with the press, to be deployed when certain types of issue arise. Where problematic press coverage includes factual inaccuracy (short of libellous statements), or where intrusion is an issue (eg individuals being pursued or having their homes surrounded by journalists or photographers), the PCC has in my experience often provided valuable elements of the strategy to be adopted. In these days where the Courts are stressing the need for parties to a dispute to engage in alternative dispute resolution wherever possible, and in any event to ensure that any action is “proportionate”, the PCC can provide a cost-effective mediation process for resolving a large category of what one might term “low profile” complaints, factual inaccuracies etc. in a proportionate and timely manner.

Where the complaint is one of libel but is not particularly serious, a correction published in the paper (and hence showing up on internet searches) is often enough for a client, especially where the client is impecunious and a CFA may not be appropriate. The PCC can in this way level the playing-field for a large number of complainants facing the fearful prospect of taking on a press organisation.

The PCC cannot however be expected to cover problems which arise in relation to the press where serious, out-and-out breaches of the law are committed by the press. This often seems to be where journalists and editors think the story is so good that it is worth their while to forget or seek to evade the rules.

Where the press ignore the provisions of the PCC’s Code and the general law in relation to both privacy and libel, and acts are committed which constitute legal wrongs which cause damage, I think the PCC is an inappropriate vehicle for appropriate redress to be secured. The PCC cannot be expected to provide a parallel tribunal to the Court process. Where tortious and other acts are committed by the press, a Court of law is the appropriate and proportionate forum for redress of any damage. Hence, for example, it seems to me proper that the recent McCann cases were pursued in through Court action, since serious wrongs had been committed, and the press seemed to have taken it into their heads to ignore the law as well as the provisions of the Code.
It should be borne in mind that those headline cases are very much the minority, and should not obscure the potentially useful role of the PCC in a far greater number of less lurid press-related issues. Where the press enjoys any kind of freedom, and depends on profit for survival, there will always be a relatively small number of high-profile cases where editors will try and flout (or at least get round) the law or the self-regulatory regime. That does not mean the law or the regime are necessarily deficient.

January 2009

Written evidence submitted by Foot Anstey Solicitors

INTRODUCTION

1. There are approximately 85 regional daily and Sunday paid-for newspapers in England and Wales, and several hundred paid-for and free weekly papers. Foot Anstey’s Media & Publishing Team represents approximately 40–50% of those newspapers, and has done so for the last 19 years or so. We also represent several national newspapers, and believe we have a unique insight into the pressures faced by publishers.

Q.1 & 2 The self-regulatory regime and the McCann Case

2. We were not involved in the McCann case, and so we are unable to offer views on the first and second questions posed by the inquiry.

Having said that, however, we firmly believe that the PCC is an effective regulatory body, whose Code of Practice and determinations are taken seriously by the print media. Anyone who suggests that the press ignores the PCC and its Code, is simply wrong.

Q.3 The interaction between the operation and effect of UK Libel Laws and Press Reporting

3. UK law is perceived to be anti-freedom of expression, particularly in the USA. In May 2008, the State of New York enacted the Libel Terrorism Protection Act to protect American citizens who are held to be liable for defamation abroad. The legislation was prompted by disquiet felt in the US in respect of the case brought against the author Rachel Ehrenfeld, who had judgment entered against her in the High Court in a defamation suit brought by Khalid Salim a Bin Mahfouz, a Saudi Arabian businessman and banker. Mr Bin Mahfouz is one of the world’s most prolific “libel tourists”, having used or threatening to use claimant-friendly English courts to sue for libel at least 36 times since 2002.

4. It is no coincidence that London is still the libel capital of the world, as evidenced by the number of Middle-Eastern and Russian citizens who come here for the purpose of bringing libel actions.

5. The effect, particularly on the regional press, is that the fear of litigation has a “chilling effect” on the media. We develop this argument in relation to CFAs below.

Q.4 The impact of conditional fee agreements

6. Our experience is that the “ransom or chilling effect” of CFAs is very real to the regional press, and has a decisive effect on the exercise of their right to freedom of expression.

4.1 Background

7. There appears to be a perception amongst members of the public and some, if not all, claimant solicitors that the publishers of regional newspapers have access to unlimited funds, and the issue of the costs of litigation is, in reality, of little consequence to them.

Nothing could be further from the truth:

— those local publishers which are wholly owned subsidiaries of PLCs or very large private companies receive no subsidy from their parent and, from a financial perspective, are treated as stand-alone businesses; and

— the privately owned publishers are invariably local, small to medium enterprises, who have to rely on their own assets and profitability to pay litigation costs.

8. Most of the well known claimant firms of solicitors in London charge their time at rates of between £300 and £500 per hour, rates which both objectively and to a regional publisher are very high, and which increase significantly after the application of the success fee, particularly in the absence of a cap on costs. The risk of being obliged to pay enormous sums by way of Claimant’s costs, which cannot be calculated or even estimated with any degree of accuracy, imposes intolerable pressure on the regional press, and effectively compels publishers both to refrain from publishing contentious material and to settle potential claims, irrespective of the merits of the claim.
4.2 After the event insurance

9. It is now the norm for claimants to purchase After the Event (ATE) insurance policies, ostensibly to ensure that any orders for costs in favour of a defendant may be satisfied. The value of cover provided by ATE policies is usually £100,000.

— Disregarding the fact that such policies may well be ineffective in the event of a successful plea of justification, the quantum of the ATE premium (usually between £5,000 and £15,000 at the time the Protocol letter of claim is issued, and rising to about £68,000 by the time a trial commences) and the timing of the purchase of the ATE policy, contribute significantly to the pressure that is applied to the right to freedom of expression on the part of the regional press. This is because the ATE premium is a recoverable disbursement from the defendant in the event of an Order or an agreement to pay the claimant’s costs.

— The time at which liability to pay the ATE premium is incurred is a particular issue for regional publishers. With the exception of David Price Solicitors and Advocates, it is the practice of all the principal claimant solicitors to arrange for their clients to incur a contractual liability for payment of a (deferred) ATE premium before the Protocol letter of claim is despatched to the publisher.

— Thus, claimants incur a liability to pay a significant sum (although they themselves do not pay it), irrespective of the strengths or weaknesses of the cases of the intended claimant and intended defendant, and without any reference to the likely payee, the intended defendant.

— The injustice of this system is obvious, particularly if the publisher accepts that the claimant has a valid complaint and admits liability immediately upon receipt of the Protocol letter of claim. In this scenario, a significant financial liability has been incurred quite unnecessarily. On any view, it is unjust for a claimant to incur a liability which he will never pay, without reference to the person who, in the overwhelming majority of cases, will be paying it.

10. Our experience is that the operation of the CFA system fails to discourage weak claims against the press. The regime allows claimants and their lawyers to hold publishers to ransom by threatening litigation, because both claimants and the publishers know that the latter risks incurring huge, probably irrecoverable, costs if they do not accede to the claimant’s demands.

11. In short, the reality is that if a regional publisher is contemplating publishing contentious material or defending a claim brought by a CFA funded claimant under current arrangements, a financial commitment is required which many regional publishers are simply not capable of giving. They know that they have little option but to refrain from publishing or to settle (even if the claim is without merit). The “ransom or chilling effect” of CFAs is very real to the regional press.

4.3 Wider issues

12. Fearless reporting has often revealed information which it has been in the public interest to expose. Armed with a CFA, a claimant can gain enough leverage to suppress the publication of an article, or force capitulation after publication, even when a meritorious defence may exist.

13. The Overriding Objective requires the exercise of proportionality in relation to any Court action, especially in respect of costs:

— Publishers can face legal fees, even if the claim against them is successfully defeated. If a claimant without means loses, he will be unable to pay the defendant’s costs. This will leave the blameless defendant to pay its own legal fees.

— In the absence of a costs capping order, costs judges have been awarding disproportionate uplifts in costs under CFAs.

— The percentage uplift applied to the costs under a CFA is meant to reflect the risk taken by a lawyer in taking on a client who may not have a strong case. Its use as a tactical weapon is wholly inconsistent with this aim.

14. The Courts have demonstrated a reluctance to step in on the issue of CFAs, seeing their control and/or reform as the function of Parliament. Instead, the Court of Appeal has recommended that a cap on costs be made at the allocation stage, by analogy with the jurisdiction in arbitration cases under S.65 of the Arbitration Act 1996.1

15. Article 10 of the European Convention on Human Rights preserves the right to freedom of speech. It often comes into conflict with Article 8, which protects the right to a private and family life. In such a clash, the two should surely be allowed to resolve their relative importance without the “chilling effect” of CFAs weighing in on the side of the claimant.

16. Turning to post-publication issues, by way of example of the above conclusions, we have represented 17 clients since 2004 to whom Protocol letters were sent by the three or four prominent claimant solicitors. Two complaints were the subject of proceedings, and the remaining fifteen were settled without proceedings being issued. Of the 15 complaints which were settled, five were considered by us to be legitimate. The other

1 King v Daily Telegraph Group Ltd [2004] EWCA Civ 613
10 were thus considered to be unjustified and/or defendable from a purely legal perspective, but were nevertheless settled because of concerns by our publishing clients of the financial consequences of defending the claims. They knew that they would be significantly out of pocket, even if their defences were successful, and that they could be severely damaged financially if the defences were unsuccessful.

4.4 Judicial decisions

17. In recent years, the Courts have been inundated with satellite cases and appeals concerned solely with costs issues arising from the primary litigation. It is not appropriate to list those decisions here.

18. However, we think it worthwhile drawing the Committee’s attention to the judgment of the Court of Appeal in C v W, which was delivered on 19 December 2008. This was a costs appeal arising from a road traffic accident/personal injuries case, in which the defendant admitted liability to the claimant, who sought damages via CFA funded claim.

19. In his judgment, Lord Justice Thomas:

— agreed with submissions made by Counsel for the defendant that there are “very forcible and attractive submissions about the lack of an effective market, and paucity of information that existed in relation to such a market as there was”;

— said that the submissions made by Counsel for the defendant “are issues that need to be considered in a wider context, including the effect that this regime is having on transferring costs to others and the fundamental right of access to justice”;

— referred to “the real difficulties that face both solicitors and the Court in attempting to fashion a CFA in cases where liability is admitted, given the inter-relationship of the necessity of financing litigation through a CFA […]”; and

— expressed the view that “it is clear that for the CFA regime to operate more effectively then much better statistical information must be collected and made available to assist the better assessment of risk; I understand that the Ministry of Justice has commissioned research that will include the provision of hard statistical data”.

These are complex issues. We highlight them to demonstrate the judicial and executive concern that exists about CFAs and ATE insurance.

Q.5 Contempt of Court Laws

20. The press does not ignore contempt laws. The author and his colleagues spend a good deal of time ensuring that our clients comply with contempt of court laws, because the publishers take them seriously. No editor ever wants to risk prejudicing any type of court proceedings. The sanctions for doing so are a very effective deterrent.

21. The freedom of the press to report the proceedings is central to the upholding of transparent justice. Even with the internet providing a wealth of information and removing geographical barriers, the track record of the regional press shows that publishers and editors can be trusted to fulfil their responsibilities accurately, to inform the public of court proceedings and to exercise sensible judgment about the publication of comment which may interfere with the administration of justice.

22. The jury system itself provides sufficient safeguards to prevent any prejudice that might arise from media coverage of a hearing. Jurors must be credited with the will and ability to focus on matters in the court room, to follow the judge’s directions and fundamentally believe that the trial process should be fair, without being swayed by external media reports or the internet.

23. We make the assertions contained in paragraphs 21 and 22 in light of the speeches of Mr Justice Butterfield and Sir Igor Judge in the case of Barot, and by Lord Phillips CJ in the case of Abu Hamza.

24. Research conducted by the New Zealand Law Commission suggests that the impact of pre-trial publicity and of prejudicial media coverage is, in reality, minimal. Given that S.8 of the Contempt of Court Act 1981 prevents such research being carried out in this country, these findings are as representative of the position in this country as is likely to be found.

2 C v W [2008] EWCA Civ 1459
3 R v B [2006] EWCA Crim 2692
4 R v Hamza [2006] EWCA Crim 2918
5 Young, Cameron & Tinsley, Juries in Criminal Trials: Part Two, vol 1, ch 9, para 287 (New Zealand Law Commission preliminary paper no. 37, November 1999).
Q.6 The effect of the European Convention on Human Rights on the Courts’ views on the right to privacy against press freedom

25. As Parliament has not yet given it serious consideration, the law of privacy in the UK has been entirely created by the courts, and has grown case by case. The speech by Paul Dacre to the Society of Editors on 9 November 2008, has received much criticism for his personal attack on Mr Justice Eady, but the underlying sentiment about the incremental development of the law of privacy by the courts, is sound.

26. We have represented regional publishers in cases where the right to privacy has restricted the right of freedom of expression. For example, in the Green Corns case, a local newspaper was injuncted from publishing information on the grounds of privacy, even though thousands of local people already knew that information. Similarly, a teenager who sued his Strategic Health Authority for substantial damages following injuries sustained at birth, successfully prevented details of his claim being made public. He secured an injunction notwithstanding that full details were set out in the Claim Form and Particulars of Claim, which had been filed at court, and thus were available for inspection.

27. The Courts are developing a law of privacy without any Parliamentary debate or scrutiny. The test is whether there is a reasonable expectation of privacy. This is being applied in the context of sexual misdemeanour and a wide variety of other circumstances such as financial misconduct, photographs of children, and wedding photographs.

28. Recently, as a result of the J.K. Rowling case, English law has shifted towards the more restrictive, European interpretation of privacy law. We see this trend as being contrary to the right to freedom of expression.

29. A related trend which is developing is that claimants, especially the rich and famous, appear to be instituting privacy claims in the High Court rather than lodging complaints to the PCC. It seems that they do so because they prefer an award of damages in the long term, rather than a PCC determination (which is not accompanied by any financial redress) in the short term. Because of the CFA regime, this course of action creates no financial risk to them. As a result, the PCC runs the risk of being seen as irrelevant, even though the PCC is intended to remedy breaches of the Code swiftly and cheaply, and does so. (It should be noted that the Code’s provision with regard to privacy is virtually identical to Article 8).

30. In consequence, editors are forced to seek a quick, and thus less expensive, settlement of a claim that is often without any real substance, which would be vigorously defended were it not for the chilling effect of litigation and CFAs. The consequence is obvious: newspapers, especially local ones, will avoid publishing stories that are in the public interest because of the growing threat of privacy litigation funded by CFAs.

Q.7 Financial penalties for libel or invasion of privacy

31. The basis of damages awarded under English law is that a wrong should be righted by putting the parties in as close a position as possible to where they would be if the harm had not occurred. Exemplary damages are a severe punitive measure, to be used only in cases of extremely bad behaviour and abuse of court process.

32. Parties found liable for defamation often acted, or believed that they were acting, in the public interest. Similarly, those found to have infringed a person’s right to privacy have operated on the same basis. To penalise publishers with exemplary, rather than compensatory, damages risks crippling journalistic freedom and enterprise through fear of such a consequence if a court found against them.

33. In short, if damages were awarded on an exemplary, not a compensatory basis, it would be a severe blow to reporting generally, and to publishers’ rights to freedom of expression.

Q.8 The balance between press freedom and personal privacy

34. In our opinion, the current state of the law has created an imbalance between press freedom and personal privacy.

35. Freedom of expression has been greatly restricted in the last seven years by the fear of litigation brought via CFAs, and the incremental development of privacy law by the courts, operating without Parliamentary scrutiny.

36. Without reform, this unsatisfactory situation will only create further obstacles to the historic right to freedom of expression enjoyed by, and expected of, the regional press.

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6 Green Corns Ltd v Claverley Group Ltd and another [2005] EWHC 958 (QB)
7 Child XXX v A Strategic Health Authority HQ07X03831
8 Murray (by his litigation friends Murray and another) v Big Pictures (UK) Ltd [2008] EWCA Civ 446
CONCLUSIONS

37. In outline, we consider that the costs and CFA regime should be reformed to prevent:
   — excessively high hourly rates being allowed;
   — excessively high success fees being applied to those hourly rates;
   — the claimant from incurring liability to pay the premium, or the first tranche thereof, of an ATE
     insurance policy until the defendant has despatched his formal written response to the letter of
     claim; and
   — excessively high ATE insurance premiums being charged.

38. With regard to the law of privacy, we believe that the development of such a law by the Courts is not
    the correct way to apply the European Convention for Human Rights. The absence of any public debate or
    Parliamentary scrutiny is to be regretted.

39. We fear that the PCC risks being marginalised, with all that implies for self regulation, by the use of
    CFAs to fund privacy claims.

January 2009

Written evidence submitted by the Media Lawyers Association (MLA) (PS 28)

This response is submitted on behalf of the Media Lawyers Association (MLA), which is an association
of in-house media lawyers from newspaper, magazine, book publishers and broadcasters.

EXECUTIVE SUMMARY

1. The media plays a vital role in allowing the proper functioning of a democracy by promoting the flow
   of information. An editorial in a recent Index on Censorship publication (looking back at the UN
   Declaration of Human Rights on its 60th anniversary, in the context of Article 19, the declaration of the
   right of free expression), serves as a powerful reminder that the Declaration was not intended to be a hostage
to political fortune or the vagaries and anxieties of a given age.

   “[...] it’s worth repeating some basics: the right to free speech means nothing if it only sanctions
   politically and socially acceptable views. It is the right that allows us to defend all other rights.
   Without it, there can be no free exchange of ideas, no means of challenging arbitrary abuses of
   power and therefore no democracy.”

2. The MLA believes that these are the touchstones of the right of freedom of expression for all as
   recognised by the English common law. It is important that the United Kingdom continues to bear witness
to and upholds these fundamental truths and does not get tempted by what may be perceived on one level
as local difficulties to impinge on or restrict them.

3. In summary, the MLA believes that:
   — the current system of press self-regulation works in practice for most people who choose to use it;
   — UK libel laws have a direct restrictive effect on press reporting;
   — excessive legal costs magnified in defamation and privacy by the unrestricted use of Conditional
     Fee Agreements (CFAs) and after-the-event (ATE) insurance have had—and continue to have—
a serious negative effect on press freedom;
   — the Contempt of Court Act 1981, and the principles underlying it, need to be re-examined in light
     of the expansion of the internet;
   — judges are making a subjective law of privacy, with little foresight or regard to the long term impact
     of this and without any proper balancing against the detrimental effects that this has upon freedom
     of expression and the commercial reality of publishing; and
   — in order to protect the fundamental principle of freedom of expression, there is no role for financial
     penalties for libel or invasion of privacy being exemplary rather than compensatory.

4. We set out below our detailed comments on the areas raised by the Culture, Media & Sport Select
   Committee.
THE MCCANN CASE AND SELF-REGULATION

5. A number of the MLA members’ organisations (for example the broadcasters) are subject to a different regulatory regime from the newspaper publishing members and they are not in a position to comment further on the specifics relating to the PCC. Nonetheless, the MLA as a group strongly supports a system of self-regulation for the print media. The MLA believes that the PCC offers a quick, cheap, flexible and effective remedy for the general public across a wide range of areas that it would be entirely inappropriate to regulate by legislation (for example intruding into grief / the covering of suicides / children / financial journalism). We understand that there was early and on-going offers of assistance and dialogue between the McCanns and the PCC but that, ultimately, the McCanns chose not to complain to the PCC, who accordingly had no basis on which to get more deeply involved. That case does not, in our view, bear any hearing on how the PCC system of self-regulation works in practice for most people who choose to use it. It would be wrong to seek to review a system based upon the perceived experience of one particular case, which appears to be unique on its facts, as it could lead to a knee-jerk response.

THE INTERACTION BETWEEN THE OPERATION AND EFFECT OF UK LIBEL LAWS AND PRESS REPORTING

6. As matters stand, UK libel law operates as an unnecessary and severe restraint upon freedom of expression. Its operation can prohibit journalists from carrying out legitimate inquiries. As Lord Nicholls observed in Reynolds v Times Newspapers Ltd:1 “Historically the common law has set much store by the protection of reputation […] There must be exceptions. At times people must be able to speak and write freely, uninhibited by the prospect of being sued for damages should they be mistaken or misinformed. In the wider public interest, protection of reputation must then give way to a higher priority.”

7. UK libel law is in need of urgent reform. It is widely recognised as being amongst the most oppressive in the developed world12 and has a direct and constant limiting impact on press reporting. “Freedom of expression is the lifeblood of democracy”13. The balance between freedom of expression and the right to reputation has swung too far in favour of protecting reputation. It is heavily weighted against a defendant and in favour of a claimant. A claimant is presumed to have an unblemished reputation and the words are presumed to be false until proven otherwise. Aspects of the current laws in England and Wales have come under attack from the Human Rights Committee of the United Nations in their report in July 2008 entitled “International covenant on civil and political rights”14. The criticism focuses specifically on concern that UK defamation law is discouraging critical media reporting on matters of serious public interest, including through the “phenomenon of ‘libel tourism’”. More recently, in an adjournment debate at the House of Commons on the subject of libel laws, featuring contributions from Labour, Conservative, Liberal Democrat and UKIP MPs15, concerns were expressed over libel tourism, fees in defamation cases, and the extension of defamation laws to the internet.

8. In our view, the following reforms to our current libel laws are urgently needed.

THE INTRODUCTION OF A SINGLE PUBLICATION RULE FOR INTERNET PUBLICATIONS

9. Currently, because of the effect of an 1849 judgment16 there is no effective limitation period for articles retained on electronic databases. Anyone accessing a newspaper, magazine or television website containing archival material can cause the republication of a defamatory article giving rise to a new cause of action well beyond the current one year limitation period. Reliance on the rule in the Duke of Brunswick amounts to an unnecessary and disproportionate restraint on free speech17. We support the Law Commission’s recommendation of a review of the way in which the viewing of articles from an online archive gives rise to a fresh cause of action, and causes the limitation period to begin anew.18

THE REMOVAL OF THE AUTOMATIC RIGHT TO A JURY TRIAL IN A LIBEL ACTION

10. The Faulks Committee (1975)19 recommended that, as in other actions for tort, jury trials for libel actions20 should be the exception rather than the rule. They concluded that “the existence of the present almost unqualified right of one party to force a jury trial on the other against his will operates in many instances contrary to the interest of justice”. Jury trials in personal injury actions were abolished many years ago. Solicitors acting for claimants often insist on their client’s right to a jury trial. The involvement of a

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11 Reynolds v Times Newspapers Limited [1999] 3 W.L.R. 1010
12 See the European and other comparisons in paragraph 12 below.
13 R v Secretary of State ex parte Simms [2000] AC 115 at 126 E, per Lord Steyn
15 http://www.publications.parliament.uk/pa/cm200809/cm翰ansrd/cm081217/halltext/81217h0001.htm#08121776000001
16 Duke of Brunswick v Harmer—the Duke sent out his manservant to buy a back issue of a newspaper which he had overlooked some 17 years previously. By selling a back copy of the newspaper, the court held there was a second publication of the defamatory article. This enabled the Duke to sue for libel 17 years after the article had first appeared.
17 Times Newspapers are challenging the rule as an interference with free speech under Article 10 ECHR in Loutchansky v UK.
18 Defamation and the Internet: A Preliminary Investigation, Law Commission December 2002
19 The Faulks Committee on Defamation (1975) (Cmdnd. 5909)
20 As currently provided for by s. 69 of the Supreme Court Act 1981.
jury dramatically increases both the costs—including for the tax payer—and complications of a defamation trial, due in large part to the unpredictability of a jury’s findings and also the scale of damages it chooses to award. Under the present system, “meaning” disputes, which are often at the heart of libel cases, can only ultimately be determined (unless the parties agree otherwise) by a jury. Section 69 of the Supreme Court Act 1981 should be amended so that libel claimants do not have an automatic right to jury trial. Giving a judge the power to resolve the meaning of an article in the first month of a libel action could lead to the speedy settlement of many libel actions. Alternatively, the courts should have greater powers to “order” the parties to a libel action to go to binding arbitration / mediation on the meaning of an article.

**Limitations should be imposed to prevent or restrict large corporations and companies being able to sue in libel.**

11. Trading companies and corporations cannot suffer injury to feelings; it is anomalous that under the UK law of libel, they can sue for libel. Corporations are protected by the law on “injurious falsehood”, where they can sue over a false and malicious statement against business, property, or goods causing provable economic loss. They should be able to sue only where they can prove special (ie quantifiable and actual) damage.21 In 2006, the Australian government introduced the Uniform Defamation Laws, which prevent corporations from suing for defamation unless they have fewer than 10 employees or are classified as not-for-profit entities. The law allows an individual associated with the firm, such as a director, to sue for libel on the basis that the defamation of the corporation had resulted in damage to his or her personal reputation. Alternatives would be to introduce a law that required companies and large corporations to try and resolve matters via some form of mediation and/or to prove special damage.

12. There are a number of other reforms to UK libel law that the MLA strongly advocate:

   (i) The scope for libel tourism should be curtailed. “Libel tourism” is a serious problem, which needs to be addressed. London has become the libel capital of the Western world.22 Actions can be brought in the UK by individuals with little or no apparent connection with the UK at considerable expense to UK taxpayers, even though there has been minimal publication within the UK.

   (ii) A recent study23 found that, even where CFA related costs are not included in comparisons, England and Wales was up to four times more expensive for defamation actions than the next most costly jurisdiction (Ireland) and 140 times more costly than the other jurisdictions examined (when excluding England, Wales and Ireland from the average).24 Consideration should be given to ways in which the procedure can be simplified (for example by the increased use of written submissions and the reduced use of oral hearings) reduce overall costs (as well as adjustments to the CFA regime, considered elsewhere in this submission).25

   (iii) The incorporation of the Reynolds principles into statute. We welcome moves by the Parliamentary under Secretary of State, Ministry of Justice, to consider putting the Reynolds defence on a statutory footing. Journalists and news organisations need greater levels of certainty and clarity within which they can confidently make statements they reasonably believe to be true on matters of public concern. There is a case for also considering moves in UK law toward a stronger public figure/public interest defence as in New York and other US jurisdictions (and even according to the case law of the European Court of Human Rights, which recognises that public figures may be subject to more and stronger criticism than private individuals).

   (iv) A review of the (rarely used) summary procedure should be implemented (the use of which has been restricted in practice by the right to jury trial).

   (v) We welcome the Government’s forthcoming consultation paper on seditious libel and criminal defamation and, as a matter of principle, support the abolition of these outdated offences.

   (vi) A review of the justification for the burden of proof being on a defendant in a libel trial—often cited as one of the major incentives to “forum shop” in the UK.

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21 As was recommended by The Faulks Committee on Defamation (1975), para 342
22 See for example (i) the case involving the American researcher, Dr Rachel Ehrenfeld, who was sued in London by a Saudi Arabian businessman, which has led to the New York state legislature passing legislation to protect writers working there from defamation judgments from countries without the same freedom of speech rights as New York; and (ii) Mardas v New York Times Company & Anor [2008] EWHC 3135 (QB), 17 December 2008, where Eady J allowed a claim by a Greek national against two US newspapers to proceed in the High Court. One newspaper admitted there had been only 177 print-edition publications and four online hits in this country, and the other claimed it had 27 online hits but had not published the article in the UK in hardcopy.
24 Jurisdictions examined by the study were: Belgium, Bulgaria, Cyprus, England and Wales, France, Germany, Ireland, Italy, Luxembourg, Malta, Romania, Spain and Sweden.
25 The MLA is setting up a working group to examine possible ways of simplifying publication proceedings.
THE IMPACT OF CONDITIONAL FEE AGREEMENTS ON PRESS FREEDOM

13. Costs should be about fairness and justice. Conditional Fee Agreements (CFAs) or “no-win, no-fee” agreements were introduced as an alternative to civil legal aid to make justice accessible to the less well off. They were supposed to involve solicitors assessing the risk involved in litigation and being compensated for that risk by the use of a success fee or uplift on base costs. Their use in publication proceedings is invidious however. In practice CFAs in publication proceedings are rarely about assessing risk but simply permit lawyers (primarily claimant lawyers) operating under them to double their fees if they are successful (the uplift or success fee) and reclaim what may be a huge after-the-event (ATE) insurance premiums, even though it will never have been paid, from a losing defendant. Their use by celebrities and the wealthy is not about access to justice or fairness but about threat and blackmail. It is not just the small regional publications who daren’t contest a complaint funded under a CFA for fear of the costs consequences, even though damages may be relatively low, this chilling effect pervades through to the heart of the publishing industry. The combined effect of CFAs, success fees and ATE insurance premiums in defamation and privacy cases undeniably has a direct and chilling effect on freedom of expression.

14. In Callery v Gray (Nos 1 and 2)28 Lord Bingham recognised that CFAs “was obviously open to abuse in a number of ways”. He listed three possible abuses, two of which are “excessive base costs” of claimant lawyers and “uplifts” bearing no relation to the risk in taking on an action. Lord Justice Brooke in Adam Musa King v Telegraph Group Limited29, identified the inequity of CFAs in publication proceedings as follows: “it cannot be just to submit a defendant in these cases, where their right to freedom of expression is at stake, to a costs regime where the costs they will have to pay if they lose are neither reasonable nor proportionate and they have no reasonable prospect of recovering their reasonable and proportionate costs if they win”. Mr Justice Eady, in a libel case in 2005, recognised the practical impact which conditional fee agreements have on press freedom when he said, “[…] there must be a significant temptation to media defendants to pay up something, to be rid of litigation for purely commercial reasons and without regard to the true merits of any pleaded defence. This is the so-called “chilling effect” or “ransom factor” inherent in the conditional fee system […].”29 In Campbell v MGN Ltd29, Lord Hoffmann identified a further abuse which he referred to as the “blackmail effect” of CFAs in publication proceedings. See too Justice Secretary, Jack Straw’s, remarks to the Labour Party Conference 21 September 2008.30

15. The way the system operates in practice is that it is effectively left up to costs judges, retrospectively, to try and control costs. This is far too late. The role of costs judges is not to control costs, as they have admitted themselves.31 Judges who hear cases should take responsibility for controlling the costs pro-actively, by imposing, as and when appropriate, pre-emptive costs orders, fixed costs and cost capping. To leave these matters until a case has ended [or settled] has a significant chilling effect on the willingness and ability of the media to fight cases.

16. The MLA acknowledges the contribution that CFAs have made to access to justice in other areas such as road traffic accident cases and personal injury. However, we believe that they need fundamental reform in the area of publication proceedings. In order that the impact of CFAs on press freedom is limited to being no more than is necessary in order to achieve access to justice we would submit that the following changes should be considered as a priority:

— successful claimants should not be entitled, as of right, to recover success fees/uplifts and ATE insurance premiums from losing defendants in Article 10 cases (they will still recover regular costs and, as applicable, damages);

— prospective cost capping should be made mandatory in all Article 10 cases; and

— lawyers should only be permitted to seek the recovery of legal costs which they certify are both “reasonable” and “proportionate”.

26 Callery v Gray (nos 1 and 2) [2002] UKHL 28
27 [2004] EWCA (Civ) 613, paragraph 90
28 Eady J in Turce v News Group Newspapers Ltd [2005] EWHC 799 (QB), delivered on 4 May 2005
29 Naomi Campbell v MGN Limited [2005] UKHL 61—Naomi Campbell sued MGN for breach of confidence and was awarded £3,500 damages and her costs. She entered into a CFA for the purpose of her appeal to the House of Lords. Her costs of that two-day appeal to the House of Lords were £594,470 including a success fee of £279,981.35.
30 “I am concerned about another element of legal services—No win, no fee’ arrangements. It’s claimed they have provided greater access to justice, but the behaviour of some lawyers in ramping up their fees in these cases is nothing short of scandalous. So I am going to address this and consider whether to cap more tightly the level of success fees that lawyers can charge.”
31 In the Response of the Cost judges of the Supreme Court office to the consultation paper: “Conditional Fee Agreements in Publication Proceedings” they stated, inter alia, “It has never been the function of costs judges to control costs by means of a detailed assessment. By the time the case comes to be assessed the work has been done long ago and, provided the costs are proportionate, the test to be applied is one of reasonableness. The policy underlying this is that a successful party should be able to recover all the costs expended reasonably. Where, as a result of robust case management, or costs capping orders, the activities of the parties have been curtailed, the costs judge will reflect the court’s orders in deciding what is reasonable and proportionate.”
The observance and enforcement of Contempt of Court Laws with respect to press reporting of investigations and trials, particularly given the expansion of the Internet

17. We believe there is a strong case for a review of the Contempt of Court Act 1981, particularly in so far as it relates to archived material. The impact of the law of contempt in the UK goes way beyond pure freedom of speech issues—its ultimate purpose is to preserve the integrity of the system of the administration of justice as a whole. The concept of strict liability contempt (ie regardless of intent) was introduced in the UK by the Contempt of Court Act 1981, which applies to all publications which create “a substantial risk” that the course of justice will be “seriously prejudiced”. The very small number of prosecutions for breaches of the Act is a testament to how the mainstream media in this country obeys and respects the contempt laws.

18. However, things have changed greatly since 1981, not least with the advent of the electronic age, new technology and the world wide web, which have made reporting a truly global affair, reaching into the corner of every country in the world. Most if not all media organisations have publically available archives of all their past publications. These are generally not “displayed” on the face of the newspaper website as available and contemporaneous material, but lie passively in the newspaper’s electronic archive until they are accessed, which needs a positive act of searching by a third party.

19. In September 2001, Lord Osborne delivered the opinion (no 2) of the High Court of Judiciary in Scotland in the case of William Frederick Ian Beggs. He was being prosecuted for murder and assault. An attempt was made to commit various newspapers for contempt on the basis that their online archives contained “accessible” material which was “seriously prejudicial” to the accused. The judge ruled, inter alia, that there was no contravention of the strict liability rule because the test in section 2(2) was not breached.

20. In December 2002, the Law Commission published its Scoping Study No.2, which was primarily concerned with defamation and the internet. While the Commission concluded (Part Five) that this was not a priority for law reform and that the risks to publishers were overstated, it felt that “much of the prejudicial effect of such material” could be removed by an appropriate judicial direction to try the case on the evidence.

21. The current state of uncertainty as regards the impact of the law of contempt on archives therefore needs to be clarified. In so far as archived material is concerned, a practice of giving jurors robust standard instructions at the outset of a trial—(eg not to discuss the case with others, to disregard any media reports about the case; and not to be tempted to be amateur detectives and go searching for their own material on the internet, to make their decision based only on the evidence they hear in court) should be adopted. In Queensland and New South Wales, Australia, it has been made a criminal offence for jurors to conduct investigations about the defendant including by means of the internet.

The balance between press freedom and personal privacy

22. The UK courts have developed a law of privacy out of the ancient law of confidentiality by recognising the effect of Article 8 of the European Convention on Human Rights (ECHR). It has reached the point where the tort is now “better encapsulated as misuse of private information”. There is a fundamental tension between the rights to freedom of expression as set out in Article 10 of the ECHR, and the privacy rights articulated by Article 8. The MLA believe that the balance between freedom of expression and personal privacy has swung too far in favour of personal privacy. This has been achieved through a series of judicial decisions, without any apparent sanction from government, or parliament or any wider public debate. Lord Hoffmann in Jameel v Wall Street Journal, gave a clear warning of this:

“Until very recently, the law of defamation was weighted in favour of claimants and the law of privacy weighted against them. True but trivial intrusions into private life were safe. Reports of investigations by the newspaper into matters of public concern which could be construed as reflecting badly on public figures domestic or foreign were risky. The House attempted to redress the balance in favour of privacy in Campbell v MGN Ltd (2004) 2 AC 457 and in favour of greater freedom for the press to publish stories of genuine public interest in Reynolds v Times Newspapers Ltd (2001) 2 AC 127.”

23. Ironically, it was Lord Justice Hoffmann, as he then was, in 1994 who highlighted the dangers of an over restrictive law of privacy: “But a freedom which is restricted to what judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and judges, however well motivated, think should not be published”.

32 See, for example Lord Diplock in AG v Times Newspapers Limited [1974] 3 All ER 54
33 http://www.scottcourts.gov.uk/opinions/osb1910.html
34 Lord Osborne, at para 24, “[...] the availability of the material as part of an archive, as opposed to part of a current publication, renders it less likely that it may come to the attention of a juror than would be the case if it formed part of a contemporaneous publication”
35 HRH The Prince of Wales v Associated Newspapers Limited [2006] EWCA Civ 1776
36 So that it has protected for example an adulterous football manager and prevented a cuckolded spouse from speaking out (CC v AB [2006] EWHC 3083 (QB)) and allowed a Canadian folk singer to prevent the publication of material that had already been published (Mr Kenatt v Ash [2005] EWHC 3003 (QB); [2006] EMLR 178).
37 R v Central Independent Television PLC (1994) Fam 192
24. The Human Rights Act 1998 (HRA) required that a fair balance be struck between Article 8 of the ECHR (the right to respect for privacy) and Article 10 (the right to freedom of expression). The right of free speech should only be interfered with where there is a "pressing social need". However, in recent years, UK privacy case law has skewed that balance in favour of Article 8. It is unrealistic to see this simply in terms of tabloid style “kiss and tell” stories. It causes considerable practical and commercial difficulties, for example, for book publishers in publishing diaries, biographies and autobiographies and also for photojournalists legitimately working in public places.

25. There are genuine fears that the current approach of the courts to privacy injunctions could be detrimental to proper investigative journalism. These concerns were voiced most recently by Sir Charles Gray, a recently retired High Court Judge with considerable experience of both libel and privacy. He said he had serious misgivings that the sort of expose of criminal or fraudulent conduct, which was a regular feature of national newspapers a few years ago, had ceased and that there was a real risk that somebody who was corrupt could use the law of privacy to trump a proper Article 10 defence of freedom of expression.

26. For example, in *Cream Holdings Limited and Others v Banerjee and Others* [2004] UKHL 44, a case that was about corrupt conduct, the Claimant attempted to restrain the publication by its former accountant Ms Banerjee and the Liverpool Echo of certain financial irregularities by the company. Cream claimed that Banerjee, as an ex-employee, was in breach of her duty of confidence and sought and obtained an injunction to restrain the newspapers from publishing any further confidential information given to it by her. The Defendants relied upon the public interest in the disclosure of financial irregularities. The newspapers were forced to take the case all the way to the House of Lords, who ultimately allowed their appeal, the newspapers having lost both at first instance and before the Court of Appeal. Sedley LJ in the Court of Appeal (minority) said that the facts that the Liverpool Echo wished to publish were “incontestably a matter of serious interest”; the House of Lords also found these matters were of serious public interest. Without the financial assistance and resources of Trinity Mirror Group, this case would not have been taken to the Lords. A local paper, with such a story today, but without the backing of a major group would probably just abandon such a case—either at first instance or after the Court of Appeal. It cannot be right that a newspaper, or anyone else wanting to exercise Article 10 rights, should have to spend the time or money going to the House of Lords to do that over a story which involved the disclosure of illegal activity.

27. There is currently a serious problem with the judicial interpretation of section 12 (4) of the HRA, which requires judges to take account of the PCC’s Code of Practice. When the HRA was crafted, this provision was intended to be a buttress to press freedom. But, notwithstanding that section 12 was included in the HRA after a considerable amount of parliamentary scrutiny and debate, the courts seem to pay scant notice of it and pay little, if any, attention to the PCC’s case law, for example with regard to whether public figures such as celebrities, politicians, sportspeople or businesspeople, who have previously been attention seeking, in effect have sacrificed some or all of their right to privacy. The requirement of Section 12 of the HRA has become progressively hollowed out as judges make their own interpretations. Not only is this potentially highly damaging to self-regulation, it ignores the vastly greater experience of the PCC in tackling privacy cases—an experience which long pre-dates the passage of the Human Rights Act.

28. The commercial impact of an approach that is too restrictive must not be ignored. As Lord Woolf stated, in *A v B and C*: 41

> “The courts must not ignore the fact that if newspapers do not publish information which the public are interested in, then there will be fewer newspapers published, which will not be in the public interest.”

This was also remarked upon by Baroness Hale in *Campbell*:

> “One reason why freedom of the press is so important is that we need newspapers to sell in order to ensure that we still have newspapers at all. It may be said that newspapers should be allowed considerable latitude in the intrusions into private grief so that they can maintain circulation and the rest of us can continue to enjoy the variety of newspapers and other mass media which are available in this country.”

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38 BBC Radio 4. Unreliable Evidence. 14.07.2009, chaired by Clive Anderson. Sir Charles Gray’s experience of publication proceedings comes both from his days as a barrister and his time as a judge.

39 As to the extent of this see, for example, the comments of Mark Thomson, a Partner at Carter Ruck in the British Journalism Review, September 2006 “Originally it was thought that section 12 of the HRA would protect the media. It is ironic that, in fact, section 12 has not had the intended effect. It is now clear that article 10 does not have priority over article 8; they have presumptive equality. The media codes now appear centre stage in any legal claim for invasion of privacy, and breach of the privacy codes may well persuade a court to find in the complainant’s favour. At the very least, the codes do provide a minimum benchmark for journalism provided by working journalists.”

40 While the “zonal” argument [that talking about a particular zone of one’s private life opens up the whole area to scrutiny] can be pushed too far, it would seem that if a person talks of a particular area of his private life (eg the Claimant’s drug-taking in *A v B, C and D*, [2005] EWCH 1651, where Eady J refused an injunction on essentially zonal grounds), he can hardly have a reasonable expectation of privacy if others wish to disclose conduct of a similar kind in similar detail.

41 [2003] QB 195 (aka *Flitcroft v MGN Limited*)

42 [2004] UKHL 22
Likewise, there is a very real risk, for example, that book publishers, hemmed in on one front by the enormous costs of fighting libel actions and on the other by the restrictive approach being taken by the courts to private matters, will have to become so risk averse as to excise vast swathes of legitimate areas of public information before daring to publish anything, or may even decide not to publish at all.

29. The courts have increasingly given priority to the rights protected by Article 8 at the expense of Article 10 rights. This imbalance applies irrespectively of whether what is published is true or untrue. The only “defence” available to the media is whether what was published is in the “public interest”, which is not a test required by Article 10. Determining what is in the public interest or is a “higher priority” to the protection of someone’s reputation or privacy has become entirely dependent on the subjective views of a High Court judge. We say that this is not a matter that should be left up to the subjective determination of the judiciary. Someone’s reputation or privacy has become entirely dependent on the subjective views of a High Court judge.43 We say that this is not a matter that should be left up to the subjective determination of the judiciary. The MLA accordingly endorses the advice from Antony White QC, (attached as Appendix 2 to News International’s submission to the Select Committee) to the effect that a media defendant should be able to advance a defence in a privacy case that it “reasonably believed that it was acting in the public interest” when it published what it did. This would introduce a statute based test as to what is in the public interest, one which parallels the public interest test Parliament introduced as part of the Data Protection Act’s protection for journalism.

Whether Financial Penalties for Libel or Invasion of Privacy, Applied either by the Courts or by a Self-regulatory Body, might be exemplary rather than Compensatory

30. There is no role for damages or financial penalties (for either libel or invasion of privacy) being exemplary rather than compensatory. Any restrictions on the rights provided by Article 10 must be narrowly construed “convincingly established”, and must be no more than that which is necessary and proportionate. When considering restrictions the courts must take into account the public interest in the free press and the potential “chilling effect” of restrictions. Last year, Mr Justice Eady ruled that: “Exemplary damages are not admissible in a claim for infringement of privacy, since there is no existing authority (whether statutory or at common law) to justify such an extension and, indeed, it would fail the test of necessity and proportionality”.44

31. As regards libel, the Neill Committee recommended in 1991,45 the abolition of exemplary damages in the field of defamation. Although the Court of Appeal in 199546 awarded a sum in exemplary damages in John v MGN Ltd47 1991, Report on Practice and Procedure in Defamation, Supreme Court Procedure Committee, chaired by Neill L.J., Report

January 2009

Witnesses: Mr Nick Armstrong, Charles Russell LLP, Mr Tony Jaffa, Foot-Anstey Solicitors, Mr Keith Mathieson, Reynolds Porter Chamberlain LLP and Mr Marcus Partington, Chairman, Media Lawyers Association, gave evidence.

Chairman: Good morning everybody. This is the first session of the Committee’s new inquiry into press standards, privacy and libel. It is an inquiry which we anticipate will take a number of weeks and we are beginning by concentrating on the legal side. We have two panels this morning roughly divided as follows: the first panel representing those who appear for defendants; and the second panel those who appear representing claimants. It is probably not an exact delineation but is a rough guide. May I welcome, on to our first panel: Nick Armstrong from Charles Russell; Tony Jaffa of Foot-Anstey; Keith Mathieson of Reynolds Porter Chamberlain; and Marcus Partington, Chairman of the Media Lawyers Association.

Paul Farrelly: Chairman, could I make a declaration of interest before we start. I am card-carrying member of the National Union of Journalists and have been since I worked as a journalist for Reuters, Independent on Sunday and Observer, which of

43 As Mr. Justice Eady decreed in his judgment on the Max Mosley case: “It is not for journalists to undermine human rights, or for judges to refuse to enforce them, merely on grounds of taste or moral disapproval”. Mosley v News Group Newspapers Ltd [2008] EWHC 1777 (QB)

44 Mosley v News Group Newspapers Limited [2008] EWHC 1777 (QB)


46 John v MGN Ltd[1996] 2 All ER 35
course is owned by the Guardian Media Group. Whilst at the Observer, Chairman, I was a defendant in a libel action involving Peter Carter-Ruck and Partners; and, just for the avoidance of doubt, their client was a Richard Lanni, a very unsavoury Yorkshire former scrap merchant who had very questionable business dealings with the later convicted fraudster Stephen Hinchliffe. I make that declaration to make it clear it is not pertinent to current cases that are live in the media that we might consider.

Q1 Philip Davies: Could you tell us if there are any problems, as you see it, with the Conditional Fee Agreement scheme?

Mr Partington: Where to begin! There are huge problems with the CFAs; but it is not really the CFAs—the real problems lie in the base costs of solicitors who use them against media defendants, the success fees which are then charged on top and then the After the event insurance (ATE) premiums. Some of the people who sit behind me, who act for claimants, they charge £500/£580/£650 an hour; if you then double that with a 100% success fee you are over £1,000 an hour; you then add VAT on top and you are talking about a huge figure per hour. On top of that the premiums for ATE insurance run at roughly £68,000 per £100,000 worth of cover. The claimant does not pay for that insurance; they incur the premium but they then claim it back from the defendant. The vast majority of cases against the media are won by claimants. I estimate that Carter-Ruck, the main firm, probably lose maybe 2% of CFA cases. I think it would be interesting to ask them how many CFA cases they win and how many they lose. So the vast majority of cases they win but, yes, success fees can go up to 100%. The solution, we would suggest, is to eradicate the recovery of success fees from losing defendants. That would still leave Conditional Fee Agreements, which exist, for example, in Ireland where people have access to justice; there should then be mandatory prospective cost-capping to limit the level of fees which are charged; and there needs to be a proper examination of ATE insurance; we would say ATE premiums should not be recovered.

Q2 Philip Davies: Why is cost-capping used so rarely?

Mr Partington: Because the judiciary avoid cost-capping.

Q3 Philip Davies: Is it not lawyers that avoid cost-capping then?

Mr Partington: You cannot get a cost cap with a claimant lawyer unless by agreement.

Mr Mathieson: I think the way in which the courts approach the question of cost-capping makes it extremely difficult to make out a case for a cost cap. You have got to show that costs are being incurred at a disproportionate rate; and you have got to show that it will not be possible to control those costs retrospectively. Those are pretty hard tests to fulfil. There have been very few cases in which cost-capping orders have actually been made for that reason. While I have got your attention, may I just mention one particular case I have had recently which shows the way in which CFAs operate in practice against the media. This was a case in which I acted for Reuters who were sued by a professional tennis player—not a well-known professional tennis player. His complaint was over a report that he had the worst record in professional tennis. This was not a desperately important story, nor was it a story which required much in the way of investigation or defence in the event that it was eventually to come to court. The tennis player employed his solicitors on a no-win no-fee basis. Reuters was extremely keen to defend the allegation. It thought that what it had published was basically true. There were, as there always are, slight niggles over aspects of the report, but basically Reuters was very keen to defend the case, and wanted to defend the case; it wanted to show that its journalists had done a proper job. Eventually it decided that it had really no option but to settle because it was faced with potential costs of trial for this comparatively unimportant libel case of £1.2 million. Those were the costs that it was going to have to pay the other side if it took the case to trial and lost. As you probably know, defendants do not have great record when it comes to taking cases before juries. So there was a clear risk even in a case where it was advised that it had a pretty strong case. It settled some four months before trial after the case had been going for five or six months; the costs that Reuters is now being asked to pay the other side are £250,000; that compares with Reuters’ own costs of £31,000; so there is a massive disparity between the costs that are being claimed by claimant lawyers and the costs that are actually being charged to large international media organisations by firms such as mine.

Q4 Philip Davies: If, as you said, Carter-Ruck only lose in the region of 2% of cases where they are on a CFA, why on earth are you as lawyers allowing your clients to take these cases to court. If you know there is a 98% chance that they are going to lose surely the best way to cap their costs and to reduce the costs is to say, “You’re on a loser here, mate. Why don’t you just settle out of court?”

Mr Jaffa: I do not think that is the right way of looking at it. I should say I speak from the perspective of the regional press, so all your local papers are the kind of people that I advise, and they are not thinking in terms of litigation; they are thinking in terms of what happens, even though we think we are right—“we” the little (whatever it might be) newspaper of somewhere in any part of this country. Their sole test is whether the costs of the claim, not to put too fine a point on it, are going to put them out of business. I do not think the question you have posed is the right one. I think the correct question is: if people have a legitimate claim then the relevant newspaper should apologise. If they do not have a legitimate claim—if there is an issue whatever the defence might be—then the press should be entitled to defend themselves. At the moment, no regional paper can do that. I went on record about 15 or 18 months ago in the Evening
Standard saying that I cannot see any regional newspaper ever defending a claim in the foreseeable future. That is not because they are poor journalists; not because they publish poor stories; it is entirely due to a small regional newspaper facing costs based on somewhere between £400–£600 an hour times a 100% success fee, plus the ATE premium, plus VAT and so on and so on. That is what it is all about.

Q5 Philip Davies: I know you did not think it was the right question to ask but I did ask it, so if you could have a crack at answering it! Is not the best way to cap people's costs for you to give better advice to defendants to say “This isn’t worth pursuing through the court because you’re on a hiding to nothing”? If you are going to lose 98% of the cases why incur that risk to your clients?

Mr Armstrong: My interest is on both sides because I represent television companies by way of defence to claims; but against the press I tend to act for claimants; and I have not, in cases that I have handled, had to operate a CFA. I have been able to settle most of the cases I have handled without needing a CFA. It is not about black and white; it is about finding ways of solving legal issues with newspapers, and most of the time it is possible to resolve that. I am slightly conscious that these big newspapers, and most of the time it is possible to settle most of the cases I have handled without needing a CFA. It is not about black and white; it is about finding ways of solving legal issues with newspapers, and most of the time it is possible to resolve that. I am slightly conscious that these big newspapers and the majority of those cases are dealt with within weeks or months without CFAs, at reasonable costs to both parties, or one of the parties if they pay the costs.

Mr Partington: Most cases are resolved. To give you an example: there was an article the Guardian yesterday about how Tesco sued the Guardian and they made an offer of amends under the Defamation Act 1996, which is a procedure which is supposed to allow cases to be resolved quickly and relatively inexpensively. I do not know what the damages were, because I think it is confidential, but I would be very surprised if the damages were more than £10,000— they are probably less than £10,000. That was a case where the Guardian made an offer of amends—which, as I say, is a set procedure to try and resolve cases quickly—and the costs bill is £800,000.

Q6 Chairman: Are you suggesting that your counterparts acting for claimants with a CFA in place are going to prolong proceedings in order to maximise their costs?

Mr Partington: If I could answer it like this: in 2002 there was a case called gallery v Gray and Lord Bingham said in the House of Lords there were three risks inherent in the CFA system: first, because there was no client checking on the charges that their lawyers were incurring, there was a risk that base costs would rise and rise and rise; the second risk that he identified was the possibility that excess success fees would be sought; and the third risk was with ATE premiums there would not be a proper market and they would be out of control. There is nothing to stop a claimant lawyer taking a case on a CFA and prolonging it for as long as they can, unless the defendant makes an offer which they accept. If you take the case Mr Mathieson referred to where Reuters wants to defend its journalism, there may be very good reasons why you might not want to make an offer and that case can be prolonged by the claimant lawyers unless you are prepared to make a financial offer, which effectively makes an admission because if they accept the financial offer they will be entitled to a statement in open court, which is an admission that you have made a mistake.

Q7 Chairman: You say there is nothing to stop this—do you think it is happening?

Mr Partington: Without a shadow of doubt.

Q8 Chairman: On a regular basis?

Mr Partington: Yes.

Q9 Paul Farrelly: A final question along that track: one area I am interested in, with respect to the potential abuse of CFAs, is the extent to which they are used by people who have got deep pockets because they are not means tested at the moment. The (Naomi) Campbell case was one interesting example in privacy action. Are you aware of any examples in libel cases where CFAs have been used by people who could otherwise afford the action?

Mr Mathieson: Yes, I have got one which came in last week in which a Premiership footballer has the benefit of CFAs against a number of newspapers. I do not know what his earnings are but I would guess they are not un-adjacent to about £50,000 a week.

Mr Partington: Two of the organisations that are members of the Media Lawyers Association, Trinity Mirror and News International, are being sued; they are privacy action by Ashley Cole; he is on a CFA; his lawyer is charging £580 an hour with no doubt 100% uplift; he has three counsel; he has ATE insurance. Roman Polanski, the film director, he sued in London—and that might be a topic you will come onto, libel tourism—but he never actually came to this country to prosecute the action; Mr Mathieson’s firm was acting for the defendants; he was a CFA. Cherie Booth was another person who has taken advantage. I believe Sharon Stone sued using a CFA.

Q10 Chairman: You are not suggesting these people should not be allowed to use CFAs?

Mr Partington: CFAs are not the problem. The problem is the recovery of the success fee. We would say that those sorts of people do not need CFAs with success fees for access to justice. It has got to be remembered that CFAs were introduced under the Access to Justice Act 1999 to give access to people who hitherto did not have access. No-one here is going to argue against that, but it seems completely wrong that a system that was introduced for people who did not have access should be exploited by rich people and their lawyers.

Q11 Chairman: You say it should be means tested?

Mr Partington: Effectively, yes.

Mr Mathieson: I would just qualify what Marcus said in relation to the base costs. The success fees are a problem; but the base costs, that is to say the
starting fee before the application of the percentage uplift, there is still a problem on no-win no-fee arrangements, in libel cases in particular, because the client in a CFA has no interest in controlling the amount that his solicitor is charging. We are probably labouring the point slightly, but we see these cases in which solicitors are charging £450/£500/£550 an hour because it is no-win no-fee; the client is never going to have to pay that; it is the media, in all probability, who are going to end up paying those sums. If you were to say to a client, “Look, I charge £650 an hour”, or whatever, the client is going to say, “I’m sorry, that’s far too expensive”. On a CFA they are not going to say that and, therefore, there is that potential for really very high charging rates which can only be retrospectively controlled, which is itself a problem.

Q12 Rosemary McKenna: What you are suggesting is rather like people applying for legal aid in taking forward cases, ordinary people. Is it not the fact that these people, who are very well off, by winning their cases are actually establishing case law to help ordinary people when they come to the courts, when they appeal to the media? Are not the people who are losing out, in cash, the media, which is why you are saying that this ought to be stopped?

Mr Partington: If you are concerned about rich people establishing precedents which other people who are not so rich can use, that can happen without CFAs and success fees.

Q13 Rosemary McKenna: But your arguments are only about money, are they not? They are not about whether it is right or wrong justice?

Mr Jaffa: That is what our job is. That is unfortunately the situation we have reached. Our job has turned from advising our clients on matters of law, to advising them on money. That is what it has come down to. We spend collectively, independently of each other, more time than ever before just telling them what the financial implications are. Let me give you an example which has just sprung to mind. Probably about this time last year one of your colleagues, an honourable Member, sued a regional paper—or threatened to—and at the very first meeting I had with the editor we spent about 15–20 minutes considering the legal issues; we then spent two hours considering the financial, and that was the driving force throughout. Every newspaper, whether national or regional, but particularly the regionals—the smaller the more significant this issue becomes—every regional newspaper is solely concerned with the finances of what is happening, never mind the merits. That is the harsh reality of it, and it is all due to the success fee and the ATE premium.

Q14 Rosemary McKenna: But it is not having any success in stopping the media printing stories about people that are either inaccurate or plain wrong?

Mr Jaffa: If they are inaccurate or wrong then they can have a remedy—access to justice via a CFA—but there is no need for a success fee. The ATE premium, I would argue, is astonishingly high and unnecessarily high. I am not suggesting that people should be deprived of their remedies, either at law or through the PCC. What I am suggesting is that the success fee element of a CFA is crippling the regional press, and the ATE premium is crippling the regional press.

Q15 Rosemary McKenna: Then stop printing stories that are not accurate.

Mr Mathieson: Can I just make a quick point. Of course the media continues to make mistakes; the media will always make mistakes; that is one of the by-products of having a free society with freedom of expression; there is no way that we are ever going to stop that. The media will try and improve their standards; but the point about the current cost of libel litigation is that it is not just about money; it is about freedom of expression. What is happening is that at the pre-publication stage the press are inhibited from publishing stories because of the fear of what it might cost if they get some part of it wrong, in good faith.

Q16 Rosemary McKenna: Fine.

Mr Mathieson: No, I think the premise of your question is that the newspaper thinks to itself, “Well, I’ve got this completely false story, if only it wasn’t going to cost me I would publish it”. That is not the way journalists work. They work on the basis that they think what they are publishing, to the best of their ability, is true: but there comes a point when they think, “Hang on, this is a bit dangerous. If I’ve got one little bit of it wrong it’s going to cost me a lot of money”. This is particularly true for the regional press who have fewer resources. That is at one end. The other end, and this is one reason why I mentioned the Reuters case, is that media organisations are inhibited from defending their journalism, from defending those stories, because it is so expensive to do so.

Q17 Paul Farrelly: From my experience as a journalist, lest this be thought of purely in monetary terms, I am aware that many of the actions taken by large corporations in particular are not primarily about money. There were two cases that were very notable where the avowed intention of the litigant was to drive the publisher out of business—that was the James Goldsmith v Pressdram case and Jonathan Aitken v the Guardian, where what the Guardian had printed was true but it was only fortuitous rummaging through a cellar in Switzerland whereby the Guardian was able to prove that Jonathan Aitken was in Paris at the time he was maintaining he was somewhere else. Do you think, on top of the chilling effect that defamation laws have already, that the operation of CFAs has produced a double chilling effect in essence?

Mr Partington: Yes.

Mr Jaffa: Absolutely.

Q18 Alan Keen: If I could make an observation, first of all. The fact that second-hand car sales people and estate agents are doing so badly at the moment—I think there are three professions represented today
which have probably slipped into the relegation zone: journalists, lawyers and Members of Parliament. We should remember that when we are discussing these important issues. We have all seen and we anticipated a good few years ago there was a problem in the banking industry. We saw the massive bonuses and we knew they were being justified on short-term gains and it has all come to hit us all. Is there a structural problem in the legal profession in fees? We have already established one, the recovery of success fees. That is one you have established. Is there another one? Is there a problem in the profession itself and Keith Mathieson said it is the media that suffer in the end, because in the end it is the ordinary person on the street who buys the newspapers or watches TV who suffers, because that is where the final cost goes down to. Is there another structural problem in the legal fees, in the legal profession, with the way that the fees are generated and distributed?

Mr Partington: What I think would be helpful would be if there was a complete change of approach. At the moment, traditionally any cost control has been exercised by the courts right at the end of the case. With CFAs you have got a double whammy fighting even against the costs. Even arguing about the costs you are potentially spending a thousand pounds an hour. The cost control needs to come forward and be done in a mandatory prospective sense for Article 10 cases. The cost judges, who are traditionally regarded as the people who control costs, are on record saying to the Ministry of Justice that their job is not to control costs. That is what they told the Ministry of Justice in one of their submissions to one of the consultation papers from the Ministry of Justice. There needs to be a whole greater control by the court system of the charges that solicitors incur and therefore seek recovery of. It goes back to what Mr Mathieson was saying about the basic hourly rate. If you compare the hourly rates which we are talking about, for example, with the rate that people who carry out criminal work would recover from the court, they are way out of line, way out of line. The way to change it is to have mandatory prospective cost control, we would say. It must be implemented by an external body, because unfortunately lawyers will try and get away with what they can get away with.

Mr Jaffa: Can I add to that by saying, do not get bogged down on thinking purely about litigation, because the overwhelming majority of complaints against your local papers do not go to litigation— they are all settled. So what people like me end up having to do is look at the rate that the court apparently will allow, depending upon the location of the claimant’s solicitor. They always claim more, and I have to try and persuade them that the hourly rate should be reduced, that it did not warrant a success fee, that the amount of time they have spent on it is excessive. But there is nothing that I can actually do, in the absence of any court proceedings, other than my own charm, personality and silver tongue (which is not that effective, I have to say); there is no control at all; it is purely a matter of persuasion. If they say, “No, if you don’t settle on our terms we’re going to sue you”, which brings us back to the point we were talking about earlier. Yes, in litigation there are those issues, but 98% of all complaints go nowhere near the court, and it is all down to negotiation; and we are (and I come back again to success fees) in a particularly weak position. The high hourly rates, for someone who is based out of London like me, I can only dream of those riches. If only. We can make an honest living by charging the rates that we charge. The claimants’ lawyers, in my eyes, are earning a phenomenal amount of money. That is the structural problem that I see.

Q19 Alan Keen: Could I ask about online newspapers and magazines. The PCC changed its policy to extend to on-line newspapers, has that made a difference? What difference has it made? Has there been less defamatory stuff?

Mr Partington: I do not think it has made any difference. Material published in a newspaper or online is treated in exactly the same way. There is, however, a problem about on-line archives because there is nothing to stop somebody finding something in an on-line archive and suing because of that publication, even though the original article was published 10, 15 or 20 years ago; because every time they download it it is regarded as a fresh publication. The Media Lawyers Association thinks that should be urgently examined—about whether there should be a single publication rule, and how we deal with archives; because there is a danger in which people can bring actions in respect of material in archives which there is absolutely no possibility of defending.

Q20 Chairman: When you say “there is a danger”, has it happened?

Mr Partington: Yes.

Q21 Chairman: People have taken out actions for material which was written years ago?

Mr Mathieson: Yes, we have all had experience in several cases. What it means is that the limitation period which Parliament has said should apply to newspapers does not apply to on-line newspapers, and that seems to me to be inconsistent and it is a very simple change to the law which is required to implement the change.

Mr Partington: What actually happens in truth is that people will complain about something that is published on-line, and because of the difficulty of defending it, because it is years later, the natural instinct is to just remove it whether it is true or not; which I think we all lose out on in that sense because the public loses information, and accessed information, which could well be true; but it is safer and easier for media organisations to just say, “Okay, I’ll take that down”, because they might not be in a position to defend it, so we all lose out, I think.
Q22 Alan Keen: The people administering the sites—there is the editing aspect of it: if they take stuff off they are getting liability, are they not, for editing the site rather than just letting other people put stuff on? Does that apply?

Mr Partington: There is defence under section 1 of the Defamation Act about whether you are an innocent publisher of material. That was designed to protect ISPs. For any media organisation, if they put archive material up there they will be regarded as the publisher of it and therefore they will be liable.

Mr Mathieson: That will include third party content too in all probability under the law as it is currently applied.

Q23 Alan Keen: Is the ISP provider in the same position as a newspaper? I am not talking now about newspapers on-line: I am talking about websites. Does the internet service provider become liable in the same way as a newspaper becomes liable for publishing letters, or is there a distinction there?

Mr Mathieson: No, there is a distinction. Section 1 of the Defamation Act refers to publishers, authors and editors as having liability for defamation. If you not a publisher, authority or editor then you will have the benefit of the defence under section 1 of the Defamation Act if somebody tries to sue you for libel. An ISP will normally escape liability because it is not an author, editor or publisher; but generally, as soon as the ISP is notified of the defamatory material, it has to act to take the material off-line, otherwise its continuing act in keeping it on-line may expose it.

Q24 Alan Keen: What is the difference between a site that is recognised, it has got a heading that says, “I am the local newspaper [something] publishing news”, and those sites which somebody else administers, not the internet service provider but someone has a site and lets other people put blogs on there? How is that liability?

Mr Mathieson: There may not be much difference legally if the person, as you describe it administers the site, acts as an editor and decides what goes on the site, or enables material to go on there, then it may well be liable for defamation.

Q25 Paul Farrelly: I remember in my time when the threats duly came from a Russian billionaire that they were going to sue me—you counted down the days until the year was up, but with the internet things have moved on. Mr Mathieson, can I just be precise about the simple change in the law you were referring to, to bring the law up into the internet age as Parliament intended. Would that be to restrict the ability to sue for 12 months from the first date of publication on the internet?

Mr Mathieson: Yes.

Q26 Paul Farrelly: That would be the simple change?

Mr Mathieson: Yes.

Q27 Janet Anderson: I wonder if we could turn to the Human Rights Act, and the balance between Article 8 and Article 10. Of course Article 10 is concerned with the rights of freedom of expression; and Article 8 respect for private family life, and I think is largely interpreted to cover reputation now. I just wonder if I could ask each of you: what do you believe to be the current balance between those two articles? Marcus, would you like to start maybe by referring to the (Naomi) Campbell case, which I think was one of the seminal cases in this area?

Mr Partington: The Media Lawyers Association firmly believes that the balance between freedom of expression and personal privacy has swung too far in favour of personal privacy. The safeguards which were designed by Parliament in section 12 of the Human Rights Act have, we would say, been largely and quite cleverly overridden by the courts; and therefore the balance, we would say, is skewed too far in favour of Article 8.

Q28 Janet Anderson: You are saying that section 12 has failed to protect freedom of expression?

Mr Partington: Yes. I think section 12 has failed to do what Parliament intended it to do; which was clearly that the courts were to give freedom of expression a greater stress than they actually have. The truth is now, we believe, that it is very easy to get through the Article 8 doorway, but it is much harder to defend something in Article 10 terms.

Mr Jaffa: I think that is probably right. The regional press is not faced with anything like the level of activity that the nationals have. Thinking back over the last, say, 12 months for the regionals for which I act, there have been a number of cases where information has been in the public domain, whether by the website or actually in the paper, and yet the claimant has gone off to the High Court and obtained a privacy injunction, notwithstanding section 12. It is hard for me to understand how that can be. These are not international celebrities; these are cases involving a young lad who was brain damaged at birth and was suing his local health authority for a phenomenal amount of money. There was a clear public interest in that story for local people and yet, despite the information about the claimant (the child was not identified or anything; it was a perfectly respectable story), they were still injunctioned, despite section 12 and despite the Article 10/Article 8 balance that is supposed to be taken into account. There was another story where there was an injunction because a private company was placing delinquent youths in a residential area, and these were not just youths who were in a bit of trouble, they had gone through the whole system and this was the final opportunity to reform them. The local paper found out about it—a clear issue for local people, for the neighbours who lived around them; they were in a residential street; it was in the public domain this information if you knew where to look for it—the paper published a story and then was enjoined. Again, I cannot see how section 12 can be said to be working properly in those specific examples. I just do not see it happening; but we do not get it as much as the nationals do, that is for sure.
Janet Anderson: Do you think that that view is taken in other countries? The reason I mention that is, we were recently in Barcelona and we had a meeting with the editor of La Vanguardia, which I think is one of the biggest broadsheets in Barcelona, and one of the questions we asked was: if there were a case of a politician who claimed to be happily married and was discovered to be having an affair, and if there were a footballer who claimed to be happily married and was discovered to be having an affair, would he see it as his job to publish the details? He said, “In the case of the footballer, yes; in the case of the politician, no, because we have no interest in politicians’ private lives”. Do you think there are different standards in different countries?

Q30 Mr Sanders: Yes, it is self-evident!
Mr Partington: There are definitely different standards. One of the things I am not sure we are going to have time to come onto, but obviously we are now in a situation where American states are passing laws to protect American citizens from UK judgments—

Q31 Chairman: I hope we will come on to that.
Mr Partington:— because they think we do not do enough in this country to protect freedom of expression.

Q32 Chairman: You have suggested that Parliament attempted to give weight to freedom of expression and privacy through section 12 in the Human Rights Act but that that is not actually happening. Would you share the judgment of Paul Dacre that that has come about due to arrogant and amoral judgments of one man?
Mr Partington: No. It is not down just to the decisions of one man; but as we say in paragraph 27 of our submission the requirement of section 12 has been progressively hollowed out as judges make their own interpretations; and that is judges in the plural; it is not just one judge but a succession of their own interpretations; and that is judges in the way they have been progressively hollowed out as judges make decisions. Mr Thomson from Carter-Ruck who sits behind me, and you will be hearing from, said he thought it was originally thought that section 12 would protect the media, but it is ironic that in fact section 12 has not had the intended effect. That is a claimant lawyer saying that actually section 12 has not had the effect. I would add to that by saying simply that the law has been skewed slightly because it has developed through a relatively small number of high profile cases on a small number of specific sets of facts. It is quite difficult for a judge to keep in mind the generality of that proposition, I would argue, when faced with the specific facts of an individual case where you may have shortcomings by the journalists, and the nature of the investigation and the intrusion that has taken place he is bound to focus more on that. In a way the problem is intrinsic in the decision-making process where the facts of an individual case will tend to cast those general points into the shadow. I think that is where the skew has come because we are dealing with cases involving celebrities if you like, by and large, that have been decided by the courts, and a relatively small number at that. It is not a very in-depth jurisprudence yet.

Q35 Rosemary McKenna: The PCC code and privacy, the PCC, how relevant is the code today in privacy cases; could the procedure be made more effective?
Mr Jaffa: I think the PCC’s code is absolutely spot-on. I really get very cross when I hear people say that the PCC is ineffective; that the PCC code is ineffective. The relevant provision of the code concerning privacy reflects Article 8 and it takes into account Article 10 as well—the wording does. If you go to your local regional paper, or the editor, he will tell you like every other regional newspaper editor that as soon as anything comes in from the PCC they jump to it; they take it extremely seriously. It is a fabrication for people to say that the PCC is an empty vessel; that the code is worthless; and that, from my experience, regional editors ignore it; that is simply not true. It is a working document; it develops as time goes by; and from the regional press’s perspective it is extremely effective, first of all, in preventing infringements of privacy, because they take it seriously; and then, if there is a complaint and it turns out that the code has been contravened, in rectifying it.

Q36 Rosemary McKenna: Because they cannot prevent the publication of an article?
Mr Jaffa: I cannot speak for the PCC, but I think you will find they will say that they can more and more frequently; they are taking early action.
Mr Armstrong: What I find in my conduct cases is that the presence of the PCC and the code and their involvement at a pre-publication stage does have a persuasive effect. You are right that they cannot issue an injunction or prevent publication peremptorily; but in terms of persuasion and adding force to the argument of prevention of privacy intrusion it does have an effect. I do find it generally a very useful additional tool.

Mr Partington: I would agree with that. Many people do not know that the PCC proactively will warn newspapers before a story, or as a story develops that, for example, certain people do not want to be approached; certain people have been approached and do not want to be approached again; and that sort of thing happens all the time but it happens maybe on a quiet, behind-the-scenes, level which is actually very effective. If newspapers are told, for example, that somebody does not want to be approached then they would obviously adhere to that instruction by the PCC. A lot of the work the PCC does perhaps does not get the focus and the praise that it deserves, but it is quite effective behind the scenes. I think what is very important is the PCC in those circumstances is used by the non-celebrities, the ordinary people who can approach the PCC and then use their services to get what they want.

Mr Jaffa: I think the one difference between me and the others here is that my colleagues and I check stories. The nationals operate in a different way from the regional press; and my colleagues and I check stories before they are published, obviously to try and prevent legal problems arising; but one of our key considerations is the code. Is this story going to contravene the PCC code? My clients, and you will see from my submission paper that I represent a fair number of the regional press, really do take the code seriously; and they take proactive action by talking to people like me to try and ensure that the material they publish complies with the code. It is all in the background; nobody knows about it but it is really there, I can assure you.

Q37 Mr Evans: Do you think the PCC have been effective, for instance, in cases like the Royal Family, or wannabe Royal Family, Kate Middleton, for instance, when clearly she was rather disturbed by the amount of attention she was getting?

Mr Partington: I think that is probably a question that would be better addressed to Kate Middleton, perhaps. I think it has been effective. I think Kate Middleton is an interesting example of somebody who, on one level on certain occasions, does not seem to want publicity, but for somebody who does not want publicity to go to the most high profile nightclubs in London where there are lots of photographers outside seems strange behaviour for somebody who then wants to complain about press—

Q38 Rosemary McKenna: So because you go to a high profile nightclub you want publicity, is that what you are suggesting?

Mr Partington: What I am suggesting is that if you want to have a quiet, unassuming private life there is a way of doing it.

Mr Sanders: Do not go out with a member of the Royal Family!

Q39 Rosemary McKenna: Are you suggesting that it is inappropriate for someone to go to a high profile nightclub but object to intrusion into their privacy?

Mr Partington: No, not at all.

Q40 Rosemary McKenna: That is just what you said.

Mr Partington: No, let me clarify. If you go somewhere which is high profile and there are photographers there you are likely to be photographed, so it is difficult for you to object to being photographed because it is not against the law to photograph somebody in a public place.

Q41 Rosemary McKenna: But not harass them?

Mr Partington: No, absolutely not. No-one is trying to defend any sort of harassment.

Q42 Mr Evans: The fact is going out with Prince William means that you are a centre of attention.

Mr Partington: Absolutely.

Mr Evans: In some cases, some may argue that there was so much attention at one stage that it was actually damaging the relationship.

Chairman: We have already done an inquiry on that particular aspect.

Q43 Mr Evans: Could I ask on a separate case about the rise of citizen journalists, which means that the paparazzi may not be taking the photograph of whoever it may be but the citizens are and they are sending them in. Do you think there is a special role there for the PCC to get involved as well in saying that newspapers should show a lot more editorial control over some of the stuff that is being sent to them?

Mr Mathieson: I think there are two aspects to that question: one is the taking of the photograph itself which may in some circumstances amount to an invasion of privacy. The PCC plainly cannot really do anything to control members of the public. The second one is the publication of photographs. I think the PCC would regard it as being within its existing jurisdiction to adjudicate about the appropriateness of publication of photographs wherever they come from.

Mr Partington: We would certainly regard it as our obligation to check that the material we were publishing that was sent in was legitimate.

Q44 Paul Farrelly: I just want to come to the issue of responsible journalism, which some people might feel is a contradiction in terms. The so-called Reynolds defence at one stage earlier this century seemed like a godsend for responsible journalists but it does not appear to have worked out that way. Why is that defence so rarely used?

Mr Mathieson: I think one reason is actually cost. It is quite an expensive defence to run in practice because it means enquiring into precisely how a story
was put together, and that means going out interviewing people and getting witness statements and all that kind of thing. The other reason is that it shifts the emphasis of the case from the truth or otherwise of the allegations that are being sued upon to the conduct of the journalist. In a sense I think claimants are quite content to allow that shift of emphasis to take place in certain cases, because it gives them a means sometimes of attacking journalists; because with journalism, like most fields of human activity, its practitioners are imperfect. It is often not terribly easy to get information, whether it is from private or public sources. We have often found that when we are pursuing Reynolds responsible journalism defences that we come across just one email which suggests “Oh, hang on, maybe he shouldn’t have done it that way”; and we have to call time on the responsible journalism defence because we know that would be blown out of all proportion, we would say, by the other side, who would regard it as a gift to their case. It has been applied in a rather restrictive, rather strict, rather judicial sort of manner without, at times, much regard to the realities of how journalists actually operate.

**Mr Armstrong:** Quite a complex way. It is quite difficult to anticipate the judicial thinking that will be applied retrospectively when prospectively advising on how the article should be published, in my experience.

**Mr Partington:** I want to second what Mr Mathieson just said there. The 10 tests that were introduced were supposed to be quite loose, but the feeling is that they will be potentially rigidly adhered to; so unless you feel that you have passed through each of the 10 tests without fear of being attacked by the other side, you are wary about using the defence. Of course, anyone who does anything might with hindsight say, “Oh, I could have done that. Or maybe I could have done that”; I think that fact sometimes gets in the way. There is criticism afterwards: “Oh, well, you could have made that telephone call; or you should’ve looked at that “. rather than actually examining what the journalist did and being slightly looser about the 10 tests.

**Q46 Paul Farrelly:** Most people, apart from those who inhabit neo-conservative think tanks, would probably agree that a serious of articles such as the Guardian has recently run questioning whether companies aggressively avoid tax, which was a case mentioned previously, Guardian v Tesco, is in the public interest. Is one of the problems—whether you are trying to run, if you get it right, a justification defence; or, if you get it wrong or slightly wrong, a Reynolds defence—that in those cases all the disclosure comes from you and that the litigant has no onus to disclose anything at all?

**Mr Mathieson:** That is right. If you are running a Reynolds responsible journalism defence you are starting on the back foot. If all your facts were absolutely spot-on you would be running a justification defence. You are right; you are starting from the wrong place in a sense.

**Q47 Paul Farrelly:** The development of the case law in privacy has been referred to in the questioning. Do you think it is satisfactory in such an important area that the protections for reporting in the public interests is left to the courts to develop, and not guided or helped by statute?

**Mr Partington:** It is left to the courts and I think it is inevitable that it would be left to the courts, but I think Parliament can provide guidance as it sought to do through section 12 of the Human Rights Act. I think it is probably obvious that there needs to be a re-examination of why that guidance, which was given to the courts by section 12, has effectively been skewed in favour of personal privacy against freedom of expression.

**Q48 Paul Farrelly:** I am talking now about libel and defamation. We do not have the First Amendment here. Could statute help guide the courts in giving more protections to the media when reporting in the public interest?

**Mr Partington:** Yes, I think so. I think the willingness of the Government to put the Reynolds defence on a statutory footing is something that is to be welcomed.

**Q49 Chairman:** Could I finally move on to the issue which you touched on earlier, which is libel tourism. How do you feel about the fact it is now apparently becoming quite common for overseas citizens who object to a publication by an overseas publisher to take action through the British libel court?

**Mr Mathieson:** Personally I think it is nonsensical to allow, as we have done, Icelandic banks to come to the UK in order to sue Danish newspapers, or to allow Paris residents, film directors, who have been banned from the United States, to come to London, if not in person at least by telephone from Paris, in order to sue a US-based magazine. I just cannot see that it makes any sense at all to allow our courts to be used in this way. The threshold of admissibility of claims by characters such as Roman Polanski, Russian oligarchs and so on is simply too low.

**Q50 Mr Sanders:** In a recession should we not be encouraging it?

**Mr Mathieson:** It is good business. I confess it is.
Q52 Chairman: We were advised in some of the earlier briefings we received that there is provision whereby the judiciary can strike out such actions as simply the UK not being the most appropriate jurisdiction in which to bring them. Why do you think that is not happening?

Mr Mathieson: I just think the existing case law has become too restrictive. There are cases in which that can be done; for example, if there is no evidence that a website received any significant number of hits from this jurisdiction, then the courts in such cases have said that the action should not be allowed to proceed; but there have been many other cases in which only 30 or 40 instances of publication have taken place within this jurisdiction which have been considered to be sufficient to allow the case to proceed.

Mr Partington: I think traditionally the view has been taken that if there was one publication in this country it proceeded on the premise that that was enough to found jurisdiction in this country. There has been too rigid a view traditionally that if there is any publication in this country that this country could have jurisdiction; and, as Mr Mathieson says, although there has been an easing of that, it is still too easy for people who have very limited links to this country to obtain jurisdiction. Mr Sanders says we are adopting a “good for business” attitude encouraging people through the door.

Q53 Chairman: But we have had examples of people coming to the UK who order books to be delivered to them in the UK in order to establish publication in the UK and therefore use that as an excuse to go to the UK courts?

Mr Partington: Have we?

Q54 Chairman: So we are advised. Equally, websites with the Ukrainian example. The Ukrainian website which said something about a Ukrainian oligarch which was accessed, I think, 120 times within the UK by Ukrainian speaking people and that was regarded as therefore justification for it to be brought before the UK courts.

Mr Mathieson: Very often these hits to the websites are by the claimant and his own advisers.

Q55 Mr Sanders: Given that claimants have to acquire proof that their reputation can be damaged here, that actually seems to require a wider definition. How would you narrow it down? What would you do to more closely define who could or could not use a UK court in these actions?

Mr Partington: I am afraid the premise of your question is wrong.

Q56 Mr Sanders: Do they have to prove that they have a reputation that could be damaged?

Mr Partington: No, they do not have to prove that. They only have to prove that it has been published here.

Mr Mathieson: Firstly, I think there needs to be much greater scrutiny about whether the person is connected to this country, properly connected to this country; secondly, I think there needs to be a much greater scrutiny of the extent of publication in this country; and, thirdly, I think there needs to be a greater scrutiny of whether there is a more appropriate forum for the issue to be dealt in. To give your example about the Ukrainian, anyone would think, “Why isn’t that being dealt with in the Ukraine?” I suspect the real reason why everyone comes to London is because it is such a claimant-friendly jurisdiction.

Q57 Chairman: It was put to us actually in the Ukrainian case that one of the reasons they came to London was that a judgment in the UK courts would be seen to be a proper judicial process, whereas a judgment in the Ukrainian courts would not be quite as “robust”, shall we say.

Mr Partington: But not in America.

Q58 Chairman: Indeed, not in America. Given that you regard the present situation as absurd, do you therefore have sympathy with the Libel Terrorism Protection Act which has been passed in America, and the free speech act which is currently before Congress?

Mr Partington: I am not sure “sympathy” is the right word. I think it is very regrettable that we are in a situation where one of our chief allies is in a situation where it is taking steps to pass laws because we do not do enough in this country to protect freedom of expression, and allow libel tourism. I think as a country we should do something to stop that.

Q59 Chairman: You regard it as understandable that that is the reaction in the States?

Mr Partington: Yes.

Q60 Chairman: Do you think if that legislation does pass through Congress that is going to do significant damage to the reputation of British courts?

Mr Partington: To be honest, I think that damage has already started happening. I think the fact that the steps have already been taken in America, and are being taken, has already created that damage.

Mr Jaffa: If you read the press releases that accompany the bill that is before Congress now, and if you read the memorandum that accompanied the New York Act from the Governor, you can see what they think of our laws; and it is not very pleasant to see that we are described in those terms. I have no personal experience of this, so this is just a general observation; but I find it really very distressing that they should think of our laws as terrorism. Just think what that implies. If I were a parliamentarian I would be absolutely shocked to think that the United States regards our law in that light.

Q61 Chairman: I think it came about as the result of a specific case.

Mr Jaffa: The New York one did, yes.

Q62 Paul Farrelly: Just for the record, Chairman, the Reuters case you referred to against a tennis player, for the record could you name the tennis player?
Mr Mathieson: Yes, Robert Dean.

Q63 Paul Farrelly: Which nationality?
Mr Mathieson: British.

Q64 Paul Farrelly: He was a British tennis player; publication happened here?

Mr Mathieson: Yes, he is a British player who actually plays most of his tennis in Spain, as it happens. He is a British national, yes. I am not suggesting in any sense that he was guilty of libel tourism. It was a Reuters’ publication in this jurisdiction.

Chairman: Could I thank the four of you very much.

Supplementary written evidence submitted by Charles Russell LLP

Further to my written submission of 13 January, there are two supplemental points I would like to make in the light of proceedings on 24 February when I appeared with other lawyers before the Committee.

1. The Balance Between Article 8 & Article 10/The Costs of Media Litigation

In my experience, most of the cases which proceed far down the litigation route (either to trial, or to “the door of the court”) feature conduct by journalists which falls short of the standards one would ideally expect. It is frequently this which prompts claimants to persevere with their claim. This has two consequences.

   a) As far as costs are concerned, when the newspaper lawyers complain about the costs of litigation, they omit to give full weight to the failings by journalists which more often than not, either contribute to or are responsible for those costs having to be incurred.

   b) In relation to the emerging jurisprudence on privacy, cases which proceed as far as a decision by the judges quite often feature failings by the press—with the result that protecting the claimant from such conduct often and inevitably assumes greater importance in the judge’s mind (on the specific facts of the case being decided) than the more general principle of free speech. It is therefore difficult for that principle to prevail in judge-made law.

I am not clear how Parliament could compel greater emphasis on freedom of speech in deciding such cases, without running the risk of injustice to claimants, where journalists and editors (in their growing desperation for revenue, circulation and perhaps sheer survival) fall short of the standards that should be expected from them.

The press and those representing them need to realise that the best approach would be for standards of press reporting to improve so that judges shape the law with a sense of greater confidence that the press can be trusted with the responsibility that freedom of speech implies. An example of how things might improve is provided by the television industry where there is a culture of careful fact-checking by journalists and the compliance/legal teams in accordance with the more detailed régime of the Ofcom Code.

2. CFAs

In one question put during the second session on 24 February, Mr Davies said:

“...is quite a good racket, is it not, if you are going to take on a case that you are pretty sure you are going to win anyway and you shove it on a CFA and therefore double your income as a result? You are doubling your income on a case that you are absolutely certain you are going to win. It is nice work if you can get it. You should be paid less for cases that you are certain you are going to win.”

The question (quite apart from slipping from “a case that you are pretty sure you are going to win” to “a case you are absolutely certain you are going to win”) ignores the reality that there is no such thing as the latter. Where the opponent is fighting the case, it always means there are arguments or questions of interpretation on both sides. Straightforward complaints do not result in expensive litigation. Litigation is notoriously unpredictable in any event, especially libel litigation where a jury may well be deciding the outcome. In contested litigation, the lawyer is never “absolutely certain” of victory, and very rarely even “pretty sure” of success.

Further, a “double” income, ie a 100% uplift, is only sought and appropriate if the newspaper chooses to fight to trial. In that event, the newspaper will have consciously decided not to avail itself of the costs protection of the Part 36 settlement procedure—i.e. it is a case the newspaper thinks it can win in which case it would seek to bankrupt the claimant in the event of inadequate insurance.

In fact what happens at my firm and I believe in almost every other law firm (except perhaps one firm that automatically does 100% of its work on CFAs) is as follows. A case is scrutinised before being cleared to the partners to be done on a CFA, and it will only be authorised if there is a better than even chance of success—normally a better than 66% chance. Normally the formal advice of counsel is needed to that effect. The same applies if ATE insurance is to be obtained.
That still leaves a substantial risk of losing. If a firm acts on a CFA and loses, it will have worked for nothing—often for over a year. Most law firms have lost CFA cases they thought they had a good chance of winning, and hence got nothing—this included not just loss at trial, but also earlier “walk-aways” where the claimant’s lawyers come to appreciate as litigation progresses that the claim is legally or evidentially problematic or disproportionate. Even when the firm wins the case for its client, it will have not been billing for a year or more. The success fee is to balance those disadvantages.

In my view therefore, wrongly caricaturing the process as a “racket” is unhelpful to the debate. It wholly fails to take into account the economic realities of the process for the vast majority of law firms (as well as the fact that the CFA provides a genuine means of offering access to justice to those who would otherwise lack it).

March 2009

Written evidence submitted by Mark Thomson

From the outset, I wish to clarify that I am making the below submission as an individual, and not on behalf of the McCann’s who, as you may be aware, are clients of Carter-Ruck. For professional reasons, I cannot comment on any of the specifics of the McCann case.

I have worked in media law for over 20 years and have been involved in complaints to the various regulators for invasion of privacy and inaccuracy, as well as many significant court actions for privacy, defamation and harassment (e.g. Naomi Cambell v Mirror Group, Loreena Mckennitt v Ash, Sienna Miller v Newsgroup and Big Pictures; Marco Pierre White v New York Times and Amar v BBC). I have acted for both individuals as well as broadcasters (Carlton TV) and publishers (OUP and Penguin). I have also written numerous articles on media law and contributed to the book Privacy and the Media—The Developing Law edited by Hugh Tomlinson QC. I make this submission based on my own experience.

Why the self-regulatory regime was not used in the McCann case, why the PCC (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case?

While I cannot comment on the specific case, I would point out that the PCC, set up and funded by the media, does not award compensation for damage to reputation, make declarations of falsity, issue penalties, or grant injunctions. Indeed, the PCC does not want to exercise these functions. The PCC either mediates to provide for publication of apologies or, in rare cases, issues an adjudication that the newspaper must publish, although recently a newspaper publicly disagreed with the content of a PCC adjudication.

In claims for defamation, the most effective form of vindication is an award of damages and a substantial award sends the message to the world that the allegations are untrue and should not be repeated.47

Accordingly, whilst the PCC sets a minimum standard of conduct for journalists and the PCC code has improved considerably over the years, in my view, it does not provide effective remedies for libel or for invasion of privacy. This is also the view of the European Court of Human Rights48 in relation to privacy.

Reputation is an important right which is now guaranteed by Article 8 of the European Convention on Human Rights (ECHR). It takes a long time to obtain a good reputation and a short time to lose it; it is therefore essential for an individual to have access to the courts and to have effective remedies that effectively restore his or her reputation.

Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime

No comment, for professional reasons.

The interaction between the operation and effect of UK libel laws and press reporting

UK libel laws, which have developed from a combination of common law and statutory law (such as the Defamation Act 1996 and the influence of Article 10 of the ECHR), remain consciously and carefully balanced in order to allow an individual to seek remedies when a defamatory allegation has been made against him, but also to allow reasonable investigative journalism that is in the public interest.49

Libel laws are needed in order to hold the press to account when they make serious errors, damaging and destroying peoples’ reputations, and sometimes their livelihoods.

Where a newspaper or broadcaster reports allegations that are in the public interest, and where the

49 Reynolds v Times Newspapers Ltd [2001] 2 A.C. 127
newspaper or broadcaster has acted responsibly, they will have a defence to any claim in libel, even where the defamatory allegations are untrue. This development in the law is significant protection for the media. However, where defamatory and untrue allegations are made in error, the claimant should have a right to vindicate his reputation by legal redress. The media also have the advantage of the offer of amends regime brought in by the Defamation Act 1996, which has reduced libel awards.

These developments mean that responsible press reporting is much less vulnerable to legal claims. On the other hand irresponsible, defamatory and intrusive reporting are, and have always been and deserve to be, vulnerable to legal claims. Newspapers, in particular tabloid newspapers, have huge circulation and therefore huge power to affect people’s live. They also have huge resources.

The impact of conditional fee agreements on press freedom, and whether self-regulation needs to be toughened to make it more attractive to those seeking redress

Conditional Fee Agreements (CFA’s) provide access to justice including access to courts which provide effective remedies for libels and invasions of privacy. This is a right guaranteed by Article 6 of the ECHR. There are numerous examples of successful claims, where if such a scheme had not existed, a claimant would have been deprived of legitimate redress. CFA’s also allow victims with modest means to be on a level playing field with their media opponents.

As mentioned above, the PCC and other regulatory bodies do not provide sufficient and effective remedies.

Moreover, it is doubtful whether, contrary to numerous statements by the media, conditional fee agreements have a chilling effect on freedom of expression. When newspapers act responsibly and notify their target of proposed publication of the material, they are likely to have a defence in libel. If they notify their intended victim of any intended private disclosure, then any problem will be quickly resolved, probably by agreement and, if necessary, by a speedy Court hearing.

The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the internet

This point is best addressed by in-house lawyers who have to deal with these issues on a daily basis.

What effect the European Convention on Human Rights has had on the courts’ views on the right to privacy as against press freedom

In general, the ECHR has had a larger effect on the courts’ views in favour of press freedom than on the right to privacy. Since the late 1980s, early 1990s, the media has been relying successfully on Article 10 to defend itself against state injunctions (Spycatcher), source disclosure orders (See Mersey Care NHS Trust v Ackroyd and Goodwin v UK), and excessive libel damages (Tolstoy Miloslavsky v UK and John v MGN), as well as to help establish the defence of responsible journalism (Reynolds and Jameel).

Moreover, despite a lot of recent ill-conceived criticism from the tabloid press the Human Rights Act (HRA) and, in particular, Section 12 of the HRA has further increased the protection of the press, since injunctions for threatened breaches of confidence have become more difficult to obtain than they were before the HRA came into force. In addition, reporting restrictions are now more heavily scrutinised than before.

In contrast, in relation to privacy, the effect of the ECHR has been to accelerate the continuing development by the common law of claims in confidence, now renamed the misuse of private information. It is important to remember that, prior to the 1980’s and 1990’s, spurred on by the intrusive activities of the tabloid press (and in parallel to numerous parliamentary reports highlighting concerns over invasions of privacy), the law of confidence was already developing considerably, in such cases as Avery, the tabloid press (and in parallel to numerous parliamentary reports highlighting concerns over invasions of privacy), the law of confidence was already developing considerably, in such cases as Avery, the tabloid press, Stephens v Avey, and Barronmore v News Group Newspapers. Indeed, this was the submission of the (Labour) Government to the European Court of Human Rights in Spencer v UK.

The recent decisions of the ECHR such as Peck v UK and Von Hannover v Germany have undoubtedly increased the level of protection of privacy for all people, whether those in the public eye or not. However, the precise impact of these cases is still being worked out by the Courts. It is clear that where there is a genuine public interest, the media has nothing to fear.

50 Mersey Care NHS Trust v Ackroyd [2007] H.R.L.R. 19
51 Goodwin v United Kingdom (17488/90) [1996] 22 E.H.R.R. 123
53 John v Mirror Group Newspapers [1997] Q.B. 650 CA
54 Reynolds v Times Newspapers Ltd [2001] 2 A.C. 127
55 Jameel v Wall Street Journal Europe [2006] UKHL 44
56 Stephens v Avey [1988] Ch. 449
57 Barronmore (Michael) v News Group Newspapers Ltd [1997] F.S.R. 600 Ch D
60 Von Hannover v Germany (59320/00) [2004] 16 BHRC 545
It is therefore somewhat ironic that some sections of the media want the Human Rights Act repealed or amended since, if they were to be successful, it may well have the effect of making obtaining injunctions easier to obtain.

**Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, might be exemplary rather than compensatory**

Libel law currently allows for a claimant to seek exemplary damages where the defendant’s defamatory publication has been done “with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic, or perhaps physical penalty.”

Such cases are rare and exemplary damages awards are, in any event, vulnerable to appeal. A claim in aggravated damages will only really be available where the conduct of the newspaper is reprehensible. It is important that a claimant has the right to seek exemplary damages for very serious defamations as this limits the possibility that a media organisation will take a commercial decision to publish an allegation regardless of its truth.

At present, the law does not allow for exemplary claims for breach of confidences/invasions of privacy as is clear from the decision of Mr Justice Eady in *Mosley v News Group Newspapers Limited*. However, a claimant in a privacy/confidence claim can seek an account of profits as an alternative to compensatory damages which could have much the same financial effect on the defendant as exemplary damages. However, claims for accounts of profits are complex and difficult to pursue.

It should be noted that whilst self-regulators such as Ofcom/ITC have imposed very substantial fines, which almost certainly have a punitive element, these fines do not offer any compensation to the victim. The PCC do not, and do not wish to have, any power to fine newspapers or award compensation. (This is not surprising considering they are funded by newspapers.)

The writer’s view is that the tabloid press have got worse with regard to privacy in the last few years, especially given technical advances in the last few decades of high powered digital cameras, unlawful surveillance devices, email communication and the internet.

There is a massive and continuing unlawful trade in highly sensitive information as demonstrated by the Information Commissioner in his two significant reports to parliament “What Price Privacy” and “What Price Privacy Now”. I am also aware of this trade, from my own experience.

I set out below a brief extract of a table exhibited at page 9 of his second report “What Price Privacy Now” (2006). The Information Commissioner describes that table as follows:

“The following table shows the publications identified from documentation seized during the Operation Motorman investigation, how many transactions each publication was positively identified as being involved in and how many of their journalists (or clients acting on their behalf) were using these services.

It should be noted that while the table is dominated by tabloid publications, they are far from being alone. Certain magazines feature prominently and some broadsheets are also represented. The Commissioner recognises that some of these cases may have raised public interest or similar issues, but also notes that no such defences were raised by any of those interviewed and prosecuted in Operation Motorman”

<table>
<thead>
<tr>
<th>Publication</th>
<th>Number of transactions positively identified</th>
<th>Number of journalists/clients using services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily Mail</td>
<td>952</td>
<td>58</td>
</tr>
<tr>
<td>Sunday People</td>
<td>802</td>
<td>50</td>
</tr>
<tr>
<td>Daily Mirror</td>
<td>681</td>
<td>45</td>
</tr>
<tr>
<td>Mail on Sunday</td>
<td>266</td>
<td>33</td>
</tr>
<tr>
<td>News of the World</td>
<td>228</td>
<td>23</td>
</tr>
<tr>
<td>Sunday Mirror</td>
<td>143</td>
<td>25</td>
</tr>
<tr>
<td>Best Magazine</td>
<td>134</td>
<td>20</td>
</tr>
<tr>
<td>Evening Standard</td>
<td>130</td>
<td>1</td>
</tr>
<tr>
<td>The Observer</td>
<td>103</td>
<td>4</td>
</tr>
<tr>
<td>Daily Sport</td>
<td>62</td>
<td>4</td>
</tr>
</tbody>
</table>

In these circumstances, where a very serious invasion of privacy has taken place, and the defendant has not given the claimant any prior notice, and thus has denied the claimant the opportunity to restrain publication, I believe that exemplary damages should be available to act as a deterrent. This will probably require Parliament to legislate for this. Otherwise, the now standard and increasing tabloid media practice of publishing private information without any prior notice will continue unchecked.

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61 *Broome v Cassell*[1972] A.C.1027
Whether, in light of recent court rulings, the balance between press freedom and personal privacy is the right one

In my view, the balance reached by the Courts between press freedom and personal privacy has improved considerably.

The Courts have made it clear that there is a presumptive equality between press freedom and personal privacy. Each case is judged on its facts alone and whether the particular intrusive publication is justified by a genuine public interest or some other factor, such as the material is in fact in the public domain. Consequently, some information will be restrained and some will not, depending on the particular facts of the case.

Parliament has also introduced two important laws protecting privacy, the Protection From Harassment Act 1997 and the Data Protection Act 1998 which have helped.

Nevertheless, it would be a significant improvement if the privacy codes of Ofcom and the PCC included a provision that a journalist/newspaper had to approach the target before publishing defamatory and/or private material.

This is consistent with the concept of reasonable journalism in Reynolds and is a matter of basic fairness. The tabloid media refrain from notification in order to avoid the risk of a complaint or even to avoid an injunction. The consequence is that people’s private information is released permanently without any chance of the victim remedying the situation.

Written evidence submitted by Russell Jones & Walker, Solicitors

Introduction

1. Russell Jones & Walker is a medium sized firm of solicitors with offices in London, Manchester, Birmingham, Bristol, Cardiff, Sheffield, Newcastle, Wakefield and an associated office in Edinburgh.

2. The defamation and privacy department is well known for its claimant work, but also regularly acts for defendants. It is consistently rated as one of the best and busiest in the country.

3. Our diverse national client base includes both private clients and members of unions and membership organisations. In the latter category, we are particularly known for the work we do for the Police Federation and its members (being police officers up to the rank of Chief Inspector). However, we also act for the NASUWT, RCN, GMB (Southern Region), League Managers’ Association, Prospect (including the Premiership Referees Group), Musicians’ Union, Community and PCS.

4. The private clients we act for tend to be ordinary individuals rather than celebrities.

5. Over the years we have successfully pursued claims against virtually every national newspaper and TV company and a huge number of local papers, magazines and book publishers.

6. We are experienced in advising on and addressing the funding difficulties which ordinary people of modest means face when contemplating an action to restore their reputation.

7. Our submissions below adopt the headings used in the Committee’s Announcement No.67 dated 18 November 2008. We have not responded to all the matters raised.

The interaction between the operation and effect of UK libel laws and press reporting

8. In a free and democratic society press freedom is essential and the media’s importance is often demonstrated by the impact of investigative journalism. The media are not simply reporters of the news, but can create the news by uncovering misconduct and calling to account those holding positions of authority.

9. Yet with such great power comes responsibility. The law of defamation is a necessary balance to freedom of speech to ensure an individual can protect their reputation. It should not be viewed as a yoke around the neck of the media, but rather a system of checks and balances to help ensure the highest standards of journalism.

10. We have a powerful, influential and robust press in this country which not surprisingly presses the case for more freedom and less restriction at every opportunity. Potential claimants do not of course have the same platform or influence to advance their position. They must rely on the Courts to achieve the right balance. In our experience, that balance between the operation of the libel laws and press freedom is deployed justly and fairly by our Courts and the specialist judges.
The impact of conditional fee agreements on press freedom

11. Conditional Fee Agreements (CFAs) were extended to defamation cases in 1998, primarily to provide access to justice for claimants of modest means. The use of CFAs has come under increasing criticism from media defendants, who argue they have led to a “chilling effect” on their freedom of expression. Having more than 25 years’ experience in defamation and having offered CFAs since their inception, we take a different view: the contention that these are stifling press freedom seems to us to be misplaced.

12. The press contends that it has been inhibited because a media defendant can be required, as part of its liability under an adverse costs order, to pay a success fee of up to 100% and a substantial insurance premium if it loses or settles a libel claim. Consequently, the media argue, they are forced to settle even unmeritorious claims for commercial reasons. We disagree.

13. First, in our experience, the CFA regime is not used to bring unmeritorious claims. If a CFA claimant loses their case, their lawyers do not get paid. Russell Jones & Walker, and no doubt other claimant firms, would certainly not be prepared to gamble huge time and resources on a frivolous claim in the speculative hope that it will be settled by the media defendant with payment of costs. The merits and prospects of success of any claim are rigorously assessed before a CFA is offered to avoid this. Frivolous claimants would also be deterred by the risk of paying the (substantial) costs of their opponent if their claim failed. Insurance is only available for a claimant CFA with a favourable risk assessment; insurers are no more willing to gamble with their money than claimant solicitors. With relatively modest damages at stake in defamation (and privacy) cases, only genuine claimants who need to vindicate their reputations are willing to subject themselves to the time and stress involved to see a case through to trial.

14. Media defendants also fail to acknowledge that if a frivolous or speculative claim is brought against them, they could defend it on a CFA. If their lawyers are unwilling to represent them on a CFA, this would suggest they believe the claim has at least reasonable prospects of success.

15. Secondly, the uplifts claimed by claimant lawyers are not as extortionate as the press suggests. Russell Jones & Walker, and most other claimant firms, have already introduced staged success fees to address the concerns raised by media defendants, meaning the 100% uplift is only applicable very close to trial. Modest success fees are applied if a claim is settled in its early stages. It is also important to remember that success fees are only paid when the newspaper loses or settles a claim, indicating the claimant had a legitimate claim. Media defendants often have either insurance or substantial resources to cover the successful claimant’s legal costs (including success fees and any insurance premium).

16. If the costs claimed by a claimant’s lawyers are considered to be unreasonable, the bill can be subjected to detailed assessment by the Supreme Court Costs Office. Furthermore, the Civil Procedure Rules and the Defamation Act 1996 each contain a number of provisions which offer a defendant assistance earlier in the proceedings. For example, a defendant can rid itself of an unmeritorious claim by making an application to the court to strike it out or seek to protect itself in relation to costs by applying for an order for security for costs or a costs cap. The defamation pre-action protocol also requires the parties to consider alternative dispute resolution before court proceedings have been issued. We have mediated many libel claims in recent years to a successful conclusion.

17. The reporting of Madeleine McCann’s disappearance and the subsequent police investigation is just one prominent example which shows the freedom of the press has not been significantly inhibited by the use of CFAs. While newspapers might choose to make a commercial exit from a claim rather than risk litigation, the evidence suggests it does not dissuade them from publishing often quite startling defamatory material. In fact, libel laws now provide greater protection for defendants, particularly through the defence of Reynolds qualified privilege (which protects responsible journalism). This has led to fewer cases being brought by claimants, particularly those on a CFA.

18. Claimants have as much right to protect their reputations as media defendants have to protect their freedom of speech and CFAs are the only way of providing access to justice for claimants of modest means, putting them on an equal footing with the financial might of a media defendant. One of our successful CFA cases provides a good example of how access to justice in defamation can be so vital. A community nurse was accused by a national tabloid in two consecutive front-page articles of hastening the deaths of 17 terminally ill children. Her life, career and family were devastated, and without CFA funding she would have been unable to take any action. We represented her on a CFA, and secured for her damages of £100,000 and a page 2 apology. This public vindication enabled her to re-enter the profession she loved.

19. CFAs are sometimes also used by wealthy claimants, but it is difficult to see how these stifle press freedom when such claimants surely have the financial resources to satisfy any order for costs if their claim fails (including any success fee or insurance premium if the newspaper itself chose to defend the action on a CFA).

20. In conclusion, then, we say that CFAs have performed a vital function in opening up access to justice for ordinary people whose reputation have been attacked by the press, and we do not believe that they have had a negative impact on press freedom. Until their introduction, such people were effectively excluded by the cost and the difference in firepower from taking defamation action against a media defendant.
... and whether self-regulation needs to be toughened to make it more attractive to those seeking redress

21. From our experience, there are a number of problems which need to be addressed:

a. Defamation complaints do not specifically fall within any of the clauses within the Code, meaning victims of a defamatory publication have no means of redress.

b. The claimant is left powerless if they do not feel a publication’s offer to resolve the PCC complaint provides adequate redress since the PCC generally offers no alternative.

c. The PCC’s greatest sanction (if no earlier resolution can be reached) is to oblige publication of its adjudication in full and with due prominence (which is itself a rather nebulous term). This does not necessarily vindicate a claimant’s reputation. It is understandable, therefore, that complainants may find this remedy unsatisfactory.

d. The PCC does not have the power to award damages to a complainant or order payment of his or her legal costs. And while complainants can pursue PCC complaints personally, they may not be familiar with the procedure and will usually be up against a newspaper’s experienced legal department. In our view, the CFA system is necessary because it enables legitimate claimants of limited means to pursue through the Courts a remedy to vindicate their reputation which will include recovery of legal costs, and so permit expert representation and advice. Any complaint to the PCC must either be made personally or at the complainant’s own expense if he or she uses solicitors.

e. The time frame for lodging a complaint with the PCC is much shorter than that for bringing a defamation claim (two months as opposed to one year). This restriction may leave claimants with no option other than a defamation claim.

f. Although a substantial number of publications do subscribe to the Code of Practice, this is voluntary, so there are cases where the PCC has no power to resolve a complaint.

g. The media is often critical of professions or occupations which deal with complaints through self-regulation eg. the legal profession and the police. Yet it expects the public to accept that self-regulation is the most effective way of dealing with complaints arising from press articles.

22. The PCC will be unable to provide a realistic alternative to formal defamation claims for as long as its sanctions and means of redress are limited.

What effect the European Convention on Human Rights has had on the court’s views on the right to privacy as against press freedom

23. The cult of celebrity has undoubtedly led to an insatiable interest in every aspect of the lives of those in the public eye, causing high-profile individuals to complain of intrusions into their private life. However, such complaints are not just the preserve of celebrities. In Wainwright v Home Office (which went right through the domestic courts to Europe) the House of Lords held that because there was no common law tort of invasion of privacy, there was no remedy available to a mother and son who had been humiliated and distressed by a strip search on a prison visit in 1997, even though it breached prison rules.

24. There was no right to privacy in the UK until the incorporation of the European Convention on Human Rights into UK law in 1998 (specifically Article 8). This is balanced in the Convention by Article 10, which states everyone has the right to freedom of expression, although this in turn is also subject to restrictions, for example, to protect health, morals or the rights of others.

25. The House of Lords grappled with these new rights in Naomi Campbell v MGN Ltd. While there were differences in opinion, the following principles commanded unanimous support:

a. Under Article 8, an action for breach of confidentiality now covers infringement of a person’s right to respect for his private life where the infringement involves disclosure of information (including photographs).

b. The principles involved apply as much between individuals or between individuals and non-government bodies as they do between individuals and public authorities.

c. Article 8 applies when the person publishing the information knows or ought to know that the other person can reasonably expect the information to be kept confidential, because of its private nature.

d. If Articles 8 and 10 both apply, the court has to balance the competing considerations, neither being presumed to have priority over the other.

26. Where it is faced with a claim for invasion of privacy, the court’s task is to embark on a two stage process:

a. First it must identify whether there is a reasonable expectation of privacy such as to engage Article 8 at all. This is the threshold test.

b. If that test is passed, the competing Convention rights must be balanced, applying the test of proportionality to each. This is the parallel analysis or balancing test.
27. Inevitably, the Human Rights Act will, in certain circumstances, act as a fetter on press freedom, but this is a necessary restriction. Everybody should have an entitlement to a basic level of privacy and it is essential that the law reflects this basic human right. We accept that the extent of the zone of privacy to which an individual is entitled may vary from case to case.

28. The freedom of the press is preserved by the safeguards built into the Human Rights Act, namely that the right to privacy must be balanced against the right to freedom of expression (and other Convention rights). The phrase used in cases such as Max Mosley v News Group Newspapers Limited is the requirement to apply an “intense focus” on the individual facts of each case. This means the press can maintain its role of “bloodhound” but only in legitimate circumstances.

Whether financial penalties for libel or invasion of privacy applied either by the courts or by self-regulatory body might be exemplary rather than compensatory

29. Exemplary damages are intended to punish the defendant rather than compensate the claimant and historically they are only available in tort and not in equity. But legal debate remains as to whether the emergence of a law of misuse of private information has become a separate tort or is a modern day breach of confidence originating in equity.

30. The courts have awarded damages for stress caused by a breach of confidence but amounts have tended to be comparatively small—usually less than £5,000. Larger sums have to be claimed through exemplary damages if applicable, but the basis upon which these may be sought remains unclear. In Kuddus v The Chief Constable of Leicestershire, the House of Lords held that the categories of cases in which exemplary damages could be awarded were not closed. In Douglas v Hello Limited (No. 3), Lindsay J left open the question of whether exemplary damages could be awarded for breach of confidence.

31. Exemplary damages are available through libel actions and depend on the claimant showing that the defendant’s act in publishing the libel was “with guilty knowledge for the motive that the chances of economic advantage outweigh the chances of economic or perhaps physical penalty” (Rookes v Barnard (1964)). The award made should be the minimum necessary to punish the defendant and deter others. The profit made by the defendant from publication is taken into account but is not conclusive, as exemplary damages can be awarded even if there is no profit, provided the defendant had mercenary motives.

32. In Max Mosley v News Group Newspapers Limited, Eady J refused to grant a claim for exemplary damages. He considered it questionable whether such entitlement could be founded on privacy and/or breach of confidence and felt it inappropriate to extend the scope of this relief into a new area of law. He did not consider there was any pressing social need in English law for the media to face the “somewhat unpredictable risk of being fined” on a quasi criminal basis.

33. General damages in libel are intended to vindicate and restore a reputation. But this outcome is impossible where embarrassing personal information has been published and, indeed, the damage is only likely to be increased by pursuing a court action. If there is no injunction obtained to stop the damaging publication, no monetary award will adequately compensate the infringement of privacy, no matter how great the sum—as Eady J observed in the Mosley case.

34. So while exemplary damages should remain available for libel, we do not believe the law should be extended at present to allow their award in privacy cases. In any event, in our view to do so would require the intervention of Parliament. Given that no financial sum can compensate for a breach of privacy, we consider that there is no pressing social need for a change in the law.

Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one

35. It is important to remember that recent court rulings in privacy cases are only putting into effect the protection afforded under the European Convention of Human Rights, and in particular Article 8(1) (“Everyone has the right to respect for his private and family life, his home and correspondence”) and Article 10 (“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers”).

36. The case of Campbell v MGN Limited recognised that these rights apply to disputes between individuals and between an individual and a non-governmental body, such as a newspaper. If a claimant can overcome the first hurdle by demonstrating a reasonable expectation of privacy, it is clear that the court is required then to carry out the next step of weighing the relevant competing Convention rights by an “intense focus” upon the individual facts of the case. In both Campbell and Re S (a child), it was expressly recognised that no one Convention right takes automatic precedence over another. The Mosley case confirmed that the rights of free expression as protected by Article 10, whether in respect of an individual selling a story or the journalist working on it, must no longer be regarded as “simply trumping” any privacy rights that may be established on the part of the claimant, nor can it be said that without qualification there is a “public interest that the truth should out”.

37. Once a reasonable expectation of privacy has been established, there must then be some countervailing consideration of public interest which can justify the intrusion. The media often argue that public figures have to expect less privacy, or be seen as role models, as justification for greater intrusion. The balancing test has been best described as turning on proportionality in the *Douglas v Hello!* judgement and whether or not the degree of intrusion into the claimants’ privacy was proportionate to the public interest being served by it.

38. All recent cases have involved a very careful analysis of the individual facts. It does seem clear, however, that once a reasonable expectation of privacy has been established in connection with sexual activities or orientation, medical information or the privacy of a child, it is not for the Judge to express a moral judgement or be swayed by personal distaste in order to deny that right. Particular consideration has also been given to the use of photographs or other visual images.

39. The Courts have been careful and diligent in analysing the application of the European Convention on Human Rights, taking into account the interpretations emerging from the European Courts and House of Lords, and we say their approach appears to strike the correct balance.

*January 2009*

Written evidence submitted by Swan Turton Solicitors

**THE LAW OF LIBEL AND CONDITIONAL FEE ARRANGEMENTS**

**THE LAW OF LIBEL, A FREE PRESS AND THE PRESERVATION OF THE RIGHTS OF THE INDIVIDUAL**

Nobody engaged in the debate about the future regulation of the press (both legal and via the PCC) doubts that a wide degree of liberty for the media is necessary for a healthy democracy. The modern commercial media is, however, immensely more powerful financially than any individual, or indeed most politicians who appear to manifest a considerable degree of wariness of taking any action that might offend it. The law must therefore take account of this (as should the regulatory framework) in providing both redress for the individual and accountability for the media generally.

The need for some restriction on press freedom is expressly recognised in Article 10. Sub-paragraph 1 provides that: “*everyone has the right to freedom of expression*. However, sub-paragraph 2 says that the exercise of these freedoms “*may be subject to such … restrictions … as … are necessary in a democratic society.*” That paragraph specifically cites the protection of the rights of others as a legitimate basis to restrict freedom of expression. In considering this issue, therefore the Culture Media and Sport Committee must very much bear in mind the massive imbalance in power that exists between the corporate media and virtually the whole of the rest of society.

When it comes to the law of libel, not only does the Committee need to keep in mind that defamatory words published by the press are ones which are inaccurate, ie they mislead the public as a whole, but defamatory words also undermine the reputation of individuals (thereby obliterating their fundamental common law and Article 8 rights). They are also words which cause individuals to be shunned and avoided by the general public, and which expose them to “*hatred, contempt or ridicule*”. They therefore directly and tangibly affect the lives both of the individuals concerned, their family, friends, colleagues etc.

Until 1999, the individual had an absolute right to go to a judge and jury when he or she was accused of wrongdoing by the media to establish that those allegations were incorrect. That right was taken from the individual by the decision of the House of Lords in *Reynolds v Times*. I believe this is neither legally, constitutionally, nor morally defensible. It is certainly not in the public interest. It means that the price that society pays for free speech is borne by the victim rather than the abuser of that right, thereby transferring the cost from (say) News International to the individuals it chooses to defame for profit.

Inextricably tied to this issue is the question of Conditional Fee Arrangements, which have the effect of shifting the balance away from the corporate megaliths that publish newspapers in a way which levels the playing field. Unsurprisingly, newspapers have taken violent exception to them, as they rob them of their huge historic financial and logistical advantage over those they have wronged in their news pages. I will start with the issue of CFAs and then address the grave impact on the law of libel of the House of Lords decision in *Reynolds*.

**CONDITIONAL FEE ARRANGEMENTS**

There has been much outrage expressed by and on behalf of the press over the evils of CFAs so far as newspapers are concerned. The Committee should not be seduced by them. A mere glance at the statistics establishes beyond question that the press protests far too much on this issue.

According to Rebekah Wade in her recent Cudlipp lecture, last year the press garnered £1.8 billion in advertising revenues alone. According to research that I have commissioned, the press turns over annually around £6.5 billion on which it makes a profit of nearly £1 billion. In 2007, 233 defamation proceedings were
commenced. On the generous assumption that half of these were against the press, that makes a total of 116. To be generous again to the press, let us say that 50% of those actions were “justified”, ie they were over allegations that were indeed false and defamatory. For those, the press can only have itself to blame. The remainder then amounts to 58.

Let us assume, again generously towards of the press, that 50% of those libel actions are conducted on CFAs. That leaves a total of 29. The cost of these actions to the press (if settled/conducted reasonably by them) can amount to no more than an average of £200,000 each. Let us assume that a mere 25% of those costs are recovered from claimants, then the total cost of CFA claims is under £5 million. Set against Paul Dacre’s £1.2 million package, the Fleet Street turnover of £6.5 billion and profit of £1 billion and advertising revenue alone of £1.8 billion, this hardly merits any serious consideration on the part of Parliament to change the law.

The real objection on the part of the press to CFAs is this: for those of us who have been engaged challenging transgressions in the print press for many years, before the introduction of CFAs the Claimant was almost invariably in a David and Goliath situation. Not only does the David and Goliath phenomenon mean that the resources for battle (if there is no CFA) are wildly disproportionate which inevitably tells in the outcome, but also in almost all cases, whereas the newspaper can well afford to lose a libel trial, the Claimant cannot.

This has an enormous impact on libel litigation, placing inordinate pressure on the Claimant either not to seek to correct any libel published about them at all, or if they do have the courage/means to take up arms then to settle or abandon the claim. This logistical imbalance is blatantly capitalised upon by the press when litigation is undertaken on a normal fee-paying basis.

The real objection then on the part of the press to CFAs is that they level the playing field between the immensely powerful press and the ordinary citizen—or even the occasional celebrity whose resources are still a tiny fraction of (say) Associated Newspapers. For this reason, they should be commended and no tampering with them should be undertaken in response to the siren cries of the press of “foul”.

*The Interests of the Individual are Sacrificed to Those of Big Business*

The press frequently complains about the supposed iniquities of the UK law of libel. Complaint is made about the outrageously proportioned that immensely powerful commercial organisations such as newspapers are obliged, in limited circumstances only, to prove on the balance of probabilities the truth of factual allegations, published for profit, which infringe the Article 8 rights of the individual—Article 8 now accepted by the ECHR as including a right to reputation.

After millions of pounds had been invested by News International to try to change our law of libel to favour its corporate aspirations as against the rights of the individual, in a 1999 case (*Reynolds v Times*) a defence was introduced into the UK law of libel by the House of Lords which fundamentally undermined the ancient common law (now also Article 8) right of an individual not to be robbed falsely of his reputation—especially not for profit.

This judicially created defence provides that a newspaper can refuse to correct and avoid liability for false and defamatory publications where it can show that in publishing material as issued it acted “responsibly”. Remarkably, once the press has elected to rely on that defence the Claimant automatically and irredeemably loses the right to establish in a UK court that the allegations that have been published against them are untrue. This is because once the media defendant elects to rely on that defence the court ceases to have any regard for whether the allegations in question are true or false—merely whether they were published “responsibly”. The general public is also thereby robbed of its Article 10 right to learn that the allegations in question are untrue—a serious issue if they are made against a public figure such as an MP.

*The Reynolds Effect on the Rights of the Individual*

One of the remarkable effects of this defence when deployed in a libel action emerges by consideration of the only two possible outcomes of such a claim. An individual who has been falsely accused of wrongdoing will either obtain a finding that the allegations were published irresponsibly, but will get no finding that they are untrue; or—remarkably—even if the allegations are wholly untrue they may lose the action and be ruined by six figure fees. The one thing which the claimant will not get is a finding that the allegations made against then are false.

Appended to my report is an article which I wrote for the Entertainment law Review in 2007 entitled *Reynolds—What about Truth and What about Human Rights?* (Appendix 1), which sets out in greater detail the full effects of the Reynolds Defence. I commend that article to the Committee in its consideration about the correct balance for the law of libel. However, in summary, so far as far as the rights of the individual are concerned the Reynolds Defence does two things:

1. It absolves the press of the obligation to correct false and defamatory allegations about matters of public interest that it has made against an individual; and
2. It absolves the press of its responsibility to make restitution to those individuals that it has defamed for profit.
THE CORRECTION OF FALSE STATEMENTS

As I explain in the article, it is very difficult to conceive of a public interest for either. As to the first, where something that has been published which is untrue concerning a matter of public interest, it is impossible to conceive how it can be in the public interest that such misinformation should not be corrected.

In fact, this also flies in the face both of the PCC and NUJ Codes which specifically state that false information published by the press should be corrected. Here is the relevant section of the PCC Code:

“1. Accuracy
(i) Newspapers and periodicals should take care not to publish inaccurate, misleading or distorted material including pictures.
(ii) Whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published, it should be corrected promptly and with due prominence.”

Here is the relevant section of the NUJ Code:

“[A journalist shall do her/his] utmost to correct harmful inaccuracies.”

It is difficult to see why in fashioning this defence the Courts have decided to free the press from an obligation which it had voluntarily shouldered—doubtless for clear public interest reasons.

RESTITUTION FOR THE WRONGED

As to the second purpose of the Defence, given the number of libel claims which were issued in 2007, how can it seriously be advanced as a societal necessity (which is what is required by Article 8 for that human right to be abrogated) for the press to be free to publish false and defamatory information for profit with no accountability whatsoever to the subject of that false information?

Someone does always have to pay for the press’s transgressions. I once asked a newspaper lawyer who said that the rationale for Reynolds was that newspapers had to be allowed to make mistakes. That was of course not the correct proposition—the effect of Reynolds is to allow the press to make mistakes without taking responsibility for them. When I asked her what happens to the rights of the individual when the Reynolds defence is deployed she had no answer. The inconvenient truth is that the effect of Reynolds is to enable the press to pass the cost of those transgressions on to the victim.

THE REYNOLDS DEFENCE AMOUNTS TO A REFUSAL BY THE PRESS TO TAKE RESPONSIBILITY FOR ITS ACTIONS

As I explain above, Article 10 carries with it an obligation on the part of those who exercise the right of freedom of expression to bear the responsibility that goes with it. The effect of the decision in Reynolds is to transfer that responsibility from the commercial publisher to the individual.

One of the reasons that it is such a remarkable aspiration for the press to expect others to pay for its mistakes is because of its unrelenting criticism of those who will not bear responsibility for their own actions. Here is a comment by the respected journalist Geoff Randall in The Daily Telegraph:

“The flight from ... responsibility has become a stampede to self-exculpation. Accountability is increasingly traded for the soft option of victim status. “It’s my fault” is vanishing from contemporary discourse; in its place comes an expectation that someone else will pay.”

Here again the decision of the House of Lords in Reynolds flies in the face of the principles which the press itself espouses.

THE REYNOLDS EFFECT ON SOCIETY

You will often read the advocates of yet greater press freedom complain that restrictions imposed by the law of libel and the use of CFAs have a “chilling effect” on freedom of expression. They will not usually own up to the fact that a press which is properly regulated neither legally nor by an effective independent body has a seriously chilling effect on the rights of individuals. The chilling effects of Reynolds on society are as follows:

— It deprives the public of the safeguard of judicial scrutiny of the truth of defamatory allegations published by the media;
— It deprives society of the right to learn when important individuals have been falsely accused of wrongdoing; and
— It deprives society of the benefit of a financial disincentive to the press of making false allegations.

One of the chilling aspects of Reynolds is that once the decision has been taken by the publisher to deploy that defence, it automatically has these two effects. Firstly, the courts have rejected the right of the Claimant to establish that the allegations are false. Secondly, the media defendant has the power to bring about this “Reynolds effect” irrespective of whether or not it has actually acted responsibly.
TWO CASES TO ILLUSTRATE THE DANGERS—THE ARMY OFFICER AND THE MP

The full iniquity and danger of this defence were recently illustrated by two cases concerning matters of high public interest where the media defendants relied on the Reynolds Defence in an attempt to avoid the issue of whether the allegations at issue were true being determined by the court.

In a case brought by Colonel Campbell James against the Guardian newspaper, Colonel Campbell James was falsely accused by the Guardian of being involved in the Abu Ghraib abuses. The paper thereby also falsely accused the British Army of being involved in those abuses. The paper was quickly provided not only with irrefutable evidence that Colonel Campbell James was not at Abu Ghraib at the time, he was not even in Iraq. However, contrary to the clear terms of both the PCC and the NUJ Codes, the paper refused to correct the story for a period of months citing the Reynolds Defence.

The issues at stake were succinctly set out by Mr Justice Eady:

“One of the unique features of this case, apart from the obvious implications for the Claimant’s reputation, is the security risk created by the article. It is common knowledge that there was widespread outrage in the Arab world when these abuses were revealed in the media. It requires little imagination to envisage the risk imposed to the Claimant and his family once he became “publicly linked” with the behaviour of those American troops. It need not be a matter for imagination, however, since there is solid evidence to that effect before the court.

Despite this, the offer of amends was not forthcoming until … more or less three months after the article.”

Eventually, the newspaper published a grudging apology. This was the conclusion of Eady J:

“It could not have hurt the Guardian to acknowledge promptly on the basis of uncontroversial facts that the Claimant had nothing to do with the Abu Ghraib abuses and was not even in Iraq when they took place. For some reason the Guardian felt unable to take those basic steps. It was not simply a matter of good journalistic practice; it was a matter of elementary human decency.”

The reason that the paper stood its ground was that the Reynolds Defence permitted it to do so, which is also used as a licence to abrogate its PCC/NUJ Code obligations. It is surely no more than “elementary human decency” that an individual should be permitted access to the judicial system to enable him/her to establish that they have been falsely accused of wrongdoing by the mass media.

The second case concerned Shahid Malik, an MP who was a Minister at the Department of Overseas Development. Mr Malik was both black and the first Muslim to be appointed as a government minister. The source of the allegations in a local newspaper was a defeated electoral opponent who, was also of a different political party, race and religion. There were indications that the newspapers defence was being funded in part by the British National Party.

Mr Malik asserted that the article meant that he had organised and directed gangs of Asian thugs to disrupt the voting at a local election; that he had threatened and intimidated voters thereby committing serious criminal offences; that he had exhorted and put improper pressure on voters to vote according to ethnic or religious affiliations thereby knowingly fuelling unrest and causing tension and racial divisions within the community; and that he was a racist and dangerous extremist who was unfit to hold public office. On any analysis the allegations were extremely serious.

One of the defences relied on by the newspaper was the Reynolds Defence which would have had the effect of robbing both Mr Malik, his voters and society generally of the right to establish whether these very serious allegations made against him by the community press were or were not true. It is very difficult to conceive how it can possibly be in the public interest that such very serious and potentially career-ending allegations against an elected member should, at the unilateral behest of the publisher, not be tested in a court of law.

If the Committee is minded to make any recommendation concerning the law of libel then it should be that this defence be abolished by statute, so that the courts recover the power both to clear the innocent individual of such serious and ruinous allegations, and to inform the public that they are untrue.

CONCLUSION

The Committee must decide whether it wants a press which (like the rest of us) is accountable for its actions and operates within the law, or whether it should grant the press further licence to mislead the public and infringe the right of individuals for profit without either effective legal or regulatory accountability. No such press would serve any other interest than its own—and certainly not the public interest.

In this sense, the issue of whether the press should remain properly accountable under the law, and also effectively regulated, very much overlaps. The dreadful wrongs committed by the press against the McCanns shows that the current system of press regulation has comprehensively failed, and it was only the law that came to their rescue. The existence of the Reynolds Defence however, means that even the law cannot now be relied on by the innocent victims of circulation wars—not least because had it been engaged by those who libelled the McCanns then their right to be vindicated by a court of the myriad false allegations made against them would automatically have been lost.
At present, the press is permitted by the law to defame individuals on matters of public interest (ie publish damaging allegations about them which are untrue) and then not only claim that it is “responsible” not to correct those allegations, but also refuse to compensate those whose lives are blighted by them. It is also trying to rob the individual of the right to challenge false and defamatory publications (or invasions of their privacy) via a funding mechanism that achieves equality of arms. It should not be permitted to do either.

Written evidence submitted by Schillings Lawyers (PS 16)

The law clearly needs to set the right balance between freedom of speech and the rights of individuals. We believe in freedom of expression. However all democracies properly appreciate that there is no such thing as unfettered free speech, and that the right to free speech has to be balanced against laws to protect the rights of the individual.

The United States is usually put forth as a bastion of free speech. However it also has significant limitations on free speech such as the laws regarding “hate crime” and obscenity.

In the UK, we believe in the right to a private and family life as well as the equally important right to a reputation, as enshrined by the European Convention on Human Rights and the Human Rights Act 1998.

Contrary to the views of various media commentators, including most recently Paul Dacre in his speech to the Society of Editors,63 we do not believe that the Human Rights Act pitches rights too far in favour of the individual as against the media. It is a balance between the two rights, and in many recent cases it has been confirmed by the courts that the jurisprudence of the European Court of Human Rights requires that neither Article 8 not Article 10 is given any presumptive priority in English law—see eg Sedley LJ in Douglas v Hello! Ltd [2001] 1 QB 967, 1004, para 135:64

“The European Court of Human Rights has always recognised the high importance of free media of communication in a democracy, but its jurisprudence does not—and could not consistently with the Convention itself—give article 10(1) the presumptive priority which is given, for example, to the First Amendment in the jurisprudence of the United States’ courts. Everything will ultimately depend on the proper balance between privacy and publicity in the situation facing the court.”

We consider that the courts are setting the right balance between Articles 8 and 10. They are in any event following the European jurisprudence on Article 8 (eg von Hannover), which is currently more favourable to claimants than English cases. It is wrong for the media to criticise individual judges for applying the Human Rights Act and jurisprudence that they are obliged to follow.

We would also point out that section 12(3) of the Human Rights Act 1998 in fact favours the media—it makes interim (pre-publication) injunctions more difficult to obtain when there is a countervailing Article 10 right, thereby raising the hurdle for obtaining an injunction. The test in Cream Holdings v Banerjee [2004] UKHL 44 applies to such cases, in which it has to be shown that an injunction is “likely” to be continued at trial; in other cases the American Cyanamid test applies: it only has to be shown that there is a “serious issue to be tried”.

The result is that in reality, it is certainly not the case that in a majority of cases Article 8 rights “trump” Article 10 rights whether at the pre-publication stage or otherwise.

Practically speaking, those individuals and companies that reluctantly become post-publication claimants in defamation or privacy cases would prefer not to be seeking to repair the damage after it has occurred (a.k.a. shutting the stable door after the horse has bolted). This is particularly the case in confidentiality and privacy cases. It is often said that confidentiality or privacy is like an ice cube on a carpet: once it melts, it is gone forever. This is all the more acute in the era of global internet communication.

For the reasons set out below, we consider that the law as it currently stands entitles the media to publish damaging information first, and then pay the consequences later, if at all. This gives rise to considerable stress for individuals, as well as leading to significant cost concerns and uncertainties in litigation.

We would therefore encourage the DCMS to strive to create a system that seeks to resolve Article 865/ Article 10 issues prior to publication wherever possible. The courts are able to order speedy and cost-effective trials on many privacy (and intellectual property) issues. This approach is to be encouraged by the DCMS, which should consider the provision of rules that strike a fairer balance between Article 8 and 10 rights in this regard.

We make three suggestions by which this might be achieved.

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63 Paul Dacre speech: http://www.societyofeditors.co.uk/userfiles/file/PaulDacreSpeech91108.doc
64 As cited with approval in Campbell v MGN Ltd [2004] 2 AC 457 at [106]
65 By which incidentally we would include rights to preserve reputation, including the right not to be defamed. We refer to the ECHR case of Campana and Mazare v Romania (2005) 41 EHRR 200 at 91 in which it was concerned that the right to reputation is protected under Article 8 of the Convention.
1. Notice Requirement

We propose that there should be a requirement to give notice in cases where there is a threat of serious infringement of an individual’s Article 8 rights.

The incentive to do this could be increased damages or payment of indemnity costs where no such notice is given.

This is a view that appears to be supported by the PCC and the courts in the context of responsible journalism (see respectively the Burrell adjudication and discussion about the Jameel case, below).

In serious cases of threatened infringement of Article 8 rights (including defamation cases) the target should be given notice of the intended publication, so that they may have the opportunity to take action in respect to the allegations or at least provide a response to the media organisation threatening publication.

This approach is to some extent supported by the PCC, who recently stated that a failure to contact the subject of articles may constitute lack of care under clause 1 of the Code.—see Burrell v News of the World. This is also the approach recommended by the courts in Reynolds v Times Newspapers Ltd and Others [1999] UKHL 45 and Jameel v Wall Street Journal [2006] UKHL 44:

Secondly, the publisher must have taken the care that a responsible publisher would take to verify the information published. The actual steps taken will vary with the nature and sources of the information. But one would normally expect that the source or sources were ones which the publisher had good reason to think reliable, that the publisher himself believed the information to be true, and that he had done what he could to check it. We are frequently told that “fact checking” has gone out of fashion with the media. But a publisher who is to avoid the risk of liability if the information cannot later be proved to be true would be well-advised to do it. Part of this is, of course, taking reasonable steps to contact the people named for their comments.

A failure to give notice can constitute a denial of the right to access to justice as enshrined by Article 6 of the European Convention on Human Rights (and the Human Rights Act 1998).

Journalists are generally avoiding the giving of notice and have admitted to doing so. The News of the World admitted in the Burrell case above that they did not give Mr Burrell notice because they were concerned that he might have obtained an “unmeritorious” injunction. Colin Myler also admitted the same in the course of the Mosley v News Group Newspapers privacy trial.

There is a significant commercial incentive for the media to publish information that they know would give rise to a successful injunction application. The likelihood is that in most cases, the decision to publish will result in the media organisation not being sued by the subject, because the information has already been published. Madonna’s current case against Associated Newspapers in respect of the unauthorised publication of wedding photographs is an appropriate example of a newspaper refusing to notify the subject (a copyright and privacy claim).

Further, the Court of Appeal (in Douglas v Hello! Ltd) has recognised that because damages awards in privacy cases are very modest, this does not represent a disincentive against publication of infringing material:

The sum is also small in the sense that it could not represent any real deterrent to a newspaper or magazine, with a large circulation, contemplating the publication of photographs which infringed an individual’s privacy. Accordingly, particularly in the light of the state of competition in the newspaper and magazine industry, the refusal of an interlocutory injunction in a case such as this represents a strong potential disincentive to respect for aspects of private life, which the Convention intends should be respected.

We are not suggesting necessarily that damages should be increased but we would urge the DCMS to vocalise that the lack of a notice requirement encourages the publication of infringing material and is not to be condoned.

Another option is indeed to allow increased damages (and in particular remove the limit on defamation damages effected by the comparison which is drawn as of right with personal injury cases). Further still, it is open to the DCMS to recommend that legislation should be brought in to allow for exemplary damages in such cases. Exemplary damages are not currently available in privacy cases—see eg Douglas v Hello! (above) and Mosley v News Group Newspapers (2008) EMLR 20 (at [235]).

The media regularly complain that costs in media cases are out of kilter with the damages. But it is rarely acknowledged that damages have been capped.

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67 At para. 149
68 Extract from the transcript of Mr Myler’s evidence. Ev not printed
69 Douglas v Hello! Ltd [2005] EMLR 609 at [256]
Damages are not the main motivator for many Article 8 complainants. As was observed by Eady J in *Cox v MGN and Others* [2006] EWHC 1235 (QB):

\[\text{The amount of financial compensation was not the Claimants’ only or main concern; they were}
\text{seeking undertakings from all four Defendants and, above all, delivery up and destruction of the}
\text{photographic digital images to make further publication impossible.}\]

Accordingly the judge considered it to be over simplistic to say that the amount of costs claimed in the case was disproportionately high (approximately £140,000) in comparison to the damages received (£50,000).

2. **Abolition of the Rule in Bonnard v Perryman in Libel Cases**

Under the law as it currently stands, it is not possible to obtain a pre-publication (or “interim”) injunction in defamation cases, unless it can be shown that the allegations intended to be published are “demonstrably false”; put another way, it has to be shown by the applicant that no defence to the claim has any prospect of succeeding. This rule ought to be amended by statute. It has now been accepted by the European Court of Human Rights that the right to reputation is one of the rights protected under Article 8 of the Convention, and English law provides for a flexible test for obtaining pre-publication injunctive relief in cases where infringements of Article 8 rights are threatened.

As above, Section 12 of the Human Rights Act 1998 protects the media by raising the bar for injunctive relief to be granted in freedom of expression cases, since it requires the claimant to prove that an injunction would be likely to be granted at trial. The same provision ought to apply to defamation cases, and in particular the *Cream Holdings* test ought to be confirmed as applying to defamation cases as one of the rights protected under Article 8. We submit that the cases of *Greene v Associated Newspapers* [2004] EWCA Civ 1462\(^70\) was wrongly decided, and is in conflict with subsequent jurisprudence from the European Court of Human Rights (see *Cumpana and Mazare v Romania* (2005) 41 EHRR 2005—above).

There is no sense in having a rigid rule that applies to defamation (reputation) rights pre-publication, namely that an injunction can only be granted if there is no arguable defence, but allowing for a flexible rule with regard to other Article 8 rights that, as per *Cream Holdings*, which generally allows for those rights will be protected at the pre-publication stage if it appears that the applicant is more likely than not to succeed at trial.

The historical reason for the rule in *Bonnard v Perryman* has been that damage to reputation can be “repaired” by a jury’s award of damages at trial through the “vindication” that a claimant obtains on a successful outcome of a defamation case. Today this justification is virtually obsolete for the following reasons:

(a) Damages in defamation cases have been significantly reduced from the levels when *Bonnard v Perryman* was decided. The award of substantial damages is an important aspect of vindication.

(b) Litigants are strongly encouraged to resolve disputes prior to trial, and there are numerous procedural disincentives against pursuing a claim to trial. The Offer of Amends regime provides defendants with the opportunity to reduce damages by substantial amounts (often 50%) if an offer to make amends is accepted.

(c) Settlements are often entered into by the media for, they say, commercial reasons rather than to provide any genuine vindication to the claimant. Apologies are often published with minimal prominence and claimants can find difficulty publicising the fact that they have obtained a “victory” in respect of false allegations. Trial results tend to make news; settlements often do not.

(d) Perhaps most importantly of all, out of court settlements do not generally provide for a process by which an independent adjudicator can conclude, after examination of the evidence, that published allegations are false. Certainly, there is a difference between a media organisation accepting that allegations are false (say in a statement in open court) and a decision by a judge or jury after a trial process that includes detailed cross examination and other testing of the evidence.

3. **Speedy Trials in Injunction Cases**

If the media are concerned about a story being “killed” when pre-publication injunctions are granted, then the DCMS ought to consider rules that encourage litigants and the courts to work towards speedy trials to resolve whether publication should be allowed in defamation (and privacy) cases where an interim injunction has been granted.

We submit that in many cases, a trial could be arranged to take place within a month or two of the initial injunction being granted. In many cases, the process could be even quicker.

Such speedy trials would protect freedom of speech, reduce the costs of litigation and promote certainty. In appropriate cases they could also provide the media with the opportunity to fully argue the case for publication in sufficient time for a story to still be newsworthy once the trial process has been completed.

\(^70\) And an earlier case coming to the same conclusion—*Coy v Autocherish* (2004) EMLR 25
Specific Questions from the Consultation

Below we express views on the specific questions asked in the consultation, except insofar as they have been answered above.

1. Why the self-regulatory regime was not used in the McCann case, why the PCC (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case

2. Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime

We take these questions together. We do not intend to comment on the PCC and the McCann’s issue specifically, but will say that the starting point is that our self-regulatory authorities (in particular the PCC) do not adequately protect Article 8 or reputational rights.

The PCC is seriously inadequate since it cannot:
— make findings of fact or declarations of falsity of allegations;
— make a monetary award of compensation in appropriate cases;
— compel witnesses or order disclosure; and
— deal effectively with pre-publication disputes.

There is also a general public perception that the PCC is too favourable to the media; accordingly there is a lack of public confidence in using this route to resolve serious complaints against the media. It is therefore important to consider how the law protects the rights of individuals in pre-publication cases (see above).

3. The interaction between the operation and effect of UK libel laws and press reporting

We answer this in the main submission set out above.

4. The impact of conditional fee agreements on press freedom, and whether self-regulation needs to be toughened to make it more attractive to those seeking redress

We are broadly in support of the proposal reached after the Theobalds Park consultation—see our attached letter to the Ministry of Justice that sets out our views on this issue.71

5. The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the internet

Our general point is that the contempt of court rules which apply in this jurisdiction can be enforced against outsiders to the jurisdiction, and ought to be enforced in cases with an international element where there had been a breach of a Section 11 Order overseas. Failing to do so in the age of the Internet renders the Order useless, when the information is being published online in another jurisdiction but is clearly available in this jurisdiction.

We have acted for a blackmailed individual who had received the benefit of a reporting restrictions order under Section 11 of the Contempt of Court Act 1981. The details of the case are confidential but if it would be of assistance to the Committee we would be happy to disclose further details on a “not for publication” basis.

6. What effect the European Convention on Human Rights has had on the courts’ views on the right to privacy as against press freedom

The media claim that the European Convention and Strasbourg jurisprudence have eroded the right to freedom of expression. Complaints are regularly made, for example, that the public interest defence is a “fig leaf” defence. However, in the cases in which such a public interest defence has been raised by the media and has failed, such as in Mosley, the public interest argument was a weak one. There could have been no public interest justification for the disclosure of Mr Mosley’s private sex life to millions of people on the basis of public interest. Numerous further cases have been decided in which no public interest exist. A classic example is cases involving the publication of photographs of naked people on honeymoon or on holiday. The media regularly carries such stories, without a hint of legitimate public interest. They cannot complain when successful legal action is taken over them.

7. Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, might be exemplary rather than compensatory

We have discussed above our views on increasing damages in media cases. We advocate rather for the giving of proper notice, with a failure to do so leading to increased damages.

71 Ev not printed
8. Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one

See main submissions above.

January 2009

Witnesses: Mr Mark Thomson, Carter-Ruck Solicitors, Mr Jeremy Clarke-Williams, Russell, Jones & Walker Solicitors, Mr Jonathan Coad, Swan Turton Solicitors, and Mr Rod Christie-Miller, Schillings Lawyers, gave evidence.

Chairman: We now move to the second session this morning and our second panel who generally represent claimants. May I welcome Mark Thomson of Carter-Ruck Solicitors, Jeremy Clarke-Williams of Russell, Jones & Walker Solicitors, Jonathan Coad of Swan Turton Solicitors, and Rod Christie-Miller of Schillings Lawyers. Philip Davies is going to begin.

Q65 Philip Davies: I believe very strongly that freedom of expression is one of the most precious things that we should defend in this country. In a democracy we often rely on the media to expose wrongdoing by people in authority and that seems to me to be a good thing. The allegation that we heard in our previous session—Mr Thomson, you seemed to be the main person in the line of fire from what I could hear so perhaps you might want to tell us your thoughts on this—is that the exorbitant fees that you charge, particularly in relation to CFAs, are preventing the press from publishing certain stories that they should be publishing because they fear having to cough up extortionate amounts of money to firms like yours. What would you say in response to them?

Mr Thomson: I do not think that is right. The number of libel claims in the courts since the new rules came into force in 1998 have remained around about the same; they have gone down a little bit. There has been no significant change since the CFA regime came in, so statistically that is not right. The reason why there are expensive litigations in my view is because of the way the staged payments work, it is a staged success fee. It is the credit crunch!

Q66 Philip Davies: We have heard that the typical hourly fee might be somewhere in the region of £600 an hour and on a CFA, with 100% uplift, that will be £1,300 an hour plus VAT. If firms like yours are so concerned about access to justice then perhaps reducing those fees would be a good start, would it not?

Mr Thomson: Those figures are not correct. Our fee at the moment is £400 an hour, which is about the standard rate in the industry.

Mr Evans: Are you having a sale?

Philip Davies: It is the credit crunch!

Q67 Chairman: On the £400 an hour point, on top of that you still have your success fee.

Mr Thomson: It is a staged success fee.

Q68 Chairman: And you have the After the event insurance (ATE) premium on top of that.

Mr Thomson: Yes, and that is staged as well.

Q69 Chairman: If you add in all the additional costs, what is the total per hour?

Mr Thomson: It depends when it settles. Under The Times, Carter-Ruck cost agreement, if they have checked the story and it is then settled within 14 days the success fee is zero, so it stays at £400 an hour. Because of the way the staged payments work, it is only if the newspaper decides there is merit in fighting the case that the uplift increases at the end of the case. Most cases in reality do settle within 14 days. If the other media got involved—and they refuse to at the moment for their reasons—and adopted The Times, Carter-Ruck Agreement, if it is settled quickly there would be no success fee.

Q70 Philip Davies: What proportion of cases that you take on under a CFA do you win and what proportion do you lose?

Mr Thomson: I do not know those figures. They are confidential. There are a number of committees looking at costs at the moment. Our firm is providing the data anonymized to those various committees. They will be provided in anonymized form.

Q71 Philip Davies: Why is it confidential how many cases you win and lose?

Mr Thomson: I do not know what the answer is anyway.

Q72 Chairman: It was suggested it was a 98% success rate.

Mr Thomson: I do not think that is right.

Mr Clarke-Williams: I think it should be pointed out as well that, of course, when a CFA is entered into by a firm of solicitors it can represent a very considerable investment by that firm because you are agreeing to act on a “no win, no fee”. In my firm...
we have a very rigorous risk assessment procedure at the outset to decide whether or not we are prepared to take on a case on a CFA. So it is not surprising that the cases we do take on on CFAs are ones we expect to win. It has rather been presented as if everybody who walks through the door is immediately put on a CFA and cases are run willy-nilly and because of the defects of the system large cheques are then written out at some stage in the future by newspapers to firms of solicitors. That is not what my experience is.

Q73 Philip Davies: It is quite a good racket, is it not, if you are going to take on a case that you are pretty sure you are going to win anyway and you shove it on a CFA and therefore double your income as a result? You are doubling your income on a case that you are absolutely certain you are going to win. It is nice work if you can get it. You should be paid less for cases that you are certain you are going to win. Surely you should be paid more for the trickier ones, not a vast amount of money for the easy ones.

Mr Clarke-Williams: The 100% success fee would only kick in at trial. The success fees which would be claimed and may well be compromised only kick in at trial. The success fees which would be under the CFA increases and therefore that is why a case—the risk to the firm who is conducting it may involve two or three or four people working on and that does occasionally happen. Their lawyers acting for the newspapers under a CFA thinks they are going to win there is nothing to stop them anything like the amount of money it will if they have to go to trial? You are creating a financial incentive to settle a case whether or not you actually believe you stand a reasonable chance of winning it in court.

Mr Clarke-Williams: First of all, CFAs are available to defendants. If the defendants think they have a good case and the claimant is under a CFA but with insurance then they know that they will get paid or if a claimant is one of these wealthy celebrities with funds to pay. If a defendant risk assesses the case and thinks they are going to win there is nothing to stop their lawyers acting for the newspapers under a CFA and that does occasionally happen.

Mr Coad: There is a lawyer called David Price who does work on CFAs. CFAs are as much available to defendants as they are to claimants. It is something which is available to all of the gentlemen who have spoken to you before us. There is nothing to stop them taking on CFAs. At the risk of slightly pulling their leg, I think if you visited some of their offices you might be surprised at their size and grandeur and City locations. I say this because my firm does not do CFAs or at least we have not yet done a CFA against a newspaper. If you visited Reynolds Porter Chamberlain or Taylor Wessing or whatever you would find them in very big, smart City locations and you would find us on two floors of a converted Wesleyan chapel in Covent Garden.

Chairman: That is because you do not do CFAs!

Q75 Philip Davies: We will resist getting the violins out just for a minute. Is the answer to this problem that the costs should be capped by the courts on a far more routine and regular basis than happens at the moment? Is that not the solution to this particular problem?

Mr Coad: I do not know whether this is commonly understood, but the courts do fix and assess costs. The newspaper always has the opportunity to do what we used to call “tax” or have costs assessed. The courts do have control over the costs.

Q76 Philip Davies: It does not happen very often where costs are capped, though, does it?

Mr Coad: The cost-capping regime is an interim measure, but at the end of the case, if the newspaper objects to the costs that are being incurred by the claimant, be it on a CFA or not, then the court can go and say, “No, we won’t have this,” and challenge them and have them reduced.

Mr Christie-Miller: There has also been consideration of the cost-capping regime. Just yesterday the Ministry of Justice put out a variation to the civil procedure rules which introduces rules relating to cost capping and those were subject to extensive input from many interested parties, including representatives of the media and some of the gentlemen who are sitting behind us. Those representations were considered and the Civil Procedure Rules Committee decided that the cost-capping regime should be as it was presented yesterday. In addition, Lord Justice Jackson is undertaking a review of civil costs generally. So these things are being considered.

Q77 Philip Davies: Are you all unanimous in the view that there is no way that the CFA could be altered or amended in order to protect the freedom of expression and freedom of speech of the media?

Mr Thomson: I think that The Times, Carter-Ruck protocol which the other media refuse—I am not sure if the Committee has seen it—is a fair staged agreement and reduces risk early on. The Times adhered to it. The Civil Justice Committee is considering bringing it into law. I think that is a solution. If the newspaper checks their facts before, which is rare now, in 14 days and settle there is no success fee. If that was adopted throughout that would reduce such chill as there is.

Mr Clarke-Williams: A very important part of the access to justice provisions being introduced was to try and settle disputes at a very early stage. In defamation, there is a pre-action protocol, which means that parties are meant to exchange full details of their claim and the defence before they get to the stage of litigation, and there is a requirement to consider alternative dispute resolution, such as

Chairman: That is because you do not do CFAs!
mediation. There are all sorts of provisions which encourage parties to try and resolve things at an early stage when costs are low.

Mr Coad: I think you have to look at the number of libel writs against the overall turnover and profit of Fleet Street. I think you have got to keep some sense of proportion here. There are a whole range of defences available and there is an enormous array of privileges available to the press. I think you have just got to keep some sense of proportion, the number of libel writs against the turnover of Associated Newspapers or News International and remember that there is an enormous media corporation here and a relatively small number of libel actions.

Q79 Chairman: It is worth pointing out that most newspapers now are barely profitable at all; indeed, a large number are not making money. So the idea that these are institutions awash with money to pay out in libel damages I do not think is an accurate one in today’s climate.

Mr Coad: I cannot pretend to have done more than looked at the published figures, but the published figures, as far as I can work out from looking at what is said by the press about themselves, is still a turnover of about £8 billion with a profit of about £1 billion. They are still reasonably substantial figures.

Chairman: The kind of example which was highlighted by Paul Dacre, which was of an action taken by an MP which resulted in him winning £5,000 in damages but where the total costs awarded against Associated Newspapers was £520,000, you would just regard as being part of the normal procedure under fees?

Mr Christie-Miller: Whenever we meet a client for the first time and they say they have been defamed by a newspaper or broadcaster what they are looking to achieve is repair to their reputation. It is very much second best. It is rather like a mirror that has been cracked and taped back together again. You can go a certain way to repair a reputation, but once these things are out there they are out there forever, particularly in today’s internet Google searches. It is no longer yesterday’s fish and chip wrapper what the newspapers say about you because you type someone’s name into Google and you will find the same old things coming back up at the top of the search. Clients are not after the £5,000 of damages. What they are after is a public vindication that these people got it wrong. If there is one message that I would like to get across today, it is that clients are looking either to protect private information that should not be published in the first place or repair their reputation after it has been damaged. If we can find some way to push the assessment of what should be published back along the chronological order then I think clients will be happy. Clients do not want to get involved in two and a half years litigations where they may or may not win at the end, they may or may not be supported by a CFA, there will be some cost shortfalls and they may get a jury award where the jury say, “Yes, we find for you,” and they may get a sum of money, but that is not really what they want, it is very much second best.

Q81 Chairman: You heard examples of cases involving relatively simple matters which should have been possible to determine in a very short space of time going on for days and days and then charging up huge costs.

Mr Thomson: I cannot comment on cases I do not know about. I have dealt with two cases recently on CFAs. One was of a dental technician who was accused of fraud suing the BBC. He would not have been able to get vindication without a CFA. Very quickly, as in most cases, the parties formed a view and he was awarded £50,000 in damages. He has told me that but for a CFA he would still be labelled a fraudster by the BBC. There was a similar action last year, quite a significant one, where an MP sued a local newspaper over quite serious allegations, this was on a CFA, but it settled quickly and the success fee was modest. Initially a complaint was made to the PCC but it got bogged down in the process. They then consulted us and reasonably quickly an apology on the front page of that local newspaper, which has an impact for MPs, was negotiated, modest damages were sorted out and his reputation was vindicated. The newspapers say, “Well, they’re always going to win”. When you assess the risk at the outset of a case you cannot guarantee that certain determinations are right. There may be risks on the meaning and risks on disclosure. It is by no means always black and white as to what your assessment is. On one of the cases we were genuinely concerned about whether it was defamatory, but the newspaper took a different view and conceded it. Real risk assessment does take place at the outset and there are concerns about it.

Q82 Chairman: So the kind of example which was
Here we have two groups of very highly paid lawyers arguing amongst themselves as to who is earning too much or who is being paid too much and in the middle of it all we have the client who is very often a very ordinary person going about their daily lives and having their privacy invaded and sometimes it is libelous, sometimes it is completely false and sometimes it is true, but who really cares, who should know about it? Do any of you see any evidence that the media is being more careful in what they print given the huge sums of money that they have had to pay out?

Mr Christie-Miller: No. I think it is quite the contrary. I think the media are being much less careful. There have been a number of examples recently where the media knew or suspected that they were going to be publishing something which a court would injunct because it was invasive of somebody’s privacy and they decided, “Well, if we run this and if we tell the target they will probably get an injunction and we will not be allowed to run it. Let’s run it anyway.” If one goes to some of the cross-examination of the News of the World’s editor in the Max Mosley trial, there is a reference there to one of the considerations being that Mr Mosley would seek an injunction if notice was given to him. There are many examples. I can think of examples in my practice where people have not been given notice of defamatory stories or stories which are going to be in breach of their privacy and we suspect it is because the newspaper—and it is not just newspapers—suspected that they would be prevented from publishing that story. Whether they should on an Article 8/Article 10 balance is a different issue which I am more than happy to talk about if that is something the Committee wants to move on to.

Mr Clarke-Williams: There was talk of a Reynolds defence earlier and the requirement for the newspaper to demonstrate responsible journalism. A key component of that has always been putting your allegations to the target of your article in advance and then publishing their responses.

Q84 Chairman: Would you support calls for a requirement for prior notification?

Mr Christie-Miller: Yes.

Mr Clarke-Williams: Yes.

Mr Christie-Miller: I think it would also make an enormous difference in terms of the amount of follow-on litigation. All the lawyers here will make most of their money from litigating afterwards, let us be honest. We do not make as much money from dealing with a story prior to publication but it is very much what our clients want. If there was a requirement for prior notification of stories which are going to be seriously defamatory—and Parliament would have to agree exactly how the words worked—or likely to invade somebody’s privacy then I would be very much in favour of it.

Mr Coad: I regret that I have not brought it with me, but the PCC publishes an Editors’ Codebook and the Editors’ Codebook actually says that people should be given advance notice. So it is actually something which the press itself has endorsed because the Editors’ Codebook is written entirely by the press.

Q85 Chairman: So an example like Mr Mosley, where the News of the World published a dummy first edition and kept back the story about him until the latter editions so that he had absolutely no warning and had no opportunity to seek legal redress, you would legislate against that being able to happen?

Mr Christie-Miller: We are not working on the Mosley case.

Q86 Chairman: As a general example.

Mr Christie-Miller: As I understand it, he is going before the European Court asking for a ruling that there should be prior notice. I would agree that there should be prior notice given on those kinds of stories and in the absence of prior notice there should be some deterrent for the media if they do not give notice. That may be an instance where there should be an elevated costs award.

Q87 Mr Evans: Let me go back to this thing about the CFAs and picking up the easy cases. I suspect doing a risk assessment is quite costly in time devoted to it. How many cases do you dismiss percentage wise?

Mr Christie-Miller: We have done four CFAs in the entire history of the firm.¹ They were two House of Lords cases for Naomi Campbell, the groundbreaking privacy substantive case in the House of Lords and then a costs case, a House of Lords case for Roman Polanski, one case for somebody whose photographs of them taken on a private beach on honeymoon were published, and then a third case that was a complaint to a broadcaster to issue proceedings that were never issued.

Q88 Chairman: Mark Thomson, your firm has been singled out as being the libel equivalent to ambulance chasers. Presumably you would not accept that.

Mr Thomson: I am not on the CFA Committee. They seem to reject a number of my cases and maybe it is because they were involving privacy. I had a case two years ago. We were in debate, it was not accepted on the CFA and they did not accept it, the client accepted the risk and therefore the potential of losing his house and we won. It was a case against a celebrity magazine. We have differences of opinion. They seem to reject a lot of potential cases when they assess the risk. A lot of the area in privacy is still developing to some extent. There is risk in that as the Naomi Campbell case pointed out. She lost in the Court of Appeal and won in the House of Lords by 3:2. CFA committees do not always take every case. There are differing views about risk. We cannot look into the future and predict precisely what a judge may say.

¹ Note by Witness: Whilst Schillings have acted in four CFAs in libel or privacy cases, the firm has also acted on a CFA in one copyright case.
Q89 Mr Evans: Peter Oborne at the moment is currently taunting the Home Secretary to sue him. Maybe you should be staying by the phone, Mark. You may just get that call on a CFA. Mr Thomson: Suing on what?

Q90 Mr Evans: Allegations on the Additional Cost Allowance. He has written serious allegations and said, “Come on, sue me.” Is that a case you would relish to take on?

Mr Thomson: I think it may be a political speech. Mr Coad: I think it is important in all of these things to remember that the litigation is a battle of two sides. As far as the length of the case is concerned, it is hard to get across from those on this side how extraordinarily a newspaper can make something which should be relatively straightforward a war of attrition. Secondly, you pick high profile celebrities, but a lot of them are in a situation where realistically they cannot afford to lose litigation and the newspaper can. Again, unless you sit with a client through a trial or in the run up to the trial you cannot understand just what tension that is. They are not familiar with the litigation process whereas newspapers are. There are enormous psychological differences of pressure in litigation. Thirdly, in a non-CFA case if the newspaper decides to make a big battle of something for whatever reason and it could be a litigation that lasts 18 months, so a client could well be faced with a bill of half a million pounds, which is a big sum of money for a lot of them, then the reality is they will get to a trial, so by the grace of God they win. Let us say they win £10,000. There will be a costs shortfall, because they will not recover all their costs because the courts control the amount of costs, which will be considerably in excess of £10,000. In those circumstances, in an attempt to vindicate them from an allegation which is completely untrue they have gone through 18 months of hell, of having everything but the kitchen sink thrown at them by the newspapers—and if we had time I could tell you some reasonably hair-raising examples—and at the end of that they make a net loss of £60,000, £70,000, £80,000 or £90,000 and they (i.e. the newspapers) know that.

Q91 Mr Evans: So you think some newspapers sit down, they know what they are about to print is complete rubbish and their accountants and lawyers say, “Alright, fair enough, print it because it is only going to cost you £100,000 and your circulation will go through the roof”?

Mr Coad: You will have to read Piers Morgan’s book where he describes that very process. So the answer is it is not a question of me thinking it, they say that is what they do. It is his first book. You will learn all you need to know in there. Mr Clarke-Williams: My firm’s statistics show approximately that we take on and pursue something under 10% of the requests for advice that we receive in relation to defamation and privacy claims and a much smaller percentage goes to the CFA committee for risk assessment.

Q92 Paul Farrelly: I am sure the Committee would find it helpful, because there is a dispute over this, if you could provide us with the anonymized figures that you have already submitted to the inquiry that is going on.

Mr Thomson: They are being submitted. They have not yet been submitted.

Paul Farrelly: That would be very helpful. The chilling effect of CFAs has been disputed. I want to move on now to the issue of the chilling effect of defamation laws as they stand in the UK. I could pick on the Police Federation cases or speculate about whether we might have had better reporting about City banks had we not got our libel laws. I just wanted to take one case which has been mentioned and that is Tesco and Guardian Newspapers. I think it is important to read the bare bones of this for the record. The Guardian accused Tesco of tax evasion but mistakenly it got the wrong tax. Tesco was avoiding tax but it was Stamp Duty Land Tax when the Guardian originally alleged it was Corporation Tax. Tesco sued for libel and the editor for malicious falsehood. The Guardian apologised, it corrected the story at length and made an offer of amends but Tesco still pursued the action in court. Even though, thanks to research by Private Eye, Tesco was indeed established to be avoiding Corporation Tax through a labyrinth of offshore companies, Tesco tried to omit that from the court’s consideration, but Justice Eady, who has been damned by Paul Dacre, threw that attempt out and also the action for malicious falsehood. The action was settled out of court for a small amount of damages. The facts of the case are quite clear. The thrust of the Guardian’s story was correct.

Chairman: Paul, I think you should apply for an adjournment debate on this issue rather than read it all into the record!

Q93 Paul Farrelly: It was avoiding tax aggressively and serially and the Guardian was left with a bill that it is now disputing for £800,000 of which £354,000 relates to the costs of hiring accountants and lawyers to explain the tax avoidance schemes to the claimant’s own side. Surely that case shows how unbalanced the defamation laws are in this country and that they are ripe for abuse by large corporations, such as Tesco, to produce a chilling effect on responsible journalism. How would you counter that argument?

Mr Thomson: There is a confidentiality agreement in place on that settlement.

Q94 Paul Farrelly: You can generalise from the case. Mr Thomson: I cannot generalise from the case without trespassing on our confidentiality agreement, and it was not my case. I suggest you ask the Guardian what their costs were at the time and their research costs, but I cannot make any further comment. There is a confidentiality agreement. I am going to abide by it. Mr Coad: I know little more about the case than what you say. I can only speak from my own coal face experience and cite, for example, Fridays where I have been suing a newspaper and I have had six
letters on one day, where I have attended a hearing on my own, where I have been met at the hearing by a silk accompanied by the head of the newspaper’s legal team, accompanied by a senior partner from a City firm, accompanied by the assistant to the senior partner of the City firm, accompanied by the assistant to the assistant to a senior partner of a City firm, and fought my corner on that basis. I am sure it is perfectly possible to pick out situations where apparently large corporations have abused the system. I cannot comment on that because I have not read enough about the case to be sure. Each of us here could equally tell stories about how the litigation process has been abused by large media corporations in order to deny people justice by using their superior financial power. You have got to be set in that context because each of us coal faces could meet you with half a dozen other stories where the abuses have been entirely the other way.

Mr Clarke-Williams: I do not know very much more than what you have read out about that particular case, but what I do know is that the Guardian ultimately settled that case and so they must have received advice that they were likely to lose at trial and for that reason presumably concluded that the articles which they had published were wrong. I do not know enough about the detail of the case to know why the costs escalated to what on the face of it are massive proportions, but the fact of the matter is that this seems to be a case where the newspaper got it wrong.

Mr Christie-Miller: Let us not forget that it is not just getting it wrong. If the newspaper published something that is untrue then they cannot justify it, they cannot then go ahead and prove that they got it right. They can rely on the Reynolds Defence. I differ somewhat with my colleagues who were up here before in terms of how the Reynolds Defence is being applied. The Reynolds Defence essentially is there to protect responsible journalism and so if the journalism is responsible and that test has been increasingly flexibly applied there are no longer 10 hoops one needs to jump through. In fact, the case of Jameel in the House of Lords said the opposite, that it was a flexible test that should be applied depending on the circumstances of a particular case. It is a sad day for investigative journalism if (a) the story is untrue and (b) it was not even put together responsibly. One of the questions we were asked to consider was whether there should be a Sullivan v New York Times-style defence here in this country. It would be an even sadder day for investigative journalism if the story was not true, it was not responsibly published and the only defence that the newspaper had was that the person they were attacking was a public figure and that the journalist who wrote the article did not do it with actual malice, which in this instance means knowing that it is wrong. That is a defamer’s charter to be honest.

Q95 Paul Farrelly: We have explored Reynolds. Let us take an example that Australia has adopted. It has taken the inability of public bodies to sue, councils, government agencies, one step further. Companies larger than 10 employees cannot sue unless malice can be proven. What effect do you think that might have on responsible journalism in this country if that changed the law made here?

Mr Coad: I think you have got to remember that newspapers have the power to bring quite large companies down and the people in those companies who are then made redundant and lose their jobs also have rights too. Did you say we have dealt with Reynolds?

Q96 Paul Farrelly: We have explored Reynolds. Mr Coad: I am not sure you have with us because I think there are questions about Reynolds. I think it is perfectly reasonable to say that there is a finite amount of damages that a large corporation should be allowed to recover. Let us take an example where a newspaper says, “baby milk A is dangerous and you should not drink it and baby milk B is fine”. It would be extraordinary if there was no mechanism whereby a company could go in front of a judge and say, “Well, actually, our baby milk is fine and, by the way, we have had to lay 500 people off and there is therefore a good reason for us to come in front of a judge and establish that that is not true.” It would be an extraordinary state of affairs, it seems to me.

Q97 Paul Farrelly: The internet has changed the rules of the game. We heard earlier about a simple change of the law, updating the law into this age by stating that a claimant should have 12 months to sue from the first publication. How would you view such a change in the internet age?

Mr Thomson: I am not sure. If we are talking about a defamatory article, so we are talking about a defamatory online article, in my view the internet changes the game a lot because once it is online it gets repeated. Google makes all articles and everyone’s previous articles available. If there is an article online in a national newspaper and it is wrong, what they normally do is remove the article online because they are concerned about republication by others and their liability for damages. If they have left it online as an archive then, knowing there is a complaint already in force, they are taking a big risk because of the way the internet disseminates information and therefore allows for repetition of defamatory allegations. I think the law as it is should stay because of the power of the Internet otherwise archive defamatory allegations will remain available. So even though a newspaper might have apologised and said someone is not a car thief, the allegation is repeated, Google keeps putting it on their search engines and it is still out there, whereas the person who has won his action and has been vindicated is then faced with effectively the same article appearing. The reality is that with most newspapers when you complain, you ask for and they remove the online article. They look into the story and they either fight or settle and so it is a fairly narrow point.

Mr Clarke-Williams: Dealing with the online publications by newspapers about which one’s clients complain is relatively straightforward. The
newspapers have well-established procedures for dealing with complaints of that nature. The problem I encounter in tending to act for ordinary individuals is when the allegations either spread out to more obscure online publishers or where perhaps single issue fanatics operating out of back rooms in remote parts of the country through rather obscure internet service providers pump out defamatory material which, if you manage to close it down, opens up elsewhere. That is a much more difficult problem to deal with over the internet. Quite often one has to just trust the online reading public to attribute the weight to that sort of internet publication that it deserves and just assume that these are not to be taken seriously or not to be assumed to be true because it is extremely difficult and extremely costly to chase down that sort of internet publication.

Q98 Paul Farrelly: Anyone in public life is acutely aware of the problems with the internet and the inability to do much about it in the blogisphere and the world out there. There is one case currently that has received quite a lot of media attention. There are a number of newspapers where legal action has been threatened. I think legal action commenced against the New Statesman where you were seeking to remove references to an Iraqi businessman called Nadhmi Auchi even though he stands convicted of fraud in France over certain dealings with the oil company Elf Aquitaine. A lot of people would say that is you using the chilling effect of UK libel law with the threat of costs and damages against a small publication such as the New Statesman and that is an abuse of the libel laws.

Mr Thomson: It is not my case. I cannot comment. If an English publication is reporting and restating a libel online then they have got to form their own view as to the risks and whether they can justify that. People have a reputation which is presumed and that is a good thing because they are innocent until proven guilty. If they print online or print in hard copy and they take the risk of publication, if it is proven guilty then they have got to form their own view as to the risks and whether they can justify that.

Q99 Paul Farrelly: It may be defamatory but true.

Mr Thomson: In which case they will no doubt say “We’re not taking it out”.

Q100 Alan Keen: I would like to ask two questions which may not be related to law exactly. One of the previous panel was kind to newspapers by saying all they want to do is be responsible journalists. The main aim they have got is to sell newspapers, that is really why they are there and how they sell newspapers and how they get people buying more of them is something which they act on. I have complained to the BBC about the fact that headlines are given out as the news starts which are sometimes misleading. and the BBC are in competition with other newspaper programmes, with Sky and ITV, at times. By the time they get to the full discussion or the full news item on it it is not quite the same. Newspapers are guilty of this all the time in that headlines come out to get people to buy the papers and by the time you have read 17 paragraphs you realise that it is not quite the same as the headline made out or the opening three paragraphs. Is there anything in law that can reflect this? My experience is that newspapers have got away with it by saying they did not do anything wrong.

Mr Clarke-Williams: I think that would be regarded as skilful journalism because one is obliged, if one is pursuing a defamation claim, to consider the whole of the article. Therefore, the poison of a headline can sometimes be corrected by what appears later in the article itself. You are absolutely right. I have got one case on at the moment where the headline contains all the evil. I had one comparatively recently for a union leader which was suggesting in the headline that she was encouraging her teacher union members to sleep with underage pupils. That is not what she had said and the article itself revealed that, but the headline was a very startling thing to confront the reader with. At the moment as the law stands the article and the headline would be analysed very closely by a court and a determination would be made as to whether or not the headline was corrected by what is read below.

Q101 Alan Keen: Should the law be changed so that the public are not misled by headlines?

Mr Clarke-Williams: It is an interesting point to raise because it is something which I think clients find more difficult to understand than many other areas of defamation. They cannot understand why a headline which is patently defamatory and untrue does not give them a cause of action simply because you can pick through the rest of the article and find a correction to it. If you asked the man in the street, the man on the Clapham omnibus, they would say, “Yes, that is something which one ought to be allowed to bring a claim on,” because it is what strikes the viewer in the eye, I suspect more so on internet publishing as well. I think people surf, cruise, whatever, the websites and I think they read headlines and skip on and quite often do not read the article as well, but in a legal case the article itself would be read very carefully.
which of course they won, they won their privacy battle. The headline of the Evening Standard was “Michael Douglas and Catherine Zeta Jones lose privacy battle”. For an awful lot of people who walk past the stands that is all they have ever learned. I agree with Mr Thomson that it does create technical difficulties, but the reality is that particularly front pages are an advert and the adverts are sexed up and they send a signal. Since the reality is that millions of people see the front page who do not buy the newspapers, that is all they get and at the moment neither the law nor the PCC provides an adequate remedy for that. I absolutely agree that it is a problem that needs to be addressed.

Q103 Janet Anderson: Let us turn to the Human Rights Act and the balance between Article 8 and Article 10 of the European Convention on Human Rights. It was suggested in the previous session that section 12 of the Human Rights Act had not been interpreted correctly by the judiciary very often, that the weight was now in favour of the personal privacy rather than freedom of expression and that there was a failure on the part of the courts to understand the value of freedom of expression. I wonder if you would just like to comment on that.

Mr Christie-Miller: Article 8 protects rights to privacy and Article 10 freedom of expression and they are supposed to be equal under the European Convention on Human Rights. They are given a match. There was agitation in the Human Rights Act, the legislation which introduced that, for section 12, but section 12 is a step up in terms of protecting the media rather than a step down.

Q104 Janet Anderson: That is not what they were saying in the other session.

Mr Christie-Miller: Let me explain why I believe that is not correct. If I am applying for an injunction to prevent an employee from starting another job somewhere, for example, then the test I am going to apply as to whether I should have an interim injunction, the American Cyanamid test, is a much lower test. Essentially it revolves around whether I have got a serious issue and where the balance of convenience lies. If I am looking to restrain somebody’s freedom of expression rights under Article 10 there is a different test which applies, which is the test introduced by section 12 of the Human Rights Act. That test is whether I am likely at trial to get an injunction—and “likely” has been interpreted all the way up to the House of Lords as meaning essentially 50:50—which is a much higher test than the old fashioned pre-human rights test. So actually the media are more protected by section 12 of the Human Rights Act, but I think the complaint is the way in which more likely to succeed is being interpreted by the judges. Again, all of the jurisprudence says that when deciding where the balance lies between 8 and 10 and section 12(3) there should be an intense focus on the facts. What judges are doing is they are looking at the very detailed facts of specific cases and saying is this individual more likely than not to get an injunction at the end of trial and sometimes they say yes and sometimes they say no and most of the time the judges will say, “You can protect that bit of information because that relates to your medical condition. You can’t protect that bit of information because you have put that information into the public domain yourself.” You may have talked about how much you are paid, for example. “You certainly cannot protect that bit of information because that is just not capable of being protected.” So there is a division between what information can and cannot be protected and it is decided on the facts by experienced judges. I do not think it is right to generalise and say that those judges are not giving due weight to Article 10. They are looking at the facts of each particular case.

Q105 Janet Anderson: So you think that interpretation is fair, the way it has been interpreted?

Mr Christie-Miller: Personally, acting for claimants, I think the judges have made individual decisions which I would rather they had not made. I would rather they were more claimant friendly and the media will say exactly the opposite, that they would rather the judges apply this in a more defendant friendly manner, but the judges are applying an intense focus on the specific facts and are deciding whether or not something is likely to be injunction at a trial or not.

Mr Clarke-Williams: I agree with Rod. I think judges are conducting a very careful balancing exercise. As has been mentioned, because it is a phrase which occurs repeatedly in case law, they do so by applying an intense focus to the facts of that particular case. It may be, from something which was said earlier, that the cases which tend to go all the way to trial and which therefore become the guiding case law are slightly unusual because they often involve celebrities. Certainly my experience in acting for ordinary members of the public is that where privacy issues arise I notice much greater anxiety on the part of the newspapers to settle those claims at an early stage. I suspect that a claim by an ordinary member of the public over privacy issues which went all the way to trial would carry less of a stigma than some of these celebrity cases which have attracted so much attention. The fact is, if one reads something like the Mosley judgment, I do not think that Mr Justice Eady could have done a more conscientious job in seeking to balance freedom of expression against the rights to respect for privacy and come up with the decision which he did. I think it is being fairly applied. I think to suggest otherwise is to come back to the unfair suggestion that the judges who are determining these cases are in some way biased against the media or biased in favour of an individual’s right to respect for privacy and I do not think that is a fair allegation to make.

Mr Coad: I take this on a more general level because I think if you simply go out and buy newspapers today you will find them full of all sorts of material which you might think is private or controversial. You can take a list of scalps that the press have been able to have notwithstanding all these cries of foul. The fact is that the British press does fulfil its role as a watchdog, as it should and none of us would want
Q106 Janet Anderson: Do you think there should be harsher penalties available?  
Mr Coad: Harsher penalties for the invasion of privacy?

Q107 Janet Anderson: Yes.  
Mr Coad: The whole issue of invasion of privacy is better dealt with on an injunctive basis. It goes back to the point that we made earlier on about prior notification. It is scant comfort for a client to receive a modest sum of money from a newspaper after their lives have been wrecked one way or another. It is not a great way of protecting privacy by paying the money after it has been breached. So the preferable way is to develop some kind of system where there is an effective protection for privacy. Do I think the penalties are too high? No, I do not think they are. Given the value to newspapers of the private lives of celebrities or otherwise, the vast sums of money which they choose to pay on the market for these things and since they are published with profit then I do not think that the current fines notionally that they get for breaching people’s human rights are excessive. I would also add that the PCC’s Code of Practice is written entirely by the press and the press has written in at paragraph 3 of the Code, virtually verbatim, Article 8. So at least there is recognition by the press itself that this is a value which they themselves should take note of.

Mr Thomson: I think the balance is about right. There are certain areas that privacy law could develop and particularly paparazzi activity of people. I think the real problem with the media and the tabloid media is that in essence they have now a policy they do not notify in advance, which means that whether it is accurate or not they do not know, if it is private they fear an injunction and just as a policy they do not notify so the damage gets done. They know the risk of an injunction. Mr Mosley’s situation was that he could not even get an injunction restraining the video for which there was no public interest and probably never was and that is the major issue about this area now. There is a policy of no notification and that means that victims, whether it is a celebrity or anyone else, are not told in advance about the publication and it means that the damage is done sometimes permanently, and sometimes when the damage is done they do not want to go to trial because it is too distressing and embarrassing. It used to be when I started in practice the media would notify. Nowadays generally the tabloid media do not. There are a lot of victims who do not have an effective remedy and who cannot face the sort of trial that Catherine Zeta Jones or Naomi Campbell had to face. It is a real issue. Whether it is the law, whether it is Parliament should intervene or whether it is the regulators should put it in their Code, something ought to happen because there are real victims and they are not just celebrities whose lives are being affected by this and sometimes permanently and irretrievably and it is a big issue.

Q108 Janet Anderson: Would you say that the way things are at the moment is encouraging irresponsible journalism?  
Mr Thomson: Yes. I think it has got worse. I think online articles are particularly risky and vulnerable to claims. The practice at the moment is that press standards have got worse and there are more victims. The media know this. Sometimes it is just too embarrassing. I have a number of claims where the client would have won, but given that they published the article, which was deeply embarrassing, they just did not want to go to court and face the full publicity of an action. If they were notified it would have been, for a small amount of money, resolved either by agreement or by a judge. When I am notified in advance, and so you are given a few hours to seek to complain, what generally happens is—because I know all the media lawyers—that you will make a call and say do not do it and maybe you will threaten an injunction. A lot of the time it is three phone calls and they say, “Alright, we won’t publish those pictures of so and so with their kids,” but the issue is when they do not notify and the general policy is they do not. There are real victims everywhere in England and Wales without an effective remedy and they do not want to face the Mosley publicity trial and they are left without a remedy.

Q109 Janet Anderson: So that general policy that is being adopted of not notifying people means that journalists are encouraged to be sloppy because they think “Well, I’m going to get away with it”?  
Mr Thomson: A lot of the intrusive articles are inaccurate as well. Nothing is ever plainly private. There is a mixture of inaccuracies and privacy. I had a client where the newspaper wanted to publish details about his cancer treatment and one published details about his cancer treatment but they got the details wrong. There is no public interest in this. He was an actor. Because they did not check in detail the facts they had got the wrong kind of treatment and it caused him, his family, his wife and his friends huge distress.

Q110 Mr Sanders: How do you view the PCC? When would you advise your clients to seek redress through the PCC rather than another route?  
Mr Coad: You do not really get redress from the PCC since they have elected to have only one sanction and that is the publication of a correction and apology. As you know, I have written a substantial paper on this. If I may, I am going to demonstrate a point which, I have to say, I have my client’s permission to do. As I have tried to say, you are looking for a litmus test about a regulator. How can you judge the effectiveness of what they are doing? I complained about this article.
Q111 Chairman: You will have to describe it.
Mr Coad: I would like you to see it.

Q112 Chairman: It will not be on the record unless you describe it.
Mr Coad: I will read it out: “Peaches: spend night with me for £5,000”. You see it as millions and millions and millions of people see it either on breakfast television, at petrol stations or at Tube stations or whatever and this is your headline point. Not one single word of this story was true; not a syllable of it. Not only was it there, but if you turn to page five you will find—and I have made photocopies of all these—that it carries on in the same vein. On a Blue Peter basis of “Here is something which I made earlier” here is the paper that carries the apology. The point is, Mr Whittingdale, it is not there. That is it: that is what the millions and millions of people who have seen it will have seen. In fact it is there.

Q113 Chairman: Where is that?
Mr Coad: Thank you, you have made my point.

Q114 Chairman: It is actually necessary, if this is to be useful, for you to tell us.
Mr Coad: I will point it out to you but I have made photocopies. Perhaps you would like someone to pass them round.

Q115 Chairman: I am sorry to be difficult but photocopies will not appear in the transcript of the session. If you want this taken as evidence, you have to describe it.
Mr Coad: It is on page 2, in size it is 2.6% of the correction. This is what the newspaper admitted. I do not think I need to tell you that what the headline implies, but the newspaper accepts and says: “We apologise to Peaches for the implication in the headline that she provided services of a personal or sexual nature for the payment of a fee.” So the newspaper accepted that that is what the implication was on the front page. The point is: the newspaper agreed, as they could do no other, that the front page story was inaccurate, but what they would not do was put the correction on the front page. I went to the PCC and made the point that millions and millions of people do not buy the newspaper will have seen this on the front page and therefore the only place for the correction to be is on the front page. In 2003 Sir Christopher Meyer came in front of you and said of prominence, not once but twice, that of course corrections must be “at least as prominent” as the original article “otherwise it would be ridiculous”. I think we would agree with that. You will see that also in my paper I have done a little survey and he said that on a front page where there has been a hideous transgression—and you may think that accusing a 19-year-old girl of prostitution on the front page of a national newspaper might possibly be a hideous transgression—in those circumstances the apology should be on the front page, or at least trailed on the front page. Well, it was not. If you have a regulatory body which has as its sole sanction the publishing of corrections and apologies, and time after time they float that in favour of the very industry that pays them and appoints them and set them up, then that is the clearest indication, in my view, that it is a body which is failing. It causes the most intense frustration and people simply cannot understand it. They cannot understand how an editorial decision can be made on one day that this story is of sufficient importance to go on the front page, but miraculously when it comes to correcting it, and a volte-face is undertaken, the editorial decision is taken no, it should be elsewhere, or it should be a tiny fraction of the original story. As far as you go back to redress, that is the only redress that the PCC gives. My last point, and then I will shut up, is that there are three interest groups when it comes to an apology: there is the newspaper; there is the individual, family, friends and whatever; and there is the general public who have been misled in the first place. The striking thing about the PCC policy on prominence is that invariably it favours the newspapers’ interests because the only interest group where it is best the apology is kept small is the newspaper. It is invariably the newspaper that persuades the PCC to agree to a 5% size apology, so the interests of the complainant and the general public who have been misled are set aside in favour of the newspaper. There simply can be no other explanation of a body like this, that it is failing the complainants and it is obviously, and fatally, biased in favour of those that set it up and fund it.

Q116 Mr Sanders: That is a very persuasive example of failing. What needs to happen to bring about the remedy that many people believe the PCC is there to obtain for them?
Mr Coad: There needs to be root and branch reform of the PCC. My own view is that the better thing would be to change this entirely anarchic system we have whereby footage that is shown on a newspaper website is regulated by one body but if it is shown on television it is regulated by another. We now have a rapidly converging set of media. The only sensible thing to me—and also to avoid the competitive advantage that newspapers have by regulating themselves, which of course the broadcasters do not have—and I should add that I have spent quite a lot of my time defending broadcasters—the only sensible thing is to place newspapers under Ofcom and for them to be regulated. You read a newspaper on the screen, you watch television programmes on a screen through your PC. Why on earth should there be any difference in regulation? Why for example should the PCC be allowed to operate a system where there is no independent representation on the Code Committee? You cannot turn up at hearings where your complaints are being adjudicated, rather like Guantanamo Bay. There is no substantive appeal to decisions of the PCC and this cannot be right.

Q117 Chairman: We are at 1 o’clock which means we are possibly going to have to stop in any second, but I am anxious that the other three of you say whether or not you agree with Jonathan Coad about the inadequacy of the PCC?
Mr Thomson: It has a role but it is a limited role. The Code is reasonably good but it should be amended and it should include notification so that it is part of their professional obligations to notify. It has a limited role. The notification of harassment procedure is quite effective and I am sure is of use. If someone is being harassed by the media they do actively intervene, but the adjudications and the complaints procedure is not, in my view, a sufficient remedy. They have a limited role and for serious complaints and serious libels they are best dealt with between lawyers rather than through the PCC.

Mr Clarke-Williams: I agree with that analysis. For minor inaccuracies it can sometimes be a sensible option for a client, but, I am afraid, the inadequacies so graphically described by Jonathan mean that it has engendered enormous cynicism about the PCC, which has got as far as the general public, and quite often members of the general public say, “There is no point going to the PCC, is there?” when I meet with them at the initial client meeting. That is a sad reflection on the way in which it is regarded.

Q118 Paul Farrelly: It appears very rapid and proactive when it comes to members of the Royal Family, for instance in the issue of the Evening Standard saying that Prince Philip had got prostate cancer, but not when it comes to ordinary members of the public. Is that a fair assessment?

Mr Clarke-Williams: It is certainly my experience acting for ordinary members of the public rather than members of the Royal Family, yes.

Mr Coad: That is a good point but, as I recall, the prostate cancer story was most of the front page. I will never understand why there was a kind of postage stamp note on the front page saying that there had been a correction, but the correction was page 14 or something like that, so for those who walked past and saw the story and did not buy the Evening Standard, which would be millions, the story was effectively not corrected.

Mr Christie-Miller: I have not got any newspapers or a PowerPoint presentation so I cannot compete with Jonathan, but I am not quite as damning as Jonathan is. I tend to agree with Jeremy and Mark a little bit more. There are certain things the PCC is very good at. If one has a non-defamatory inaccuracy, so it is not something that is open to be sued upon, then the PCC is the right person to use. In addition, we have had instances where the media have—and I am not quite sure of the right word— amalgamated photographs to make an untrue set of circumstances appear. Again in non-defamatory circumstances the PCC Code has bite on those, but, other than that, if it is serious, use the courts I think. That is always our experience.

Chairman: I am afraid we are having to stop here. Can I thank all four of you very much.

Supplementary written evidence submitted by Swan Turton Solicitors

(1) Anecdotal Evidence of Abuse of the Litigation Process by Claimants

(i) Those of us who have a very long experience of suing newspapers can all supply you with ample anecdotal evidence of serial abuse of the process by Defendant lawyers; tales of false promises of mediation for the sole purpose of delaying proceedings and wearing down an opponent, determined defences of an allegation which was not actually made in the article in order to break the will and the finances of an opponent; the loading of bills when the Claimant is obliged to pay; blatant attempts to mislead the Court; attempts to get behind the Claimant’s lawyer and place direct pressure on the Claimant to settle etc.

(ii) One of those that gave evidence for the Defendants this morning and made a point of how the system is abused by Claimant lawyers wrote this to me in response to a claim letter I wrote for a client who was ultimately vindicated at trial:

“If your firm were foolish enough to advise your client to issue proceedings, and if in turn your client was foolish enough to take that advice, then he will learn to his immense financial cost that he has picked the wrong fight, over the wrong article, with the wrong newspaper”.

(iii) In that action my client was in effect obliged to appeal a decision by the PCC which had gone against him. In an attempt to evade liability, the newspaper ran their case right up till trial on a wholly false assertion as to what the article actually meant, which hugely increased the costs and delay of the action. After winning the trial he was faced with a six figure shortfall in his costs, despite having merely requested a correction at the outset which the newspaper had refused.

(2) The PCC and Peaches Geldof

(i) I thought it might be helpful if I sent to you and your colleagues electronically the front page and fifth page of the Daily Star which carried the Article that I mentioned during the session, and the front page and page 2 of the Daily Star that carried the apology.72

(ii) This was a form of “redress” which was sponsored by the PCC which I hope illustrates the point both that it is in serious need of reform/replacement, and also that its virulent attack on the Media Standards Trust concerning its paper should be treated with immense caution.

72 Not printed.
(3) CFAs

(i) On the issue of the profitability of the press, I have set out the statistics in my report on CFAs and Reynolds showing that the current profit of the national press is £1 billion per annum. Just to take Associated Newspapers as an example, if it were not a hugely profitable organisation why is it paying Paul Dacre £1.2 million per annum? I strongly suspect that is more than the four claimant lawyers put together that appeared before you yesterday.

(ii) It is important for the Committee to remember the setting in which the argument made yesterday by those representing the press is made. In effect, there argument was that it is too expensive for newspapers to breach their own rules—the statistics showing that when their actions are tested in front of the scrutiny of a judge/jury they are almost invariably found wanting.

(iii) Before then the point is reached is where either the newspaper finally concedes that it has got it wrong, or it is found by a court to have got it wrong, this is the journey that it must have undertaken:

(a) In breach of its own code (the PCC Code having been written by the press) the newspaper must have published inaccurate material having taken inadequate care in checking it (see paragraph 1 (i) of the PCC Code);

(b) The publication at issue has been made by a newspaper which is a commercial organisation, the publication therefore being for profit as Piers Morgan makes clear in his book (The Insider) these decisions are often made on a straight commercial basis;

(c) The resulting publication is a breach of the fundamental human rights of the subject of the allegations, it having now been established via a series of ECHR judgments that one of the elements of the Article 8 right is right to reputation. That means that the personal integrity for a phrase commonly used in the ECHR jurisprudence) of the individual has been wrongly robbed of them, and the general public as a whole has been misled;

(d) The newspaper must then have breached its code again by refusing to comply with paragraph 1 (ii), which says that inaccuracies should be corrected promptly and with due prominence.

(e) The Claimant is then faced with what is invariably a very stressful and forbidding prospect, taking on a very powerful media organisation, which has the power to do it damage, not only financially, but further damage reputationally. Many clients simply baulk at that proposition and take the matter no further.

(f) The paper is then put on notice that the Claimant intends to protect his/her human rights for the benefit of a CFA, but despite all of the above, refuses to withdraw the allegation.

(iv) If that point the paper takes a financial hit it can really only be regarded as self inflicted. Although, as I explain, I have not yet brought an action against a newspaper with the benefit of a CFA, I think it is important for the Committee to consider the arguments that were advanced on behalf of the newspapers in the light of the above.

(4) The Opinion Poll Survey about the PCC

(i) The Committee will find at paragraph 22 of my report the result of an opinion poll survey that we have undertaken on the key activities of the PCC. It shows that in many instances, over 90% of the general public take a different view as to how it should operate/be constituted than the PCC. A regulatory body which operates in a way so directly against both the views and interest of those that it is tasked to protect is in serious need of reform/abolition.

1. **Should the size and position of corrections/adjudications published by newspapers be:**
   
   a. Less prominent than the original; 4%
   
   b. Equal prominence to the original; 40%
   
   c. More prominent than the original. 56%

2. **Should inaccuracies on the front page be corrected:**
   
   a. On the front page; 66%
   
   b. On an inside page. 34%

3. **Should journalists be permitted to speak to children under 16:**
   
   a. Only on issues involving their own or another child’s welfare with parental consent; 31%
   
   b. Only with their parents’ consent; 67%
   
   c. Not at all. 2%
4. **Should the Committee that writes the PCC Code of Practice be comprised of:**
   a. Only representatives from the press; 6%
   b. Representatives from the press and the general public; 69%
   c. Representatives from the press and representatives for complainants; 24%

5. **Should meetings of the Commission to adjudicate complaints be recorded by:**
   a. A transcript; 3%
   b. A minute prepared by the PCC; 1%
   c. Both. 96%

6. **Should a complainant (or his/her representative) be allowed to attend the meeting of the Commissioners which adjudicate their complaint?**
   a. Yes 99%
   b. No 1%

7. **Should there be an independent appeal from PCC adjudications?**
   a. Yes 99%
   b. No 1%

8. **Should the PCC be able to impose financial sanctions?**
   a. No; 0%
   b. Yes—a fine for the newspaper; 4%
   c. Yes—compensation for a successful complainant; 2%
   d. Yes—awarding professional costs to the complainant 5%
   e. A combination of these financial sanctions. 89%

9. **Should the Commission be comprised of:**
   a. A combination of press representatives and non-press members; 55%
   b. Press representatives and representatives for complainants; 41%
   c. Non-press members only. 4%

   (i) On the issue of prominence (question 1) only 4% agreed with the PCC’s policy that corrections/apologies should have less prominence than the original. Well over 90% thought that they should be at least as prominent as the original, and a striking 56% thought that they should be more prominent than the original.

   (ii) As to question 2, two thirds of those questioned thought that front page infractions should be remedied by front page apologies. This is again in stark contrast to the practice of the PCC—notwithstanding the protestations of Sir Christopher Meyer when he attended before the Committee in 2003 to give evidence. The practice of the PCC is very different.

   (iii) As to question 3, the PCC Code answers with proposition A. Only 31% of the population agree. 69% consider that children should enjoy more protection than the PCC Code provides.

   (iv) As to question 4, the PCC considers that representatives of the press should write the Code. Only 6% of the public agree with that. The other 94% think there should be some independent representation on that Committee.

   (v) As to question 5, PCC adjudications are only reported by a minute prepared by the PCC. 99% of the population disagree with that policy, and require both a minute and transcript of the meetings.

   (vi) As to question 6, complainants are not allowed to attend adjudications. Only 1% of the public agree with this and 99% think a complainant should be allowed to attend.

   (vii) As to question 7, the PCC refuses to permit an independent appeal from its adjudications. 99% of the general public disagree with them.
(viii) As to question 8, the PCC refuses to impose financial sanctions. 100% of the population disagree with that policy.

(ix) The only respect in which the PCC is supported is that the Commission should be a mixture of press and non press members (question 8).

*February 2009*
Tuesday 10 March 2009

Members present
Mr John Whittingdale, in the Chair
Janet Anderson
Mr Nigel Evans
Paul Farrelly
Alan Keen
Rosemary McKenna
Mr Adrian Sanders

Written evidence submitted by Max Mosley

My name is Max Mosley. I am president of the Fédération Internationale de l’Automobile, a federation of major motoring organisations and the governing body of international motor sport.

Just under a year ago, I was the subject of revelations about my private life in the News of the World. As a result, I sued the paper for invasion of privacy and was awarded £60,000 damages, a record for a case of that nature in the UK.

EXECUTIVE SUMMARY

The courts do not currently have reliable means to protect privacy. An editor should be required to give notice to anyone about whom he intends to publish information which a person is entitled to keep private.

MEMORANDUM

1. There is currently a major loophole in UK privacy law. If an editor wishes to publish an item which he knows or suspects is an illegal invasion of privacy, it is in his interest to keep his intention secret from his intended victim, so that by the time the victim finds out, it’s too late to do anything.

2. This only happens when the newspaper knows publication is illegal and would be stopped if the victim could go before a judge. In my case it was admitted by the editor of the News of the World that he kept the story secret (going to such lengths as to keep the information from his own staff and publishing a different, unrelated story in the first edition of his paper) because he feared I would seek and obtain an injunction to protect my privacy.

3. Once the story is published, the editor knows that if the victim sues, the result will be more publicity, thus a further invasion of privacy, while the damages received (which cannot be an effective remedy in privacy cases in any event), will be less than the difference between the costs recovered from the newspaper and the bill from the victim’s lawyers. The result is that the victim will, quite rightly in most cases, be advised of these consequences and not sue. The victim is thus left with no remedy, while the editor suffers no adverse consequences for his unlawful decision to publish.

4. In order to provide a remedy, as required by the Human Rights Act 1998 (HRA), it is essential to close this loophole. If an editor wishes to publish something which he reasonably suspects a person would wish to keep private, he should be required to give that person reasonable notice of publication.

5. The victim would then have an opportunity to bring the matter before a judge should he or she wish to. A judge will only stop publication if he thinks the victim is likely to win a subsequent action for breach of privacy (s 12 (3) of the HRA). In reaching this conclusion the judge will weigh carefully the right to privacy of the individual against the public interest in the matter the newspaper wishes to reveal.

6. It is quite obvious that an independent judge is better placed to carry out this exercise than an editor, who is inevitably more interested in selling his newspaper than protecting the rights of an individual. In the unlikely event that the story would be lost if prior notice were given, the newspaper itself could apply ex parte to a judge for permission to publish without notice. The essential safeguard is that a judge, not an editor, should decide if it is lawful to publish.

7. A reasonable period is needed because, although a wealthy individual may have lawyers to hand, an ordinary citizen (many of whom are victims of unlawful tabloid revelations) will need time to go to a solicitor and may need to come to an arrangement on fees before applying to court. In the event of an injunction to stop publication, the subsequent privacy action would be in private (although I understand that most cases are resolved after an injunction has been granted). However if the newspaper were to win, full publicity would follow and the newspaper would seek to recover its legal costs.

8. Without a requirement of prior notification, the protection offered by the HRA is nugatory. Once the story is out, it cannot be put back. Unlike libel, where the court can restore a person’s reputation, the court is powerless to remove private information from the public mind. It is therefore essential to prevent private information being published unless publication is lawful.
9. Tabloid editors will argue that they should be allowed to publish anything that might interest their readers. In their view, there should be no right to privacy beyond that which they themselves are prepared to grant. It should be theirs to decide the limits. They believe the current law is wrong. Indeed the News of the World has shown its contempt for the law by applying for the title of “Newspaper of the Year” (see the attached application) on the basis of my case, notwithstanding that after four days in the High Court they were told in the plainest terms by the judge that what they had done was illegal. They are clearly proud that they were able to exploit this loophole in the law and publish illegally.

10. It should be noted that the newspapers themselves have imposed a duty upon individuals to notify them if they are applying for an injunction (s 12 (2) of the HRA), so a prior notice obligation is imposed but it is not reciprocated by the newspapers. Giving prior notice is also recommended by the Editors Code Book and one of the requirements for being able to rely upon a qualified privilege defence to a libel. Where there is genuine public interest and thus no danger of an injunction, as for example in the recent payments-for-peers revelations, the subject of the story is always approached for comment before publication, as normal journalistic practice requires.

11. Editors like to claim that the HRA is a “European” law (so, by implication, not British) notwithstanding that the principal architect of the European Convention on Human Rights was the British lawyer (also Attorney General and later Lord Chancellor), Sir David Maxwell-Fyfe. In fact the Convention was designed to incorporate the traditional civil liberties approach of the United Kingdom.

12. In my submission, the current law on privacy is weighted too heavily in favour of the newspapers, but its requirement that the right to privacy be balanced against the right of the public to know something which might affect a decision they need to take about an individual, is fundamentally right. It is the practicality of the implementation of this balancing exercise that is missing. The devastating effect on an individual and his or her family when private and embarrassing matters, particularly sexual, are revealed, is impossible to describe. It should only be allowed when there is a real need for the public to know. No civilised society should allow its citizens to be pilloried for light entertainment or, as the editor of the Daily Mail recently suggested, to boost newspaper sales.

February 2009

Witness: Mr Max Mosley, gave evidence.

Q119 Chairman: Good morning everybody. This is the second session of the Committee’s inquiry into press standards, privacy and libel. We are pleased to welcome as our sole witness this morning the president of the International Automobile Federation (FIA), Mr Max Mosley. It is fair to say that Mr Mosley offered to come and give evidence to the Committee but it was an offer that we were very happy to take up and I would like to thank you for giving up your time to come here. The reports of the party that you attended suggested that it had a Nazi theme, something that you vigorously contested and that lay at the heart of the judgment. Given that statement was untrue, why did you choose to use privacy law rather than a libel action?

Mr Mosley: The libel action, I was advised, would take probably two years to come on by which time, as far as I was concerned, particularly internationally, the damage was done. It was very important to me to get the Nazi lie, because it was a complete lie and invention, nailed as quickly as possible. Because the court felt that had I had notice of what happened I would have got an injunction, the court listened sympathetically to an application that there should be an expedited trial and this enabled me to get the matter before a court, before a judge, a full trial, within three months which is almost unheard of for a full High Court trial. It put enormous stress, certainly on the lawyers on my side and I think probably also the other side. That enabled the issue to come to a full open hearing at court and to be determined which it was. Of course the libel action remains open. It would be difficult to sue for libel about the first edition of the newspaper which was all about the Nazi allegation because that has been decided and I think the court might feel that I was overdoing it by suing for libel on that. Where I certainly can and could sue for libel is on the second edition of the newspaper where they said that when I denied there was a Nazi element I was telling a lie. I think they gave me five pages on the second Sunday saying that I was a liar. That clearly is defamatory and the question then arises as to whether to sue them for that or not. That is still under consideration because I will have to make my mind up about that definitely by the end of July.

Q120 Chairman: Given that the opportunity to take an action for libel is running out fast, you are saying at the moment you have not reached a definite decision as to whether or not to do so.

Mr Mosley: That is correct. There are arguments both ways. One of the problems is, first of all, there might be a perception that I was overdoing it. People would say “You have been to court, you have won, why are you doing this?” It would seem almost as though I was money grabbing. The other thing is the money grabbing is more apparent than real because if I sue for libel and win it is doubtful that the damages plus the costs that the other side would pay, or the amount of money the other side would pay towards my costs, would equal the bill that I would get from my lawyers. It is a fairly open question whether it is worthwhile. Obviously we are looking

1 Not printed.
at it. Also they said I was a liar and it has been proved beyond any doubt that I was not so a lot of people would say why are you bothering to sue, you have been vindicated on that point already. The further final point is there are proceedings on the Continent, particularly in Italy and France, which are primarily criminal proceedings against the editor and the chief reporter, and possibly other people, but to these criminal proceedings I have been able to attach a civil action for libel. Those actions are going through anyway. Always as someone in my position you have this feeling do not over do it. There seems to have been, judging by the blogs, enormous public sympathy and you tend to lose that sympathy if you pursue something in a way that might almost appear vindictive.

Q121 Chairman: You suggested that the principal reason you went for a privacy action rather than libel was the speed at which it could be heard in court. Had it been possible to have the same sort of timetable for a libel action, would you have chosen libel?

Mr Mosley: I would have done both. To me it was clear that there were two elements to this. There was the element which was true but very private and very embarrassing and then the element which was untrue which was the Nazi allegation. I would have pursued both because even if there were no Nazi allegation at all and they had simply revealed that I had been involved in a sadomasochistic party, I prefer to call it, that was, to my mind, a grossly illegal and unacceptable invasion of privacy because it was completely private. No-one outside had any knowledge or anything to do with it. That, to my understanding, was a breach of the law not just since the 1998 Act but even a breach of the earlier law on confidentiality and a large number of issues. I would have attacked under that anyway but I would have been very happy to attack under libel at the same time.

Q122 Chairman: The assumption has been on the part of the newspapers that somebody in your position would not want to go to court because it would simply lead to day after day of further details of what you have said was extremely embarrassing for you. To what extent was that a consideration or were you determined that you wanted to pursue this?

Mr Mosley: It was certainly a consideration because at the very first meeting I had with the lawyers they pointed out to me, first of all, that there would be an offer, in all probability, from the newspaper. If I did not accept that offer and insisted on going to court and subsequently recovered less than they had offered, I would pay all the costs from three weeks after the date of the offer until the thing was finished. That was the first thing that was pointed out. It was also pointed out that damages awarded in privacy actions tended to be very low indeed, single figure thousands. Single figure thousands are a lot of money but by comparison with the costs involved it is almost negligible. That was the first consideration. The second thing they pointed out was they said if you go to court and you win, everything works, first of all you are going to have the entire matter debated in public; that which has been published which you did not want published, that which was private that you did not want published, will be published all over again in more detail with them able in court to make any allegation they like about you because it is absolute privilege if their witnesses say things. You will get all that in the papers again and then after that is over if you win if you add the damages that you have recovered to the costs that you recovered from them as well those two things together will be less than the amount of money you are going to have to pay your lawyers. What you get is a whole repetition of the damaging publicity, you get the thing all over again, plus you get a large bill which you have to pay so you end up paying the damages.

Q123 Chairman: You are saying that the costs awarded were not sufficient to cover the total costs.

Mr Mosley: Indeed. In round figures my costs were slightly more than £500,000. The costs that the News of the World had to pay, the so-called taxed costs, were £420,000, there were £60,000 damages, and then there were other bits and pieces of expenses that I had to meet myself. I was left with a bill of something of the order of £30,000 altogether. To me it was worth it but to an awful lot of people they would say “If in addition to getting everything repeated again, exactly that which I wish to keep private, I am going to have to pay a big bill, I will not do it.” That of course is exactly what the newspaper’s calculation is as you said at the beginning of your question. Most people, in fact you could almost say a rational person, would not sue. I just felt that it was so outrageous and also, because of the Nazi element, they had put me in a position where the entire world knew this; it was not just England. In my present job I am elected by more than 200 organisations worldwide, the National Motor Sport Authority of about 120-odd countries plus large motoring organisations in those countries. If it had just been England it would not, from my point of view, have mattered so much but it was not just England. It was on the internet and everybody knew and then it was picked up all over the world by different newspapers and so on. Although I am not a significant figure in England, because of my position in motor sport I am quite significant in certain other countries.

Q124 Paul Farrelly: You have said in your very succinct submission that “The News of the World has shown its contempt for the law”, given the decision that was made in your case, “by applying for the title of ‘Newspaper of the Year’ on the basis of my case.” You have helpfully attached the News of the World’s submission for the award. One could understand, and the public might understand, in those circumstances you going for the newspaper again to have a punitive element to your pursuit of them so one might understand why you might go for libel as well. I am not sure I am convinced by your case on costs because I would have thought there would be umpteen firms of lawyers queuing up at your door.
offering you a CFA to go to the News of the World in which case it would almost surely settle before it came to court.

**Mr Mosley:** There is an element of that. You are absolutely right that it is quite likely that I could negotiate a CFA—I think that is what it is called—and it would be attractive to a law firm because their chances of success would be very high and therefore their chance of recovering, I think it is double or significantly more, costs would be high. It is attractive and that is one of the things we are thinking about. The other element to bear in mind is I have to be careful not to appear to be trying to be money grabbing or vindictive. An awful lot of people standing back from it tend to say “You have got what you wanted. You have proved that they did not tell the truth.” Also punitive damages, which are the things that really upset people, do not seem to be available. You might get a jury that was really incensed by their conduct and awarding a very big sum but then those sums tend to be reduced on appeal. It seems that the maximum in libel is not that big. Of course what they would be saying in court is “Here is this man. He has got a certain amount of money himself. He is coming after this newspaper and trying to help himself to more.” They could make it sound as though I was behaving badly.

Q125 Paul Farrelly: One of the areas we are interested in exploring and inquiring into, not necessarily in your particular case, is the potential of CFAs for abuse, that it becomes a racket for the lawyers and that people who are well able to fund their own cases have resorted to CFAs because it has more of a chilling effect on newspapers. You might not have such sympathy for newspapers but these are perception concerns that you are bearing in mind at the moment.

**Mr Mosley:** Yes. To my way of thinking, CFAs are absolutely vital as part of the English legal system in order to protect the interests of people who cannot afford themselves to bring one of these actions, and without those it is very, very difficult for somebody with ordinary means, even somebody earning quite a lot of money, to think about bringing a case. A big libel action you are talking about £1 million and an ordinary person cannot do that and even quite a wealthy person has to think very, very long and hard. If I had lost my privacy action against the News of the World I would have ended up with a total bill very close to £1 million. Ordinary people cannot do that. How do you protect ordinary people if you do not have a really draconian criminal law to deal with libel and privacy invasion? The only way that I can see are these CFAs. If they exist, and I think it is quite right they should, it is slightly an abuse of the system if somebody who can afford to bring an action themselves then uses that as a way to punish the newspaper and because the editors watch every move particularly I make in this area I am sure they would not hesitate to point that out. I would not want to do anything that might cast any doubt whatsoever about the need for those CFAs in order to protect the vast majority of people in this country who cannot afford to put £1 million on the line in order to protect their reputation.

Q126 Mr Evans: I am a little confused as to exactly what is going through your mind at the moment as to whether you are going to sue for libel or not. As Paul suggested, you could do a conditional fee arrangement which is there but you are doubtful because you do not wish a jury or the court of public opinion to think that you are acting badly so you are going to show some Christian compassion towards the News of the World.

**Mr Mosley:** I do not think you could ever accuse me of having Christian compassion towards the News of the World. No, it is a slightly different thing. First of all, the court of public opinion, it is interesting you have raised that point because when the BBC did a big interview on the entire issue there were 735 entries on their blog and it came out at just a shade under 80% on my side and just a shade over 20% on the News of the World side so the court of public opinion is very clear. The public opinion polls I have seen which are relevant are very clear. The public do not like the degree of intrusion into privacy that the current tabloids go in for. It does not mean they will not read it. Very few of us confronted with a completely outrageous story about some pop star and what they did or did not do and you are on the train and it is there but it does not mean that you think it is right that it should be there. Public opinion is fine. What I do not want is to appear to be somehow a bully in this thing. Also bear in mind that with all these actions going on on the Continent people might start to say are you not overdoing it. The obvious thing for me is to wait and see how the actions on the Continent evolve and what actually happens. There is a possibility that the editor and the chief reporter could go to prison. If that happened, or if it looked seriously like it was going to happen, that would change the perception completely. It is one of those things where I will know a lot more when it comes to make your mind up time than I know now.

Q127 Mr Evans: If they go to prison you will think they have suffered enough but when you see front pages of the News of the World with those sorts of headlines, what went through your mind when you saw that for the first time?

**Mr Mosley:** It is very difficult to describe something like that coming completely out of the blue. Do not forget it is not as if I had done something a bit “iffy” on the Friday and there it is in the paper on Sunday. I had been doing this for 45 years and there had never been a hint, nobody knew, and suddenly at 10 o’clock on Sunday morning I get a phone call saying “Have you seen the News of the World?” I said “No, I have not.” I never see the News of the World. I went to the local newspaper shop and bought two copies and I was horrified. The sensation is a little bit like—and it has never happened to me fortunately—coming home and finding your front door open and everything in your house removed by thieves. You would be shocked, annoyed, angry, outraged. You
would have a deep sense that the law had been broken but an even greater sense that you had been invaded. It is sort of like I imagine that would feel. Thank God it has never happened to me but it is the same sort of sensation. What a lot of people do not appreciate is it is a little bit like road accidents: you read the statistics but people do not actually think about the individual family and the knock on the door by the policeman coming to tell you the terrible news about the father, the brother, the son, the daughter or whatever. One does not realise when you read these things, where certain people say they should be allowed to publish because it is sells newspapers, the appalling impact on the family. It is the most terrible thing you can imagine. I sit here I hope quite rational, reasonable and so on but it is a terrible thing. It is like imposing on someone the most enormous penalty. It is like taking all your goods, taking all your money; in fact it is worse because if someone took your goods and your money you have some chance of replacing it—even if you are not insured you can work—but if somebody takes away your dignity, for want of a better word, you can never replace it. No matter how long I live, no matter what part of the world I go to, people will know about it. It is not that I am ashamed of it like I am not ashamed of my bodily functions but I do not want them on the front page of the newspaper.

Mr Mosley: Indeed.

Q130 Mr Evans: Could you tell us about pre-notification? How do you think this requirement for pre-notification would work? How would it have worked in your case do you think?

Mr Mosley: Of course it could be represented to be a huge inconvenience to newspapers but if one looks at the reality you have got a mass of cases where they publish something about somebody where there could be no possible suggestion that that person might object and then you have a number of cases where the person might object but it is clearly in the public interest. A classic case of that would be the recent exposé in The Sunday Times about peers accepting money for allegedly discussing legislation. In between there is a small band of publications which could be said to invade privacy, where the editor knows perfectly well that it is an invasion of privacy and it is probably illegal, and it is on those occasions that they go to enormous lengths to keep it secret from the victim. The way in which they do this—and they did in my case and also in the case of the chef Gordon Ramsay—is they publish what they call a spoof first edition. They have a story in the first edition that bears no relation to the real story because they know the first edition is probably available on the streets in London around about 10.00 pm on Saturday night. You could get that first edition if you were lucky, particularly if you had any sense of being watched, which I must say I did not because I never have the papers on Saturday night, and then have time to get on the phone, get the lawyer and get the judge if you have the right connections. They publish the spoof first edition and then the real edition comes out in the middle of the night and it is impossible for the victim to do anything. They would not do that if they did not think that the victim would have every chance of getting an injunction. In my case they knew perfectly well that if I had known about it and gone to a judge I would have got an injunction. You can say “Good for them, they have found a loophole in the law”, but what I am saying is there should not be a loophole in the law. What I am saying is they should be obliged in cases where they know that the person is going to object to that publication and there is a substantial chance that he will go to court and could get an injunction that they should notify him. In my submission, the case for that is unarguable and I will explain why. The moment you say that it should not be obligatory to give the individual an opportunity to take the matter before a judge what you are really saying is that in carrying out this sometimes very delicate weighing balance between Article 8 of the Convention and Article 10 the best and most qualified person to carry out that delicate weighing up of interest is not a High Court judge but the editor of a tabloid, and not just an editor of a tabloid but the editor of the tabloid who is dying to publish the very story which is the subject matter of this weighing. That follows absolutely logically, at which point to say that the editor is better qualified than a High Court judge is so manifestly absurd that I do not think any rational person could support that
We had the libel lawyers in last week, as you may know, and they were talking about the practice of accountants sitting down with lawyers working out that a story is completely wrong but still going ahead with it because they think it will be good for sales and good for circulation. You believe that pre-notification would be able to nip that in the bud and that it would go to a judge and they would make that decision.

Mr Mosley: I think it would. One has to remember that under the Human Rights Act the press through their lobbying managed to erect a big hurdle that you have to get over in order to get an injunction. The myth is put around by Fleet Street that if you know you just go and get an injunction. This is absolutely fundamentally untrue. Lord Wakeham, in more or less his last speech as chairman of the Press Complaints Commission (PCC), was quite fulsome about the lobbying success that they had in getting Section 12 of the Act put in there. So what you have to satisfy the judge that you are likely to win the action. It is a much higher test to get an injunction in a privacy matter than in the law generally. The classic example in the law generally is you have a tree at end of your garden and I say I have the right to cut it down and you say I have not. You will probably get the injunction because the judge will say once he has cut the tree down you cannot put it up again so the balance would be on your side getting an injunction rather than my side which would be to cut the tree which is completely rational. The press managed to get that changed in the case of privacy where the judge would not just say "Hang on a minute because if this goes out into the open everyone will know about it", which would be the normal test, it is a higher test which is “Am I, the judge, satisfied that this is a case which this claimant is likely to win.” It is quite difficult to get an injunction. If you can go to a High Court judge and satisfy him that you are likely to win the privacy action, it cannot be right that the paper should publish it. Even more it cannot be right that you do not get the opportunity to do that so that your rights are completely bypassed and you are left with no remedy. It is also a breach of the Convention on Human Rights because the Convention puts on the UK government the duty to provide you with a remedy. In my submission, as things stand at the moment for the reasons I have explained, we do not have a remedy.

Q131 Mr Evans: We had the libel lawyers in last week, as you may know, and they were talking about the practice of accountants sitting down with lawyers working out that a story is completely wrong but still going ahead with it because they think it will be good for sales and good for circulation. You believe that pre-notification would be able to nip that in the bud and that it would go to a judge and they would make that decision.

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If you imagine, for the sake of argument, the unfortunate peers in The Sunday Times case. They had a clandestine recording made of what they said which prima facie is a breach of privacy. If one of them went to a judge and said “My privacy has been invaded”, the judge would say “Your privacy has been invaded but let us look at the public interest. You are a peer. You are responsible for legislation” and all the obvious arguments and the judge would throw them out and quite rightly. For exactly that reason The Sunday Times did not hesitate to approach each of those peers and ask them what they thought. There was prior notification because there was no need not to notify them previously. It always comes back to the same thing as to who is the right person to take the decision: is it an independent High Court judge, who after all are probably some of the most straightforward, honest independent people in the land, or is it a tabloid editor who has a massive commercial interest in publishing them. To me there is no discussion, plus we have the law of the land and it is up to the courts to follow it. On your second point, that is a very valid point and the way to deal with that, in my submission, is to require that prior notification be given with sufficient time so that people have an opportunity to do something. As you quite rightly point out, even I would be in difficulty on a Saturday night, or not now because I have had all this and I know exactly who to ring, where to ring and I have their home numbers. Any normal person, even somebody prominent, is not necessarily going to have a lawyer with expertise in this area who knows exactly who the duty judge is in the High Court and to get hold of him and ring him. You are absolutely right that you need a period of time; you know exactly who the duty judge is in the High Court. You are a peer. You are responsible for legislation” and all the obvious arguments and the judge would throw them out and quite rightly. For exactly that reason The Sunday Times did not hesitate to approach each of those peers and ask them what they thought. There was prior notification because there was no need not to notify them previously. It always comes back to the same thing as to who is the right person to take the decision: is it an independent High Court judge, who after all are probably some of the most straightforward, honest independent people in the land, or is it a tabloid editor who has a massive commercial interest in publishing them. To me there is no discussion, plus we have the law of the land and it is up to the courts to follow it. On your second point, that is a very valid point and the way to deal with that, in my submission, is to require that prior notification be given with sufficient time so that people have an opportunity to do something. As you quite rightly point out, even I would be in difficulty on a Saturday night, or not now because I have had all this and I know exactly who to ring, where to ring and I have their home numbers. Any normal person, even somebody prominent, is not necessarily going to have a lawyer with expertise in this area who knows exactly who the duty judge is in the High Court and to get hold of him and ring him. You are absolutely right that you need a period of time; you need two, three or four days’ notice. For example, the News of the World in my case knew what was going on but they only did the filming on the Friday. There would be no difficulty about publishing that a week later. They could have held that over to the following Sunday; it is not a problem. When you weigh the minor inconvenience for the editors against the appalling consequences for the family of the victim in my submission there is no discussion. They should give reasonable notice and enough time so that anyone can get hold of a local solicitor who will then say “I am not an expert but I can tell you in two minutes who is” and he opens a book and gets hold of them. Then if it was somebody who needed it, and most people would, there would be a conditional fee arrangement if it was a strong case.

Q133 Paul Farrelly: I should say that I used to be a journalist and I worked for Reuters, The Independent and The Observer, organisations which either would not or could not afford to pay money for a story so I do not think your sort of story would have fallen into my lap for free and therefore presented my editors with the dilemma of publishing or staying true to more highbrow principles if they had them. We would be in a position where we would have a real dilemma supporting the lines you were advocating where it came to investigative stories which we would think would be in the public interest: investigating dodgy business deals, acts by government and so forth. We would always want to get a comment but we would not necessarily want to give very much time for that comment with the knowledge that organisations such as big business or government might seek an injunction on any grounds they could simply to stop the story, be it privacy, libel, national security or breach of confidence. From my experience I do not share your faith in the discerning nature of judges. I have been on the end of an ex parte injunction from a judge who just granted it willy-nilly. Can you explain why you think judges are as discerning as you make out? Mr Mosley: Everybody is fallible, there is no question, but when you say they go on any grounds and then you cite privacy, libel or national security, first of all it is as near as impossible as can be said to get an injunction on libel. If somebody pleads something, there are a number of leading cases that say you do not get an injunction; nevertheless somebody could ask for an injunction, The thing is it all comes down to who decides. We do employ judges and they are carefully selected. They are supposed to be the best there are and they are independent manifestly. They may not be perfect but they are, in my submission, an awful lot better than the tabloid editor in deciding this matter particularly as he has an interest. When we come to serious investigative journalism and when you talk of Reuters, The Independent and The Observer, those are newspapers and an organisation which one associates with that. It is, I would suggest, inconceivable that a judge, where there is serious investigative journalism unless there are other factors which one cannot speculate on, would give an injunction because that is exactly the basis of a free press, that you can have investigative journalism and it is in the public interest. I keep mentioning it because it is the most recent but the peers in The Sunday Times is a classic example of there being no question of an injunction. It is the areas where neither The Observer nor The Independent nor Reuters would venture that the red tops and the tabloids go. That is where you get the terrible abuse of the rights of an editor and the whole thing of free speech and freedom of the press. They actually abuse freedom of the press which is a very valuable thing and they damage the whole of the press by their abuse. I would be the last person to say there should not be serious investigative journalism. If I were doing something wrong in the FIA, or doing something wrong to do with Formula One, they would have absolutely every right to publish it; that is what papers are for. One should not confuse that with wishing to publish things about someone’s sex life that is of no interest to anyone except the individual and his wife.

Q134 Paul Farrelly: There are cases where judges have issued an injunction. My concern is that while some people may be very sympathetic to your case and other invasions of privacy and the culture amongst tabloid newspapers, the ramifications of changing the law may be using a sledge hammer to crack a very big nut in terms of the potential effect it may have on other legitimate forms of journalism.
Just in terms of the workability of what you are proposing, you say in your evidence that a reasonable period should be given for pre-notification before publishing a story. I have said I might want to approach people for comment but not give them much time. Can you explain what you mean by a reasonable period?

Mr Mosley: This is my opinion and it would be a matter for considerable thought. I would say that if it was for the Sunday you would need to be told on the Thursday. You need one clear working day. If you are going to do something, anybody should be able to do it in one clear working day. 72 hours would probably be the right figure. You would need to be, for the Sunday, asked on the Thursday. If it was for publication during the week, then one clear day between; published on the Wednesday, tell you on the Monday. I understand what you say that you would like to ask at shorter notice but what you are really saying is “I want to ask in sufficiently short notice so this person cannot go to a judge.” What you are then saying is “The reason I do not want them to go to a judge is I do not trust the judges.” That follows absolutely logically from what you said and we cannot have that. If we do not trust the judges, what do we do? We cannot have a society in which we say “I do not want a judge to look at that because he might decide against me.”

Q135 Paul Farrelly: Let me give you an example of where I might have difficulty with one day. One of my concerns about what you are proposing does not simply relate to going for injunctions. Newspapers and news organisations are not homogeneous, some are more circumspect and sometimes you cannot trust your colleagues not to leak your stories if they know about them. I will give you one example. I used to work for Reuters and one day I had nothing better to do than leaf through Robert Maxwell’s prospectus from the back and I found that he had not actually complied with Stock Exchange listing rules on how he valued his assets. At the time Robert Maxwell was a board member of Reuters. We carefully checked the story with my news editor who was very sympathetic and we ran the story that he had broken the Stock Exchange listing rules. We ran it giving the broker, then Michael Richardson of Smith New Court and latterly of Rothschild who was working for Maxwell, a very short time to comment because we knew that had he been given one day Maxwell would have killed the story. In fact, he was on the phone shouting down the phone and people were approaching us there saying “Is this really worth it?” In retrospect, given what happened with Maxwell, it was worth it. There is a particular circumstance where one day might not be satisfactory because I might have run that story just before the deadline for people to subscribe to Maxwell shares. Reuters is a real-time news organisation and he may have wanted to influence that and one day may have been too late to do that.

Mr Mosley: I completely follow what you are saying but it actually goes away from the point. First of all, if you had gone to a judge and said “I want to publish the story” exactly as you have described it, the judge would have said “Why not, obviously you are entitled to publish it.” The person you were fearful of was not the judge but Mr Maxwell and that is a different thing altogether. He happened to be a board member. He should not have been a board member but he was so he could kill the story. Those particular circumstances that you were in obviously posed a difficulty but that is absolutely not an argument for not going to a judge. A judge would not have killed the story, Maxwell would because he does not want people to know. I do not really see the problem. When you say “But if this had been one day before”, you can think of circumstances but in the end you are not, with great respect, putting forward any point which invalidates the suggestion that if it is right to publish that the judge will allow you to publish and if it is not right to publish he will stop it. In that case he clearly would have allowed it.

Q136 Paul Farrelly: I agree with you that changing the Code is probably not going to work because the Code is going to be hedged around with all sorts of hedges on the public interest, and it is at the discretion of editors and editors will break the Code just to sell newspapers as you have described, but actually instilling this in law would be practically unworkable and would have far more ramifications on good journalism than what you are trying to address.

Mr Mosley: I wonder why. The journalist has to inform the victim he is to publish the story. The victim now has a choice: he can go to court or he can just leave it alone. What damage does that do? I should not be asking the questions but how does that stop the journalist doing his job? Other than a minor inconvenience, why is that a problem?

Q137 Chairman: Can I come back to one thing you said? You suggested that you got a phone call out of the blue at 10 o’clock on a Sunday morning saying have you seen the News of the World and you were horror struck when you discovered what it concerned. You also said that you had been attending parties with a client for 45 years. You are a public figure and you know the British press. You know the appetite of the British press for stories of this kind. Had you not always felt this was a time bomb that sooner or later was going to go off?

Mr Mosley: I have to confess I did not. For the first 25 years I was really not well known. I have only become a little bit known. I was well known in motor racing circles, out of that I was not really known. The fundamental thing about that world is it is incredibly secretive because of the embarrassment factor. It is a little bit like gays were 50 years ago because of course in their case it was actually illegal. You had to be really, really careful so there is this secretive world. In the, if I may call it, S&M world it is not even talked about in their case it was actually illegal. You had to be really careful so there is this secretive world. It is a little bit like gays were 50 years ago because of course in their case it was actually illegal. You had to be really, really careful so there is this secretive world. In the, if I may call it, S&M world it is not even talked about in their case it was actually illegal. You had to be really, really careful so there is this secretive world. It is a little bit like gays were 50 years ago because of course in their case it was actually illegal. You had to be really, really careful so there is this secretive world. In the, if I may call it, S&M world it is not even talked about
small chance. I must say that Mr Justice Eady in his judgment said that perhaps I had been slightly “reckless” I think was his word. My response to that is I know that when I go for a walk in Monaco the chance of being mugged is infinitesimal. I know when I go out to dinner in London there is a chance but I think it is unacceptable for someone to say “You went out to dinner in London so it is our own fault that you got mugged.” It is actually very, very unlikely and if something is very unlikely I do not think it is being reckless or careless to do it. I am conscious of what you say but we live in a world of probabilities. I am always trying to say to my wife that it is quite safe to go on an airline, it is dangerous to get in a car but she does not like flying. The reality is it was very unlikely and therefore I felt quite safe.

Q138 Chairman: You say it was very unlikely but you also say you have been a public figure for 20 years and you have been going regularly. However low the probability, if you keep on taking the risk sooner or later it is likely to come up.

Mr Mosley: Yes, but if one followed that to its logical conclusion you would never fly, you would never get in a car. There are all sorts of things you would never do. You would not go out at night in London. You are right but you have to assess the risk in everything you do and my assessment knowing these people, bearing in mind that the worse aspect for the Women A to D, as they were known, was the fear their parents or their children, as the case may be, would find out, they were probably more anxious than I was for it not to get out. They were terrified of their mothers. You have people there with a common interest in the activity but a deep common interest in not revealing it.

Q139 Chairman: Nevertheless, it was one of those who did go to the News of the World.

Mr Mosley: It was. I think the problem is that the one who revealed it was the great friend and fellow babysitter, et cetera, et cetera, of the main woman, Woman A. Woman A trusted her and because I knew Woman A was absolutely trustworthy I perhaps foolishly assumed that it was all right to trust Woman E and I think it would have been but the problem was her husband, the MI5 man, put her up to doing it. He made all the arrangements with the News of the World. I think he put her under pressure. What was unfortunate is that she told him and of course most of the people in that world would not have told their partner. These things happen.

Q140 Alan Keen: You mentioned earlier that in fact most people do not have access to funds so if they knew about it they would go to the PCC. You chose not to. Is that because you had the funds or that you have looked at it carefully and you do not think they have enough power?

Mr Mosley: In my case against the News of the World I must say a conditional fee arrangement did not enter my mind at that stage. If I were looking now to go after them for libel the conditional fee arrangement would have great attraction if the lawyers that I would wish to employ would agree to it, which they probably would, but when I first went it was not in my mind. This was early days. When I first talked to the lawyers this was after the first publication and before the second publication where they said I was a liar. We were then trying to get an injunction. I was really anxious to get the thing on and get the Nazi business killed. I have to confess the last thing on my mind were fees at that stage as that was quite a minor consideration.

Q141 Alan Keen: You did not need to use the Press Complaints Commission but through all of the problems you have faced have you looked at the powers, or the lack of powers, that the Press Complaints Commission has? For people without recourse to funds they are the only people they can go to for help. Have you put any thought into their powers or lack of powers?

Mr Mosley: Very much so. Right at the beginning my first reaction was we should complain to the Press Complaints Commission. Then I quickly learned you cannot do that if you are also litigating which seems to me to be a mistake. As long as what happens in the Press Complaints Commission does not prejudice a legal action I see no harm in it at all. In fact, even from a newspaper’s point of view, it could be beneficial because if the Press Complaints Commission were to have slightly more extensive powers then you can well imagine that it would actually mitigate the difficulty the legal case might have. Yes, I thought about it but the problem with the Press Complaints Commission is, first of all, they have no power. They have no actual power of compulsion as I understand it. Secondly, it is very much a creature of the press. In one or two instances, I think outrageously so, if I could illustrate, if you take the Code Committee which draws up the Code of Conduct and you look at the Code itself there is not a word in the Code about corrupting public officials. There is no requirement on the journalist not to bribe a public official to give him information that that public official should not give him. There was a case recently, about five years ago, where the police raided a private investigator whose business was to obtain information from sources like the police, the DVLA, and various other government or semi-government organisations all in breach of the Data Protection Act. The paper with the most applications to this private detective was the Daily Mail with I think 950 cases by 63 different journalists over a three-year period. It was obviously part of the Daily Mail culture to use this man who was obtaining information improperly from these different agencies. Who is the editor of the Daily Mail? Mr Dacre. Who is the chairman of the Code Committee? Mr Dacre. It would be funny if it was not such a serious matter.

Q142 Chairman: I would point out the Committee did an inquiry into the operation of the Motorman incident, which is the one you are referring to, and we had the Daily Mail and other newspapers before us. They pointed out and the Code Committee pointed out that they actually issued new
instructions after the Motorman case making it absolutely clear that this should never be done by journalists.

**Mr Mosley:** That is very good news but it is surprising this has not found its way into the Code. One would have thought the chairman, being so aware of it having appeared in front of this Committee, the first thing he would have done when he left this Committee would be to sit down with his committee and incorporate into the Code a requirement not to do that. There is an aspect of this I would like to point out to the Committee and that is it is not just the Data Protection Act. It is inconceivable that if information is obtained from DVLA or even, I am sorry to say, the police or various other bodies that no money changes hands. If money or valuable consideration does change hands then, depending on which body it is, either under the Public Bodies Corrupt Practices Act of 1889 or the Prevention of Corruption Act of 1906 it is a criminal offence. It was remarkable in the Motorman inquiry that not one journalist appeared in the dock when the private investigator did. I do not want to exaggerate and I certainly do not wish to be offensive to the media, not even the tabloids, but it is actually absurd to have a body which is run by the journalists themselves never mind a Code Committee. I am sorry to say this but it is like putting the mafia in charge of the local police station; it simply will not work. If you are going to have any sort of proper rules you cannot let the people regulate themselves. You cannot let the banks regulate themselves. I cannot let the Formula One teams regulate themselves. There has to be somebody independent looking at it. Witness the fact that, I think I am right in saying, nearly four years have gone by since the conviction of those people in that case and not one word in the Code. There are a lot of the other things in the Code, all sorts of things, but nothing about corruption.

Q143 Alan Keen: I thought your attitude earlier was admirable when you said you did not want to be regarded as a bully and now you just said you do not want to offend even the tabloids. Do you not think they are the ones who have been the bullies in so many cases and the only way to treat a bully is to fight back very fiercely? Why are you reluctant to do that?

**Mr Mosley:** I am fighting back vigorously but I am very conscious of the need not to overdo it. In the end what happens is going to be a reflection of public opinion. It is an awful thing to say but if you are perceived to be wealthy and to be in a position of power and influence you must not be seen to be overdoing it. I am already doing a lot. Going after them under the Penal Code in France, with the possibility of people going to prison, and in Italy is a lot. I do bitterly resent what they do. They have done a particularly bad thing to me. Again, I am not looking for sympathy but I was born into a rather unusual family and I moved completely away from the sort of things that that family were involved in and worked quite hard for a number of years to try and build up a reputation. I have done a certain amount and I have achieved a certain amount, not in motor sport which is the bit people notice so much as in road safety, the environment and things of that kind. You work away at something like the FIA as I have done. For the sport I have been in charge for 18 years and the whole FIA for 16 years. You do this because you want to re-establish yourself and your family as proper people and then something like this happens and it destroys the whole thing. People will not take away what I have done but I will never be seen in quite the same light and I feel it was unnecessary and unfair. Still, in response to your question, I think it is better to under-do it than overdo it. I could say the example of my father. I think he overdid it and that stopped people thinking seriously about his ideas so I always have that slight inhibition.

Q144 Alan Keen: There is such a thing, probably talking more about safety of the public and workers, of corporate manslaughter. People who own newspapers, take the chief executive of the holding company, might be arm’s length from the newspaper company but it is part of a conglomerate. If death was caused by the company because of lack of safety procedures and even cutting costs, irrespective of the dangers to workers or the public, that responsibility can go right back to the owners. Have you thought about that in relation to newspapers? There are some people who are sitting back a long way away and letting other people act in a most despicable way. This is what you are saying today. Do you think the public should be able to get back to those people who are counting the money but pretending it is nothing to do with them?

**Mr Mosley:** I completely agree. It is a little bit like the really successful criminals. They never get caught because they use other people to carry out the crimes. I have asked lawyers in France to investigate whether in these circumstances we could go against certain members of the Murdoch family because of what happened in the *News of the World* in France. That is still being looked at. It is a possibility but I do not think it is a very strong one because of the legal barriers which they erect. There is something very disagreeable about these people who are purveyors of soft porn because that is what the *News of the World* is. If you look at the advertisements in the *News of the World*, it is a soft porn paper. They do that and at the same time they hold themselves up as being so respectable and looking after the public interest. They try to pretend that in those papers they publish serious articles about serious things. The truth of it is I do not suppose anybody reads those articles. It would be very interesting, as you raise quite rightly the point, to know how many people whose privacy has been destroyed by the *News of the World* and one or two other tabloids have subsequently committed suicide. I think it has happened. I believe there are cases and an investigation would undoubtedly reveal there are. It is the most terrible thing what they do. Somebody who is already rather vulnerable might easily do so. The whole trade is disgusting. When you think in America they have no privacy laws relatively
speaking, it is much more open in that sense than here or Europe, but because the newspapers do have proper standards of ethics, they religiously check sources and check everything, and the issue has never become a major issue. The problem here is that we have got these people who are, I am sorry to say, semi-criminals if not actual criminals. The actions of the people who got the information from Motorman are criminal. Then we had the chief reporter on the News of the World who tried to get two of the women involved to give him stories saying that it was a Nazi thing and threatening to publish their pictures unpixilated if he did not get what he wanted and offering them money. When this was put to the editor, Mr Myler, in the witness box my QC said “What do you call that, Mr Myler?” and he had to admit it was blackmail. When we subsequently went to very senior counsel at the criminal bar and said what would be the prospects of prosecuting successfully Mr Thurlbeck, the chief reporter, the answer came “excellent”. The only thing that stopped the entire matter being handed over to the police was the fact that the ladies concerned really could not face another whole court case and so on. That was clear blatant blackmail, a criminal action. The thing that shocked the judge most, because the judge sat and listened, at a certain point in the hearing he asked Mr Myler what disciplinary procedures, if any, had been taken against Mr Thurlbeck and Myler said none, that he was on a holiday at the time so was not involved. In the meantime nothing has happened. Going back, if I may for one second, to the Press Complaints Commission, one of the suggestions that is put forward by the supporters of the Commission is that if someone is in breach of the provisions or did something really bad they would be sacked. Mr Myler is still there. Mr Thurlbeck is still there. Not only are they still there, having breached point 3 and probably 10 of their own Code and been accused and had to admit to blackmail in the witness box, they produce a document saying that as a result of these actions they should be Newspaper of the Year. It is really quite interesting that here we have a newspaper obsessed by an individual’s sexual behaviour using two cases based entirely on an individual’s sexual behaviour, whether or not true or not, on the basis they were a good story and that there was a high principle at stake. I find it difficult to find a high principle in those two cases. Do you think that there is ever a case for reporting an individual’s sexual activities?

Mr Mosley: I have to say I would not say there should be a blanket power. That is to say I would like to say anything that is sexual is completely private but if it were down to me I would allow one small exception where it can be shown clearly that what the person did is directly relevant in a damaging way to their public activity. If you can show direct relevance then it is permissible but anything other than it is deeply private. It is just as private as when one is in the bathroom in the morning. The News of the World would happily film a pop star carrying out their ablutions and say this is interesting. It should not be allowed. May I say one other thing appropriate to that point of deep interest? One of the arguments that is put forward for exposing particularly footballers and people of that kind is that they are role models. Of course in reality it is a completely reversed argument. Take for example the swimmer, the one who won seven Golds at the Olympics and got caught smoking cannabis. He is exposed because he is a role model. Surely it is exactly what you do not want to expose. Imagine you have a 16-year-old son, he is a very good swimmer but he has some difficult friends and he wants to have the odd spliff, I think it is called. You say to him “You must not do that. If you want to be a successful athlete you must not do that. You have to keep on the straight and narrow.” It is the same with a racing driver or anybody. He points at the swimmer and says “He smokes cannabis and he has won seven Gold medals so what is the problem?” A sensible society would not publicise the fact that a role model has done something he should not do precisely because he is a role model. It gives the wrong message to the young people.

Q146 Rosemary McKenna: I was thinking about the sexual activities’ argument about not publishing. There was a case in Scotland a couple of the years ago where a Roman Catholic Bishop had a child by a woman in a neighbouring parish. Surely there is a justification for publishing that given that he is giving advice to people or saying that he lives by a certain moral standard and asking them to live by that moral standard when clearly he is not.

Mr Mosley: That is a very interesting question. The fact that everybody sins I think is beyond doubt. Is it worse if the person who sins is a priest? If it were, or if priests, using the general term whatever religion they happen to belong to, or if a clergyman is really not allowed to sin then we would have no clergymen because everybody sins unfortunately. They have this set of principles they are supposed to live by and people move away from them. Some religions have confessions, some do not. Whether it is helpful,
whether it is relevant, imagine he is a really, really good bishop doing a really, really good job and this is completely on the one side and has nothing to do with the way he conducts his actual job or the way he puts the thing forward and you lose that really good bishop because of this sin and you get a less competent bishop in his place. I am not sure it is in society’s interest. The mere fact that people do not do what they say one should do, in other words do not do as I do but do as I say mentality, is not necessarily an argument for not keeping it secret. Exactly the point you have raised is exactly the sort of thing that a judge would weigh. If we come back to the point of prior notification, the judge sits there and he weighs this quite difficult moral question that you have raised. I put one side of the case but I could put the other side reasonably effectively as well that it should be published, but that is what the judge does and that is why we need prior notification.

Q147 Rosemary McKenna: You are basically saying that the defence of responsible journalism is no longer relevant and at the moment they are publishing anything without actually thinking through whether it is responsible journalism.

Mr Mosley: I think that is very true. I think an obvious example of responsible journalism would be The Sunday Times about the peers or Mr Farrelly’s point about Robert Maxwell. Those things are undoubtedly responsible journalism. The defence exists without any question but it all comes back to the same thing. If this goes to the judge he will weigh it and he will weigh it very well and very fairly. One gets in a very difficult area with all sorts of hypothetical cases. If one thinks about it long enough you can find cases where it is really difficult to say is it in the public interest or should it be private but that is what we have judges for. Getting back to my fundamental point that there should be prior notice, it is precisely for that reason, in my submission, that we need it to go to a judge.

Q148 Rosemary McKenna: One of the things that I am trying to find out in this inquiry is how can we help ordinary people who find themselves in these circumstances, do not want the story repeated, do not know how to deal with it and do not know how to get in touch with the Press Complaints Commission, local lawyers or anybody? How do you think your case will help ordinary people caught in these situations?

Mr Mosley: If you take a completely ordinary person and they are going to have something devastating revealed about their sex life, the newspaper effectively notifies them by asking the question, putting it to them or just telling them they are going to do it. If that person has a clear working day, even if they have never been to a solicitor in their life, they go into a local solicitor’s office and say “I have this problem in the morning.” The local solicitor will quickly open a book with all the specialists in and he will say “I will make a phone call for you and ring one of the specialist lawyers” like for example the people who represented me, and by that afternoon you could have a conditional fee arrangement in place and they would then act to go and get the injunction. Most of these specialist lawyers will take it upon themselves to do that even if they had to do it pro bono. A very well known privacy lawyer that I know has acted on a pro bono basis, a privacy barrister. Once you give notice if the person really minds they can do something about it. If there is somebody who has never had anything to do with the law, where this is a complete mystery to them, they will always have a friend and they will say “I have this problem, what shall I do?” The friend will say “You need to see a solicitor. I know a solicitor.” Given a clear day I think most people can do it but it would have to be a clear working day hence the minimum Thursday for Sunday. Then I think ordinary people can do it because thanks to the conditional fee arrangement it is possible for an ordinary person to take the action but without that we would have a society where, like the judge once said, the law is open to everyone just like the Ritz Hotel and that is obviously wrong.

Q149 Paul Farrelly: Just following on from Rosemary’s question of responsible journalism, some people would say it might help the public interest if the responsible journalism defence was actually helped by statute so it might make it more workable. How do you feel about that?

Mr Mosley: I think there is much to be said for that. This would force some very clever people in parliament, but also among the draughtsmen, to think carefully what was meant by responsible journalism. A statutory defence of that kind would safeguard genuine responsible journalism and I would trust the judges to know the difference between that and salacious reporting that is not responsible.

Q150 Janet Anderson: You referred earlier on to something you described as the Daily Mail culture. You will know that Paul Dacre, the editor of the Daily Mail, was particularly critical after your case. He described the ruling as a privacy law by the back door. You have made your views about prior notification well known. Do you think there should also be a privacy law? Would you support the introduction of a privacy law?

Mr Mosley: I would. I think privacy, as indeed is clear from the European Convention on Human Rights, is a fundamental right. I think if you have a fundamental right it should be protected. The suggestion is always put that this is somehow a European thing but of course it is not. The European Convention on Human Rights was drafted by British lawyers, headed by Maxwell Fife, who was later Lord Chancellor. It incorporates basic British principles about what should be the rights of an individual. Nowadays it is so much more serious than it was. Once upon a time a breach of privacy was perhaps in the UK, it is now universal, it is the entire world and it is instantaneous. Once it is on the net instead of wrapping yesterday’s fish and chips, as they always say, it is there for ever. You can Google my name and you will immediately get all the details
of what happened. When technology has evolved to that point the individual needs protection and hence I would say we need a privacy law.

Q151 Janet Anderson: If we had a privacy law do you think that would impede the investigation and reporting of matters that were in the public interest? 

Mr Mosley: I do not because again I would trust the judges to know the difference between what was private and not in the public interest and what was perhaps private but the public interest required its disclosure. If you have a privacy law, I would suggest that it would obviously have a clause saying that where the matter was in the public interest then the privacy law would not apply. The onus should be on the person wishing to publish to demonstrate that the public interest required publication.

Q152 Janet Anderson: You mentioned Europe and in other European countries there is a rather different situation. The Select Committee was in Barcelona recently and we met the editor of La Vanguardia. When we put the question to him if you had information about a senior politician who had claimed to be happily married and was engaged in an affair and you had a similar story about a famous footballer would you publish. He said “In the case of the footballer we would because it might be affecting his play but in the case of the politician we would not because we have absolutely no interest in the private lives of politicians.” If you think back to France there was the case with Mitterrand. You mentioned Europe and in particular criminal proceedings in theory could result in the imprisonment of editors and journalists. Would you be concerned if that were the case here?

Mr Mosley: I think there is a strong case for it but if I were allowed to say what would happen I would not want the journalist to be imprisoned but the organisation to be subject to an enormous fine and that is what would stop it. In the end Mr Murdoch would look at his pocket and he would make sure it did not happen. The journalists when they are on the scent will always overdo it and they need somebody holding them back and the best way of doing that would be a fine. In the case that I brought, we asked for, but were not optimistic about getting and did not get, exemplary damages. The problem with exemplary damages is you get a large sum of money awarded to an individual. It is like a windfall and there is something wrong about that. If there is going to be enough money to make any difference at all to News Group Newspapers and News Corp it has to go into the public purse and then nobody feels bad about that at all. I would not mind seeing them fined, rather like in competition law cases in Brussels, up to 10% of their turnover. That would get their attention and then I think it would stop. I do not think anybody wants to see people in prison who are not pretty serious violent criminals but a huge, huge fine to the benefit of the public purse would have the desired effect. Yes, I would like to see a privacy law and I would like to see the possibility of an unlimited fine being imposed for breaches. That would also have the great advantage that an ordinary person, if they did breach his or her privacy, could go down to the police station and lodge a complaint and it would change the culture and we could get a much more responsible culture about damaging people’s private lines.

Q153 Janet Anderson: Fines would be your preferred option but do you not think that the fact that in countries like France the imprisonment of editors and journalists is a possibility makes journalists more responsible in those countries?

Mr Mosley: I do not think it affects journalism in the broader sense very much but if you take my case, Article 226–1 of the French Penal Code makes it an offence to take pictures of somebody in a private place without their consent. Article 226–2 of the French Penal Code makes it an offence to publish those pictures or draw them to the attention of a third party. Both offences carry up to one year imprisonment and a fine of 45,000 EUR. The first one, taking pictures in a private place, did not apply in my case but of course the second one did because the News of the World is published all over France. It is another illustration of their complete contempt for the law that they just do not care. They must know that this is illegal in France. They have top class French lawyers, we know that because they have some people looking after their interests there, but they just published it. Worse than that, when they were in full cry and full sanctimonious mode their solicitors, Farrer’s, wrote a long letter addressed to the president of one of my committees enclosing two copies of the newspaper and offering to send a video of the entire party to the entire membership of the FIA. They thought that this was some sort of duty of theirs, the solicitors not the paper. Of course it is now the solicitors who have published that in France and again it is being looked at as to whether certain senior partners in that firm should not also have to answer to the French courts. If you want to publish something or operate in a foreign country you have to respect the laws of that country. Such is their attitude that they think “Nobody will attack us. We are above the law.” I very much hope, and it remains to be seen, that the French judiciary will take the view that if you want to operate in French you must respect their laws.

Q154 Mr Evans: When you said earlier on you thought that in your opinion your father had overdone it a bit I think you just might have taken understatement to a new level. How significant do you think it is that you are the son of a wartime fascist leader has been playing in this particular handling of the story?

Mr Mosley: It certainly played a role because it upped the level of interest in the story. Of course, once the News of the World started the Nazi thing they were able to link “Your parents were married in Goebbels’ house”, and all the sort of thing.

Q155 Paul Farrelly: These factually correct things. 

Mr Mosley: Absolutely but I was not there. It is not really my fault. The thing is that yes, it played a role, no question and, in a way, that is an illustration of
how deeply unfair they are. I have noticed this in the dealings I have had with politicians in this country. No-one, and I have met an awful lot of them in different circumstances, has said anything to the effect that it bothers them who my father was. It is not a problem.

Q156 Mr Evans: Mosley disowns father. I am giving another headline to the story.
Mr Mosley: To be fair, when I was young I certainly stuck up for him. When I went to university I decided to study physics because I thought physics has an advantage over anything to do with politics or philosophy because in the end you can say “There is the box. If you do not believe it, sit on the box I will go somewhere else and press the button and we will settle the argument” whereas politics you could argue forever. I was quite happily doing physics and towards the end of my second year somebody said “Of course you could never ever go anywhere near the Union” which was much more serious in those days than it is now. I said “Why not?” and they said “Because they would just take you to pieces because of your father.” When somebody says that, the next day you turn up at the Union; you just had to. I used to support him until I was about 21 or 22 and then started doing other things: joined the TA, started motor racing, went to the Bar and so on. You always have sympathy for your parents. I can see his side of the thing. I can see why he did what he did—it does not mean I agree with him now—but I do. He used to say to me in old age “When they say I was too impatient, there were children running around with no shoes on in 1930 and something could have been done.” He knew John Maynard Keynes, he knew all that, and he wanted to do something. You cannot turn around to somebody and say “No, I do not because you got married and Hitler was the best man.” It is history. I have led a completely separate life. I went into the motor racing community knowing no-one, completely on my own, and I have got a position there now. That really put a stop to it and that was finished the previous history of the family but this has revived the whole thing. You look on the web and you will find now my name linked with Nazi all because of the News of the World. It is actually objectionable.

Q157 Mr Evans: That brings me on to the damages thing. Clearly you were going for exemplary damages which you did not get. You have just explained to us all that you are now £30,000 out of pocket by this particular procedure which then begs the question. Clearly you would like exemplary damages given in these cases but the fact is, after all you have gone through, I do not think anybody would accuse you of going over the top if you were to go for libel. Do you not want this all dredged up again, is this part of the reason? You have come here today of your own volition which means this again will play in the newspapers tomorrow and later on tonight. The big question mark for the public is why does he not go for it then?

Mr Mosley: First of all, there is time; secondly, coming here today is a very different thing. It is rather like going to the European Court of Human Rights. I am hoping to persuade those who have the power to do so to change the law. That is a very different thing. I feel that is a duty, something that really needs to be done and hence my request and my gratitude for being allowed to come here. As far as going after them for libel is concerned, I have explained that already but another small factor which I should mention is my term of office in the FIA comes to an end in October and I have to take a decision whether to stand again or not. If I stand again and I am elected I want the minimum of distraction. If I decide, and I have to decide by the summer, not to stand again I will have much more time to do something like pursue the News of the World for libel. They may just settle but it could be a massive case involving all the things again which, I have to confess, if I had the time I would relish. I think the more they are looked at, the more they are brought into court, put under the microscope, cross-examined, the more disreputable and evil they become. It would be irresponsible to take a second term at the FIA as these things take an awful lot of time. I am desperate to get on with situations to do with Formula One because of the current economic crisis. They need my undivided attention which I am not giving so there is that factor as well.

Q158 Mr Evans: We were told last week that if you did a conditional fee arrangement and they took you on the chances are you would win, the chances are they would settle out of court so the chances are it would not distract you and you could do both.
Mr Mosley: Absolutely, 100%, but you have to say what is the worst case before you start on anything like this. If you are going to go after the News of the World for libel you must be prepared for Mr Murdoch sitting in New York with his billions saying “I do not like this guy and I am going to fight him.” You have to be ready for that. When I started the privacy action a big newspaper owner in another country who knows Murdoch well said “Does Max know what he is taking on?” I knew perfectly well what I was taking on but I must not underestimate them. They might well decide to fight it all the way, conditional fee or no conditional fee. He can afford to do it. I can take this on if I have the time. Let us wait and see.

Q159 Paul Farrelly: Internationally it is correct to say you are suing for libel in France.
Mr Mosley: Correct.

Q160 Paul Farrelly: Why?
Mr Mosley: Because they libelled me.

Q161 Paul Farrelly: Why not in the UK?
Mr Mosley: I just explained. I have not yet taken the decision whether to do it in the UK. In France the way it works is if there is a criminal procedure then you can, and you have to make your mind up very quickly, attach to it a civil action for libel. The advice
from the lawyers in France was it is advantageous and assists the criminal proceedings if you attach also a claim for libel so that is what we have done.

Q162 Paul Farrelly: Your actions that are still ongoing and under consideration, be they in the UK or overseas, are restricted to the News of the World, its editor and reporters, not the people who facilitated it, Madam E and her husband.
Mr Mosley: The suit in France there is the Penal Code against the two individuals and I think also the newspaper, the action under their law of 1881 against both the individuals and the newspaper.

Q163 Paul Farrelly: The offence occurred in the UK. Are you not concerned that you are going to be accused of libel tourism or forum shopping?
Mr Mosley: No, their offence was in France. They published the pictures in France. Unfortunately publishing the pictures in France or Italy is a criminal offence so therefore I am going after them for the criminal offence in France and Italy. Unfortunately, at the moment, it is not a criminal offence in England. If there were, I would go after them here.

Q164 Paul Farrelly: To clarify, you would like both a privacy law and mandatory pre-notification on all stories?
Mr Mosley: Absolutely, because without prior notification a privacy law is nugatory for the reasons I have already explained.

Q165 Paul Farrelly: You do not think that might have not only a chilling effect but real repercussions for the sorts of journalism that are practised in the public interest and not the sort of journalism that you have been suing the News of the World for?
Mr Mosley: No, because we get back always to the same point. You have to trust the judges. If we had a law that says you must not publish something that is private unless it is in the public interest, which is pretty much what the law says now, then who decides whether it should or should not be published? In a difficult case it has to be the judge. Most cases are straight forward.

Q166 Paul Farrelly: Would you not admit that judges sometimes are known to follow their own prejudices and sometimes judges get it spectacularly wrong? Not in this issue but I remember Lord Denning on the Birmingham six saying, the biggest non-sequitur in recent UK legal history, that what he was being told about the treatment of the Birmingham Six could not possibly have been as the consequences would have been unimaginable.
Mr Mosley: For anyone to advance the proposition that judges are infallible would be foolish but equally for somebody to advance the proposition that we cannot trust the judges so we will leave the whole thing to the tabloid editors is perhaps more foolish.

Q167 Chairman: We have no more questions so can I thank you very much.
Mr Mosley: Thank you for giving me the opportunity.
Tuesday 10 March 2009

Members present

Janet Anderson
Mr Nigel Evans
Paul Farrelly
Mr Mike Hall

Alan Keen
Rosemary McKenna
Adam Price
Mr Adrian Sanders

Witnesses: Mr Gerry McCann, Mr Clarence Mitchell, the McCanns’ media adviser and spokesman, and Mr Adam Tudor, Carter Ruck, Solicitors, gave evidence.

Q168 Chairman: Good afternoon, everybody. This is the third session of the Committee’s inquiry into press standards, privacy and libel. I would like to welcome as our witnesses this afternoon Gerry McCann, his media spokesman, Clarence Mitchell, and Adam Tudor of Carter Ruck. Obviously we are going to be focusing this afternoon specifically on media issues but perhaps I could just start off by expressing, I think on behalf of all of the Committee, our sympathy to Gerry McCann for the ordeal that he and his family have had to undergo and also to express the hope still that Madeleine might one day be found. Before we come to questions, I know that you would like to make a short statement.

Mr McCann: Thank you. I am Gerald McCann, the father of Madeleine, who was abducted in Praia da Luz on 3 May 2007. Although elements of the media coverage have undoubtedly been helpful in the ongoing search for Madeleine, our family has been the focus of some of the most sensationalist, untruthful, irresponsible and damaging reporting in the history of the press. If it were not for the love and tremendous support of our family, friends and the general public, this disgraceful conduct, particularly in the tragic circumstances in which we find ourselves, may have resulted in the complete disruption of our family.

Q169 Chairman: Can I ask you to say a little bit more about your impression of the reporting of the case and how it changed over time?

Mr McCann: The first impressions really started on day one when we came back to Praia da Luz having spent the day in Portimao at the police station. Clearly, there was a huge media presence there already. My natural instinct was to appeal for information, for people to come forward. At that point we were desperate for information and desperate, as we still are, that our daughter could be found and we wanted people to help in that. That is why we spoke to the media and did our appeals. Particularly early on, there was a general willingness of the media, an engagement and a real desire to try and get information leading to Madeleine’s whereabouts. Fairly quickly though both Kate and myself, certainly when we were in the apartment watching the broadcasting, particularly on the news channels, and subsequently when we looked at the newspapers, saw that much of the content of the material, even within the first few days—possibly particularly in the first few days—was highly speculative. It was not at all helpful to us and we fairly quickly decided, for our own benefit, not to watch the broadcasting or indeed to read the newspapers in detail. Of course the speculation aspects are still ongoing in many respects until we all know where Madeleine is and who took her. There were elements as we went along where clearly we wanted to get the message out there and particularly the fact that, when it became apparent to us that Madeleine could quite easily have been transferred out of Portugal quickly, added a completely different dimension to us as parents and what we were trying to achieve. As you know, the Spanish border is only about 90 minutes away and we felt, if Madeleine had been moved quickly, our chances of finding her with a local investigation only would be quite slim. Therefore we wanted an international campaign as much as possible and for people to be aware of her being missing. We were put in a very difficult situation in that we are used to coming from a society where there is quite open engagement between law enforcement and the public in terms of high profile crimes, compared to the circumstances that we found ourselves in, in Portugal, where as a rule there is not any open dialogue between law enforcement and the public. That was difficult, particularly when we were being fed and researching the experience from North America where in cases of missing children there is a very strong belief that the public can help. There was undoubtedly a desire to help. As the weeks went on, particularly after we had finished our trips to countries where we felt there was potentially relevant information that may be got for the investigation, by staying on in Portugal we were surprised that the media interest did not die down, to be quite frank. We saw pressure, particularly on journalists, to produce stories when really there was not anything new to report. Probably that was the point where things became what I would call irrelevancies or half truths or suggestions were making front page news.

Q170 Chairman: Your impression was that the newspapers wanted to go on reporting stories about Madeleine’s disappearance and, if there were no new facts to report, they started to resort to making up things?
Mr McCann: I totally agree with that. Prior to becoming involved in this experience, I always believed that, although there might be quite marked exaggeration to some front page headline stories, I never really believed that many of them could be absolutely blatantly made up. I believe that was the case with Madeleine.

Q171 Chairman: Did you feel that once that point had been reached the majority of press coverage then become negative and unhelpful to you or were there specific worst offenders?

Mr McCann: Obviously there were fictitious stories which were not necessarily libellous or defamatory and clearly there was another turn when we were declared arguido and it was a free for all really. A different process went on before that which was largely where Madeleine, I believe, was made a commodity and profits were to be made. As far as I could see, having front page news stories or indeed any stories in newspapers on a daily basis was not helpful to the search. There was that element, but that was not particularly damaging at that point other than that there was a lot of misinformation and we would have been spending all of our time if we were trying to correct it. There was something very early on which I was uneasy with and that was in terms of the confidence of the investigation, whether it be in this country or in a foreign country. I think there is information related to a crime that you do not want to be made public because only the witnesses who were there will know that information. It concerned me greatly that elements of the time line were becoming increasingly apparent through leaks and a desire to have every single bit of information known; whereas at the time I remember speaking to Kate and her other friends and saying, “In some ways, judicial secrecy is good because the abductor will not be able to get access to information that only we know.” That was pretty quickly eroded and was disappointing. That is very different to the senior investigating officer, as would happen in a serious case in this country, providing information to the public to try and get further intelligence. That aspect of it was concerning even quite early on.

Q172 Chairman: Do you believe that in the majority of cases the negative stories that appeared were completely fabricated or were there some people in the police who might have given them information which led them to write the stories they did?

Mr McCann: Do you mean the stories arising in Portugal?

Q173 Chairman: Yes.

Mr McCann: The worst stories that were printed in this country were based on articles that had been directly published within Portugal. Often what we found was that they had been embellished and a single line that was very deep in an article within a Portuguese newspaper, usually from an unsourced source, was front page and exaggerated to the extent where we had ridiculous headlines and stories. I think the most damming thing of all of this and the most damaging aspect of all the coverage which Kate and I cannot forgive is the presentation that there is a substantial body of evidence that suggests that Madeleine is dead when there is no evidence in fact to suggest she has been seriously harmed.

Q174 Mr Sanders: Are you saying that the media impeded your campaigning and the search for Madeleine?

Mr McCann: I have made it clear that elements of the media were helpful in terms of the campaign. In terms of distribution of her image, it is incredibly powerful. There is absolutely no doubt about that. Subsequently the media were used by C-OP in terms of an appeal asking for tourists to come forward and there was a huge number of photographs uplifted and other information given. Elements of the appeal nature and awareness are there and are helpful but if you portray a missing child as dead and people believe she is dead without due evidence then people stop looking.

Q175 Mr Sanders: Did you feel the need to appoint media help to raise awareness through the press or did you feel the need to do that to deal with unwanted media attention?

Mr McCann: There are two elements. Right at the very beginning, Mark Warner had a media specialist, a crisis management specialist from Bell Pottinger called Alex Wilful, who was incredibly helpful to us and, in those early days, gave us quite simple guidance which we found particularly helpful. It was very much along the lines of: what are your objectives? What are you hoping to achieve by speaking to the media? Be very clear about what you want. That was very, very good because there is an element that they are there on your doorstep. Having never been exposed to media in any substantial amount previously, you are not quite sure where the boundaries are and what is expected. Having that protection and guidance in terms of dealing with it was very important. The Government sent out a media adviser who had expertise in campaign management, Cherie Dodd, who previously worked at the DTI and started talking about planning for us, how we could utilise the media in terms of achieving objectives and then subsequently Clarence came out. That was very important, one, to assist us in trying to get information to help find our missing daughter and, secondly, in protecting us from the media because the demands were unbelievable. To be thrust from being on holiday one minute into the middle of an international media storm and knowing how to cope with that is very difficult. What we wanted and still want is a partnership with the media when we have information which we think may be relevant and can assist the search, obviously drawing the lines between the search for Madeleine and the Kate and Gerry Show, which the media were much more interested as most of the facts came out. Drawing the line between those two things was much harder.

Q176 Mr Sanders: It seems to prove almost impossible when you have that level of media attention to control it. It just becomes an uncontrollable vortex.
Mr McCann: Obviously the circumstances around this story are fairly unique but we were never under the impression that we were controlling the media. We did not set the media agenda.

Q177 Mr Sanders: I do not think you gave that impression.

Mr McCann: For the record, I have to be categorically clear about this. The media decide what they publish and what they broadcast. Obviously we were asking for help and we got a lot of exposure and, even early on, unwanted exposure. It was more about influencing the content and being clear about when we were engaging about what we were hoping to get out of it.

Q178 Adam Price: You mentioned a moment ago the pressures that you felt some journalists were facing in terms of having to deliver stories 24/7. Did any of the journalists that you would have met on a face to face basis ever express any sense of regret or remorse at some of the stories that they were printing or were they fairly brazen?

Mr McCann: At the time the most damaging stories were published, we were not really speaking to many journalists face to face. Kate and I, despite the coverage, particularly after the first five weeks or so, have been in front of the media very periodically. Very rarely have we come face to face with a journalist whose name was by the byline or the story. We have had Clarence with us during most of this so he has dealt with it more. I know that Clarence has had apologies from journalists and there has been, “I wrote this but the headline was done by the news desk.” There is clearly pressure on the journalists on the ground who are being funded on expenses and are under pressure to produce copy. There is pressure from the news desk to write a headline which does not necessarily reflect the factual content available for the story.

Mr Mitchell: Gerry is absolutely right. The reporters on the ground were only doing their job. We are not critical of them in that sense, but they were under intense pressure from their news desks and within themselves as well. We had a pack—this is just UK press I am talking about—of UK reporters based in Praia da Luz who were looking at the front page that day. We also had another, smaller pack in Leicestershire trying to talk to relatives and people back here who knew Kate and Gerry at that end. We also had columnists writing legal pieces and all of them were competing on a daily basis to get their version of the story into the paper. I sometimes had the most ridiculous situation where I had reporters coming to me saying, “I have got to get a front page splash out of this by four o’clock this afternoon or my job is on the line.” If I said, “Well, sorry, we do not have anything substantially new today” or the authorities either in Portugal or Britain did not want us to say anything, they would say, “We are going to have to write it anyway.” They were apologetic in that sense but as a former journalist myself I understood the pressures they were under. Later in the evening I would get calls from Leicestershire or the London news desks saying, “We have got a better angle from the UK on this. What do you think about that?” It was like a one story news room in itself generating all these different pressures and, regardless of what we would say or do, sure enough the story would be on the front page the next day anyway. We had anecdotal evidence as well that was putting on massive sales for certain titles and that was undoubtedly one of the reasons why Madeleine stayed on the front page as long as she did, although there were lots of other factors within the story that, in pure journalistic parlance, made it a big story and kept that momentum going. We were credited with keeping that momentum going. A lot of the time we were not doing anything. It was the media feeding on it itself.

Q179 Mr Evans: Do you think you got better treatment from the television news than you did from the printed press?

Mr McCann: By and large the broadcasters have been more responsible. I would not say they have been without fault, particularly around the arguido time. There are elements that were too accepting of information that was becoming available from sources and we still are not sure where they are. Whether the coverage was all entirely appropriate I am not the best person to decide because obviously we are biased.

Q180 Mr Evans: At any time was any journalist in a face to face with you—although you just said that was rather contained—abusive to either you or Kate?

Mr McCann: Not so much directly. I did speak to Christopher Meyer about this in the summer of 2007. “Reverence” is the wrong word but amongst the UK press there did seem to be an empathy and they did not want, at least initially, to unduly upset. That wore off fairly quickly but generally I felt we were treated quite well. When we came back from the police station on the first night and I saw the press pack and the frenzy there, I had the most horrible visions of complete intrusion, invasion of privacy, and in those first days and weeks while we stayed on the Ocean Club complex there was an order about it. We agreed that we did not mind being filmed going about our normal activity but we were not going to be engaging in giving stories on a day to day basis. That seemed to work quite well. Both sides seemed to be quite happy. What we envisaged was that demand would rapidly tail off which it never quite did really and that certainly took me by surprise.

Q181 Mr Evans: Did any of them have your mobile numbers for instance and phone you at odd times or pester you all the time?

Mr McCann: I have to say it was remarkably few. My mobile number was known to a proportion of the journalists. The vast majority called through the media liaison, whether it be Bell Pottinger with Alex Wilful first of all or Clarence and his predecessors. I had a few calls. One of them was phoning to say, “I think what is happening right now is getting out of hand and you need to try and do something.” It was
advice as much as tapping us up. That happened on one or two occasions and we just directed it back to the media.

Mr Mitchell: One of the problems was on the ground. Because of judicial secrecy and the police not being able or willing to say anything publicly, certainly the British journalists and the Americans to a certain extent had come to expect a very open attitude from the authorities and, when they did not get that, they had nowhere to fall back on. They were not able to do any real investigative digging of their own or they did not seem particularly inclined to. As a practical illustration of that, they tended to congregate at one particular bar which had a pretty lethal combination of free Wi-Fi and alcohol and that became the news room for the duration of the trip, I am afraid. They would get the Portuguese press each morning translated for them with mistranslations occasionally occurring in that as well. Then, no matter what rubbish, frankly, was appearing in the Portuguese press from whatever source, they would then come to me and I would either deny it or try and correct it or say, “We are just not talking about this today.” That was effectively a balancing of the story and there was no further effort to pursue any independent journalism as we might recognise it.

Q182 Mr Evans: Are you suggesting that some of the stuff that we read in the newspapers was fuelled by alcohol?

Mr Mitchell: I am not suggesting anything was written in that particular state. I am just trying to illustrate the point that it was a convivial atmosphere. The journalists found it easy to work there and I had to go down to brief them there. Broadcasters tend to hunt in a different pack from print, so I would have to go down to where the broadcasters were and talk to them for the day on any agreed messages that I had agreed with Kate and Gerry. Then the print press would have different agendas and different deadlines and they tended to congregate at the bar. I am not saying that in a pejorative sense. I am just illustrating that as an example of where they were, but that is what they had to do because they had no other traditional sources that would normally be available to them. Frankly, because of that, they did not really push any further.

Q183 Mr Evans: I want to touch on the distinction, when the information that the media managed to get one way or another was useful and when it was not, which is the suggestion almost that information that could only be made available to the police—only the police would know it and yourselves—somehow got out into the media world. Do you believe therefore that this information was directly leaked to certain newspapers? Is there any suggestion—Clarence, maybe this is one for you—that any British journalists were paying the police for information that they later used which went against your best interests?

Mr Mitchell: I have no proof of that. I cannot prove where any of the leaks came from but you only have to look at the nature of the stories and the content within them to make certain presumptions. My situation was dealing with those leaks once they appeared. Something that was even often just a suggestion or an allegation, unsourced in the Portuguese press, by the time it found its way across the Channel, had become hardened up into fact with an extra scare headline or whatever on top of it. That is where the real problems started because these things would end up in the cuttings file and would become an accepted fact in the story when in fact they were complete distortions in many cases or entirely untrue in others.

Q184 Mr Evans: In those instances where the information was true, was the source originally Portuguese newspaper and then transferred after translation into British papers or did now and again some stuff that only the police and yourselves knew get into British newspapers first?

Mr McCann: As far as I could see, almost all of the information available had arisen within Portugal first. Without knowing the intricate dealings of what happens around the police station and what is on and off the record, clearly someone else within Portugal has been quoted as saying that judicial secrecy is a bit like the speeding law. Everyone knows there is a law but no one sticks to it. It was not me who said it but there is that element. There is a cultural difference and obviously we do not speak the language. With hindsight, we only really started paying attention more to the Portuguese press when we realised what was happening. I know in your submissions there are a lot of elements about the digitalisation of media and also the globalisation of it. Clearly, this is a very strong example of where you have media very quickly feeding off each other and the day after it would be front page headlines and in the UK press there would be a front page headline of what was a tiny little story. There was this positive reinforcement: The Times of London has carried it; that means it is true. That was quoted on more than one occasion.

Mr Mitchell: We would see things appearing in the Portuguese press get misreported in Britain and get misreported again back in Portugal. It was just this circle of lunacy at times.

Mr Tudor: In order to be sure about that you would have to do a line by line comparison of all of the Portuguese articles and all of the UK articles. We do not know the answer directly but I am pretty sure that the overwhelming majority of the allegations that appeared here had been sourced from the Portuguese media, first and foremost, rather than direct sources.

Q185 Paul Farrelly: I want to move to the PCC but before that I want to establish what the legal situation of the reporting was in Portugal. Irrespective of press standards and libel, when a potential criminal investigation is run in the UK there are laws of contempt. The Portuguese police leaking is clearly reprehensible but they are not the
only police force to do it. When it came to the case of the care home in Jersey recently, it went to a different level where police were making statements that could be reported with impunity but the press was not sceptical about them. We do not have this arguido category here. Often we have people helping on any way and the Portuguese press in any way breaking Portuguese laws of contempt in any of the reporting? This is perhaps one for Mr Tudor.

**Mr Tudor:** I would not bank on it. I am not a Portuguese lawyer and I am not a criminal lawyer. I do not know is the short answer. So far as I am aware, there was no intervention by the Portuguese authorities along the lines of contempt in the way that you might expect to have seen here.

**Mr McCann:** This is my first hand knowledge from discussions rather than knowledge of Portuguese law but clearly within Portugal there has been a balance going on between laws, many of which date back to them being a Fascist government and subsequently a Communist one. Freedom of speech is perhaps more freely enshrined there and yet we have this judicial secrecy which, in many cases, does not function the way it should. There is this element where the press there is potentially much less well regulated, to use that in the loosest context, than it is in the UK. I believe in terms of the legal situation, if a police officer gave information which was known to be on the file and only on the file relevant to it then technically I believe that is probably correct.

**Q186 Paul Farrelly:** Have you ever speculated as to how this might have developed had Madeleine disappeared in Britain and what the difference might have been in the press reporting?

**Mr McCann:** Speaking to law enforcement over here and in the US, obviously in Portugal and other organisations involved in child welfare and missing children, usually, certainly within this country, the senior investigating officer and the police force responsible have a media strategy. They give information which they want out there and that takes away the vacuum to some extent. In many countries that is the way it works.

**Q187 Paul Farrelly:** Have you had any sense from talking to law enforcement officers here that, had the media started on the trail that they followed leading to the completely made up and damaging stories, the police here might have stepped in and warned the media to calm it down?

**Mr Tudor:** Or the Attorney General even, yes. I have always taken the view from a non-criminal, legal perspective that if this “incident” had happened here there is no way you would have had this nature of coverage. It would have been substantially different and the newspapers would have been considerably more careful. Incidentally, even though this did take place in Portugal, it is important that you know if you did not know already that at the very least in October 2007 Leicestershire Police did indeed issue a missive to the media asking them to be a bit more careful about how they were going about this. Even though it was overseas, the nature of the reporting was obviously an issue which as I understand it was of concern to Leicestershire Police as well.

**Q188 Paul Farrelly:** This brings us neatly to press standards. There has been criticism of the Press Complaints Commission that they were not proactive. They stood by and did not invoke their own inquiry. They have said in evidence to us, defending that position, that to have done so would have been an impertinence to the McCanns. Would you have felt it an impertinence to you had the Press Complaints Commission in respect of press standards been more proactive and said, “Hold on, this is not the way a responsible press behaves”?

**Mr McCann:** No, I would not have found it impertinent. I certainly would have been open to dialogue if it was felt to be within the remit of the PCC. Having also read their evidence, they are claiming it is not within their remit. Aspects with the PCC have been helpful in terms of protecting privacy particularly for our twins, which was a major concern for us. They were continuing to be photographed and we wanted that stopped. Very quickly that was taken up by the press and broadcasters within the UK. We are thankful for that. There was also help in removing photographers from outside our drive after what we felt was a very very quiet and we were still being subjected to camera lenses up against our car with the twins in the back, which was inappropriate. In terms of the defamatory and libellous stories, clearly the advice from both the PCC and our legal advisers was that the PCC was not the route.

**Q189 Paul Farrelly:** You have described some of the interaction you had with the PCC. Did you consider making an official complaint to the PCC that they were publishing stories about you on the basis of no evidence at all and indeed about Mr Murat as well whose life was also destroyed?

**Mr McCann:** In terms of the defamatory stories on that specific point, we were advised that legal redress was the way to address that issue.

**Q190 Paul Farrelly:** You were advised by the PCC?

**Mr McCann:** I had an informal conversation that was directed to me, yes.

**Q191 Paul Farrelly:** Can you tell us who you had the conversation with?

**Mr McCann:** It was with the then chairman, Sir Christopher Meyer.

**Q192 Paul Farrelly:** There was no willingness to take up the issues around you therefore as a matter of press standards?

**Mr McCann:** At the time and on reading their submission, they say it is a very clear division between libel, for which there is legal redress, and when we spoke to Adam for Carter Ruck he also strongly advised us that if we wanted a stop put to it then legal redress was the way to go.
Q193 Paul Farrelly: There are wider issues; your personal safety and the ability to try and find your daughter. It was much wider than libel behaviour.

Mr McCann: Absolutely. From Kate’s and my point of view, taking the legal route was a last resort. You are right. I think there is a gap there currently in the regulation. A complaint for example about stories which are about an invasion of privacy is always retrospective and the damage has often been done. There has to be some degree of control, I believe, or deterrent to publishing untrue and particularly damaging stories where they have the potential to ruin people’s lives.

Q194 Paul Farrelly: The fact that newspaper editors, including The Daily Express Editor, Peter Hill, were on the board of the PCC at the time—what sort of view did that leave with you as to how the Press Complaints Commission operates?

Mr McCann: It did cause me concern. We were in a dispute with them. Although ultimately they thankfully decided to settle before taking it on to court, they did not just roll over and say, “Oh, sorry.” There was quite a bit of correspondence and we had to produce quite a bit of evidence. I did think it was surprising that an editor of a paper which had so flagrantly labelled us with the most devastating stories could hold a position on the board of the PCC.

Q195 Paul Farrelly: The newspaper industry of course is adamant that self-regulation works. I would be interested in your view of that but furthermore it has been remarked that in any other sphere of life, in any other profession, in business or in government, if something like this had happened there would have been an inquiry. Somebody, somewhere, would have launched an inquiry. We are mounting an inquiry here but we are not part of the media profession. What does the failure of any inquiry or any toughening of a code because of what you have been through say about not only the standards of the press in this country in your view but also the role of the regulator in upholding these standards of the media?

Mr McCann: Obviously speaking from our own experience, we have probably been the most high profile case or extreme case there has been. I think we do see almost on a daily basis information published that is damaging, possibly untruthful and defamatory to people. My own view is that there has to be some more stringent regulation of that. I will very much defend freedom of speech but when people’s lives are put in jeopardy by different mechanisms there has to be redress.

Mr Tudor: We had a conversation about the PCC when Kate and Gerry first came to Carter Ruck. It was quite a short conversation. The PCC is perceived, to a considerable extent still correctly, as being wholly media friendly. It lacks teeth. It cannot award damages. It cannot force apologies. As soon as there is any dispute of fact between the newspaper and the victim of the libel, the PCC backs off and says, “This needs to go to law.” To be fair to the PCC, I think they have accepted and said that the McCanns’ case was never going to be appropriate for the PCC but should have gone to law and so on. How one views the PCC in this kind of scenario, extreme or otherwise, is that it can be summed up by the fact that if you were to ask me how I think The Express would have reacted if Kate and Gerry McCann had brought a PCC complaint rather than a Carter Ruck letter, you could probably have felt the sigh of relief all the way down Fleet Street. Perhaps that gives you a feel for how it would be perceived. First of all, I am afraid it would have led The Express to think that relatively speaking they were off the hook because of the lack of teeth that the PCC has. Secondly, almost by definition, by going to the PCC Kate and Gerry would have been tacitly sending out a signal, not only to The Express, but to the rest of Fleet Street that they had no appetite to see this through and therefore perhaps could be fobbed off, as it were. Time and again one comes across this being the reality of PCC complaints. I am not here to put the boot into the PCC. I think they have a very important role to perform. From my experience indirectly of how the McCanns have dealt with the PCC in relation to the children, harassment and so on, it certainly has a role to perform, but it is not the sort of role it is cut out for because of the inherent contradictions of self-regulation.

Mr Mitchell: On the practical aspects of dealing with the press, they were a very substantial help. Kate and Gerry had photographers outside their driveway for six months, every day, after they came from Portugal. It was on the basis that, “We need a today picture”, which was exactly identical to the one six months before. Utter nonsense. When the PCC made representations formally and at the right levels, that presence dissipated very quickly. They were a substantial help on certain practical aspects, but we all knew and the PCC themselves knew that, given the gravity of the defamations that were occurring and the sheer volume and scale of it and the unique nature of this particular situation, really the legal route was then the only option. With self-regulation, I echo Gerry. Free speech in a democracy has to stand. Of course it does. With the changing media landscape now, in the new multi-connected, multi-layered, multi-platform world we live in, self-regulation is an issue the press need to address themselves in terms of improving it and widening it. The whole aspect of the social networking that occurs now, the readers’ comments, their own websites—many newspaper groups are now almost broadcasters in their own right and look like that when you walk into the news room. I am not sure personally whether self-regulation is keeping up with that advance in technology. It is something that they really will need to address in the coming months and years. It has been said that information travels these days beyond the speed of thought and I think that does happen more and more frequently. If the press do not keep their own house in order, they may run the risk of some other regulatory body coming in.

Q196 Janet Anderson: Would it be fair to say to all three of you that there is an important, valuable role for the PCC to play but it is very limited? There is a
gap in all of this that needs filling. You said, Gerry, that some of this irresponsible media coverage has the potential to ruin people’s lives and that is exactly what it can and does do. You also made the point—Max Mosley in front of us this morning made a similar point—about, once this has happened, the damage has been done. I wanted to ask you two things really. To what extent were you given advance warning of the kinds of stories that were going to appear? When you talk about the need for more stringent regulation, would you favour a privacy law of the kind that exists in other countries? Do you think the press would be more responsible if we had that?

Mr McCann: In terms of privacy, I was certainly concerned about privacy but I do not think in general we had gross violation of our privacy. We had irritable elements of it but generally I feel it was respected. Any views I have on privacy are therefore very personal and I do not think I should be giving them in front of this Committee as having a specific experience. In terms of advance notice, I would often hear Clarence on the phone to journalists expressly telling them that the information they had was rubbish. It would not stop it being published.

Q197 Janet Anderson: It would still be published?
Mr McCann: Yes.
Mr Mitchell: We expected it to be published after a while. We just knew it was coming. Normally, we had a few hours’ notice.
Mr McCann: We were talking about this again this morning. We possibly could have forgiven the furore around the arguido status at that time. Clearly that is going to be newsworthy, but when it became abundantly clear to newspapers that there was not any evidence to back up any allegations then they were warned. We wrote to them. Two newspapers, The Express and The London Evening Standard, were put on express notice that the stories they were running were defamatory. The editors were all visited personally by our spokesperson, Clarence, and Justine McGuinness before that, with a criminal lawyer, who told them that there was no evidence. It did not stop. It was the rehashing and this ad infinitum aspect that they could reproduce headlines at will that had no substance that forced us to take action.

Q198 Janet Anderson: The PCC was absolutely no help in that at all?
Mr McCann: It was again never offered in any way. Secondly, in the discussions, we were advised that they were not the correct vehicle for such complaints.
Mr Tudor: One can only speculate about what was going on in that regard. The PCC in many respects, certainly when it comes to libel, is a passive body rather than a proactive body. That is just a fact, rightly or wrongly. If, let us say in another world, the PCC had decided to get involved in Kate and Gerry’s predicament at a relatively early stage and contacted for example the Editor or the journalists at The Express and any other newspapers that were reporting this stuff, tried to warn them off and said they understood that there was a danger that this could be a breach of the factual accuracy provisions in the PCC code, for example, I anticipate that the answer to the PCC would have been, “Well, these stories have all been well sourced. We are standing by our sources. It is a story of the most colossal public interest. Therefore, we are carrying on.” The result would have been they would have carried on publishing. You would have ended up exactly back at square one. I am not saying there should be but there would have been no interventionist power on the part of the PCC to wade in and say, “You cannot publish that. You cannot publish this. You have to redraft that so it does not say this.” That is obviously not what they do and probably not what they are there for. That would have been the reality of that kind of situation.

Mr Mitchell: When I visited Peter Hill with Angus McBride from Kingsley Napley, it was really an informal discussion to say, “Look, this is beginning to get out of hand. Can we rein it back in before it becomes necessary to take any action?” There was an acceptance by him on that day that “some of their headlines had overstepped the mark” and that they would be more cognisant of that in the future. For a week or two things did get better but I am afraid there was the competition and the urge for the front page. Off we went again and it led to the complaint that was lodged.

Q199 Chairman: The PCC has told us that on 5 May, two days after Madeleine’s disappearance, they contacted the British Embassy to remind them that the PCC’s jurisdiction extended to journalists working overseas and also to suggest that the embassy pass on the PCC’s details to you. Did that happen and did you then have any contact with the PCC?
Mr McCann: If it did, it certainly was lost in the furore of the other information I was bombarded with at the time. I was not aware of that until I read the submission.

Q200 Alan Keen: Did you get the impression a lot of the time that the headlines were selling newspapers and the stuff following the articles was disconnected with the headline? Was the content as well as much rubbish as the headlines that were put out to sell the papers?
Mr McCann: On many occasions, yes. I can only assume that the stories were being published on a commercial decision.

Q201 Alan Keen: Have you tried to calculate roughly how much profit The Express made after deducting their costs?
Mr McCann: I have no idea.
Mr Mitchell: I heard from reporters on the ground that it was putting on upwards of 40,000 or 50,000 copies a day when Madeleine was on the front page. I have no way of knowing whether that figure is accurate but it certainly was putting on tens of thousands of paper sales at the height of it on a daily basis.
Q202 Alan Keen: In the same way as the photographs of Princess Di have appeared by the hundred.

Mr Mitchell: The Express Group, for whatever reasons, decided that Madeleine was a front page story come what may in the same way that they had treated the princess for the previous decade many times. We could only but draw the conclusion that there was a commercial imperative at work here.

Q203 Alan Keen: Has anyone tried to calculate the profit from this to The Express alone? Has any other newspaper criticised The Express? Have there been any articles saying that The Express went too far?

Mr Tudor: As one would expect, the usual broadsheets from memory ran some articles on it, the Guardian being the classic example. It has a good media section that tends to run a lot of articles commenting on other things. It has the Roy Greenslade blog and all that sort of thing. There was an element of coverage but of course the results against the Express, the front page apologies, the damages and so on, prompted a huge amount of coverage, not so much in the printed media perhaps unsurprisingly but certainly in the broadcast media, which was of course one of the reasons for having it in terms of the vindication that the McCanns were seeking and indeed the deterrent for that matter. If I may turn to your question, Mr Keen, yes, the headlines in many cases were appalling. I do not know if you have had the misfortune of having read them. A large number of them were appalling. A large number of them were on the front page. Almost all of them were big. Obviously they all appeared online as well. Leaving aside the legal aspects of how much an ordinary reader is assumed to have read the whole of the article, the House of Lords decided some time ago that the ordinary reader is assumed perhaps artificially to have read the whole article. In this case, I think we complained against The Express. I think there were about 110 articles. So far as I am concerned, every single one of those articles themselves, including the headlines, were actionable, very serious libels in their own right.

Q204 Alan Keen: Should there be a law to ensure that headlines do not exaggerate what is in the body of the article? It was so bad in your case that it is hardly relevant even but it is something that happens on a daily basis in the press. Should there not be a law to ensure that the headline does not imply more than is in the actual article?

Mr Tudor: It can be a big problem with websites even more so because they often have just the opening line plus the headline and you have to click on something to go over the whole article. From a legal perspective, you would probably expect me to say this but, yes, I think there is a lot to be said. If you go into a filling station or a newsagent and read the headline about Kate and Gerry McCann, you do not bother to buy the newspaper. You just absorb the headline and the subhead and go about your every day business without spending the money and reading the whole of the article. The assumption that people read the whole article is completely artificial.

In practical terms, I would love the law to move in that direction but I would be surprised if it were ever to happen because of the practical difficulties.

Q205 Alan Keen: Would you like us to recommend that?

Mr Tudor: Yes. I think there is a huge amount to be said for it. To be fair to the newspapers, I do anticipate that it would lead to difficulties. Sometimes, to be fair, the headline by definition has to be attention grabbing within the realms of reasonableness.

Mr McCann: Your point is well made. It does not just apply to newspapers. If you watch any news channel, some of the banner strips that run there, often we would see headlines directly relating to ourselves and say, “That is not what was said.” If you just looked at that banner, you would believe it was the case. The way we live our lives now, people are pulsing in and out and that will be the message they take away. Regarding the point of law, I defer to Adam, but clearly there is the potential for misinformation to be implied from headlines.

Mr Mitchell: Speaking as a former journalist, privacy law per se is going down a road that I know journalism and the media will directly oppose as an infringement on the right to speak freely. They would argue that they operate within the law as it currently stands. They did not in Kate and Gerry’s case. That is why they paid the penalty they did. We have never asked for anything beyond free, fair and accurate reporting. When it overstepped that mark, that is why Adam and his colleagues assisted Kate and Gerry in the way they did. I notice in the NUJ submission they talk about a conscience clause. If a journalist feels they are being asked to write something, be it a headline or the copy, that they know to be demonstrably untrue or distorting, they should be able to object to that. That might be some sort of half way house but the concept of self-regulation is potentially under threat given the massive expansion of the media we have now seen. If the media do not police it themselves, they could well find that this sort of debate is increasing and the calls for a privacy law become louder.

Q206 Alan Keen: I asked earlier had anybody done a calculation as to what profit The Express made after the expense that you incurred. We all want freedom of expression but would it not be good for the public to be able to see what profit The Express made on that, just using The Express as one firm example? Would it not be good to know how many papers they sold and how much profit they made?

Mr McCann: If you can command that information, I would like to see it.

Mr Mitchell: It is quantifiable, I suppose, if you know the accurate figure for sales against cover price but that is not where they make most of the money. It is through the advertising anyway. It was definitely put on sales.
Q207 Alan Keen: It is not impossible to look at the advertising as well. That comes from numbers of copies sold. We are representing the public. We are not against the press. We agree with freedom of the press but it is our job to try to get the balance right. We are representing our constituents and it is an information age we are in. Would it not be good to get that information from the press so we can all see it?

Mr McCann: The one point I take from that is that, if we are relying on tabloid newspapers to present us with news and fact, then they should not be unduly influenced by profit. Clearly in our case I think they have been heavily influenced by profit. I can see no other reason for the way the stories were covered or such a consistent basis. I would be very interested to know what an economist within the newspaper industry could work out as a figure. It disturbed me to know that The Express sold out on the day the apologies were published.

Q208 Alan Keen: I believe the owner of The Express is closely tied in with what is put into the newspapers but if you take the press in general do you think the owners, the people who collect the profit at the end—it might be a holding company or a conglomerate which has broadcasting, news printing and all sorts—the people on that top board who are at arm’s length all the time from the newspapers that are printed should somehow have to carry some responsibility rather than staying at arm’s length and letting it be handled by the editors and the lawyers so that people higher up should not be able to escape? I gave the analogy this morning of corporate manslaughter. If a company is guilty of bad practices and causes danger to their employees or to the public—I am not a lawyer—but the company can be guilty of corporate manslaughter. Are owners of the groups, particularly of the print media, able to escape from any sort of liability other than the financial costs like the ones you have incurred?

Mr Tudor: I am primarily a claimant libel lawyer but I am a huge fan of newspapers. I think they perform an extremely valuable role in our society. I love reading them but, at the end of the day, they are commercial entities. I make no criticism of that. It is good to have a healthy, competitive newspaper market. The thing that hurts them, that makes them stop and think about whether they should be publishing serious libels or seriously infringing people’s privacy, I am afraid to say somewhat cynically, is two things, not necessarily in this order. Firstly, how much it is going to cost them if they get caught out and if they get the story wrong. Secondly, to be fair to the newspapers, of course there is an element of professional pride in journalists, editors and so on and we have to assume that that is the bedrock of journalism in this country because, if it is not, heaven help us, frankly. The main stick to ensure that this kind of thing does not happen again—that is, other far less serious, far less voluminous, but nevertheless still very serious for the victims—is financial. You have the theoretical possibility of having a statutory fines framework put into place. Personally, I am not a fan of that. I would be very surprised if it was ever to happen. The other stick, as we know, is the potential humiliation of losing a libel or privacy action plus the damages they have to pay out which vindicate and compensate the victim of the libel or the breach of privacy. The jurisdiction, as I am sure you know, does exist within the civil court to award punitive damages, exemplary damages, in certain circumstances but those circumstances are very, very limited. The reason exemplary damages exist and the philosophy behind them very much reflects your point, Mr Keen. If you can see that a decision has been made to publish an article regardless of its truth in order to make more money out of sales that day, then perhaps the law should allow that to then be reflected in the damages. At the moment, the circumstances in which exemplary damages are awarded are very, very limited. I think it has been held that they cannot be awarded in privacy cases. They are available in libel cases but only very rarely. I take the view that Kate and Gerry’s case was a classic one where punitive damages, exemplary damages, may well have been awarded if it had gone to court, in which case it may well have been that the judge would have thrown the book at Express Newspapers, but even then these things are never open and shut because you have to establish a state of mind, recklessness as to the truth or otherwise and so on. It is far from straightforward in terms of bringing a real, financial deterrent for publishers.

Q209 Alan Keen: Are you saying that, as with the banking system, self-regulation particularly in the print media must come to an end? Self-regulation has not worked, has it?

Mr Tudor: I am not sure it was ever intended to work in the kind of scenario we are talking about in terms of libel. I am not sure it works in terms of general privacy in the Max Mosley sense. I know Mr Mosley thinks there is a great deal to be said for having an obligation to pre-notify somebody before you publish something about their private life and I have considerable sympathy for that. There is a place for self-regulation but to suggest, as I think some media organisations do, that it is working perfectly, we do not need to worry and we do not need to bother the courts with more and more cases I think is simply not the case.

Q210 Chairman: You reached a settlement with Associated Newspapers and with News International in the form of the News of the World, but you decided to go to court against The Daily Express. Was that because you could not reach a settlement or was it because you decided that The Daily Express was so serious that you wanted to see them in court?

Mr McCann: We complained against the Express Group first because they were the most serious and the worst. We came to an agreement with them and there was an open statement in court in front of Mr Justice Eady. It did not actually go to trial.
Q211 Chairman: Mr Tudor, we have heard from other members of your firm a week ago about your firm quite often operating on a CFA. You have said in your view it is quite clear that there was serious defamation so you were very confident clearly that you would win this case. Did you consider a CFA?

Mr Tudor: Yes. My partners and I talked about it. We have a committee of partners that looks at whether or not a case is on a no win, no fee basis, as you probably heard from my partner, Mark Thompson. We did that with Kate and Gerry’s case. It was a longer, more difficult discussion than would ordinarily be the case because of the extraordinary nature, volume and so on. We sent the complaints to The Express and The Star, at which point we were acting on a normal retainer. We indicated to Kate and Gerry and we told The Express and The Star at that time that if the matter was not resolved we would indeed go on to a no win, no fee arrangement.

Mr McCann: If there was not the facility for a conditional fee arrangement, it is very unlikely we would have continued with the action on the basis that this was not our main purpose. We are still looking for Madeleine. Much of our energies are diverted in that but also the prospect of a fairly swift, conclusive verdict along with taking away most of the risk—essentially, we would have had to remortgage our house to do that. It had a huge bearing and I am thankful to Carter Ruck for taking us on.

Q212 Mr Hall: You went to some extraordinary lengths I think to avoid having to take any legal action in this case. You really did go to the newspapers and point out to them that a lot of what they were reporting was factually incorrect or just pure fabrication. That clearly did not work with one group of newspapers. What was the final story that drove you to take legal action?

Mr McCann: We had done as much as we thought we could. There was a period where it seemed to go pretty quiet. After that, there was a short lull. In January 2008, we had the same headlines rehashed, the same stories with the same incredibly disturbing content. At that point we said, “Enough is enough. This cannot continue.” It was a last resort. We did not want to get into an adversarial process with the newspapers very, very quickly. Unfortunately, many of our family and friends did not. Just to emphasise again how disturbing it was for us, often if we were going to bed, putting on the television and you had the newspapers being shown on the news last thing at night, to see a front page headline that you knew to be rubbish and, worse, insinuating that you were involved in your own daughter’s death or disappearance was incredibly, unbelievably upsetting. Often, it was feedback through us or through our media person. What we did do though, for the reasons I outlined earlier, around July/August 2007, we had an offer from a Portuguese lady who said she could translate the Portuguese press for us on a daily basis. She did that and then it became very apparent to us the way the news cycle was happening. I want to make this absolutely clear: we could see that often what was a throw away line at the bottom of a Portuguese tabloid, along the lines of “Somebody said this”, the next thing was fact in a headline and greatly embellished, rehashing much of the article but often in much stronger terms than had been originally reported.

Q214 Mr Hall: Was the standard of the reporting in The Express significantly worse than the other newspapers, of a lower standard? I have no experience of this. I do not know how you managed to get the translations from the Portuguese newspapers. How did it compare with the reports in the Portuguese newspapers?

Mr McCann: Kate and I really did stop reading the newspapers very, very quickly. Unfortunately, many of our family and friends did not. Just to emphasise again how disturbing it was for us, often if we were going to bed, putting on the television and you had the newspapers being shown on the news last thing at night, to see a front page headline that you knew to be rubbish and, worse, insinuating that you were involved in your own daughter’s death or disappearance was incredibly, unbelievably upsetting. Often, it was feedback through us or through our media person. What we did do though, for the reasons I outlined earlier, around July/August 2007, we had an offer from a Portuguese lady who said she could translate the Portuguese press for us on a daily basis. She did that and then it became very apparent to us the way the news cycle was happening. I want to make this absolutely clear: we could see that often what was a throw away line at the bottom of a Portuguese tabloid, along the lines of “Somebody said this”, the next thing was fact in a headline and greatly embellished, rehashing much of the article but often in much stronger terms than had been originally reported.

Q215 Mr Hall: You said that your intention for the libel action was to stop factually incorrect, fictitious, fabricated stories appearing in the press.

Mr McCann: Yes. Again, I make this absolutely clear: our primary motive was absolutely clear. We did not want to have to take action, because I cannot say that the damage that was done has been reversed. I hope it has but I cannot say that it has. We will not know until we find Madeleine and who took her.

Mr Mitchell: All of that could have been taken is one person who had information, who reads some of that and says, “It must not have been anything” and the call never comes through. It could all still hinge on one call.

Q216 Mr Hall: What is your assessment of the success of that action?

Mr McCann: I think it has been incredibly successful. There was an overnight change in the reporting and what would be carried. I think Kate particularly wants me to say this: we would much rather that none of these stories had been published in the manner that they were and we would rather not have had to take action, because I cannot say that the damage that was done has been reversed. I hope it has but I cannot say that it has. We will not know until we find Madeleine and who took her.

Mr Mitchell: All of that could have been taken is one person who had information, who reads some of that and says, “It must not have been anything” and the call never comes through. It could all still hinge on one call.
**Mr McCann:** When people are presented with information on almost a daily basis insinuating something, even if it is on rather fragile ground, there is not always the reasoning and rationale behind it and the objectives of why that information is in the public domain in the first place are not always scrutinised.

**Q217 Mr Hall:** Other than the financial penalty that the newspaper group suffered in having to settle the action, do you think they have suffered any other serious consequences for the misreporting in this case, because they clearly have damaged the case to find Madeleine. That I think goes beyond any shadow of a doubt. Do you think there should have been other consequences apart from the financial damages that they had to pay?

**Mr McCann:** I do not know if the Express Group stated exactly what action they have taken and who they have held accountable and responsible for that. You could apply that to the others. We should make that public. All of us would expect in our walks of life, in the jobs that we do, that when you get something so badly wrong so often, with potentially serious consequences, someone should be held to account. There has been a financial payment. I have no idea whether that has seriously damaged Express Newspapers or not.

**Q218 Paul Farrelly:** There have been scores of libellous articles over months and months and no one has been sacked, demoted or reprimanded. Robert Murat was quoted at the weekend as telling Cambridge University that a British journalist covering this was so anxious to break the story that she created it. “She tried to convince the Portuguese Police that I was acting suspiciously”; yet nobody has paid any penalty. What does that say about the press?

**Mr Mitchell:** It may be instructive to know that when the complaint first went in the initial response from the Express Group was to offer the chance to set everything right in an exclusive interview with OK Magazine, which is owned by Mr Desmond as well. You do not have to think too long and hard about our response to that offer.

**Q219 Mr Sanders:** It says in The Express’s apology that they “promise to do all in their power to help efforts to find her”. Have they done anything in their power since that apology to help you?

**Mr Mitchell:** I think our silence speaks volumes.

**Q220 Adam Price:** You described the process of embellishment whereby an originally inaccurate story in the Portuguese press then became magnified in the British press. Did you ever feel it necessary to take any legal action against any of the Portuguese newspapers for some of those original sources of inaccurate information?

**Mr McCann:** We have of course considered it. In August 2007, we did issue proceedings against the Tal e Qual newspaper and that organisation has subsequently gone bust. An indicator of it is that it is still going through the process of the courts. It is very unlikely that we will follow it up but we have chosen at this time not to take action in Portugal, primarily because we have been advised that it would be a very long and drawn-out process. It would distract our energies in a direction which is not the main aspect of what we are trying to achieve in the search for Madeleine. Additionally, we think it would have a negative impact by rehearsing the same information over and over again and adding what we saw in some of the jingoistic elements of the reporting an Anglo-Portuguese battle, which is not what this is about. We want to work with the Portuguese in the search and although we cannot and will not rule it out in future, for the time being we have decided to try and get on with doing what we think everyone should be doing, and focusing on Madeleine and not on what has been said in the past.

**Q221 Adam Price:** In that sense at least you think that the British system of libel law is more expeditious?

**Mr McCann:** Absolutely, and I know that the PCC in their submission have said that their process is fast, free and it is solved in a non-adversarial way, but that is not the advice that we were getting with regards our specific complaints. In some ways I have been very thankful that we have been able to put a stop to the reporting, the way it was going, and fairly quickly, and without a huge amount of time. Obviously we weighed up issuing the complaint very carefully and we felt that we were pushed into a corner, but in terms of our own time, how much Kate and I had to spend on it was really small in comparison with the amount of other activity that we are involved in with the on-going search.

**Mr Tudor:** Just on that point, and as a follow-up to Mr Farrelly’s point as well, which is what does this say about British journalism and newspapers and so on, I am not going to comment on that in any detail other than to say that one of the themes that has come out of many of the submissions that you have had from the media for the purposes of today, and to some extent from the PCC as well, is this notion that the McCann phenomenon in libel terms and press terms was indeed just that, a phenomenon, and you cannot compare it with anything, it is not a model for where we are with press standards, and so on and so forth, and that is a real theme. That is Fleet Street’s out, if you like, in this debate. This case was clearly unprecedented to some extent. I know Kelvin Mackenzie says he thinks that the “Madeleine story” was the biggest of his career, and whether or not that is right, I do not know. Either way—and Gerry would probably amplify this—I think that all this case has done in libel terms is magnify what I think is endemic anyway in terms of the pressure on journalists to deliver stories, the lack the sufficiently rigorous fact-checking and so on and so forth, and filling vacuums of news on the 24-hour news cycle. I do not think it is right to say there is no lesson to learn from this. I do not think that is right at all.

**Mr McCann:** I may just add one thing to that and it is that we know that journalists have always had deadlines and pressures, but it is quite apparent to me from reading several of the submissions that they
Mr McCann: Every time I get an interview bid—and I still get them on a daily basis—Kate and Gerry turn round to me and say, “How is this going to help the search for Madeleine?” and, frankly, 98% of the time I have to say it is not. It is going to give them a good headline and it is interesting, but it is actually going to have a tangible, beneficial result; the answer is no. There are obvious points such as anniversaries and birthdays where the interest will come back again, legitimately we could argue. We had the nonsense where we had the 30-day anniversary, the 50-day anniversary, the 100-day anniversary, fatuous things like that. However, when there are legitimate anniversaries, God forbid that it goes on that long, Kate and Gerry may well choose to do some interviews, and we will choose which are the most effective and refine what messages there are from the search side, from the investigative side, that will hopefully yield that piece of information. That is when we will re-engage with the media. We are very grateful to them, Kate and Gerry are very grateful to them for their continued interest on that basis.

Mr Mitchell: It is quite difficult in terms of the calendars on the news desks because clearly they do mark dates on the calendar and they think, “Okay, we will come back to this story.” The pressure mounts to give something. Of course, we do want people to know the search is on-going. It is hard we are never going to give up; we cannot give up, but it is very much if we have something, then we will try to coincide that with what will be a natural increase in the media interest anyway.

Q224 Paul Farrelly: As MPs we get abusive letters and emails all the time; that is freedom of expression. People write hostile news stories but these days they invite comment on news stories on-line. On New Year’s Eve, a friend of mine lost his son who was 16-years-old in a tragic accident. There was a factual report in the local newspaper but some of the comments that the newspaper allowed on the story were obscene and sick, and it is a disgrace that they allowed them to be printed there. What was your experience was with the so-called on-line world, in particular how newspapers did or did not moderate comments that they invited on stories about Madeleine?

Mr Mitchell: I am not going to dignify some of the on-line comment or sites or forums that are out there around this particular case. A lot of what they say is, as you say, quite rightly, entirely disgusting and, nor, as I say, will I dignify it with any real comment. Where we see deeply offensive nonsense like that, inaccurate, libellous statements appearing, it has got to the stage where I will not even tell Kate and Gerry about it; it is pointless. I let Adam know and if it is a mainstream media outlet that is allowing this publication to occur, normally a call from Carter Ruck pointing out the legal problems they are facing with such comment sitting there will normally suffice to get it either retracted or taken off. That is not in any way trying to stop free speech. Expression of free speech within the law of the land is absolutely fine, but when it oversteps the mark, and I know exactly what you mean about that other tragedy, you just
wonder about human nature, where is the compassion, and where is the heart in any of these people that they can say these things freely.

Q225 Paul Farrelly: With respect to newspaper sites you should not have to do this, should you, they should moderate themselves?
Mr Tudor: That is a moot point. In my experience, what happens, and I echo everything that Clarence has just said, with a slight exception, I remember at a fairly early stage of my retainment we wrote to a newspaper in respect of readers’ obscene comments attached to several of the articles that that newspaper website was running, and we got the response back that said that they were not going to do anything to interfere with their readers’ Article 10 rights to freedom of expression, which is ludicrous obviously given what these emails were saying. We upped the ante somewhat and it is fair to say that they then came down very, very quickly. Only last week we had a situation with a newspaper where we had to get stuff down. By and large, newspapers are quite responsible about it, not necessarily through any altruism but because as soon as they are on reasonable notice of it they become legally liable. One of the ways they try to protect themselves from the very point that you raise, Mr Farrelly, is that they deliberately say, as I understand it, and I will be corrected if I am wrong, that they are not moderating it because if they are not moderating it they are not responsible for it. Personally I think that is a rather unattractive way of looking at things. If they are going to host websites and allow people to put whatever comments they want on their websites, they should monitor them properly and spot libels and serious infringements of people’s privacy or whatever and take them down themselves. It should not be necessarily incumbent on the victims of those libels or infringements to get in touch with them and get it taken down. That begs another question about the extent to which newspapers can be encouraged or forced to moderate.

Q226 Paul Farrelly: They would be in breach of what the PCC tells us is the Code position. One final question on electronic media. Since we have taken up the inquiry I have noticed that because our emails are public we are getting people who really should get a life coming to us with obscene stuff. We do not respond to it because it just encourages them, so we just delete it, but that begs the concern where this stuff is egged on and people have taken this up because they are quite sick, in large part because of the tenor of the newspaper coverage, to what extent are you plagued by this now and to what extent have there been fears for your personal safety?
Mr McCann: I think in general we have had a substantial amount of abusive mail. There have been one or two incidents around the house in which the police have been involved. Generally it is not such an issue, but clearly we have concerns for our own and our children’s safety, and that should be borne in mind. I think in terms of electronic media, clearly some people have got too much time on their hands. I stopped reading any comments, much like most of the information on the internet regarding Madeleine, very, very early on. When the media said to us at the beginning about this being a campaign, it was a word that I really did not like. Actually I have realised why it is a campaign; it is because we have got one objective and we are trying to achieve it and other people are trying to derail us from our objective, and there is a war of attrition at times. I feel very sorry for those people who feel the need to do that. There is clearly something missing in their lives.
Mr Mitchell: I think the internet can give a spurious credibility to some of these views. A lot of these people have their own self-serving agendas based entirely on prejudice and inaccuracy and a churning of inaccuracy upon inaccuracy leading to this false horizon that they believe in themselves. We choose to ignore them because they are utterly irrelevant.
Chairman: Thank you. We have no more questions. Can I thank all three of you for coming this afternoon and in particular, Gerry, we greatly appreciate your willingness to come and talk to us, thank you.
Thursday 19 March 2009

Members present:

Mr John Whittingdale, in the Chair

Janet Anderson Philip Davies Mr Nigel Evans Paul Farrelly

Mr Mike Hall Alan Keen Rosemary McKenna Helen Southworth

Witness: Mr Anthony Langan, Public Affairs Manager, Samaritans, gave evidence.

Q227 Chairman: Can I thank you very much for coming and giving evidence. This is, as I think you know, a session that we are holding entirely in private particularly for the benefit of Mr Fuller who will be coming after you. It is part of a wider inquiry we are doing in the whole area of press standards, privacy and libel. Obviously the reporting of suicides is a particularly difficult and sensitive area and the lessons from Bridgend are ones we are keen to hear. Could you start by giving us an overview, on behalf of the Samaritans, as to how you see the media’s treatment of the question of reporting suicides?  

Mr Langan: The Samaritans, as the Committee will know, is an organisation dedicated to reducing suicide. We have worked with individuals since 1953, some years before suicide was decriminalised, so we were actually working with people who were potentially criminal before the 1961 Act. We have also worked very closely with the media; in fact the name Samaritans came from the Daily Mirror who gave us the name. We have always been very keen to work with the media because as an organisation with limited resources we value the role of the media in telling people about our service. In 1991 we published our first media guidelines which some of the Committee may know and, for the record, can be found at www.samaritans.org/media. We have used the media guidelines with policy makers and regulators. Significantly, as the Committee may know, in 2005 we managed to secure a change in the PCC’s Code of Practice to include a new clause, 5(ii), on the reporting of suicide. In the light of what happened in Bridgend, I think appropriate reporting and the impact that has on vulnerable people and copy cat suicides were issues we had to address very quickly. In terms of where we were, to briefly get this out, we began in a situation where we felt some of the media stories were damaging, probably counter-productive and through interventions from ourselves and from members of this House we were able to work with the PCC and editors quite quickly to address some of those concerns. At this stage in the process we still need to keep working with the PCC and probably with the Code Committee to look at how that Code works and whether we can do some extension to that remit. That is where we are at the minute.

Q228 Rosemary McKenna: Talking about the PCC Code, does it give enough guidance on the issues surrounding suicide reporting?  

Mr Langan: In itself I do not think it does. One of the things that Bridgend threw up is within the remit of the PCC a lot of things fall outside that Code. There were particular issues around the re-publication and duplication of photographs. The new Editor’s Codebook talks about dramatisation of suicide and I think it is equally dangerous to look at the normalisation of suicide. When we looked at the regular re-publication of 10 or 20 photographs of people of a certain age then other people of that age would see perhaps a pattern of normalisation and that was equally dangerous. The current Code does not address that. We think the guidance note behind that could do with some work but we see the Code of Conduct as a working document. We want to keep working with the PCC and the Code Committee to extend that remit so it is actually going to go further.

Q229 Rosemary McKenna: There is a question about their expertise. Do you think they have the necessary expertise to adjudicate on the reporting of the suicide cases that we have seen?  

Mr Langan: I am not familiar with that conversation I have to say. In our dealings with the PCC what they have always stressed to us is they are not of the media, they are separate to the media and in that respect they have the ability to look across the piece. I do not feel qualified to talk about their expertise.

Rosemary McKenna: It is a very specific area and they really ought to have some kind of expertise.

Q230 Chairman: That suggestion was specifically raised with us by PAPYRUS. Are you familiar with them and would you think they are probably pretty good advocates?  

Mr Langan: We work very closely with PAPYRUS. In terms of Bridgend, I know PAPYRUS said that they initiated a principle of not speaking to the press. We decided to work differently in that respect. In our view, we felt it was important to make sure that the objective we were getting across was, first of all, to make sure that people were looking at this properly and were not picking up on some of the slightly less evidence-based conclusions that were being drawn about why these suicides were taking place. There were discussions around internet death cults and other things that have never been proven. Again, to refer to some of the previous witnesses’ evidence, we felt there was a potential that if the press were not being spoken to, then stories would go ahead based on limited sets of information ***. We
do work very closely with PAPYRUS and we continue to do so. I am not familiar with the argument about the question of expertise. In terms of our own work, once the PCC got involved we found them very helpful.

Q231 Rosemary McKenna: Did they come to you for advice?  
Mr Langan: Since Bridgend they have come back to us. My invitation here today has been somewhat helped by the PCC. I have also worked with them on delivering a seminar to students at the LSE and academics there on the politics of talking about suicide in the media so it is a developing professional relationship.

Q232 Mr Hall: Reporting on these issues is quite a difficult thing because it is a very personal tragedy for the families yet there is quite a lot of public interest. What do you think of the press coverage that surrounded the Bridgend suicides?  
Mr Langan: As I mentioned earlier, some of the initial stories did cause us concern. When we began to look at these we realised ourselves that in terms of complaining to the PCC they were outside their remit. *** We would contact the papers to actually talk about our concerns, about how things were not being represented. Our focus at that stage was to talk to the papers locally to see what we could sort out. If you look at the PCC, and I have been thinking about this quite a lot, in terms of the change that Samaritans would want to see, the PCC is able to make a level of redress but again, as other witnesses have said, once the story is out there it is out there. We are looking now at how we can actually *** help in the development of those codes. It is more important that we are preventing future deaths and preventing inappropriate reporting.

Q233 Mr Hall: You said you had concerns and they were reported outside the remit. Could you be slightly more specific about what the concerns were and where they had gone beyond the remit?  
Mr Langan: Probably in the duplication of those photographs. Early on a number of papers, and it is difficult for me to remember the names now, would publish either a front page or a double page spread and around the perimeter of the page you would see the photographs of the young people. Again, because it was developing a picture of a youth group, potentially looking at suicide as a normal life choice, we thought that was potentially dangerous.

Q234 Mr Hall: Did you think it contributed to further suicides?  
Mr Langan: It is a difficult question to answer. Any view of suicide and suicide research is a long-term issue. It is only now that some of the researchers, particularly Professor Keith Hawton at Oxford, are beginning to look at that. I know there is some work taking place in Wales as well to look at media and whether that has had an impact ***

Q235 Mr Hall: Am I right in thinking there is no protection against the names of people who have committed suicide being reported?  
Mr Langan: I am not a legal expert but I do not believe there is a privacy law for the dead as such.

Q236 Mr Hall: Would that help?  
Mr Langan: I am not an expert on these things. It is difficult to say. What Samaritans wanted to see in this situation was a discussion around the issue that was positive and useful. *** Though it is not a crime, because suicide is not a crime, it is often stigmatized. ***  
Mr Hall: For juveniles there is a lot of protection in the press if you are alive with loads of restrictions on reporting but the minute you are dead there is not.

Q237 Helen Southworth: Following on from what Mike was asking but slightly sideways, can I ask you about the impact on families and your experience at the Samaritans of the impact on families of somebody who has committed suicide generally? Do you have an opinion on whether newspapers should have to seek the consent of a next of kin before they publish photographs and details of somebody who has committed suicide? There is an issue around intrusion and privacy of somebody who is the closest relative who must be feeling very considerable grief and possibly guilt and anxieties around the fact that they themselves have not been able to do anything to prevent it.  
Mr Langan: In terms of the issue around next of kin, it is a difficult one to answer particularly from a Bridgend perspective because a lot of the photographs that were used, as the Committee may know, were harvested from social networking sites.

Q238 Helen Southworth: That is a why I asked about consent before publication because it is so easy to get hold of them.  
Mr Langan: It is easy because by the very nature of them they are in the public domain. They could be harvested because in effect there was an informed consent that that photograph was there to be shared. My answer will draw me back to the work we are doing with the PCC. In terms of what happened at Bridgend, once the PCC became involved they did hold a meeting with the bereaved families and it was at that meeting, which I was fortunate—although it is wrong use of the word—to be invited to, the issue around re-publication of photographs was actually discussed at some length. I do not think it is possible with the public domain pictures to seek consent.

Q239 Helen Southworth: We have been looking at issues around protecting privacy on the internet as well as within the media. For example, in terms of data protection if you receive a piece of information you can only use it for the purpose for which you are given it. In social networking sites people are giving you information about themselves and their lives not necessarily with consent to use it for an invasion of privacy on another issue. I am wondering whether
that is something we need to explore a little more, whether there is an issue about needing consent to use it for other reasons.

**Mr Langan:** It would be an interesting issue to explore.

**Helen Southworth:** Also consent from the third party, the next of kin. If a person has died, you can publish information about them without having issues around libel and they therefore have no longer given consent. I am wondering whether these are the sort of things we should ask people to look at.

**Chairman:** I have done quite a lot on the use of photographs on social networking sites and there have been rulings on this. Part of the question is the privacy settings of the person putting up the photographs.

**Q240 Helen Southworth:** I was wondering about the impact and whether the Samaritans have an opinion on whether they think something more should be done.

**Mr Langan:** It needs to be explored. I am a member of the UK Council on Child Internet Safety. I am sitting on the Industry Standards sub-group and I will make sure this is one of the issues we will discuss within that if I am able to bring it up within that sub-group. A lot of this will refer to the terms of service. A lot will also be open to the arrangements that we have with the social networking providers and their terms of service and their desire to actually take those steps. I feel I cannot adequately answer on these things. *** It is equally important that people understand the finality of the act. Taking the photograph away could, and this needs to be researched further, have an adverse effect on that. It may not enable people to connect with that individual in a way that could be helpful.

**Q241 Helen Southworth:** In terms of the issue of helpfulness, on television for example, when difficult issues are being explored, there will be a point at the end where they say if you have been affected by these issues they show a contact for help. Do you think this is something that the media generally are dealing with appropriately?

**Mr Langan:** Going back to Bridgend, every time we contacted the newspapers, and again through work with the PCC, we were able to get messages back to the editors that we wanted them to make sure that in every piece that they were writing they were putting sources of support at the bottom.

**Q242 Helen Southworth:** Were they doing that without your contact?

**Mr Langan:** It has been an ongoing piece of work we have done with them for many years and Bridgend just meant that we could actually push that issue home.

**Q243 Helen Southworth:** When the Bridgend issue was coming out, were people putting at the end of the pieces sources of support?

**Mr Langan:** In the majority of the cases, yes.

**Q244 Helen Southworth:** Were there any examples of where they were not or were you content with the full coverage?

**Mr Langan:** Off the top of my head I cannot recall but I could check that. I feel in most of the cases people were either giving out the Samaritans’ or the PAPYRUS number and on broadcasting, if it was appropriate, they would give out the name of the BBC action line. You asked me a question about the families. The impact on families is devastating. I still feel very touched by that families’ meeting I went to. Hearing the families’ stories was one of the most moving things I have ever heard. I have had similar meetings in Northern Ireland where families there have also been bereaved in these circumstances. What struck me about the families is they had a belief in the media. They had a belief in the press that they could help and I think sometimes some of those families felt betrayed but maybe that is too strong a word. I think they were looking for support and they were talking to people. Some of those families came out of the experience feeling that the media had let them down.

**Q245 Janet Anderson:** You mentioned the meeting in Bridgend but that did not take place until May and the suicides had started in January. Sir Christopher Meyer was asked if he felt the PCC had been too late in going down there and he said “We should have been down there earlier.” Do you think the PCC were a bit slow in getting involved or were you happy with what they were doing?

**Mr Langan:** My recollection of the dates has got a bit fuzzy. I was in Wales quite a lot at that time and continue to travel to work with the Assembly and with my Samaritans colleagues there. I thought there was a meeting in February with the PCC but I would have to check my records because I have not brought them with me. They did hold an open day in Bridgend. They had a families’ meeting and they had a number of meetings across the day. I thought that was February but I would have to check.1

**Q246 Janet Anderson:** If you could check that because our information was that was in May and if that was the case that was a bit late. Generally you think they did get involved at an early stage and their involvement was helpful.

**Mr Langan:** The involvement of the PCC was not initiated by us. We were busy at the time trying to support our volunteers inside Bridgend County to develop an intervention they were doing called Feet on the Streets which was about them doing outreach in the community so our focus was there. We were also very caught up in talking to the media. I would say actually a lot of the pressure put on the PCC probably came from Madeleine Moon MP in terms of her desire to see some action taken there.

1 *Note by witness:* I can confirm that the month was May, not February.
Q247 Janet Anderson: Do you think Madeleine should have had to put that pressure on in order to make them act or should they have been more proactive?
Mr Langan: Other witnesses have spoken about the role of the PCC and why it sometimes is not proactive. I am really not familiar enough with the situation. I feel once they got involved they were helpful. If they had been involved sooner, I think what probably would have happened is that the desist notices that they helped get to editors would have happened sooner and that would have been helpful.

Q248 Paul Farrelly: I want to try and set the context in which the press reporting happens before I ask a couple more questions about the PCC. In 20 months there were 23 suicides, according to the briefing we have here, in and around Bridgend. Is that statistic in any way out of the ordinary in the sense that there may be in one area one suicide in 20 months or two or three but in many places around the country at some point there will statistically randomly be 20 or 23? Was there anything more to the suicides in Bridgend that was more than randomly out of the ordinary?
Mr Langan: My understanding of the figures is in terms of the deaths there were six in 2007 and 19 in 2008. I would have to check those figures but there were also a number of other deaths but because they did not happen in the under-28 age group they were not reported in the same way. Looking back at the figures from where I am now, yes it is a significant number and it is out of the ordinary.

Q249 Paul Farrelly: Is it more than randomly out of the ordinary?
Mr Langan: I do not know what you mean by randomly out of the ordinary.

Q250 Paul Farrelly: Let us take tossing a coin. On average the number of heads and tails will even out over a long period but at some stage, even though it looks in terms of probability something funny is going on, you might get a run of 20 or 30 heads. If you take the whole sample it is a large number but it is not out of the ordinary because it is random. That is what I am trying to get at. Was it anything more than random and were they connected? I want to come to the thesis the press were reporting.
Mr Langan: Initially it was not possible to say whether it was out of the ordinary in that respect. As the situation progressed, we felt that it was a suicide cluster and various people have spoken about the “Werther effect”. We did begin to believe that it was a suicide cluster so that is therefore something which is not random. There is a process by which that is occurring but it is an under-researched area.

Q251 Paul Farrelly: Is there any evidence that thesis is correct?
Mr Langan: At this point that is still being developed.

Q252 Chairman: Have there been other suicide clusters? It is a recognised phenomenon.
Mr Langan: Yes.

Q253 Paul Farrelly: Like people getting brain tumours, it happens in clusters. It could be statistically random but some people associate it with electricity pylons. They make a connection that may or may not be justified. Was it your belief that there may be a suicide cluster encouraged by press reporting?
Mr Langan: No, I think we felt that it may have been a suicide cluster prior to significant media reporting. Again, I refer to the need for research. We know that there is some research taking place at the University of Swansea on the impact of the media. I feel it is better to wait for that research to come out to see if there are any direct links between media reporting and further suicides.

Q254 Paul Farrelly: From what I am hearing now it may well have been a legitimate avenue of inquiry and thesis for the media to explore that there may well be suicide pacts encouraged by possible social networking.
Mr Langan: We looked at the issue of suicide pacts and I do not think there was any evidence of suicide pacts.

Q255 Paul Farrelly: What do you mean by suicide cluster?
Mr Langan: A suicide cluster is when within a given locality you will see a pattern of suicides taking place. That is what happened within Bridgend County. We saw within a distinct locality that there were a significant number of suicides taking place within a distinct period.

Q256 Paul Farrelly: You used the word cluster and you used the word pact.
Mr Langan: Did you say pact or pattern?

Q257 Paul Farrelly: I asked what a cluster was and you answered with the word pattern but that begs the question what do you mean by pattern?
Mr Langan: A pattern is a number, a distribution, how those happen within that locality within that time frame.

Q258 Paul Farrelly: This goes back to the original statistical question: there may be nothing in it. It may be just a statistical random aberration.
Mr Langan: It may be but I would look towards the research which is currently taking place to see if that is the case.

Q259 Paul Farrelly: You have reached the concerns whether there may be links and you have undertaken that research now, but you say you may have thought that before the press reporting encouraged it. The press could say it was a legitimate avenue of inquiry, particularly with the growth of social networking sites, as to whether this statistically large number of people and their suicides were connected and whether social networking was in some way
Q260 Paul Farrelly: What would you say to that?
Mr Langan: There were a number of lines of inquiry taking place at the time.

Q261 Paul Farrelly: It is a line of inquiry that you are pursuing internally?
Mr Langan: In terms of the research, it is looking at what were the links if any. Yes, it is a legitimate line of inquiry to look at: does this phenomenon called social networking have an impact but it is similar to the same questions we have asked about whether television and broadcasting have an impact. We have had some research on that so I think it is a legitimate line of inquiry, yes.

Q262 Paul Farrelly: Do you think that in the reporting the reporting went from what you might say is a legitimate speculation overstepping the mark and asserting things that could not be supported by the evidence, that there were pacts, and therefore it was irresponsible in that respect?
Mr Langan: I do not recall that many reports talking about suicide pacts.

Q263 Paul Farrelly: This is what stands out in my mind from the memory of the reporting.
Mr Langan: There were obviously some reports about the relationships between people. Whether there was interaction there or not I have not heard and I think that is yet to be established.

Q264 Paul Farrelly: To your recollection, was there any single newspaper, or one or two newspapers, that were pursuing the story in such a way that it became incumbent on other media and newspapers to follow them?
Mr Langan: I do not think so.

Q265 Paul Farrelly: Was there one newspaper like the Daily Mail or the Daily Express?
Mr Langan: My recollection is there was not. I think it was a story which captured national attention and many of the papers were interested in the issue. In terms of our press office, I would have to go back and check how many inquiries we were getting from separate newspapers. I think they came from across the titles.

Q266 Paul Farrelly: The PCC has shown us examples of a procedure called desist notices. They have told us that everyone has always observed the desist notice. It begs the question as to whether they have a conversation beforehand and ask will you observe it if we issue a desist notice. That is something we will talk to them about. Did the PCC issue any desist notices, to your knowledge, in this situation?

Mr Langan: My understanding was that the PCC did issue desist notices to editors about the re-publication of photographs and that was following the meeting in Bridgend with the families.

Q267 Paul Farrelly: Was that notice respected?
Mr Langan: I believe so.

Q268 Rosemary McKenna: Have there been any further suicides since the end of 2008 and have they been reported differently?
Mr Langan: There were some suicides over Christmas and New Year which Members may have heard about. We think they have been reported differently. They have been more low key. I think they have been appropriate in that they have not given explicit detail, which is one of the considerations that we do ask of reporters in this matter. Some of the lessons are being learned. I raised this point earlier but what is important for Samaritans is to ensure that the lessons of Bridgend are properly picked up on in terms of the work with the PCC. We see that as one avenue to make sure that redress can be developed. I think it is more important for us now to work with the Code Committee to make sure that there are opportunities to actually engage in the development of future codes to make sure that they are actually addressing these issues in quite strong detail.

Q269 Philip Davies: I was interested when you were answering Paul’s questions about this concept of cluster suicides. It is a well known phenomenon. I did not know it was but obviously it is. We are focusing here on Bridgend but has the reporting of Bridgend been totally different from the media reporting regarding other cluster suicides? Where you do get a cluster in an area has the reporting of that in other places been the same as what took place in Bridgend or has the reporting of the Bridgend one been completely different to the reporting of any other cluster suicides?
Mr Langan: I think Bridgend was a phenomenon. I would hope it was a singular event. The previous cluster that I am familiar with was in Craigavon in Northern Ireland about a year previously. That was quite significantly reported in the Northern Irish press and did hit the national news in the UK but it did not have the same impact as Bridgend did. I am not sure what the reasons for that were and I would hope that would be explored in the research. Bridgend was a particular event. Since Bridgend there have not been, as far as I can recall, any significant suicide clusters. There have been a number of other high profile suicides that we have talked to the PCC and editors about, again about the detail used in a story, the language and the imagery used. This is the issue about why article 5(ii) needs to be explored and expanded in the Code. I am not sure how far I can talk about other examples but we have recently talked to the PCC about some cases of murder suicide where we have felt that there has been explicit detail. One of the anomalies we are starting
to look at is whether innovative, novel, graphic methods of death are more likely to affect vulnerable people than talking about imagery and methods of death which are more open and accessible to people. I reflect this in passing, say between portable power tools and people’s school ties. If they are referred to in the story, do those different methods have different impacts on the audiences?

Q270 Philip Davies: In terms of cluster suicides and what might be expected when you get them and the factors in them, with the Bridgend ones was the fact they were so young a special factor or would that be the age range in which lots of people do commit suicide? Was the age of the people one of the factors that would have alerted a big press interest?

**Mr Langan:** I think so. One of the things we know about vulnerable groups in Wales is that it is not necessarily that suicide across Wales is higher than the other UK nations but that there are hard to reach groups within that nation. The 16-25 age group was seen as a particular risk. What is interesting though is these other suicides over the age of 28 that I referred to they have not been reported in the same way. We are looking at something like 14 suicides which were not reported in the same way because they were over that age.

Q271 Philip Davies: Is it more distressing to the family to have reported the suicides of children? It seems to me that potentially it may well be more distressing for the families of a child who has committed suicide and equally that could be of more interest to the media. You have this double whammy that it is more tragic in many respects for the families because it was somebody so young that had done this and that is made worse by the fact the press are more interested in it because it is somebody so young.

**Mr Langan:** There is no doubt that the death of a child does have an impact on a family member. The majority of people in the country have families and children and those sorts of stories will have an impact without a doubt. Could I ask the Committee one favour? One of the things we ask people who talk about suicide not to do is say “commit suicide”. Because it is not a criminal act we feel that the connotations of saying “commit” with the word “suicide” do actually continue the stigma. We prefer to say people who take their own life.

Q272 Alan Keen: There are lots of feelings put forward about the media; that they made it into a story because it looked like one was affecting the other. My feeling as they stand at the moment is there is something in the fact that one person who is that sort of individual and is close to considering taking their own life we could not argue that they would not be influenced by this but the evidence is far from convincing. What is your feeling? Are you getting towards feeling that maybe there is a case for an authority, the PCC, needing to be able to step in and stop the reporting or are you completely unconvinced of that? How do you feel now?

**Mr Langan:** We have always supported the reporting of suicide because we think it is an under-discussed issue. The press, the media, are a good channel for getting this topic discussed so we do not want to see a ban on suicide reporting. Norway tried that route but have now stepped back from it. We think that the topic should be open for discussion. What we welcomed from the PCC was the use of desist notices, where I was told they were being used, in order to reduce the pain upon the families from seeing photographs re-produced. There were issues raised by the families that these photographs were photographs that did not really represent the person; they were almost a persona used for social networking sites. It is a balance between the two. We do need to make sure that this issue continues to be discussed. Our role again on this was to make sure that the issues being discussed were the right issues. We have talked about some of the less developed theories about why these things happened. There were discussions about this being caused by electricity pylons which were disputed. Perhaps in those circumstances it is important that we can continue to work with the papers, particularly locally, to say “What has that actually been done to help with this problem?”

Q273 Alan Keen: Did most of the press or all of the press actually say there is a possible danger here, can we help, or did they just report it to get headlines?

**Mr Langan:** Were the press responsible when they reported these things and the possible links? Did they, at the same time, say this is where you go for help?

**Mr Langan:** Yes, they did do that. It is that issue of ensuring that whenever we were being interviewed we always made sure we were telling people our telephone number, telling people the website address, but also asking the editors, and the readers’ editors as well, to actually work within the paper to ensure that those sources of support were being put in the papers whenever the story was discussed.

Q274 Alan Keen: Your feeling is that we do not have to recommend anything further. You would rather that your help continued to be there in the future or do you think there is something you would like us to actually say?

**Mr Langan:** If there is a recommendation or if there is something that Samaritans would like to see, I think it does come into the issue of regulation and it is about the development of the Code. I am sure the Committee are familiar with the report from the Media Standards Trust; A More Accountable Press. There are some useful ideas in there which could be looked at. It is only part one of the report which is out so far so it is difficult to talk on part of a report but it does point towards the Advertising Standards Authority (ASA) and their CAP Code. The CAP Code is coordinated by a lay chairperson and a criticism often put to the Code Committee is that it is put together by journalists, for journalists. I think if we could look at having more lay involvement in the development of that Code and could feed in at an
earlier process, that would be useful from our own perspective to make sure that the issues are being discussed more openly and fully.

Q275 Helen Southworth: You have raised the detail of information that was given. Would you be able to send us something that would specify some of the areas of concern that you have? If you have time, could you look at it and decide which issues would be most suitable to let us have.

Mr Langan: I may need to check the details with you but I am sure I can help you.3

19 March 2009 Mr Anthony Langan

Witness: Mr Tim Fuller, gave evidence.

Q276 Chairman: Mr Fuller, good morning. We have been hearing from Anthony Langan of the Samaritans. Would it be all right if he continued to stay?

Mr Fuller: Yes.

Chairman: Can I thank you very much for coming to talk to the Committee this morning. As you know, we are conducting an inquiry into the general standards of the press and privacy intrusion. We have focused particularly on what happened in Bridgend and the way it was reported and we would be very keen to hear from you. Can I express, on behalf of the whole of the Committee, our sympathy with your loss?

Q277 Rosemary McKenna: Good morning, Mr Fuller and thank you again. Could you describe to us the interaction that you had with the media, with the press, following your daughter’s death?

Mr Fuller: I have been reviewing the whole process on the way down because there is more than just what happened after the article. If I analyse the whole scenario, it started on the day I went down to Bridgend and the way it was reported and we would be very keen to hear from you. Can I express, on behalf of the whole of the Committee, our sympathy with your loss?

Q278 Rosemary McKenna: Do you think the Coroner’s office could have kept that information for another day? Would that have been helpful?

Mr Fuller: It would have been useful from my perspective. I do not know if that is fair on the media to do that. In perspective, if it happened somewhere else in the country there would not have been this great interest but it was because it was Bridgend. She had not been there long. She had lived there about 18 months so in a way she was an outsider. As soon as I heard what had happened it did not take me long to realise she is in Bridgen and it will be everywhere which it was in a short time. It was because of the magnitude of the story and the history that what was actually a detached case became part of a growing story.

Q279 Rosemary McKenna: Did the press speak to you?

Mr Fuller: No. The police asked me if I wanted the statement issued from them and for the press to stay away and they did that and nobody contacted me. We did not get any intrusion. Somebody knocked on my door the next evening and we were sure at the time that he was an Express reporter but on reflection he could have been from the Stockport Express. A few months before I had set up my own company so I am prepared to accept that in the heat
of the moment I may have sent him away saying he should not be there. I cannot say. I may have had a Daily Express reporter on the doorstep but it may have been coincidence that somebody did turn up. Aside from that I rang the police liaison and they said if somebody approaches you from the press and you ask them to leave because they should not be there and they go there is nothing more that can be done. They cannot pursue it. I did not have any more interaction with the press apart from the fact that whenever anything else happened in Bridgend the whole story was related again. I think the meeting was called in Bridgend. I was invited to attend a meeting with the PCC but because of the distance and taking a whole day out from what I could cover in 15 minutes at the time I wrote to Steve Abell at the Press Complaints Commission. I did not attend the meeting. I had some feedback from that and he asked me for a statement to forward to the newspaper. I have brought it with me. If you want any of the paperwork I am quite happy for you to have a copy of what I said to Steve Abell which he passed on to the Daily Express. Through him they apologised for certain content and the way it was reported although they do not feel that they overstepped any lines. Aside from that I have not had any major problems. It is just the issue of the way it has left me feeling for myself and the empathy I feel for other families. A few weeks after Angeline’s death—I cannot remember all the details—there was a girl who died. I am not sure if she fell from a balcony or what the circumstances were but it was believed she was bullied or something. She was a lovely girl and her picture was on the front page of the newspaper. To me I did not need to see the picture. She was a lovely girl and it made the story. If they had said this had happened and the tragic circumstances and she is dead, that for me, as a non-family member and not knowing this girl, that would have been sufficient. I knew at that point, because of what I had been through, all her family and close friends would be seeing their daughter and knowing their daughter’s picture was in millions of households of total strangers up and down the country. It was the front page as well which is really what exacerbates it. I mentioned in my letter to Mr Abell that just about every newspaper carried the report on Angeline’s death from the small ones to the broadsheets but they were contained inside. It was only the Daily Express that had the front page article.

Q280 Mr Hall: You had the initial impact of the coroner releasing the details of your daughter’s death and the press clamour. You have advised the Committee that there were subsequent repeat reporting of the circumstances and the way the Daily Express treated the story. We know that you made a complaint to the PCC and they upheld the complaint and you received an apology. Would you say a few words for the Committee about how the reporting affected you and your family?

Mr Fuller: We accepted that people would get to know about it. I tend to be quite a realistic person. From the point of view of the fact this Bridgend saga, if I can call it that, had been going on for a while was public interest, we could not get away from the fact that it would be reported. We knew we would have to take some distress from that. I think the way it came across was quite intrusive. Are you familiar with the Daily Express article? Would it be of any help if I passed that out? I have here the letter I wrote to Mr Abell and the apology as it appears on the internet—it is not a direct apology to myself, just the resolution—and the strips on the front page article from the Daily Express. As we started to read through some of the reports, there was one close friend of Angeline who thought she was speaking to the police when in fact she was speaking to a reporter. She was quoted giving information about her family, her stepsisters, also personal information about mental health issues that she had and that was part of my complaint. A doctor would not divulge that sort of information so no way should that have been on the front page of the newspaper.

Q281 Chairman: When you say she thought she was talking to the police, was that because the person made out they were police?

Mr Fuller: I could not say but for whatever reason she felt she was giving information to the police. She may not have been deliberately misled but maybe if someone said “We are investigating the situation” she probably would have thought it was official. I made a few points that maybe I could raise today. When the reporter quotes the words of somebody else, does that take the responsibility off the reporter for saying those things? I feel that it should not but I feel it did in this instance. If I can give an example, in the article, and in the response as well, from the Daily Express they say that they did not give specific details of the method used and they are allowed to say that she was found hanging and that was the nature of her death. They said they gave no more details about how that happened but within the article they quoted the mother of the previous victim who actually described that they found him hanging and he had used his dressing gown cord and they found him hanging from the framework of a built-in wardrobe they were having constructed which to me is quite specific. This other lady may well have said that in conversation. Sometimes when you are talking to someone informally you do give information but I do feel that should have been edited. That sort of detail did not need to be there. It was about somebody else. I do not know whether Angeline would have read that information printed beforehand but Angeline too used a dressing gown cord so we just have this thought. I do believe that some of these youngsters were influenced by the publicity, not of the minute detail but the method. A big question has been asked why all bar one of the victims used hanging as their form of death. The question is why, because people who commit suicide or are desperate, in my view, go through a process of thinking how shall I do it; is it going to hurt; will I suffer. There can be a desperate moment and I am sure all of them suffered that desperate moment where you do not care what you do and it just happens but the questions other people are asking is
why did they all choose this method. Angeline was reported as number 14. How many do you need to go down the line saying they hanged themselves, they hanged themselves, they hanged themselves? If somebody is thinking “I want help, what do I do” is it not known to be the way to do it? I notice articles more recently have said harmed themselves. Somebody was rushed to hospital and died as a consequence of harming themselves. You think they have harmed themselves, what did they do? You are none the wiser whether they cut themselves, took an overdose, tried to hang themselves or what. To me personally I feel that is as far as it should go into these instances. If you want to say it is self-harm, it does not give any clues to anybody else as to what happened. If somebody is in a vulnerable situation, mentally unbalanced, they have got problems, suicidal tendencies, they are going to be thinking about what to do. As I said, Angeline was fairly new to Bridgend but she had friends. If she is reading that this is how it is done, it obviously succeeds because they died, it was reported on; they got the publicity. Whether the memorial pages on the internet have any bearing it is not for me to say. They are there. Various people have views on that.

Q282 Chairman: One of the things we have heard, which is certainly distressing to some families in Bridgend, was the fact that not only did they have to cope with the press coverage immediately after the suicide occurred but it kept coming back because every time another one occurred all the pictures of the previous people who have taken their own life were reproduced. Just as you were trying to come to terms with it suddenly the whole thing is back seeing the pictures again in the newspapers.

Mr Fuller: That is right. I am grateful for the work that has been done to get rid of those pictures and stop that happening. Obviously it is an ongoing situation. There is talk of suicide clusters and so forth. It is not for me to say how these things exist and what the mechanics are but this article in the Daily Express again at the end listed the names of all the others so far. We did not have the picture gallery in that article. One big concern we had was my eldest son is eight; he was seven at the time. We brought him home from school and somebody else had my other two children at the time. We sat him down and said what had happened, that she was poorly. She had mental health problems to some degree. We do not know all the circumstances that caused it; the inquest is still ongoing. We wanted to help him deal with that situation. The big fear to us was that it was in the news. We kept him away from the television to Bridgend but she had friends. If she is reading that this is how it is done, it obviously succeeds because they died, it was reported on; they got the publicity. Whether the memorial pages on the internet have any bearing it is not for me to say. They are there. Various people have views on that.

Q283 Chairman: The picture of your daughter that did appear, how did the newspapers come by that?

Mr Fuller: I do not know. It is interesting that the same picture seems to appear in both of the newspapers. I think overall there are only two pictures. The third one appeared later on.

Q284 Chairman: Had you seen it before?

Mr Fuller: I had not. I had not seen Angeline for quite a while. It was a picture with her boyfriend Joel. I would imagine that somebody has given a picture or it could have been lifted from an internet site. It was very widely circulated. I was surprised that all the various different newspapers got the same picture which makes me feel that it was perhaps taken from somewhere rather than given to a reporter.

Q285 Chairman: Was she on a social networking site?

Mr Fuller: I believe she was on three: Bebo, Facebook and Myspace. One had not been used for some time but Myspace she was using regularly. I used to keep an eye on it in a Dad kind of way to see what was on the front page. There is a little bit where you can say what your mood is with a photograph and things like that knowing that she had been struggling.

Q286 Chairman: To that extent her being on the social network site actually helped you.

Mr Fuller: Up to a stage. You may be aware that you can shut down correspondence and hide it to selected friends on the internet site. At one stage it was open so I was able to see who she was corresponding with and the kind of conversations that were going on, the sort of intrusive things that Dads do. Then it shut down and went private sometime before this happened so all I could see was the little bit you fill in with what mood you are in, snippets that are made public to everybody and a photograph. I could see she was drinking, that was obvious from the photograph she put on there. I would say the photographs that were used were not complimentary. They were not ones we would have chosen to give if we were asked. Because they were used in so many different arenas I do not know where it came from but I get the feeling if everybody has the same photograph it was not given by one person to one reporter.

Q287 Chairman: When you say it was not the one you would have chosen if asked, would you have been willing to provide a photograph, given there were going to be photographs that would appear, that you would like to have seen?
Mr Fuller: If we had been offered a process perhaps rather than faced with the media as an entity, if there was a channel through the police with one person perhaps with the family liaison. My sister had correspondence with the press when her son died unfortunately. It was two years before. He was 18 on his way to college and died in a car crash so a totally different set of circumstances. She had dealings with the press managed by the police family liaison officer and she was able to vet all the articles that came out from the local press. She chose the photographs and all this kind of thing and it was controlled. As a result she ended up working with a police charity helping others who have been in similar situations and lost children in road accidents. We were never given that opportunity. We knew because of the Bridgend situation this was going to get headlines. It could not help but hit the headlines. I am not daft enough to think that I could put my head above the trenches and speak to one. In fact it was said to me when I suggested would it help to perhaps give my views on what could be done to someone in the media I was cautioned that if you make it known that I am willing to speak they cannot then say to other members of the media do not speak to him. It would not be fair. I had to do an all or nothing approach. It would perhaps be nice to have a controlled report knowing that there was a need to report this in the context of everything else. If it had happened in her home town of Shrewsbury it probably would have been contained in the local newspaper but because it was Bridgend it had to go a lot wider and that is why we lost control. If we were still in the Shropshire area we probably would have had a call personally from the Shropshire Star. That is how it would have worked.

Q288 Chairman: It is an interesting thought. Do you think that there could be an extension of the role of the PCC, that they might actually offer a service to people who suddenly find themselves having to deal with the media having never had experience and providing advice about what they should provide, what their rights are in saying no? Do you think that would be helpful?

Mr Fuller: Yes, I think so. Basically the advice we got was through the coroner and the police. Sometime later the PCC started after this meeting was held in Bridgend with the various parents. You do feel that you are suddenly dealing with an unknown entity and you do not have any time to think about it. The only way I could deal with it was to sit outside the police station, before I started my journey back home, phoning work colleagues and family friends saying that I have something terrible to tell, stop stirring the dinner. It is the end of the day and I have to tell you something horrible but I need to tell you now because you might see it on the evening news. I was not given any direction apart from they are up at the house, if you do not want to get involved do not go up there. As I say, we started surfing the internet to see what the newspapers were about to publish.

Q289 Chairman: You did choose to make a complaint against the newspaper. Were you satisfied with the way that was handled and the outcome of the complaint?

Mr Fuller: I think I could have pursued it a bit further. I have mentioned about the material that was quoted which give more details which were unnecessary. I was resigned to the fact that it happened. It was months ago, people have probably forgotten about it apart from those involved in the case. The cynical side of me says they have said sorry but what is going to stop it happening again. They will slip up and put something else on the front page. They will cross the line and somebody will say they do not like it and they will say sorry and go away. I did not feel I could achieve an awful lot more. I was happy to say fair enough the flag has been raised.

Q290 Paul Farrelly: Was there a specific thing that led you to complain and say enough is enough?

Mr Fuller: Yes. Originally I was not going to complain and I was going to let it go. This is what happens when you get printed and we are not happy about it but when the meeting was called with the PCC I thought I could contribute something here. I know a lot of people have been affected by this media publicity. I was concerned that this friend of Angeline’s had mentioned that she had tried to commit suicide twice before and she suffered from depression and that was included in the article. It was also included in bold the quotation half-way through the script, which you will see it on the print-out that comes around, that she tried to commit suicide twice before. To me that is personal information. They also published that her boyfriend was living with was being treated for stress and anxiety and was unemployed which I felt very strongly about from a number of angles. That is personal information they had no right to give. Also he lived in a small community and, first, he has to get over Angeline’s death, he found her there. How does anybody deal with that? He has to rebuild his life and he is looking for work or whatever to stabilise himself in that area but everybody has read in the newspaper he suffers from anxiety and depression. It could be a negative side to his character.

Q291 Paul Farrelly: Did inaccuracy play any part in your decision to go the Press Complaints Commission?

Mr Fuller: Yes, because it was on the front page and the headline actually said “internet cult death number 14”. I did feel strongly about that because in all the other cases it had been established there was a question raised quite early on because these individuals had got social websites, they had put their profiles on there, one or two of them from Bridgend chatted to each other, surprise, surprise, that maybe they were linked and that is why they followed this course but the coroner and the police had on a number of occasions said they were convinced this was not behind it and that they were all individual cases. They reported Angeline had only been in Bridgend for a couple of years at most. I think it was in the same article the police had not
made any connection between this and the other victims. Why put on the front page there is an internet cult situation? I looked up the definition of the word “cult” so I was not making stories in my own head. It gives the impression that individuals are in a little community of their own, perhaps talking about how they can take their life and get this glorification on the website which was not the case. It was definitely a question. I am quite happy to accept that there was a question mark over whether any of this was fed by association on the internet but the way it was presented was that Angeline was part of a group of youngsters, almost as if this was already established. Here is another one. This internet cult thing has taken another victim. How many youngsters have a mobile phone but none of the articles said all these victims had a mobile phone. Is there a mobile phone death cult going on? The youngsters do use these internet sites as much as they use a mobile phone, perhaps even more because it is free once you are on line.

Q292 Paul Farrelly: The Daily Express apologised to you. Did that apology actually affect the behaviour of the Daily Express?

Mr Fuller: I have no idea.

Q293 Paul Farrelly: Did it affect the behaviour of the reporting afterwards of other newspapers?

Mr Fuller: I would like to think it did. I did notice one or two newspapers using the phrase “harmed themselves” but then more recently there has been another incident and told the individual hanged themselves. I could not say whether it has any lasting effect. The apology came in the form of a letter back to Mr Abell from their legal adviser who said they had sent information back around to the reporters how they were supposed to conduct themselves. They did not feel they had included excessive detail. I would disagree with that but I felt it was not worth taking any further. They did include more details in the quotation from somebody else. The items I have mentioned to you about personal details about Angeline’s medical history and Joel’s personal situation, the apology came in a paragraph in that letter which said we cannot really justify the inclusion and we apologise to Mr Fuller for all that. I did not get anything directly; it just came through this.

Q294 Paul Farrelly: The 16-year-old son of my children’s godfather died in a tragic accident on New Year’s Eve while messing around on a railway station. That made the local and the national press. I looked on the website of the local newspaper in the area and I was upset. I cannot imagine how my friend and people in families like yourselves would have felt about some of the comments that were made from members of the public on the story because the commentary invited views. Did you see any offensive comments that were run on websites belonging to the newspaper?

Mr Fuller: I would not say they were offensive. One thing that has concerned me on the subject of the websites is the fact that some work has been done behind the scenes with the police and the ISPs, the internet Service Providers, to have the pages removed. The only way to get back onto these sites is to log into them and delete them and of course once you are dead you cannot do that. Parents cannot do it and nobody else can do it. Some work has been done to have these personal sites removed. What has happened is in creating these memorial sites one way or another the person has managed to take a copy of the picture and the comments of that individual, in this case my daughter, and recreate that web page, but instead of having the conversations of that person you have tributes coming in. There is one in particular which comes up. Somebody has built this memorial garden. It is not for me to say as it may help millions of the people throughout the world because she has millions of things set up. She must devote hours and hours to setting these up for people all around the world who have lost loved ones. In my case just reviewing it there are two tributes which have appeared on the site from people she knew and the rest of them are from individuals on the other side of the world. You can tell from the comments that they have no connection with Angeline whatsoever. In a callous type of way what are they doing, just surfing this site, picking up the name of someone they do not even know and saying “God Bless. Peace you little angel. You are beautiful”? I am not saying it is not a well meant thing, and maybe some people specifically look at these to give condolence, but to me it is meaningless. I do feel a bit put out that somebody can set this up as a memorial to Angeline and anybody out there can post something on it. I do not think we have any control over that. If I decided to set up a memorial site for my daughter, I would not want other relatives saying of the ISP take it down because it is mine. I own it, it is my daughter and friends and family can put comments on it, but when somebody totally unrelated does is it how can you stop it? That troubles me but I have to let that go on out there somewhere.

Q295 Janet Anderson: Could I ask you about the meeting that the PCC called in Bridgend. I think you said this was the first contact you had with the PCC, is that right?

Mr Fuller: I am not sure if it is direct contact with the PCC. I was invited to join in the meeting as all the parents were invited.

Q296 Janet Anderson: Who invited you?

Mr Fuller: I think it came from Madeleine Moon’s office via the police. There was a bit of a data protection issue when the whole thing started. The police held my name and address and Angeline’s mother’s name and address so any correspondence initially went out through them. I think that is how I originally got the invitation.

Q297 Janet Anderson: How long was that after your daughter’s death?

Mr Fuller: I cannot remember. She died in February and it was about May some time.
Q298 Janet Anderson: That is what made you aware of the PCC and is it following that that you decided to complain?

Mr Fuller: It was. I did feel that if it was closer I would have given up the time and gone along, partly to be with the other parents as they are going through the same thing and to express my views and give support to what they were going to say. I think I had already got the gist of what they were trying to achieve because of the individual complaints. The press had reported the incidents but they also reported the repercussions, the complaints that were being made by various parents saying we are not happy with this, that and the other being reported and things on the internet to that effect as well. It would have been an opportunity for me to say what I am saying here today, how it affected me and maybe things do need to be changed.

Q299 Janet Anderson: Your daughter died in February and that is when the distressing press coverage started. Were you at that stage aware you could have complained to the PCC?

Mr Fuller: I knew I could. I knew there was a PCC. I could have asked at the time but it was not a priority in the scheme of things. Realistically I felt that I could say something but may be it would drag things further than they need to. It was an article that was written. Most people would not know Angeline. Those who do know her were affected and upset by the article but as the weeks and months go by the people who did not know her would forget about it. They would know there were a lot of incidents in Bridgend but they would not think Angeline Fuller necessarily even though it was on the front page. I just thought let it go. The importance of something like this and the PCC meeting is to focus in on it. It is not the general public that can let it go; it is the people that are really affected. I do feel that is important. I am happy to contribute here. I would have contributed the same but it was a three or four hour journey away from home.

Q300 Janet Anderson: When you say the meeting was in May, that was a long time after this started. Do you think they should have done that sooner?

Mr Fuller: Maybe so. Maybe it should have been done after suicide number five. There was another incident a week or two after Angeline and then others cropped up during the subsequent months. A lot of work has been done. At the time everybody was at a bit of a loss. The Health Service was at a loss because this was going on in our community. Why are these people not being helped? Anyone in a normal state of mind does not take their life so what have we missed? The press had built their story from these incidents and it was obviously mushrooming. It is great if you have a story that you can add incidents to. From the point of building a story it is great because it keeps it going but it is a very personal and sensitive story. It is not about old buildings falling down or car crashes; it is something sensitive and horrible. Maybe the PCC could have done something earlier. Maybe somebody did not raise the flag.

Q301 Paul Farrelly: Have you looked back over the coverage from when it started before your daughter’s death at all?

Mr Fuller: The only thing I have done is try to see whether there were Coroner’s Inquest reports. Occasionally I have looked over the internet to see if there is anything.

Q302 Paul Farrelly: From your experience was there one newspaper driving this?

Mr Fuller: I could not say. I have not looked at it in that depth. The thing is that every newspaper carried the article. I have not focused in on the names of others and done any research to see if there is any pattern. Occasionally I type my daughter’s name into a search engine and the same articles come up again right back from last year. Probably in four or five years’ time they will still be there because that is how the internet is. You put something on there and unless it is physically deleted it is there forever. I must say most of the pictures have gone but there are a few still around. When that other incident happened with the girl who died some weeks after, I felt an affinity with her relatives knowing that picture was out. Before coming here today I thought I will see if I can find that article to back up what I was going to say but I could not find it. I could not find the picture. I can still see it in my mind. I thought that is good it is not there. I would like to think three months ago I would have found it and some work has been done and that is the result. I am quite impressed that I could not find the picture. I cannot say that anything specifically has driven it but it is a good point that somebody maybe leading it but I have not done any research.

Chairman: That is probably all we have to cover. Can I thank you for coming and talking to us.
Written evidence submitted by Times Newspapers Limited

Earlier this year News International submitted a paper in response to your current inquiry into Press Standards Privacy and Libel. Part of that submission was “The Interaction between the operation and effect of UK libel laws and press reporting”. In that part of the paper, we highlighted the fact that Times Newspapers Limited was challenging the Duke of Brunswick v Harmer rule in the European Court of Human Rights as a serious fetter on free speech as articles stored electronically can be easily accessed and each new hit on an article stored on a database will give rise to a new cause of action and start the limitation period running all over again. This means there is no effective limitation period for any article kept on an electronic database.

Last month, the European Court of Human Rights delivered its judgment in the case of Times Newspapers Ltd v UK Government. Unfortunately, on the particular facts of the Loutchansky case, the ECtHR decided that there was no actual fetter on free speech in the particular circumstances of the Loutchansky case. The electronic action had been commenced only a year and a quarter after the original hard copy article so there was no serious prejudice to the Defendant in the action being commenced only just outside the one year limitation period. We were of course disappointed that the court failed to come to grips with the “multiple publication” rule as it applies to electronic databases because of the rule in the Duke of Brunswick case. There is therefore still no effective limitation period for electronic publications held on databases.

The ECtHR did, however, concede in paragraph 48 of its judgment that “the Court would emphasize that while an aggrieved applicant must be afforded a real opportunity to vindicate his right to reputation, libel proceedings brought against a newspaper after a significant lapse of time may well, in the absence of exceptional circumstances, give rise to a disproportionate interference with press freedom under article 10”. In short, had the circumstances been different in the Loutchansky case and the second action on the electronic version of the original story been commenced many years later, then we might have succeeded.

Following the European Court’s Judgment, we have been in communication with Jack Straw. I have also written an article for a special issue of Index on Censorship, which is due to be published at end of May. I gather it will include among other articles a piece by Floyd Abrams looking at UK libel law from a US perspective. Anyway, I enclose a copy of the article I have contributed to this special issue which covers the recent ECtHR decision on a single publication rule.¹

The important part of my article is highlighted in red. This suggests a quick and easy solution to the problem of there being no effective limitation period for archival electronic copies of newspaper articles. The answer of course must be to amend section 15 of the Defamation Act 1996 and include in that a new paragraph under Part II of the Schedule to the Act. This would basically mean that archival media websites would be protected under the law of qualified privilege, subject to the newspaper being ready and willing to publish, “in a suitable manner, a reasonable letter or statement by way of explanation or contradiction”. This would enable people, who were being dogged by an old article, which maybe long out of date because facts had changed and time marched on, to get the article updated and new salient facts put onto the database alongside the old article. This could be done by an updating letter or statement by way of explanation or contradiction being posted alongside the old article or easily linked to it.

Last month, Jack Straw very kindly wrote to me about online archives and the “multiple publication rule” and how he is hoping to publish a consultation paper on this in the near future. I enclose a copy of his letter to me and hope that the DCMS Committee will be able to make recommendations as set out in my attached article to the MoJ so that the Civil Law Reform Bill can include suitable provisions making all electronic archival copy subject to a qualified privilege defence subject to a reasonable right of explanation or contradiction.²

April 2009

¹ Not printed.
² Not printed.
Witnesses: Mr Jeff Edwards, Chairman, Crime Reporters Association, Mr Sean O’Neill, Crime and Security Editor, the Times, and Mr Ben Goldacre, the Guardian, gave evidence.

Q303 Chairman: Good morning. This is the fifth session taking evidence into our inquiry on press standards, privacy and libel. In the first part of this morning’s hearing we are taking evidence from what we have termed “working journalists”. I would like to welcome Jeff Edwards, Chairman of the Crime Reporters Association, and I think recently retired Chief Crime Correspondent for the Daily Mirror.

Mr Edwards: Yes, not working any more.

Chairman: Sean O’Neill, the Crime and Security Editor of the Times, and Ben Goldacre, author of the Bad Science column on the Guardian. Adam Price is going to start the questions.

Q304 Adam Price: One of the themes that has emerged in the inquiry so far is the huge pressures that modern journalists are having to work under. We are familiar with the term “churnalism” that Nick Davies has added to the lexicon. In the study by Cardiff University that underpinned some of his work, a survey showed that, for example, facts were only checked in 12% of stories, and they claimed that journalists in national newspapers were having to produce three times as much copy compared with 20 years ago. Is this an accurate picture in your experience of the pressure that journalists are working under now, compared to, say, a generation ago?

Mr Edwards: Yes. I think everybody in a newspaper office has to do more for less now. I can only speak about the organisation I was with for the last 20 years, which was the Daily Mirror, but during that period I have seen the staff shrink year on year, and when I left in December it was probably about 50% of the strength it was when I joined in the late 1980s. Inevitably it depends on what is happening on the day. As a specialist correspondent, I might start the day with nothing on the agenda or with five or six projects in the air at any one time and having to dip in and dip out of things. Pressure to produce is not a new phenomenon. That has been ever-present, in my experience. It is slightly different if you are a very experienced journalist—as I am, as Sean is, and my colleague here, I am sure, is as well. Obviously it is a matter of professionalism that you check your own facts as closely as you possibly can all the time but it is true that at certain times you might be dealing with, essentially, an overload of information. I think that is just changing times in the newspaper business. Its back is to the wall at the moment. We have seen shocking cuts and economies being made wholesale. Especially in the tributary system through the regional and local paper system, we have seen huge job losses. I think that, inevitably, the overall effect will be a poorer standard of journalism.

Q305 Adam Price: Some of the more colourful passages in Nick Davies’ book refer to the use of industrial language, I suppose, by certain leading figures in the newspaper industry: “Journalist reduced to tears under pressure to produce.” but was it not ever thus? Or is this a new phenomenon?

Mr O’Neill: I do not think there is anything new about that. It is a fairly robust work environment, where every day there is an absolute deadline otherwise the paper does not get out. You have to produce. I agree with Jeff: there is a new pressure to update internet sites and websites continually, but from my own experience at the Times, if I am on a particular story and the web are saying, “We need copy for this,” I can very easily say to the guy who is running the website, “I have to research this for the paper and I haven’t got time to do it.” I talk to one of his online reporters—he has a dedicated team of online reporters—have a chat with him on the phone, and that can be my input for the web for that particular story. Other times, if I feel I have time, then I will certainly follow up for the internet as well. I think the pressures have always been there. I have been on the staff of national newspapers, the Daily Telegraph and then the Times, for 17 years now and we have always had a pressure. The Daily Telegraph back then was a much bigger paper. It carried an awful lot of stories. You would be writing two or three stories for the paper every day. You might do less stories now but you might do one for the paper and one for the web—one version for each.

Q306 Adam Price: To a certain extent you are all specialists. In the news environment, are you give the time and the space to develop the specialist expertise, the contacts and the depth of knowledge that you need really to be a specialist?

Mr O’Neill: Where Jeff and I are, we cannot do our jobs in the crime field without spending a lot of time developing contacts. You just have to look at some of the agendas over the last year to see journalism of the last year to see that people do have the time to get out there and still dig into a story. If you look at my own paper’s coverage of the Eddie Gilfoyle alleged miscarriage of justice case, one of our reporters spent months and months on that. He has had plenty of time to work on that. Ian Cobain at the Guardian, in the work he has done on alleged British complicity in torture, took months and months to pursue one topic. I myself have a 3,000 word piece in the Times today which has taken weeks and weeks to do. There is time. Absolutely. If you have the right story, you will get time to do it.

Mr Edwards: But quality journalism is expensive, frankly. It is expensive in terms of staff power. It is expensive in the literal sense: if you want to investigate something properly you have to go out and travel, you have to stay in hotels, costs mount up. There is an element in certain papers now of “pile it high and sell it cheap”. Without a doubt. There is a huge budget squeeze. A ratcheting effect has gone on. This is not entirely new. It has gone on over at least a decade, I would say. I think the end product is a lower standard of product. It is interesting to note that the consistently successful newspapers, the ones which either maintain their circulation or at least manage to have a slower rate of decline than the others are those that invest heavily in journalism. There are commercial benefits to be gained from proper investigative journalism, but I am afraid that
for many newspaper groups that is not an option any more. They have missed that boat or the boat sailed without them noticing. The Express Newspaper Group is a very good example, I suppose—although I do not really want to single anybody out. The truth is that is merely a shell of the organisation it once was. Newspapers are run by accountants now, not by journalists.

Q307 Adam Price: Clarence Mitchell, who is the media adviser to Gerry McCann, painted a pretty appalling picture of almost frenzied pressure on the journalists working on that particular story to produce. One of the discussions is whether that was a one-off because of the particular circumstances, but in the last few days we have had another crime story in an overseas jurisdiction, the Fritzl case. The Sun was the first newspaper in the world, I think, to publish a photograph of the daughter. The Daily Mail then followed up by publishing the name of the village where she was living now with her family, and she has had had to move back into a psychiatric institute because the cover has been blown. It hardly makes you proud to be British. Does it make you proud to be a journalist?

Mr Edwards: No. It is a vast topic this. When you look at the amount of trade and traffic that a newspaper like the Times or the Daily Mirror generates every day—millions of words, thousands of different topics over a period of a year, and things happen. There have always been things that have happened that I certainly did not approve of and no doubt a number of my colleagues would not have approved of. With the McCann case, which I was not directly involved in, I did not travel to Portugal—I did a little bit of work at this end, but I was only peripherally involved—I know from talking to colleagues, not just colleagues at the Daily Mirror but colleagues across the business who were out there, that there was intolerable pressure brought to bear on some of them to produce results at any cost. One of the interesting developments or one of the interesting aspects of how technology can take over is that all newspapers have websites now, and editors were coming in each morning and looking at the number of “hits” per story on the websites, and certainly the ones which were getting the greatest amount of attention were the ones they then wanted to repeat the process with again the next day. With the McCann case I know that most newspapers were in this situation. Editors were coming in the morning, having a look and saying, “There’ve been 10,000 hits.” I have no doubt the same thing would have applied to the demise of Jade Goody over the last few days. They would come in, have a look and say, “This story is getting as many hits as many people. We are twice as interested in this as anything else, thus we must have more on this story. So the editor tells one of his line managers, “We must develop more on this story,” the line manager leans heavily on the reporter in Portugal and says, “We must have more on this story,” and the reporter says, “There is no more. We have squeezed this dry.” The line manager—and I am not talking about any particular newspaper: I am sure this is happening across the business—will be saying, “I don’t care what we do, just get something”—you know, “Don’t bring me problems, bring me solutions.” I have heard that expression many, many times in these sorts of circumstances. Essentially reporters, I know, will have been congregating in Portugal over breakfast, and saying, “What the hell are we going to do today to resolve the situation?” Thus a huge amount of recycling of information, and I have no doubt that some of what went on strayed beyond the boundaries of what was acceptable and some newspapers paid the price for that.

Q308 Adam Price: Sometimes, of course, the problem lies not with the body of the text of a story but with the headline. To what extent, if your buyer pays for the story, do you, as journalists, get consulted in relation to the headline?

Mr Edwards: No.

Mr Goldacre: You do not.

Mr O’Neill: I have had cases where we have had legal problems which have emanated from headlines and captions rather than from the body of the text. But I think it is part of the job of the reporter to be sensitive to the nature of the story. If you think there are legal issues there, you must say to the in-house lawyers and to the sub-editors who write the headlines, “Be very careful about the headline. Don’t put the word ‘terrorist’ in there” and make sure the lawyer sees the headline before the page goes to print. There are ways of avoiding it but you have to have your antennae out at all times. The other thing is that sometimes people insert mistakes into your copy while in the business of correcting your grammar or something.

Q309 Adam Price: This must be one of the problems with some of the health scare stories that certain papers seem to major on. People will read the headline which will give an impression of whatever problems with MMR, et cetera. Maybe the body of the text is more balanced but they will just have read the headline and that is it.

Mr Goldacre: I think that is sometimes true. “Facebook Causes Cancer” was a good example of that in the Daily Mail. I think there are a lot of problems that are possibly specific to health and science coverage. I am slightly worried about the extent to which people are keen to use overwork as an excuse in bad journalism. One of the stories I have covered, for example, the media’s MMR hoax—as I believe it will come to be known, effectively—is not an example of people being hurried. It is also quite a good example of how, even though there are people in newspapers who are well trained (for example, specialist health and science correspondents who are often very good at what they do), commonly when a story becomes a big political hot potato, it is taken out of the hands of the specialists and put into the hands of journalists. In the case of MMR that was very clear. There is study from the Cardiff University School of Journalism from 2003 which shows that of all the science stories in 2002, which is when the coverage of MMR peaked, the stories about MMR were half as likely to be written about by science and
health correspondents as stories about GM or cloning. I think that is very problematic because, suddenly, the people who normally would be writing about a funny thing that happened to the au pair on the way to a diner party were giving people advice about epidemiology and immunology, which is plainly never going to work. That happens time and again with stories of the kind that I cover, where you see a scare story, or a story about the supposed benefits of one particular vegetable, written not by a health or science correspondent but by a journalist who has picked up a press release.

Q310 Adam Price: Nick Davies’ speeches about churnalism are borne out, and it is driven by sales in this country, because a paper believes that there is a public interest in these kinds of stories and therefore they want them to go on the front page of the papers.

Mr Goldacre: I recognise that you have to be realistic and that there is a difference between the work of a public health physician trying to convey good, clean, clear information to the public about the risks of different health behaviours and the desires of the newspaper to sell copies or to sell readers to advertisers, but I think the drive to sensationalism has gone to the point where people create stories that really have basically no factual content at all in the area of health.

Q311 Alan Keen: It is coming through clearly—and people knew before we started the inquiry, but every time we have asked anybody during this inquiry, whether it is lawyers or Gerry McCann or Max Mosley, and you have said it again this morning—the standards have changed, have deteriorated, because of people getting desperate. What can we do about it? We are talking about a privacy law or not a privacy law. Are the press intruding too much or are they not? You are insiders. What would you say we should do?

Mr Edwards: I do not have any answers. I could take you back through my career and I could sort of chart the demise of journalism. When I started my career in the late 1960s, working on very well-produced newspapers in East London, advertising was the packaging that went around the editorial content. They were editorially driven and had a large editorial staff. If you look at those same papers today—if they are not free sheets—they have almost no editorial staff whatsoever, and what editorial content there is, it is the packaging that goes around the advertising. I like to compare regional journalism, say, in this country—and this is a bit whimsical, but I am an angler—to the tributaries that feed into the main rivers. Those regional and local newspaper offices and so forth—as with radio and television, I am sure, as well—are the spawning beds of the industry. If you destroy those spawning beds, do not be surprised if the number of salmon coming through over the next few years is reduced. Ben made a good point. We laugh about it sometimes, ironically, at work. I have seen extraordinary schoolboy howlers creeping into papers I have worked for over the last few years, simply caused by just a lack of knowledge or a lack of training or a lack of experience by people on the production side. Sometimes you hear conversations that make your hair stand on end. I walked behind two sub-editors at the Daily Mirror just before I left—these are people in their thirties, you would have thought they would probably have had a good education—and one was saying to the other, “Do you know, I didn’t know Japan was in the Second World War.” I am serious. And I thought, “Then you shouldn’t be working here.” I do not really want to bring levity into this, because it is a serious matter, but the Guardian was honest enough to be the first newspaper that started a purpose-designed corrections column, and the Daily Mirror does the same thing now, and it is one of the things that you first look at in the morning to cheer you up. Things happen in there that you find completely unbelievable. But it is symptomatic of a much more serious problem.

Mr O’Neill: I would take a slightly different perspective from Jeff in that. I have spent quite a few days recently in the Newspaper Library at Colindale, which is a fascinating place. It is not that long since newspapers had advertising all over the front page. They did not have news; advertising was very much to the fore. Also, I do not necessarily recognise “churnalism”. I do not have a lot of time for Nick Davies’ thesis at all. The old Telegraph in the 1950s and 1960s had about 40 or 50 stories on a page and somebody was churning that out. I am a very passionate, heated believer in the power of journalism to shine a light in dark corners and to get where people do not want stories to be told and things to be found out, and journalism today is a damn sight more professional than when I started 30 years ago, and, I think, a cleaner and more conscientious business than it was. We were chatting outside about the old days but I think people are a lot more conscientious now about how they go about it. It is just a more professional business. Frankly, we spend a lot less time in the pub than we used to.

Q312 Paul Farrelly: I became an MP in 2001, and I was City Editor of the Observer and an investigative journalist beforehand. My coming here coincided just at the time when these collaterised debt obliations and all this fancy stuff was taking off. I had never heard of it until recent times. I cannot help thinking that the number of old hands from financial investigative journalism that I still know in the trade I could probably count on the fingers of one or maybe two hands, whereas there used to be a lot of them. I just wonder, coupled always with the implicit threat of libel, always with the implicit threat of spoiling the sources if you are in the City, whether, even 10 years ago, the press would have done a far better job of investigating the causes of the current troubles than it does now in terms of the amount of resources it is willing to put into investigative journalism.

Mr Edwards: I agree, in a way, with what Sean just said. I think we have been “professionalised” in one sense, but it has not necessarily made us better journalists, if you see what I mean. Newspapers cannot afford, never more so than at the moment, to
be cavalier about what they do. Lawyers in big newspaper groups are more active than they have ever been. The biggest struggles that I know go on in a newsroom on almost any given day are those between journalists and our in-house legal departments, because, in an ideal world, they would put a blue pencil through everything they possibly can because they are also judged on their results. If things get through the net, they are culpable. In the end, the buck stops with them. They are the people who carry the responsibility for keeping us out of the courts. Journalists are passionate in their views, or should be, about their profession, and of course they are always looking in a certain sense, with responsibility I hope, to push the envelope, to push the boundaries. Once again, it comes back to responsibility I hope, to push the envelope, to push it used to be, for instance. You could almost rely on

Times is not feared by the establishment in the way investment in the product. It strikes me the boundaries. Once again, it comes back to responsibility I hope, to push the envelope, to push it used to be, for instance. You could almost rely on it, week by week, 20 years ago, to produce stories that really grabbed attention, that really brought about change, that brought important matters under public scrutiny—and not just the Sunday Times but many others. The Daily Mirror, where I worked until very recently very proudly, had a fantastic tradition for really great journalism. It had many, many extremely credible people working for it: people like Paul Foot, John Pilger—great names—journalists who built a reputation on fighting wrongs, on fighting injustice and so forth. As I said to you before, that element is no longer considered, even in a paper like the Daily Mirror, to be a commercially viable or a commercially interesting asset.

Mr O’Neill: Your generation of financial journalists were probably the generation that did not see Maxwell coming. Maxwell got away with robbing the Mirror pensions blind.

Q313 Paul Farrelly: Read the last transcript.

Mr O’Neill: When they went for Maxwell, he went to the courts and he obtained injunctions against everybody. That is the situation we are in with a lot of investigative stories now. You probably see less of it because a lot more of it is being stopped in the courts by injunctions and by threats from Carter Ruck. People run to Carter Ruck as soon as you ask the question and stories get stopped.

Q314 Chairman: That leads neatly on to this issue. We have been told that there has been a gradual shift in the balance between freedom of expression and privacy, but that in the area into which I think all three of you fall—which is exposing genuine matters of real public interest, not sensationalism—all three of you are dealing with either crime or health matters which obviously are in the public interest, there is the defence for journalists of public interest, which has been set out specifically in the Reynolds case, where there are various tests which, if you meet them, provide you with a defence. Are you satisfied that you are still able to devote the time and the resources in order that you have that defence and that it is not preventing you from fighting wrongs as you do it?

Mr O’Neill: I personally think we still get the stories and we still do the work. Where the obstacles come in—and this is particularly just in the last two or three years—is in the rise of this kind of unwritten, judge-made privacy law, and the rise of—I am sure you have heard of it—what I call “no win, no fee” but which I think is called CFA libel.

Q315 Chairman: Indeed.

Mr O’Neill: That scares the living daylights out of newspaper lawyers. As soon as they see Carter Ruck coming waving CFA at them, they know that by the end of the week the costs are going to be tens of thousands of pounds and going up from that in a spiral and they settle cases and run away from cases rather than fight them. I have been involved in a number of stories where, frankly, I think we could have fought cases and won them, but it would have been so expensive. Might the guy at the other end have had the money to pay our costs? Probably not. The judgment is made that we will wait for a bigger one, but we have to stand our ground at some point. It is difficult to give examples of this but I have been involved in a couple of cases involving terrorism stories, where people have gone to Carter Ruck and sued. I hope I am privileged in here, but . . .

Q316 Chairman: You are.

Mr O’Neill: Jolly good. I am fairly sure that in two cases that I am aware of some of the money that was paid in damages to one individual was then later used for bail surety for a man on a very serious terrorist charge, and I am pretty damn sure that money was used to bribe officials in Pakistan to set free a very serious terrorist prisoner. On the other business of privacy law, I can give you an example of a story I was working on with a couple of colleagues a couple of years ago. A fairly senior lawyer, who back in the 1980s was a student animal rights extremist, now works for, advises and represents the Metropolitan Police and police forces up and down the country. His previous animal rights activity is well-documented back in the early 1980s. We were going to do “Look where he’s gone now” as a matter of public interest but as soon as we put the questions to him, we called him up and informed him of what we were doing and here are the questions, he gave answers—he basically admitted everything—within an hour we had Carter Ruck on the phone threatening. “This is breaching his privacy. We’ll get an injunction” blah, blah, blah, and we ended up having to pull back and look at that another day. We run into that sort of thing all the time.

Q317 Chairman: But you believed that that story was in the public interest and that is a defence against any attempt to obtain an injunction.

Mr O’Neill: I believed it was in the public interest. If I am right in remembering, I think my lawyer said, “We think we would win on public interest, but this privacy law is so uncertain, we don’t know where we are going, and is this the one on which we want to make our stand?”
Mr Goldacre: I think one problem is the time and money required to deal with the problems you could pick off is so enormous that it is a very big risk. I get the sense that people often exploit the fact that they know it will be a lot of time and money for you in order to make quite trivial objections to your own stories.

Mr O’Neill: It is blackmail.

Mr Goldacre: Yes, but it is a test really of how much you want to cover a story. In some cases it can make you more dogged, because you think, “Right, there’s obviously something worth covering here” and, also, just out of bloody mindedness, “I’m going to pursue this because I feel offended that you are trying to bully me.” But I think in a lot of cases, if it is a 50:50 thing and you are not that bothered, then people will often drop things just because the nominal cost is too much.

Mr O’Neill: We had a similar one at the Times recently, with Mohamed Ali Harrath, a Tunisian who is on an Interpol red notice. He is a wanted man in Tunisia but not anywhere else and he is an adviser to the Metropolitan Police on Islamic affairs in this country. When we first approached him it was as a side issue on another story, and, once again, we got Carter Ruck down like a ton of bricks “How dare you harass our client.” He abused the reporter and he called him “a Zionist, an Islamaphobe.” He was more abusive and we were terribly polite, as always. In the end, I thought, “This is just not worth it.” But we had a young Australian reporter who came in recently, and he spent three months nailing that one down and got it into the paper. But it took a hell of a long time and an awful long time spent with the lawyers, and basically not to deviate very far from the point at which we started.

Q318 Mr Hall: I want to explore with you the relationship between journalists and the PCC. Before I do that, you said that we have unwritten, judge-made privacy laws. Would you like the Government to clarify the position on privacy laws in primary legislation?

Mr O’Neill: I think that once we start getting ministers and judges and lawyers editing newspapers, we are heading towards Portugal.

Q319 Mr Hall: I take that as a no, then.

Mr O’Neill: Absolutely.

Q320 Mr Hall: You are quite happy to put up with the situation as it is.

Mr O’Neill: In my situation the PCC Code is part of my contract of employment. It is a very serious matter for me. I cannot mess about with that. I cannot say, “I’m not going to stick by that.” It is in my contract. If I breach that, I can lose my job. I think we are all pretty aware these days, especially on crime stories, that you are dealing with very sensitive areas. You are approaching people who have been bereaved; you are dealing with ongoing criminal investigations. You have to be very careful. I personally take that Code very seriously.

Q321 Mr Hall: The National Union of Journalists has campaigned for a “conscience” clause in the PCC Code to allow journalists to say to their editors, “I’m sorry, I don’t like this story, I don’t want to cover it.” Do you think that should be in the code?

Mr Edwards: It is very difficult to apply. In my situation I had sufficient seniority—and I have used this many times over the years—to go to the editor, if I knew in advance what we were doing, and say, “I think we’re wrong to do this. I think we are barking up the wrong tree. I think this is dangerous.” I have worked for 26 different editors in a 25-year career on national newspapers. The turnover was very rapid. Different editors. Different personalities. Some were good listeners and would take good advice; others did not want to know at all. I think senior journalists do have that facility, I have no doubt that senior political journalists regularly brief their editors and say “I think we should be doing this”—or “I think we should not be doing this” just as important. But, of course, the majority of the staff of any newspaper are not in that privileged position. It would be deemed to be quite impertinent for most of the people I can think of to go the editor of the paper and say, “I’m not doing this, boss, because I simply do not agree with it” on moral or ethical grounds or whatever. You would probably be quietly eased out of the organisation, is the effect. It would be impossible, I think, to police it.

Q322 Mr Hall: We have heard reference to the MMR story, which you are calling the “media hoax”. A journalist goes along to his editor and says, “This is completely wrong. We are going to end up in seven years time with an endemic of measles, the research side of this story is complete garbage and we should not be doing it.” Would that work?

Mr Goldacre: I think that did happen in a lot of newspapers. There were a lot of people who spoke sense to power but were ignored. I think there is a problem in that health and science coverage have unique problems, in that people at the top of news organisations tend to be humanities graduates who do not understand the basics of evidence-based practice but, also, there is a desire for certainty about either risks or benefits that medical research simply cannot offer. Certainly in relation to MMR I have been told a lot of stories about this stuff. Also with the silly science stories. There was one where the headline in the Sun was “All men will have big willies”. It was a classic example of churnalism. It was a promotional piece for a TV channel but it was presented as if it was an important breakthrough within the science of our understanding of evolution. This was reported as a serious story in all national newspapers. I have been told by people who were in newsrooms on that day that they said, “Look, please do not make me write this story, it’s ridiculous.” News editors and other senior people in the paper made it very clear that this would be bad for their career. That is a trivial example, but I think it speaks to a larger problem. Journalists often talk about “writing for the spike,” which is where you are forced to write a story, and so you do write it, but you
write it with as many caveats as possible so that it is effectively unpublishable. I suppose it is that dirty protest that is the closest you can get realistically.

Q323 Mr Hall: How effective is the PCC’s Code of Practice, if you are not going to sign up for a conscience clause? Sean, you have already answered this question. What is your view, Jeff?

Mr Edwards: I think the PCC is taken very seriously. I know from the last few years working at the Daily Mirror that I frequently heard and was part of debates where the question of whether we would be leaving ourselves vulnerable to that kind of complaint was taken. I was quite pleased, in the sense that I think it was necessary to form a body like the PCC. And of course initially people said, “It does not have a great deal of bite” but I suspect that the longer it has gone on the more seriously it has been taken. I really think that is probably about as good as it can get.

Q324 Mr Hall: What is your experience of the complaints procedure? You might want to invoke the Fifth Amendment.

Mr Edwards: Not at all.

Q325 Mr Hall: You have been very candid with us. Mr Edwards: I will be honest with you, in my entire career I have never been the subject of a PCC complaint. I have only been the subject of one libel, which was on my first week on the News of the World, and, interestingly, bearing in mind something else we were just debating, it was not about the text of the story. My copy was not libellous but the headline was. We lost that, I think. Again I make this delineation: amongst senior journalists who are given responsibility and expected to show responsibility and expected to understand their profession fully there is a great deal of discretion and a lot of integrity and a lot of commonsense application. Your knowledge of the rules should keep you out of trouble anyway. Instinctively, your experience, your knowledge, your learning and a number of factors should be able to tell you: “If I write that we are likely to run aground. We are going into tricky conditions here.” In my particular field, many, many times, I have adjusted my approach to a story out of deference to victims of a crime or to recognise that you need to show some sensitivity. I have sometimes been critical of colleagues who have written things. We have had debates afterwards and I have said, “If I had been writing that story, I would not have pitched it that way. I would not have said that. You could cause a lot of damage unnecessarily. How does it enhance the story? What would we lose by it if we had not included that?” No saint am I, but I have accrued a lot of experience and I think that is invaluable in keeping you out of trouble.

Mr O’Neill: I have two outstanding PCC complaints at the moment. They are both being taken very seriously by our Readers’ Editor. One is from Terry Adams and the other is from Kenny Noye both with links to organised crime, and I have to answer those in full when they come in. On the conscience clause, I think a conscience clause would turn into a bit of a shirker’s charter. I was born and bred in Northern Ireland and I spent a lot of time reporting on The Troubles. It is my job in something like that, no matter what I think and feel personally about a matter, to report that impartially. There is a paper in Northern Ireland called the Impartial Reporter. I think a reporter has to be impartial. You report what you see in front of your eyes. It is not about what you think when you are a reporter; it is about what you see and what you hear and what occurs. You have to report that fairly and frankly and openly. I think if you have a problem with an issue, if you have a problem with a news editor suggesting you go and do something, I think Jeff is right this is where experience comes in. If you are an experienced reporter, you can tell your news editors to hang back a little: “We do not want to do that. It is a bad idea.”

Q326 Helen Southworth: You have been very clear about the importance and significance of the PCC code of practice, all three of you. How universal is that? Is it automatic for any journalist that the code of practice would be part of a contract, for example?

Mr O’Neill: I do not know if it is universal across the industry. I think it is in News International. When we had the previous body, the Press Council, before the current Commission, I think it was taken less seriously. I think that for the last five, six, seven years it has been regarded much more seriously, because all newspapers, like Jeff says, want to stay out of the courts. Nobody wants to get to the courts. If there is a system of self-regulation and it can be seen to be working, then everybody in the industry takes it seriously. We have to. I think that has become much more the norm and much more the standard.

Mr Edwards: Certainly in the last eight or nine years at the Mirror, however long the PCC has been running, it was made very clear that we were going to comply, we were going to clean up our act. I think that may well have been said in other newspaper offices as well. Unfortunately what happens is that sometimes a set of circumstances may be so irresistible that people conveniently push aside that commitment. They become overexcited. I suspect that if you look at the McCann saga it is probably a good example of that, whereby if you had shown various editors the year before a play written about those circumstances, they would have all read it and said this is jolly interesting but we would never allow it to happen. It is a peculiar psychology. I do not know what gets into people but that is an ideal example of it. It is a paradox. On the one side I know I have had many, many conversations, as I have said, where we have talked about the risks, about the morality of a particular story or whatever, and said, “Listen, we want to stay the right side of the line. We have a commitment to abide by the rules.” Then you will see a certain set of circumstances where it is almost as if, I do not know, people suddenly act out of themselves for a limited period over a particular story. I do not know—you know, in a world that is driven by extreme competition never so more now than it is—what you do about that.
Q327 Helen Southworth: I want to follow up about the drivers and whether these drivers have changed. We have been touching on it in your answer, Jeff. The mass media communication world has changed so rapidly in the last 10 years. You do not have to travel across the world to find out what parts of the world are saying. Some of those media are completely outwith the journalists’ body of experience and knowledge and skills in print media and broadcasting previously. What kind of impact do you think that is having currently? Is that something that the PCC needs to give a focus on, putting something into the public domain, for example? It has shifted really radically in the last 10 years.

Mr O’Neill: In a way we are the responsible end of the business. What they call “citizen journalism,” out there on the blogosphere and forums and rumour sites, nobody is controlling any of that. The stories are still out there about the McCann family and that case. It is circulating madly. The internet feeding frenzy that goes on is completely beyond regulation. Nobody has any control over any of that. I think that is really quite worrying. I am not saying you people, but if you look at the courts, judges make contempt of court orders: “You must not report this” and “Nobody must know anything about this” and when jurors get home they Google the name of the defendant and find out everything they need to know. Not necessarily from responsible media but from all kinds of sites. It is getting to a world where you can regulate the press and you can talk about privacy laws and libel and all the rest of it. Who is going to sue truecrimeblogger.com while he peddles loads of nonsense that cannot be checked or verified and all the rest of it?

Mr Edwards: Sean is right in that respect. I have said that mainstream newspapers are almost being pushed to the fringe of the media world and, as you say, we can only self-police ourselves internally as the world pertains to us. There is an incredible mass media world and, as Sean said, is citizen journalism now; it seems that the internet is entirely unrestrained, there are no legal restraints on it and you can write what you like almost about anyone providing that you are shielded in some way—outside the UK jurisdiction or whatever. I do not know what you do about that. I was fascinated. I watched an episode of a police series called Traffic Cops the other night and the police officers had to arrest two very violent men inside a supermarket. By the time they got them under control the camera was facing towards the front glass of the supermarket and you could see about 10 people with mobile phones videoing this arrest. I thought it was quite interesting that after the prisoners were put into a van and taken away to the police station the reporter said to the PC “That was a difficult bit of business” and he said “Yes, because we had to behave extremely well in these circumstances because you saw all those people who were videoing what was going on. That won’t be the first time that our relief has been on YouTube.” There is good and bad in that; it actually acts as a restraining factor and also acts as a restraining factor on journalists sometimes, in some circumstances, you never know, because we are all subject to more scrutiny in more circumstances which you might not expect because there is so much more media out there.

Mr Goldacre: I actually disagree. There is certainly a lot of idle tithe-tattle on the web which is much like conversations in pubs, and that could be policed very simply if our libel system was not so all or nothing; if there was the equivalent of a small claims court then it would be fairly straightforward. More importantly, there are many; many stories in the area of health and science where the coverage on the internet is infinitely better, more accurate and more relevant than the coverage in national newspapers; that is something to be very optimistic about and something to actively encourage. It is not just blogs, it is not just of random people, it is academics who write about their own work, who write about their colleagues’ work, it is medical research charities, it is the NHS evidence site which gets through many visitors a week, and actually as the quality of newspaper coverage deteriorates alternative sources are improving in quality and it has a two-sided effect. On the one hand they are producing better coverage and on the other hand, as you say, they are pointing out the flaws in mainstream media coverage. That is very powerful and something to be very enthusiastic about.

Q328 Paul Farrelly: I tend to agree that a conscience clause would be unworkable, and I can imagine the conversation afterwards with most editors, that if you want to continue working for this paper, son, before you get up tomorrow and leave the house you had better leave your morals at home.

Mr Edwards: Absolutely.

Q329 Paul Farrelly: I was interested to hear what you say about the seriousness with which the PCC is allegedly taken because I know the sort of people who comment in the press, but actually if somebody threatens to take you to the PCC over a controversial story there is almost a palpable sigh of relief because people have not got the confidence or the wherewithal or the bottle to sue, and unless you threaten to sue it will not change a newspaper’s behaviour or they will not take it seriously, you are not a threat. Therefore the PCC in many respects is laughed off as a bit of a—a

Mr O’Neill: I can only speak from personal experience. If I get a PCC complaint then in no uncertain terms I have got to go through the anatomy of the story: where it started, what I did, who I speak to and where the information came from. With some stories it is quite difficult to reveal or hint at where the source of information about a particular person came from. That is increasingly the case so I disagree with you Paul.

Mr Goldacre: I have had several PCC complaints and I have taken them extremely seriously. Often they have been on things which I have regarded as quite trivial and I am very happy to spend the time. The fact that it costs you a lot of the time is one of the main reasons for people going to the PCC because they know it is a way of effectively punishing you for writing about them.
Mr Edwards: I would agree with my colleagues here. As I stated before, I was pleased, certainly in the last few years at the Mirror that the presence of the PCC was taken seriously. Earlier I said that I have never been subject to a complaint; Sean has just reminded me and funnily enough I think the only complaint I recently received was from a multiple rapist who said that I had said that he was the worst rapist in the prison system; it turned out that there was somebody else with one more conviction so it was not true. He received a letter back from our Legal Department wishing him a nice day in prison and to stop bothering us. It is quite interesting actually; a lot of complaints that go into that body are actually from people who do it in anger, they often do not understand what is right and what is wrong. Lots of people who find themselves on the wrong end of publicity, quite justifiably, immediately lash out. People are always talking about suing newspapers but they go and see solicitors and it is not a question of the expense when they are told in no uncertain terms that actually the newspaper story appears to be fair and accurate. It is the same thing with the PCC, that people tend to make threats or make a lot of fuss and write letters to the PCC when in fact there is no case to answer. Certainly it was instilled in everyone—I have never worked for any newspaper at all where wilful inaccuracy, wilful going out to get somebody, was encouraged or tolerated or ever wanted. Quite often complaints go to the PCC because it is a mistake rather than a deliberate piece of mischief that brings about that situation. As I said before, when you look at the enormous amount of traffic that one copy of the Guardian generates—I do not know how many words go into one issue of the Guardian or one issue of The Times every day but the accuracy rate contained therein is astonishingly high when you consider all those words. It is a good thing also that you will hear a lot of people talk about being maligned in the papers and what they actually mean is it is a difference of opinion about something rather than a difference of facts. I spend a lot of time with police officers and we hear regularly of miscarriages of justice—we saw one last week where a man convicted of murder was released after 27 years when his conviction was believed to be unsafe. I do not know any police officers who take pleasure in convicting and putting in prison the wrong person for a crime, and I do not know any journalists who take any pleasure in deliberately distorting facts or maligning people who do not deserve to be in that situation.

Mr O'Neill: If I can come back on that, you are right that the PCC is maybe not taken as seriously as being sued in the libel courts and I am sure that in a case where somebody thinks they have a strong case for libel they will go to the libel courts. What is happening now though with CFAs is that you are being threatened with libel actions over things that really at the end you just know actually I am right here, but the lawyers are saying “We have got to settle this one, we cannot afford to fight this one”. That is distorting journalism and it is a distortion of justice.

Q330 Philip Davies: I am interested about this sort of chilling effect that seems to be taking place. Has the balance shifted? It seems to me as a layman that perhaps 15 years ago the common view would have been do not bother taking on the News of the World or The Sunday Times because they have got such deep pockets you may be asking for a bankruptcy, just do not bother. It seems that that has now changed and it is now the newspapers who are saying we cannot afford to risk taking this to court and the balance of power has shifted; is that right?

Mr O'Neill: The cases would go to court if the fee structure was in any way fair. I am no lawyer and I do not really understand it, I just have lawyers saying “Look, we cannot afford this” and because of this CFA thing the costs start like that and then they go like that.

Q331 Philip Davies: Is it simply CFA?

Mr O'Neill: It is also predatory lawyers. Carter Ruck, if you see their newsletter, they boast about running around the country, reading through the newspapers, picking people and approaching them and saying “We can get you some money here”. It is ambulance-chasing and that is really going on extraordinarily in some areas, especially if you write anything to do with Islamic extremism or suggesting someone is an extremist or a fundamentalist or anything like that. You can bet your bottom dollar Carter Ruck will be on it within days. Because of that it is a chilling effect, absolutely, but we do go around and we cross the Ts and we dot the Ts and we check again and again and again.

Q332 Philip Davies: My starting point is that a free press is essential in a democracy and that we rely on the press and the media to expose and challenge wrongdoing in authority; I would hate to see a privacy law because it is an essential part of our democracy. If this is happening, from your perspective what is the solution that would allow you to expose this wrongdoing without worrying about being sued or being prevented from publishing wrongdoing? Is it simply abolishing CFAs or does it need something more than that?

Mr O'Neill: Ben just talked about this idea of more of a small claims court for libel so that libel does not become this extraordinary, hugely expensive thing.

Mr Goldacre: I was recently sued by a vitamin consultant who was selling vitamin pills in South Africa—taking out full page adverts in national newspapers saying anti-AIDS drugs will kill you, it is a conspiracy by the pharmaceutical industry, vitamin pills are the answer to the AIDS problem. This was obviously very irresponsible and it was fairly cut-and-dried to my mind where the evidence stood on whether vitamin pills or anti-AIDS drugs were better for treating AIDS, but this was such an enormously long drawn-out process that eventually by the time he pulled out our costs were half a million pounds. I had watched the process accumulate with unending meetings with huge numbers of very professional and very highly-paid people and I found myself amazed at the huge amount of time
and effort that was being expended on looking at what seemed to be something that could be resolved in an afternoon.

**Q333 Philip Davies:** Are there individuals that you would shy away from, that because you know that they will threaten legal action through Carter Ruck or whoever it might be, have we got to a situation where there are now individuals whom you consider to be untouchable because you know you cannot take them on or your newspaper would not be prepared to take them on?

**Mr O’Neill:** I am not sure there are any number of Maxwells, that was the classic case.

**Mr Edwards:** We are in a position of privilege here, that is understood. Certainly the *Daily Mirror* fought shy of anything that might be perceived to be critical of Roman Abramovich recently. I actually had a story myself which was not critical, it would not have been in any way libellous, it simply talked about some security arrangements, some extravagant and interesting security arrangements that he was making concerning his fleet of luxury yachts, and we did not run the story at the time because the edict was can we absolutely back this story up? I know what it was—I knew it was absolutely true but his organisation denied it, because he is a very private person and he considered it apparently to be some commentary about some aspect of his private life. The message came back we do not mess with Abramovich, he is too powerful, he is too litigious, if in doubt—there was no doubt in my mind, I said “Orders have been placed for this equipment, I can tell you with which organisation” but they ran away from the story and I accepted that that is the world we live in now, sometimes you cannot do anything about that.

**Q334 Philip Davies:** It is quite serious if people for whom it is important to have scrutiny and be challenged, simply because of the legal—

**Mr O’Neill:** It has always been that way, it has always been the rich and powerful who have been able to go to the libel courts and silence the newspapers.

**Q335 Philip Davies:** When Max Mosley gave evidence to the Committee I actually was not here but one of the most convincing things that he was complaining about was the issue of prior notification. He felt it was absolutely right that if a newspaper was going to print something about them the following day they should be notified prior to that. In his particular case that did not happen, presumably because the paper concerned would be pretty sure that an injunction would be taken out and that they may not be able to run the story, so presumably prior notification was not given in that case in order to prevent an injunction. Would you support a system where you had to give prior notification to somebody if you were going to print an unflattering story about them?

**Mr O’Neill:** No. The normal course of action when you are doing a story with most people is that you will ring them—it is not really prior notification, you are saying this is the allegation we are about to make or the story we are about to tell, we know it is true, what is your response, what is your comment, what have you got to say? There are other stories where, again, like the Maxwell situation, people will injunction you, where you have High Court judges basically censoring stories. Maxwell was protected for years by the courts and the people who lost out were the *Mirror* pensioners whom he robbed blind for years because he was not properly exposed. The other situation, slightly hypothetical, is imagine you were writing a story about someone who has committed a criminal act or is a fraudster or something, you are one step ahead of the police—which sometimes happens. You do not want to flag that up to that person to allow them either to start shredding documents or escape the country or something like that, you want them to get the story out, you want to get the authorities informed but you do not want to have to give the game away.

**Q336 Philip Davies:** But I think the argument would go that surely it is better in terms of an injunction that an independent judge decides whether or not something is in the public interest rather than the editor of the newspaper making that decision that it is in the public interest and I do not know care what anyone else thinks. That is how the argument goes but what would you say to that?

**Mr Edwards:** First of all, how do you apply prior notification because especially in the case of very wealthy, very important people, they can avoid prior notification if you like because very frequently if I wanted to speak to Roman Abramovich I could not, it would be easier probably to get an audience with the Pope, as they say, than speaking to somebody like that because they are constantly on the move, they are shielded by layer upon layer of security and public relations and all sorts of people—echelon strength. If you are the editor of the *News of the World*, it is Friday evening and you say “Right, now it is time to tell Roman Abramovich what we are about to do”, you speak to your first line of contact which is maybe a public relations agency or whatever working on his behalf and they say,”Sorry, we cannot get hold of Mr Abramovich, we have no idea where he is in the world; he has 16 homes, eight aeroplanes and nine yachts and we do not know where he is.” Have you fulfilled your obligation to try and contact him or have you not, and do you then say we cannot publish the story until we can speak to him directly, because that situation could run on endlessly? What criteria do you apply that says we have actually attempted to do our best to contact this individual to give him prior notification? Important people, as we said, will always find ways to make themselves unavailable, so that is a difficulty that I can see straightaway.

**Chairman:** We are going to have to stop very, very shortly, Paul.

**Q337 Paul Farrelly:** Just on the chilling thing I am sure the *News of the World* might argue that actually we published a dummy edition in time-honoured
fashion, not because of the threats of injunctions, to be sure of our story, but because we did not want the *Sunday Mirror* getting in on the story.

**Mr O’Neill:** Quite right.

**Q338 Paul Farrelly:** We have recently just had an example where a newspaper was very sure of its story because it verified the documents—the *Guardian*—where Barclays found a judge at two o’clock in the morning who could not order the paper to be pulped because it had gone out at that stage but ordered the removal of the documents from its website for breach of confidentiality. Ben, very briefly in the time that the Chairman has allowed us, could you just explain, when you are running health stories how do the people who are peddling these wares approach you and the *Guardian* to try and stop you writing what they consider to be bad things about their reputations? How do they tie you down?

**Mr Goldacre:** Legal threats generally; obfuscation, so unsatisfactory defences which take a lot of time and effort to unravel but more commonly legal threats which have never come to anything—well, they have come to 15 months of weekly meetings and harassment but nothing more than that.

**Q339 Paul Farrelly:** Finally, do you find that in these circumstances it is not really about the money they want, it is about the chilling effect and also causing you and the newspaper so much aggro that you are more likely to give up and leave it alone?

**Mr Goldacre:** Yes, because the motivation is to bully you and that can have very different effects. With me in a lot of cases it has made me much dogged about pursuing a story but on a much bigger scale there are points where it goes beyond what a newspaper can actually administratively handle, and at that point people become untouchable.

**Chairman:** We need to move on to our next session. Can I thank all three of you very much.

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**Written evidence submitted by the Press Complaints Commission (PCC)**

**Executive Summary**

1. Developments over the last two years have reinforced the Select Committee’s 2007 findings about the undesirability of a statutory press regulator and a privacy law (para 1.1).

2. The PCC now helps more people with privacy concerns than ever before—but the profile of the courts’ activity in this area has increased, along with media concern about the power of individual judges to decide what can and cannot be published (para 1.2).

3. The PCC works well in practice. In 2008, we dealt with the privacy concerns of nearly 1,000 people either formally or informally. These people included high profile people such as members of the Royal Family and television presenters, but were mostly ordinary members of the public caught up in the media spotlight (para 2.1).

4. It is right now—10 years after the passage of the Human Rights Bill—to ask whether all this work might be threatened by developments in the law. The Government reassured the PCC and the press in 1998 that press freedom and self-regulation would not be undermined by the HRA. There is an argument that matters have not turned out as the Government intended (paras 3.1 and 3.2).

5. It would be potentially highly damaging to self-regulation for judges to make their own interpretations about the press Code of Practice which ignore the PCC’s experience in tackling privacy cases (para 3.3). This might undermine the advantages of the self-regulatory system, which is free, fast, non-adversarial and discreet—and which involves the public in its decision-making (para 3.4). Perhaps the remedy may lie in some amendment to Section 12 of the Human Rights Act (para 3.6).

6. The PCC remains opposed to a system of fines for breaches of the press Code because the clear advantages of self-regulation would be lost by such a move to a quasi-legal system of regulation (para 4.1). The Commission already provides a range of meaningful remedies for intrusions into privacy, and, in any case, the public does not seem particularly supportive of fines as a remedy (para 5.1).

7. In any case, the law would not make an effective alternative regulator of privacy: the UK is not a ring fence-able jurisdiction in which the flow of information can be controlled by a court; and the formality and riskiness of the law are alienating to the public (para 6.1). Globalisation and digitalisation of media are powerful forces favouring self-regulation (para 6.2).

8. The PCC took an early interest in the McCanns’ situation (para 7.2), and made numerous offers to assist (para 7.3). We helped on a number of specific occasions (para 7.4), for which the McCanns expressed gratitude.

9. But the PCC would not generally launch inquiries into matters without the say-so of the principals involved. Given our previous contact with the McCanns, it would have been impertinent to have unilaterally announced an inquiry, and risked looking like a cynical attempt to exploit the publicity surrounding the case. That said, the Chairman of the PCC did publicly condemn the libels (para 7.6).
10. In short, the PCC is not meant to police the laws that relate to the press as well as the Code of Practice. It was right that a complaint of libel should be remedied by a legal action for libel. Although unusual, tragic, and highly publicised, this was an episode from which it would be difficult to draw general conclusions about the effectiveness of the PCC (para 7.7).

1. INTRODUCTION

1.1 The Select Committee’s Report into self-regulation of the press in 2007, which looked primarily at privacy and newsgathering methods, made a number of important statements of principle. These included the rejection of the case for a statutory regulator of the press and a reference to the near impossibility of drafting an effective privacy law. These findings have since been reinforced by the changing media landscape (particularly the pace at which digital media have developed); the confidence that the public has in the PCC, reflected in even greater activity; and the continued tightening of the Code of Practice, among other things.

1.2 Despite the recent profile of the law in the area of privacy, the respective responsibilities of the PCC and the courts have not dramatically changed over the last two years. The PCC still deals with far more privacy complaints and concerns (indeed, a record number in 2008) and the courts have continued to develop the law of confidence in conjunction with the privacy provisions of the Human Rights Act, as they were doing up to 2007 at the time of the last inquiry. What has changed is the profile of the courts’ activity—mainly as a result of the Mosley ruling—and, rightly or wrongly, a serious hardening of media concern about whether in principle single judges should have so much power over what can and cannot be published. There are also serious questions about whether the law can actually be particularly effective going forward, for reasons that this submission will explore in paragraph 6.

1.3 In the context of this latest inquiry, it is clearly important to bear in mind what the PCC is actually meant to do. Before it was set up in 1991, there were already numerous laws that applied to the press—such as libel, contempt of court, copyright and so on, which have since been joined by numerous others. The PCC was not set up as a general regulator of all press behaviour to police these laws as well as take complaints under the Code of Practice. Rather, it was primarily meant to deal with issues, both ethical and practical, that the law cannot capture. It therefore complements the law rather than competes with it.

1.4 It was for good reason that it was left to the press to create its own independent body to balance the public’s right to know with respect for individuals’ privacy. There was an understandable reluctance on the part of politicians to empower a state agency to decide what sort of information should be published or discussed in a democracy. Despite widespread discussion in the 90s of the merits of a privacy law, similar objections of principle applied, as well as those relating to the practical difficulty of drafting legislation. Additionally, it was noted that bodies like the PCC were able to take account of evolving culture, wider context, public expectations and industry practices.

2. EFFECTIVENESS OF THE PCC

2.1 These arguments retain their force today. But has the PCC worked in practice? Our last submission to the Select Committee in 2007 detailed the range of activity we undertake to protect the privacy of individuals, including pro-active and pre-publication work aimed at preventing problems before the need for any complaint arises. Inevitably, a lot of this work is conducted away from the public gaze—which is the PCC’s central appeal to people genuinely trying to protect their privacy. Privacy trials in court will by definition attract far more media attention, in the process giving further publicity to the very information which in the plaintiff’s view should never have been published in the first place. But high profile cases of this kind, of which Max Mosley’s was the most striking in 2008, are relatively few and far between: they should not be allowed to obscure the rapidly growing recourse of the public to the PCC in this area. In 2008, we dealt with the privacy concerns of nearly a thousand people, either informally or formally. This broke all records for the PCC. We made 329 formal privacy rulings, resolved (that is, successfully mediated) 131 cases, issued 55 private advisory notes to the UK press on behalf of individuals, and helped hundreds of people with pre-publication advice—so removing the need for a formal complaint.

2.2 To give a flavour of our work, the people we helped ranged from an 82 year old lady, whose grandson was involved in a financial scandal, but who herself wished to be left alone by reporters; to families of people who had killed themselves in the Bridgend area; to high profile individuals such as Natasha Kaplinsky and members of the Royal Family (and their girlfriends). Following our intervention on behalf of a lady from Bridgend, whose son had killed himself, a national newspaper apologised for its actions and removed material from its website. She said:

“Thank you very much it means so much to my family and I. I will accept their apology now that I have it in black and white … I just can’t thank you enough and hope now perhaps my family can start to move forward”.

Natasha Kaplinsky said:

“When I had my baby last year, I didn’t want to be followed around by photographers every time I left the house, as happened when I was pregnant. We asked the PCC to issue a private request to photographers to stop following us, and to newspapers and magazines not to use pictures of me taken when I was with my family in private time. The degree of compliance was very impressive, and I would recommend this service to anyone in a similar position”.
There are of course numerous other similar examples of our work. Members of the Committee are always welcome to come to the Commission to talk to us in more detail about how we deal with privacy complaints.

2.3 The graphs below, showing how our work has mushroomed in recent years, reflect both the volume of our work on privacy and also the extent to which the public generally continues to have confidence in us:

**Figure 1**
NUMBER OF PRIVACY RULINGS 2004–08

**Figure 2**
TOTAL NUMBER OF RULINGS UNDER THE CODE 2004–08
3. **Impact of the HRA and Role of Judges**

3.1 But could this service—which is for “ordinary” members of the public as well as public figures—be threatened by the developments in the law? It is right for the Select Committee to consider the matter. It is now 10 years since the passage of the Human Rights Bill, when numerous warnings were made about the possible impact on the PCC’s work and freedom of expression. Responding to these, Jack Straw—then Home Secretary—said:

“There was a concern in some sections of the press that the Bill might undermine press freedom and result in a privacy law by the back door. That was not the Government’s view. On the contrary, we have always believed that the Bill would strengthen rather than weaken the freedom of the press … I am glad that we have been able to frame an amendment that reflects the Government’s stated commitment to the maintenance of a free, responsible press, and the consequent need for self-regulation … if for any reason, it does not work as we envisage, and press freedom appears at risk, we shall certainly want to look again at the issue”.

3.2 Ten years on, there is a case for arguing that on matters of privacy things have not turned out as the Government intended. In their implementation of the Human Rights Act the courts have shown their willingness to restrict the flow of information or punish the media, where judges believe that Article 10 of the Act (freedom of expression) is trumped by Article 8 (protection of privacy). Many of these cases, especially where they have gone all the way to the House of Lords, have demonstrated how difficult and controversial it can be to make a judgement on where the line falls between the public and private spaces.

3.3 It is now a fact of life that two parallel jurisdictions are issuing rulings on privacy cases: the courts and the PCC. Self-evidently, the PCC must operate within the framework of the law. But the requirement of Section 12 of the HRA that the courts take account of the PCC’s Code of Practice—the amendment to which Mr. Straw referred in the quotation above, intended to buttress self-regulation and the freedom of the press—has become progressively hollowed out as judges make their own interpretations of the Code without reference to the PCC’s case law. Not only is this potentially highly damaging to self-regulation, it ignores the vastly greater experience of the PCC in tackling privacy cases—an experience which long pre-dates the passage of the Human Rights Bill. To take one example: the PCC has developed “jurisprudence”, which, on privacy matters involving celebrities, takes proper account of the extent to which a celebrity complainant has sought publicity in the past; and whose complaint has more to do with image control than genuine privacy. This is not (yet) spelled out explicitly in the Code of Practice. As a result, judges are under no obligation to take account of PCC decisions which might well inform their own judgements.

3.4 It is worth setting out once again the advantages of our self-regulatory system: and what is at stake. We are free; we are fast; and there is none of the adversarial, and sometimes intimidating, argument of public hearings in court. Our flexible, non-statutory basis guarantees common sense decisions that take account of external developments. We involve the public in our work, for instance by having 10 lay members on the board of the PCC (and the staff have never been employed by the press); by commissioning research into public opinion; and by regularly meeting members of the public all round the UK who are affected by our work. This is something that commands public support. When asked who should consider complaints about editorial standards, 45% of the public said that such matters should be considered by a committee including both members of the public and senior journalists, while just 12% said it should be for judges.

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3 Hansard, 2 July 1998, cols 535 and 541.
4 A further 11% thought members of the public only should decide; 8% chose lawyers and 8% government appointees; while just 4% thought senior journalists alone should be responsible. 12% did not know. Ipsos MORI September 2006.
3.5 While operationally independent of the industry, we have to be aware of the realities of journalism, so that our rulings are relevant and respected in the press. The realities have been transformed over the last few years. Deadlines are constant because of digital publishing, and journalists are overwhelmed with information in an unprecedented way. Just five years ago the picture editor on the Sun received up to 2500 new images every day for consideration for publication. Now the figure is between 10,000–15,000 each day. This is one reason why a small number of serving editors sit on the PCC.

3.6 There must be a danger that the good, but lower key, work that the PCC does in the interests of the public at large will be undermined if the parallel system of privacy jurisprudence does not take account of the PCC’s own adjudications. This will result in confusion among the industry about what standard is required; “double jeopardy” for editors; and the development of a two-tier system. It was clearly never the intention for such a state of affairs to develop. The remedy may lie in some amendment to Section 12 of the HRA.

4. Fines and Compensation

4.1 The PCC naturally wishes to prevent self-regulation from being undermined. But the answer is not for the PCC to be more like the law. Our 2007 submission set out why a system of fines and compensation would be undesirable. It would actually amount to the death knell for self-regulation. We are opposed because:

— It would be impossible to fine newspapers and magazines without legal apparatus compelling them to pay. Such a legal basis alone would completely change the nature of the system, which is based on industry buy-in and collaboration between the parties where possible. It would alienate the industry—which is encouraged to work with rather than against the self-regulatory system in the interests of delivering results for complainants.

— It would inevitably import the worst features of the compensation culture: delayed justice, antagonism and legal wrangles through lawyers.

— The PCC’s popular (with complainants) conciliation service would be destroyed as editors would refuse to offer corrections or apologies for fear of admitting liability and exposing themselves to a fine later on.

— There would be little incentive for editors to work with any such statutory press council (which is what it would be) to minimise problems before publication.

— The industry has already made a substantial financial investment in the system in order to ensure that it costs nothing and is risk-free for complainants. Faced with further financial penalties, many groups may simply choose to leave the system.

4.2 We therefore urge the Select Committee not to be seduced by the superficially enticing argument in favour of giving the PCC the power to fine—ie that it would look “tougher”—and bear in mind the significant downsides attached to any such proposal. In short, we believe that it is not possible to combine the virtues of press self-regulation with a system of fines.

5. Meaningful Remedies

5.1 It is also the case that—while it may seem counter-intuitive—fines are not particularly popular as a remedy either with the public or with PCC complainants. Hardly any complainants ask the PCC for money, or for the publication to be fined. Rather, people seem to want problems dealt with quickly, sometimes privately, and in a meaningful way. The PCC offers a whole range of remedies to complaints about privacy intrusion, which would be lost if we moved to a formal, fines-based system of regulation. In addition to all the work aimed at preventing intrusion in the first place, the PCC can:

— Quickly negotiate the removal of intrusive material from websites so that it does not get picked up elsewhere.

— Organise legal warnings to be tagged to publications’ archives to ensure private information is not accidentally repeated.

— Encourage the destruction or removal of intrusive information from databases or libraries.

— Obtain personal apologies from editors, and undertakings about future conduct.

— Secure prominent public apologies.

— Help negotiate agreed, positive follow up articles.

— Use the power of negative publicity by “naming and shaming” a publication’s conduct in a critical ruling (which must be published in full and with due prominence by the editor).

— Organise a combination of the above, or, depending on the circumstances, the purchase of specific items in order to make amends (a wheelchair, for example), ex gratia payments, or donations to charity.

5 As we have told the Committee previously, research into public opinion shows that the most popular form of resolution for a possible breach of the Code would be a published apology, followed by a private apology. Less than a third supported a fine in the September 2006 Ipsos MORI survey.
6. **THE FUTURE OF PRIVACY REGULATION**

6.1 In section 3 above we have rehearsed some of the potential problems that may arise for self-regulation. But there is a fundamental question about whether the law could ever on its own become an effective general mechanism for dealing with privacy. Numerous structural flaws present themselves:

- The effectiveness of the law depends on the UK being a ring fence-able jurisdiction within which the flow of information can be controlled. This is not the case. Information from anywhere in the world is available in an instant. Ordering a UK newspaper not to publish something will be meaningless if a widely-read English-language website, based abroad, publishes it anyway.
- Similarly, the focus on the traditional media in relation to privacy overlooks the reality of commercial media existing in a new landscape alongside many successful non-commercial publishers online.
- The process of using the law is formal, slow, alienating, risky, and potentially extremely costly.

6.2 Clearly the globalisation and digitalisation of the media have presented new challenges to regulation. But there are surely powerful forces favouring deregulation of formal structures and a greater reliance on self-regulation, which is particularly appropriate with its emphasis on self-restraint, swift remedies, and collaboration.

6.3 The PCC has evolved constantly over its 18 year history, and is now actively thinking about how it can further adapt and use its expertise, in light of the legal developments and the rapidly changing structure of the media. We hope the Select Committee will recognise that there has never been a more suitable time for self-regulation of the media. Indeed, there are indications from UK and European politicians that there should be a wider reliance on self-regulation going forward, providing that the media can be persuaded to buy in to such systems.

7. **MCCANNS**

7.1 We would not normally comment on contact we have with private individuals, but note that the Committee has called for evidence on the McCanns and the media. In particular, it has asked why the McCanns did not complain to the PCC over the libellous stories in the Express titles, and why we did not invoke our own inquiry after the matter was settled.

7.2 The Committee should be aware that the Commission took a very early interest in the McCanns’ situation, contacting the British Embassy on 5 May 2007 (two days after Madeleine’s disappearance, and way before the story assumed its subsequent prominence). We have attached in an appendix the exchange of correspondence with the embassy, in which it is clear that the PCC pro-actively offered its services.

7.3 Subsequently, on 13 July 2007, the Chairman of the PCC, Sir Christopher Meyer, met Mr McCann and his then press adviser, Justine McGuinness, in London. He told them how the PCC could help—if necessary—and gave them some of our literature. There was a further, briefer, meeting with Mr and Mrs McCann on 29 February 2008 during which Sir Christopher repeated that the PCC stood ready to help, if need be.

7.4 Additionally, the PCC had a more formal role in advising the McCanns’ representatives over how to ensure that their twins’ birthday party could take place away from the media glare, something that was successfully achieved. We also spoke to the local council in Charnwood about how the McCanns’ neighbours could be assisted (vans and cars from TV, radio and press journalists were allegedly blocking the entrance to their road, preventing some of them from getting to work). In a radio interview, the McCanns’ spokesman Clarence Mitchell—while explaining why the McCanns took the legal action—said about this work:

> “the PCC have been very helpful towards Kate and Gerry—they’ve been very pleased with their advice on the more practical aspects of dealing with the press, such as having the constant presence of photographers outside their home and the harassment … ”.

7.5 This will demonstrate that there was a clear line of communication between the Commission and the McCanns, and illustrate that the PCC was actively seeking to help them if possible.

7.6 But the PCC does not generally launch inquiries into matters without the say-so of the principals involved. To have done so in this case would not only have been an impertinence to the McCanns in light of our previous contact, it would have risked looking like a cynical attempt to exploit the publicity surrounding the case. Without the involvement and instructions of the McCanns, it would also have been highly unlikely to have achieved very much. That said, Sir Christopher Meyer did give a number of interviews at the time of the settlement in which he condemned the libels, and took the opportunity to draw the distinction between the role of the PCC and the role of the law in considering matters of libel.

7.7 To reiterate the point made in paragraph 2 of this submission, the PCC is not supposed to investigate every example of alleged malpractice by the press. Breaches of the laws of libel, copyright, data protection, contempt of court and so on in relation to published material should be considered by the courts. The PCC

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6 Not printed.
7 Clarence Mitchell interviewed on the *PM* programme, 19 March 2008.
applies different tests and, in any case, has different sanctions. Where there is any conceivable overlap between the jurisdiction of the PCC and the courts, it must be for the complainants to decide which forum to use. While this was a highly unusual, tragic case that attracted enormous publicity, the use of the libel laws to remedy a complaint of libel was hardly unprecedented. It would therefore be difficult, in our submission, to draw any broader conclusions about the general effectiveness and record of the Press Complaints Commission from this highly regrettable episode.

January 2009


INTRODUCTION

1. The newspaper and magazine publishing industry welcomes much of this inquiry. The development of a judge-made privacy law and the use of “no win, no fee” arrangements in privacy and libel cases are having a profound adverse impact across our industry both in terms of press freedom and commercially.

2. The inquiry takes place at a time of serious commercial distress within the industry, as it faces the impact of global recession alongside massive structural change arising from the digital revolution. The Select Committee has an opportunity to be of great assistance to the industry, which is a vital part of the UK’s creative economy, by tackling these key issues and recommending constructive change. We are pleased to put forward suggestions on these points in this short cross-industry submission, and would welcome the opportunity to give oral evidence on them.

3. However, the industry is surprised that the Select Committee finds it necessary to review yet again the effectiveness of the self-regulatory system. An inquiry in 2003 rejected statutory controls and upheld the principle of self-regulation; while one as recently as 2007 branded a privacy law “impossible” to draft and costly to use, and also rejected the idea of fines being imposed by the Press Complaints Commission [PCC] as impossible without the sort of statutory backing which would be a “very dangerous interference with the freedom of the press”. Nothing since then has changed to undermine those findings. Indeed, the system has in fact continued to evolve in a way which is of increasing benefit to ordinary members of the public.

The Success Story of Self-Regulation

4. The industry is fully committed to effective self-regulation through the editors’ Code of Practice and the jurisdiction of the independent PCC, with its majority of lay members. There is no doubt that—as previous inquiries of this Committee have concluded—standards of reporting have been raised markedly since the PCC and the Code were established in 1991. Change has been incremental; but on very many issues—including the treatment of children and the sick, harassment, intrusion into grief, the protection of personal privacy in key areas such as health and victims of sexual assault, and the unacceptable use of subterfuge—it has been very significant.

5. As importantly, self-regulation has inculcated within our industry a culture of correcting inaccuracies and other breaches of the Code speedily and effectively. Complaints statistics from the PCC show more complaints than ever being resolved, and in record time. But very many complaints never reach the Commission: instead they are sorted out by publishers to the satisfaction of the complainant without the need for the intervention of the PCC. This is a substantial—and hidden—success of self-regulation.

6. The PCC itself has proved to be an efficient and accessible regulator. Numbers of complaints—a sign not of declining press standards, but of ever increasing public awareness of the PCC—have grown steadily over the years, as has the Commission’s record in resolving them. The latest statistics show that over 80% of possible breaches of the Code were resolved.

7. Furthermore, the system has shown that it has the ability to adapt not just to the public’s expectations—as happened in the wake of the death of Diana, Princess of Wales—but crucially to changes in technology. In 2007, the PCC’s remit was extended by the industry to include on-line audio-visual material in a speedy and flexible manner that would have been impossible under any form of statutory system.

8. The Code, too, has evolved over time, and there are now regular reviews of it, involving consultation not just with the industry but with the public. Recent changes have included new rules on the use of digital material, such as e-mail, and on suicide reporting.8

9. Self regulation is, of course, also about more than the PCC, and the industry has consistently demonstrated its ability to act co-operatively to raise standards and deal with emerging issues. For instance, in the autumn of 2008, the industry responded to concerns raised by the Information Commissioner concerning possible breaches of the Data Protection Act with an unprecedented cross-industry education and information campaign aimed at bringing home to every journalist the importance of observing this vital legislation. An electronic copy is enclosed with this submission.

8 For more detail, see http://www.pcc.org.uk/cop/evolving.html
INDUSTRY FUNDING AND COMPLIANCE WITH THE PCC

10. One symbol of the industry’s commitment to effective self regulation is the substantial investment that it has made in the PCC. Since it was established in 1991, the industry has invested close to £30 million in the work of the Commission through the Press Standards Board of Finance [PressBof].

11. Registration fees are paid across the industry—from national, regional and magazine publishers throughout the UK—and although the levy is voluntary, compliance has always been extremely high.

12. In such a complex and large industry, it has been inevitable that there have been occasions on which publishers have withdrawn temporarily from the system, often as a result of wider newspaper industry issues. In 1994, Mirror Group Newspapers—under different ownership to now—withdrawed temporarily from PressBof following a dispute with the PCC. It returned when the dispute was resolved, but pulled out again for a short time when it left the Newspaper Publishers Association [NPA]. Such events do occur, but they have—over nearly two decades—been extremely rare and manageable.

13. Currently, Northern and Shell—publishers of Express Newspapers and OK! Magazine—are not contributing to the system. It would, of course, be of great concern to the industry if a major publisher such as this were permanently to withdraw from the system, but PressBof is actively engaged in seeking a solution to the issue. Discussions are ongoing and we will update the Select Committee with any important developments. In the meantime PressBof’s investment in the PCC is unaffected; and for the present, the PCC continues to deal with complaints against Northern and Shell titles, meaning that the Commission’s service to the public is also unaffected.

THE PCC AND THE LAW

14. The complaints conciliation and adjudication system under the Code of Practice administered by the PCC has never been intended to mimic or supplant the law. The Code itself deals with areas of basic journalistic ethics—accuracy, privacy, protection of the vulnerable—but it does not cover some civil or criminal offences where complainants may have legal redress. These include copyright, breach of confidence, incitement to racial hatred and libel.

15. People with a grievance against a newspaper or magazine may therefore have alternative methods of redress available to them, although it is worth underlining at this point that the PCC does not impose a legal waiver on people with a complaint; they can—although few do—pursue a complaint through the PCC then through the Courts, or vice versa. If complainants are seeking injunctive relief or damages, then clearly legal redress is essential; if they are seeking speedy and amicable resolution of a complaint, the PCC’s service is tailor-made and free.

16. Although the Human Rights Act has increased the scope of potential redress in privacy cases, this is nothing new. Complainants have made decisions about whether to use the PCC for serious accuracy complaints, or sue for libel, ever since the Commission was established in 1991. Just as the Advertising Standards Authority is merely one route for people with a grievance against an advertisement (as they can also complain to the OFT or even undertake litigation), the PCC is part of a tapestry of potential solutions to a press complaint: it does not seek to monopolise territory in which the Courts and other regulators also have a role to play.

17. The key difference between the law and the PCC is that the Commission’s service is entirely free. It is also private and quick. This is why over 4,500 people used the PCC last year, compared to the very small numbers who took proceedings in Court.

THE McCANNS, THE PRESS AND THE PCC

18. It is against this background that the atypical and tragic case of the McCanns needs to be viewed.

19. In part because of the international nature of their case, the McCanns used lawyers to assist them throughout their ordeal; but this inevitably impacted on the manner in which grievances against the press—abroad as well as in the UK—were pursued. In some areas where no legal redress was easily or swiftly possible (such as harassment—where the PCC has an excellent record) the Commission was able to assist, as the PCC’s submission will detail.

20. As far as a number of stories in one particular group of newspapers was concerned, the McCanns had to make a judgement about the nature of the redress they sought. It is arguable that, had the McCanns made use of the PCC’s services earlier to complain about inaccurate reporting, this problem would not have arisen. However, it seems that some form of compensation was understandably important to them because of the finances of the Madeleine McCann fund—it should be remembered that they regarded the media as “important partners” in the search for Madeleine, according to their press spokesman, Clarence Mitchell—and they therefore had a strong motivation to pursue a libel action.

21. To imply that this indicates a weakness in the self regulatory system is fundamentally to misunderstand its nature. The PCC is at heart a complaints resolution and adjudication process which meets the needs of the overwhelming majority of people with a grievance against a newspaper or magazine: it is not a substitute for the law, but sits alongside it.

9 Speech at the Society of Editors, Bristol, 10th November 2008.
Fines and Compensation

22. The PCC has no power to levy fines or provide compensation for complainants in the way the law does, for a very good reason. The PCC is absolutely free to use. Importing money into the system would mean that it became populated by lawyers (on both sides of the argument)—as the Select Committee itself recognised in 2007—and would therefore no longer be so accessible. While a tiny handful of complainants might benefit, the vast majority would lose out.

23. Moreover, the majority of complainants who go to the PCC actively choose some form of conciliation—preferring to get their complaint remedied by a correction, apology or published letter rather than some form of compensation.

24. Importantly, the introduction of fines and compensation into the system could lead to the breakdown of the successful consensus on which the PCC—and the change in newspaper and magazine culture which the Code of Practice has engendered—is based. There is a real concern that some publishers could leave the system, possibly to the extent of threatening its very survival. Other publications, as happens in France (where there is a privacy law), may make the commercial judgement that a fine is worth paying if a story sells enough copies: that would be the abnegation of self regulation.

“No Win, No Fee” Arrangements

25. The PCC and self regulation work well, and it is difficult to discern any grounds for its fundamental tenets to be questioned. But of far more significance to the industry at this time is the issue of so-called “no win, no fee” cost arrangements in litigation, which are having a serious impact on press freedom.

26. Partly as a result of these Conditional Fees Arrangements [CFAs] and “after the event” [ATE] insurance policies, costs in freedom of expression cases—libel and privacy—are now running out of control, with extremely damaging consequences across the print and broadcast media.

27. CFAs are having a serious commercial impact on all publishers—who sometimes face bills running into millions of pounds to defend even fairly straightforward cases—and, even more importantly, a profound chilling effect on investigative journalism. This point is recognised at the most senior levels of the judiciary. Lord Hofmann has said that “freedom of expression may be seriously inhibited in defamation actions conducted under CFAs” while Lord Justice Brooke has said that “the obvious unfairness of such a system is bound to have a chilling effect on a newspaper exercising its right to freedom of expression and lead to the dangers of self imposed restraints on publication.” 10 Justice Secretary Jack Straw has denounced costs as “scandalous”,11 while even the UN Human Rights Commission has called on the Government to limit “the requirement that defendants reimburse a plaintiff’s lawyer’s fees and costs regardless of scale, including Conditional Fee Arrangements and so-called ‘success fees’, especially insofar as these may have forced defendant publications to settle without airing valid defences” because of the potential impact on freedom of expression.12

28. Publishers defending actions are now in a hopeless situation. The problem of cost is most damaging for local and regional newspapers, in common with other small publishers and individuals who often cannot afford to fight legal actions which could put their business or livelihood in jeopardy. The regional and local press is particularly vulnerable to the chilling effects of the CFA regime under which newspapers can in effect be held to ransom. The threat of CFA inflated costs of litigation can deter publication or force settlement of actions, even though the claims might have little merit. Thus right across the media, cases are being settled where there is no editorial reason to do so.

29. The ATE insurance system attendant on the CFA regime has also created particular problems for the regional and local press. In practice, no allowance is made even for where newspaper editors and publishers feel that a valid complaint has been made and have sought to resolve the matter as soon as reasonably practicable on receipt of the complaint. At the behest of their solicitor, the claimant will often have already incurred the liability to pay an ATE premium—but which the claimant will not actually pay—even before the letter of complaint has been sent to the newspaper. The newspaper therefore becomes liable to pay a substantial sum, which has been incurred by another who will not be actually liable to pay it, before the newspaper knows the precise substance of the legal complaint, regardless of the merits of the claim and irrespective of a swift resolution, which renders any such insurance and insurance premium completely unnecessary.

30. The industry is currently in discussion with the Government about how to deal with the inequities of the current system. Action is needed on a number of fronts—on which the Media Lawyers Association is providing you with further details—including introducing mandatory cost capping in freedom of expression cases, establishing maximum or fixed recoverable hourly rates and abolishing success fees. We would welcome the Select Committee’s support in these discussions.

12 For more detail see http://daccessdds.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement
PRIVACY

31. The other major issue for our industry is the way in which the Human Rights Act has been used to introduce a judge-made privacy law into the UK.

32. At the time the Human Rights Bill was before Parliament, publishers raised consistent warnings that the legislation could be used in this way, without Parliament ever having had a chance to examine and debate the extremely deleterious consequences of any privacy law for freedom of expression. It was in order to prevent this that the Government moved to amend the legislation through what became Section 12 of the Human Rights Act 1998. This sought to protect freedom of expression and self regulation. As the then Home Secretary, the Rt Hon Jack Straw, made clear at the time:

“The Government have always made clear our support for effective self-regulation as administered by the Press Complaints Commission under its code of practice. We have also said that we have no plans to introduce legislation creating a general law of privacy. On the question of prior restraint, our intention, as I said in the House on 16 February, is that the thresholds that the new clause sets will mean that interlocutory injunctions should be granted ex parte only in the most exceptional of circumstances. Similarly, on self-regulation, the new clause provides an important safeguard by emphasising the right to freedom of expression. Our intention is that that should underline the consequent need to preserve self-regulation. That effect is reinforced by highlighting in the amendment the significance of any relevant privacy code, which plainly includes the code operated by the PCC ... I have explained the effect that we want to achieve with our new clause. If, for any reason, it does not work as we envisage, and press freedom appears at risk, we shall certainly want to look again at the issue”.

33. While Parliament, in passing Section 12 of the Act, appears to have been clear that it did not intend a privacy law to be developed, the judiciary seems to have taken the opposite point of view. In a series of landmark cases—outlined in a lecture given by Paul Dacre at the Society of Editors in November 200814—a judge-made privacy law is being developed (particularly through the rulings of one judge who handles a disproportionate number of cases) which is now extremely damaging to press freedom.

34. The situation is now so serious that the warning given by former Master of the Rolls, Lord Woolf, in the case of Garry Flitcroft should be underlined:

“The courts must not ignore the fact that if newspapers do not publish information which the public are interested in, there will be fewer newspapers published, which will not be in the public interest.”

35. Any form of privacy law is damaging to freedom of expression because of the way in which it potentially hands power to those who wish to gag newspapers and magazines on matters of public interest. A judge-made law is even more damaging because of the uncertain manner in which it is formulated by case-law, and often—as noted above—by a single judge: publications have no certainty on which to base judgements, as they do with the jurisprudence crafted under the PCC Code, and can face often protracted and costly legal proceedings, fuelled by “no win no fee” arrangements.

36. Furthermore, any form of privacy law is—ultimately—for the rich and famous who are prepared for the spotlight (and cost) of high profile Court proceedings.

37. In view of the serious problems arising from the legislation—and the manner in which crucial undertakings to the industry have failed to protect freedom of expression—it is now time for a serious review of the operation of Section 12 of the Act. For instance, Section 12 (4) could be amended to take account of situations where there is a reasonably held belief that the material in question is in the public interest—as opposed to a judge deciding whether the material is, or is not, in the public interest.

CONCLUSION

38. There are many fundamental legal and commercial issues currently affecting the newspaper and magazine publishing industry—caught in the vice-like grip of a severe recession in advertising and massive structural change in the market.

39. However, the answers are not to be found in unnecessary reform of the self regulatory system. The PCC works well, and the Code of Practice has raised standards. To concentrate on one, atypical episode, which was always inevitably heading in the direction of litigation, would be a great mistake.

40. Instead, the Select Committee has an opportunity to help our industry—a crucial part of the UK’s creative economy—with recommendations on reform of conditional fees and of the Human Rights Act to reverse the extremely serious damage they are doing both to freedom of expression and to the long-term commercial future of the press which is now facing unprecedented challenges.

January 2009

14 Included in the Appendix.
15 11 March 2002.
Witnesses: Sir Christopher Meyer KCMG, Chairman, Press Complaints Commission, Mr Tim Toulmin, Director, Press Complaints Commission, and Mr Tim Bowdler, Chairman, Press Standards Board of Finance, gave evidence.

Chairman: Good morning, for the second part of this morning’s session could I welcome the Chairman of the Press Standards Board of Finance Tim Bowdler; the Chairman of the Press Complaints Commission Sir Christopher Meyer; and the Director Tim Toulmin. Janet Anderson.

Q340 Janet Anderson: Thank you Chairman. Welcome, gentlemen. The PCC of course was set up in 1991 following a report by Sir David Calcutt into there be a non-statutory body to regulate the press but that if it was not effective then there ought to be statutory regulation, and in fact in 1993 he went on to recommend that. Could you perhaps tell us what you do to make sure that self-regulation guarantees the freedom of the press and to make sure that the PCC retains credibility in what it does?

Sir Christopher Meyer: The essential thing, if the question is addressed to me, is that we should exist in a state of permanent evolution, that is to say never to be satisfied with the service that we deliver and always seek to improve it. I am coming towards the end of my time now, I will be gone a week today, and I look back to 2003 when I first became chairman and we put in a set of reforms that covered a very wide area of PCC activity. You could say that the last six years have been a story of embedding and improving those changes, which in turn have led to other changes. The most important thing that we have to have in mind is that above all else we provide a public service and that this public service must be consistently and continuously improved by enhancing the independence of the PCC, by enhancing its proactivity, by enhancing the speed and good judgment and the way in which we react to complaints, by enhancing our pre-publication activities, which has been a growth area over the last few years, by ensuring that when we do negotiate remedies for people, apologies, corrections and so forth they really do appear in newspapers and magazines with due prominence and by ensuring that the Code of Practice is revised as frequently as is necessary. One of the improvements we introduced five years ago was to ensure that the Code Committee met regularly every year to consider changes instead of meeting ad hoc, and to also be certain—maybe not ahead of the curve but at least on the crest of the wave—of the huge technological changes that were taking place in the industry, which now means stuff which is online. As we have just announced, last year as in 2007, which was the first such time, we are now taking more complaints about online editions of newspapers and magazines than we are print. To sum it up, this is like painting the Forth Bridge; you cannot rest at any time. You are never going to get perfection in the world of journalism any more than you will in any other area of activity in society, but I am quite convinced that the range of remedies and penalties that we have at our disposal are sufficient to maintain generally high standards in the industry. We are never going to stop excess, we are never going to stop mistakes, we are never going to stop journalists who do something stupid or even malevolent, but what we can do is provide a regime that curbs all the worst excesses and really serves as a deterrent to editors and really provides a panoply of remedies to people who come to us for help. It is not just a question of apologies and corrections and things like that, it is the tagging of archives so that the story does not get repeated again five years hence, it is the ability within 24 hours—or less even—where if something goes wrong online they have it taken down, taken off the web archive—this is increasingly a growth area which this Committee recognised in its report in 2007—and our ability to intervene and, I have to say actually, our ambition to intervene before something becomes a problem; there is a lot of stuff that we have stopped from happening, and by definition it is quite hard for us to publicise that but it is a growth area in our work. I
am satisfied (a) with the range of remedies and (b) with the range of deterrents that we have at our disposal. If we were, say, as a lot of our critics argue, to go to a regime of fines, some kind of fining system for editors who step out of line, I genuinely believe and I could elaborate on this that that would serve as no greater deterrent to bad behaviour and actually would impede seriously the effective and speedy operation of the self-regulatory system.

Q343 Janet Anderson: We have taken quite a lot of evidence about the case of the McCanns, including from Madeleine’s father Gerry McCann. In its submission to this inquiry the National Union of Journalists (NUJ) actually said: “It is likely that the PCC would not have upheld complaints from the McCanns since it is arguable whether there is direct evidence that the articles concerned breached the PCC Code of Practice, which does not prevent speculation.” We understand that the McCanns were actually advised by their legal advisers that to go down the PCC route was not the most effective, although they did eventually successfully sue the Express.

Sir Christopher Meyer: The lawyers would say that, would they not? Having read Mr Tudor’s evidence to you—I think he was there with Gerry McCann—it was a classic kind of Carter Ruck operation, a sort of tendentious onslaught on the PCC, because one has to say there are a number of law firms in London who specialise in media matters who regard us as their sworn enemies, probably because we do the job as well as they do but we do it for free and we can provide a degree of discretion which protects the complainant in a way that open exposure in court does not. Here I would mention the case of Max Mosley which maybe you will want to discuss. In the matter of the McCanns—I am not aware of this NUJ submission and I do not really understand what it is that the McCanns—what Max Mosley did in the Mirror was that “they have no power” and that it was “very much a creature of the press”. In terms of credibility would you accept that those kinds of feelings about the PCC are quite widespread, although nothing to do with whether somebody wants damages or not, they are actually just questioning how effective the PCC is in any event?

Sir Christopher Meyer: I must say it would be a desperate man who measured the quality of the PCC’s service by something that Max Mosley may have said. Where the McCanns are concerned the editor of the Daily Express, after the settlement was announced on 19 March last year, played no further part in the proceedings of the PCC and it was in May that he was replaced by Peter Wright. Max Mosley—I read what he had to say. It was absolutely predictable stuff, probably ventriloquised by Carter Ruck, all the usual tired, pitiful stuff about limp wrists and—all this was his stupid thing, arranging a piss-up in a brewery, some worn-out metaphor that he used. I really have no regard to what he had to say about the PCC.

Q344 Philip Davies: Just on the issue of credibility, I understand the point you make is a good one, that if people want damages then they are going to have to go through the court system, but in terms of the credibility it seems that Gerry McCann said that his beef with the PCC was that the “editor of a paper which had so flagrantly libelled us with the most devastating stories could hold a position on the board of the PCC.” That was his beef. Max Mosley’s beef was that “they have no power” and that it was “very much a creature of the press”. In terms of credibility would you accept that those kinds of feelings about the PCC are quite widespread, although nothing to do with whether somebody wants damages or not, they are actually just questioning how effective the PCC is in any event?

Sir Christopher Meyer: I know a lot of papers that have precisely done that. Roman Abramovich is probably not typical of most citizens in the United Kingdom so it is not an ideal benchmark for discussing this issue. If you are talking about very rich people going to court on the basis of contingency fee arrangements, for example, we are into a wholly different area of debate—you have probably had this already with various journalists who have been on the stand. I can tell you that when an editor be he (or she) national or regional or local knows that there is a possibility first of all of a PCC investigation, secondly of a negative adjudication—which in fact means naming and shaming—in his or her own newspaper in terms over which they have no control whatsoever you can hear the screams from one end of the United Kingdom to the other. Believe you me, it works.

Q345 Philip Davies: One final question: is there a possibility that the PCC could be or has been used as a sort of stalking horse for legal action so that somebody makes a complaint to the PCC to try and...
test out how good a case they have got, and if it seems that the PCC are very sympathetic to what they are saying they then move on to legal action. If so, might that threaten the newspapers from fully co-operating because they fear the wider consequences of admitting that they have made a mistake?

Sir Christopher Meyer: As a general statement I would say that I have had very little evidence over the last six years of any newspaper or magazine not co-operating with us. I remember when I became chairman in 2003 there was a great anxiety then—and I cannot remember why it was particularly acute at the time—that people, particularly those who use solicitors to come to the PCC which, as you know, is not necessary, you do not need to pay a penny to come to the PCC, would use judgments made by the PCC as a springboard for legal action. That fear subsided after that because we did not really see very many if any examples of it. There must have been one or two over the last few years and it is a fear that is there, but it is not rampant—I think I am right in saying that.

Mr Toulmin: It certainly is in the back of some newspapers’ minds that because the law, particularly on privacy, is developing and is covering similar areas to our Code of Practice, it is a theoretical possibility. What is interesting though is that most people choose to come to the PCC on privacy and that is the end of the matter, so we probably deal with 100 times more privacy cases discreetly than the courts. Of course the courts get the attention because it is a huge adversarial punch-up in the High Court which everyone loves the drama of—look at Max Mosley, but that is all you can look at. Max Mosley, for the whole of last year whilst we were dealing with perhaps nearly 400 privacy cases discreetly, and I do not think any of those went on to sue on the back of it and if they did then they were very few and far between.

Sir Christopher Meyer: What Tim has just said has set off a train of thought; could I just add one thing and it is, Mr Davies, partly an answer to your question. The great deterrent on a privacy case from springboarding, say, out of the PCC into the courts is because if you are concerned that some intimate detail of your private life has been exposed in the newspaper and the PCC finds in your favour, so you may have got a quick remedy that is going to stop the problem or prevent it from arising in the first place. When you came in to see us we gave you some examples of how that actually works in practice. We cannot take those out there and use them publicly because we are set up to protect people’s privacy and so we do suffer from a comparison with what looks like a very robust court view of press standards. People come to us precisely because they know we are more discreet, so this is 24 hours a day, seven days a week, and although it is a small team of people they are always on call, they have always got the contacts of the newspapers, the newspapers and their online publications take it seriously, we can always get through and get stuff changed, get stuff stopped the whole time. Your Committee shining a light on that work has been incredibly helpful for us in the past and you have obviously recognised it. That is not to say that corrections, apologies, tagging, preventing stuff from happening in the future and the naming and shaming element is not important as well of course.

Q348 Alan Keen: Having said that, Sir Christopher said that the PCC is forever evolving, changing and improving. Somebody has already mentioned the fact that the editor of one of the papers who was in dispute was on the PCC, so looking at it from the eyes of the public outside it does seem wrong that editors are judging when really some of them are guilty, if not the week we are talking about then next week or the week before. That may be one issue, but what other issues, Sir Christopher, do you feel need to change at the PCC? How could you improve on what has been happening—you have had five years at it.

Sir Christopher Meyer: A lot of it is an evolutionary answer because I do not believe that there needs to be any kind of radical departure in the way that the PCC operates. I really would like to take this opportunity publicly to pay tribute to Tim Toulmin who has been director of the PCC almost all the time that I have been chairman; he has been absolutely exemplary in leading a very small and highly motivated team to do an absolutely enormous amount of work, both preventative and in reaction to complaints. What I would like to see particularly—and this is quite a beef of mine—is I would like to see the industry itself give more publicity to the fact of our existence. It is much better now than it used to be six years ago; you can
Q349 Alan Keen: Could I ask Tim Bowdler, you look at it from the outside; what do you think could be done to make the PCC service better?

Mr Bowdler: I would agree with what Sir Christopher has just said. The industry does publicise the PCC and adjudications and so on, but it could be given more prominence and indeed Pressbof as the industry body or the funder of the PCC does encourage newspapers to take the PCC seriously and to give it the sort of prominence that would be helpful to it. In the end it is the individual publishers who will decide but certainly from my own point of view, having been chief executive of a company which owned more than 300 newspapers, we certainly took the PCC very seriously and I got to know of every complaint to the PCC and I certainly encouraged our editors to make sure that it was given the right prominence.

Alan Keen: Tim, could I ask you another question? We have just had three very decent journalists in front of us, one who has just retired so years of experience, and the other two were very experienced also, and each of them said that the industry, the journalists and the quality and standards have deteriorated because of the pressures of finance. It is very, very sad. I do not buy Sunday newspapers any more because I do not believe a word of what is said on the front pages, for instance—people have known that for a long time, that I do not do Sunday papers, the big ones, “Source at Number 10”, “Prominent Opposition spokesperson says . . . ”—we know they are made up so I do not even buy them. But we are not talking about that—

Adam Price: The PCC will be there.

Mr Bowdler: I would not take such a gloomy view of it. Certainly the pressures on the industry are intense. We have over the course of two years seen advertising—which in the case of a company like Johnston Press accounts for more than three-quarters of our revenue—go down by something in the region of 40% to 45% in the first eight weeks of this year alone and it was down by 36% year on year, so there is huge financial pressure, it extends across the industry and of course you have to couple that with the fact that we are selling fewer newspapers—copy sales are down so cover price revenues suffer in addition. We have seen across the industry now a fair amount of restructuring going on to take costs out of the business; the bulk of that is really to address the backroom efficiencies, whether it be in printing or pre-press production. I can speak directly of Johnston Press: we have been absolutely committed to the continued investment in content to ensure that it does not diminish in terms of the quality or quantity of the material which we publish. Inevitably there is always a compromise, or there are difficult choices to make and they get more difficult as the pressure increases, but I would not subscribe to the view that there has been a general downward trend in the quality and in fact the assessment of that is clearly subjective. I would suggest that actually the PCC through the Code of Practice has been instrumental in fact in many areas in improving the quality of journalism. I do not think it is enough to take one or two editorial views, you have to take a broader look at the entire output of the industry and not just a particular national newspaper or newspapers. You know, we are talking about an industry which publishes something like 1400 different newspapers.

Q351 Adam Price: Sir Christopher, the Max Mosley quote that you were grasping after a moment ago was “Mafia in charge of the local police station”.

Sir Christopher Meyer: That was it.

Q352 Adam Price: But as you said, the thought of Max Mosley cracking the whip in any context has unfortunate connotations. You mentioned the public humiliation or professional humiliation that arises really from an adjudicated complaint from the PCC. We know lots of examples of journalists and newspaper editors even who have lost their jobs effectively as a result of successful litigation against the newspaper; are there examples of journalists who have been demoted or sacked as a result of a PCC complaint?

Sir Christopher Meyer: I cannot tell you that—although Tim may have some knowledge there—but I would be surprised if there have not been repercussions for the kind of sloppy or bad journalism that we have exposed and condemned.

Mr Bowdler: Perhaps I could add to that because within Johnston Press I certainly have a number of examples where precisely what you describe has happened, both to the extent of disciplining a journalist and there are cases where we have dismissed a journalist through the results of the PCC inquiry.
Sir Christopher Meyer: Mr Price, do not forget that one of our campaigns has been to have respect for the Code of Practice written into journalists’ contracts, including editors as well, so if you breach the Code of Practice you are in fact breaching your own contract of employment. That is quite a salutary thing.

Q353 Adam Price: You would accept that a PCC complaint surely does not cause the same level of trepidation that, say, a major libel case could in the case of defamation, it does not have the same effect of concentrating editors’ minds, journalists’ minds?

Sir Christopher Meyer: This is oranges and apples or is it pears and oranges—I cannot remember what it is. Defamation and libel are a wholly different beast. You do not have the choice of coming to us for defamation and libel; it is a legal process, so it is a little unfair to compare that which is unique to the law with the kinds of things that we can do to act as regulator, punisher and deterrent. If I were an editor and I was faced with a defamation action, with contingency fee arrangements as they are currently constructed, I would be very worried, I would be very worried for my bottom line. If I was about to get whacked by a PCC adjudication which censured me in harsh terms, I would be worried about my professional reputation, so they are different things, but equally powerful? Certainly powerful.

Mr Toulmin: May I just add to that? Actually I do speak to editors all the time and they absolutely hate it, they hate the thought that they are about to lose an adjudication and when they have lost it they really intensely dislike the public criticism that they have no control over. It is entirely down to the PCC what we say about them; they have signed up to this system, they put it in. If you compare and contrast the News of the World’s treatment of the ruling against it in the Max Mosley case where they criticised the judge, they disagreed with it, the editor believed and continues to believe I think that the story was in the public interest, they have not accepted that. Shortly after that we handed down a ruling against that paper from Paul Burrell which the paper again did not like, but they accepted it. They printed our ruling in full, very prominently, they did not manage to avoid being in trouble. They then sacked the journalist involved—which is an example of breaches of the Code leading to dismissal incidentally. We said that they had made the wrong decision, we did reprimand them and that is on our website.

Q356 Chairman: You will be aware that there are still people, however, who believe that the PCC is basically a cosy arrangement run by the press for the press, and most recently of course we have had the Media Standards Trust, with whom you have crossed swords on their report. Do you accept that there is still a serious credibility problem in some sections for the PCC?

Sir Christopher Meyer: It is much better than it used to be and we test this all the time; we test this with our own public opinion polls, we test this by using Ipsos MORI, we test this anecdotally when we go around the country, and I have to say that the kinds of things that used to be said back at the beginning of the decade are said with far less frequency nowadays. There is a constituency out there, largely to be found in London, to a degree to be found in the academic world—the way I would put it is there are none so deaf as those who do not want to hear—who simply are ideologically hostile to the PCC. Sometimes of course it is because editors are sitting on the Commission, albeit that they are the minority, some people do not like it because it is funded by the newspaper and magazine industry of the UK, some people do not like it simply because it is self-regulatory and they believe in some form of statutory regulation. There is, if you like, a hard core out there who will go on attacking the PCC, but we just have to live with it. They can be among the more articulate members of British society and they get a lot of space in the media in some of the newspapers and among the broadcasters—the broadcasters in particular are particularly snooty about the PCC—and then no one actually has the courage to say it out in public but there is a kind of suggestion that I am corrupt sitting one part of the week in Paul Dacre’s pocket and the other part of the week in James Murdoch’s pocket, so taking gold from them in order to run the thing in a corrupt way, which of course is absolutely grotesque and ludicrous. We just
have to deal with it; it is out there, it is less than it used to be and part of our permanent campaign—it is why we go around the country—is to convince people that we are a credible organisation. The more we are used the more our reputation rises, and there is a necessary correlation in my view in the fact that we are seen more credibly and the fact that more people come to us. I do not think that this increase in numbers, to echo something that Tim has just said, is a reflection of declining standards. There are certain areas of worry, particularly online, but above all it is the impact of visibility and credibility. I have to say to you, Chairman, that pro rata today it looks like we will have a figure of near to 6000 by the end of this year, people who have come to us for help, and last year’s figure of over 4500 was itself an historic record. There is a credibility case launched against us; it is without merit and without foundation.

Mr Bowdler: If I may, Chairman, just add to that. I really do believe this is a false perception. In my role as chairman of Press Standards Board of Finance (Pressbof) in a sense I represent the industry in its link to the PCC and I can say categorically at no time do I expect to be able to tell Christopher or the PCC what they should be doing. There is no sense of any sort of pressure exerted through Pressbof on the PCC. I go and meet the board of the PCC once a year, I go to listen to their views about the industry and the way it is funded, to issues as they see them in the wider domain of the press, but there is no sense of the PCC being subject to industry direction, it simply does not hold water.

Q357 Chairman: Let me just explore that. The Code Committee which sets the rules used to be chaired by Les Hinton; when Les Hinton retired and moved overseas he was replaced by the editor of a newspaper which some might say is adept at testing the boundaries of the Code, and the Code Committee consists entirely of industry representatives. Do you not think that in order to improve the credibility the Code Committee ought to have lay representation and perhaps it should not have a practising editor as its chairman?

Sir Christopher Meyer: I think it works perfectly well. It was the original inspiration of Calcutt and the Calcutt inquiry that if a self-regulatory system was going to work the editors themselves, to use the jargon, should have ownership of the Code but an independent body should apply it and build up its jurisprudence. That is in effect what we have. If you have not seen it I really do commend the second edition of the Editor’s Codebook which shows how independently the constitution is applied. In fact, it is not strictly true that only editors sit on the committee, and I must say they are a mixture of editors from all kinds of different publications but ex officio Tim and I sit on it. One of the innovations that has been introduced is that first of all there is now a public website for the Code Committee; secondly, members of the public can themselves put forward in the annual meetings to review the Code proposals for changes to the Code and we ourselves, Tim and I, bring to the Code Committee recommendations made by the Commission itself for changes to the Code. We played a very significant role in getting, in 2006, the Code amended to be more precise and detailed on the tricky question of reporting suicide. If it ain’t broke don’t try and fix it—I do not think it is broke, the system works well. There is a multiplicity of views that come into the Code Committee—the editor of the Guardian Alan Rusbridger sits on it, whom you might consider to be not exactly in the same camp as the current chairman—

Q358 Chairman: We are going to hear from both of them in due course so we will discover.

Sir Christopher Meyer: Exactly, you can ask them yourself. It is okay, it works well, and again the proof of the pudding is in this.

Q359 Chairman: But you did recognise a few years ago that the credibility of the PCC board would be increased if you had more lay membership.

Sir Christopher Meyer: Absolutely right.

Q360 Chairman: Is there not a case therefore that the same case could be put for the Code Committee?

Sir Christopher Meyer: You can make the case, it is not a disreputable argument or anything like that. I certainly thought it necessary to increase the credibility and the independence, perceived and real, of the PCC, but I thought the most important thing to do was in the Commission itself, on the board of commissioners itself, which is why we increased the lay majority and we now publicly advertise for lay members. That has been a great success. It is also the reason why we created the job of a charter commissioner and the charter compliance panel; their reports are produced every year and you have probably seen them. Tim and I have absolutely no influence over the way in which they are drafted and published. If you take the balance we have got to have an editorial voice in the system, but what you must not have is editors ruling on editors, journalists ruling on journalists. We do not have that because we have a lay majority where it matters, which is where the decisions are taken.

Q361 Chairman: Can I just put to you one other criticism which I think you are familiar with. When you were first appointed and you appeared before the predecessor committee to this one you were asked about corrections and adjudications and you said that they should be at least as prominent as the original otherwise it would be ridiculous. I do not think anybody would say that corrections and adjudications are being given equal prominence to the original stories; do you not feel that that is something which could be improved?

Sir Christopher Meyer: It should have been improved and it has been improved. I am pleased to report to this Committee that last year—and Tim will correct me if I get this wrong—85% of all apologies and corrections rather than appeared on the same page as the original sin or on a page ahead of the original sin. In 2004 the figure was somewhere around 60% so there has been significant improvement. Room for more improvement:
always, yes. We have to be a little bit careful about making a precise arithmetic or geometric connection between something that has gone wrong and the necessary correction. You have to make a judgment on how much of the article was wrong, was it one sentence in a long piece, was it the whole thing, what was the burden of the inaccuracy or the fact for which there needed to be an apology? The real phrase is due prominence.

Q362 Chairman: To what extent do you as the PCC, once you have reached an adjudication, have any ability to influence the decision of the newspaper as to the size in which that is given or the position in the paper in which it is printed?

Sir Christopher Meyer: We do, and that is another thing that has changed. We were quite passive on that before but now we take a violent objection to adjudications or apologies which, without reference to us, suddenly pop up on page 33. In fact we have had two cases recently where we have gone back to the publications and said you have not published this in the proper way, including sufficiently prominently, and we censure you again; this time make damn sure you publish this in the right place. We have done this recently with a regional newspaper and with a magazine.

Q363 Paul Farrelly: Sir Christopher, could you tell the Committee why the editor of the Daily Express Peter Hill left the PCC board?

Sir Christopher Meyer: I said in an interview with journalists at the time of the publication of our 2007 report that there was a combination of reasons. There was the fact that Mr Desmond, because he was not paying his fee to the NPA was not paying his fee to the self-regulatory system, then there was the affair of the McCanns and then there was the fact that Peter Hill had been on the Commission since 2003 and was due to go. There was a mixture of things there.

Q364 Paul Farrelly: My understanding from within the industry is that during the McCann coverage many editors felt the position of Mr Hill on the board was untenable and in effect revolted. Peter Hill offered his resignation but Richard Desmond refused in the circumstances to allow him to carry it out, is that correct?

Sir Christopher Meyer: I would not know; you need to ask Mr Desmond that. I do not know if you are inviting him to appear before you or even Peter Hill, if you are inviting him to appear before you. Mr Farrelly, you will have to ask them.

Q365 Paul Farrelly: Is it correct that he offered to resign but then rescinded that offer?

Sir Christopher Meyer: I was under the impression that he did realise that he needed to resign after the announcement on 19 March of the judgment, and I certainly had the impression that he was going to do that, but that was an impression that was not confirmed by life.

Q366 Paul Farrelly: Events. The answer is yes.

Sir Christopher Meyer: Probably, yes. I think he was going to resign.

Q367 Paul Farrelly: Yes definitely or yes probably.

Sir Christopher Meyer: It has to be yes probably because I am not inside his brain. I was certainly under the impression immediately after 19 March that he was going to resign from the Commission, but he did not.

Q368 Paul Farrelly: I just want to explore the position of the Express further but first of all, in retrospect, you are about to leave the PCC after long and distinguished service. On reflection do you think that the PCC could or should have acted in the McCann case better to restrain the press?

Sir Christopher Meyer: I do not see how we could and the people out there who say that the McCann case is a failure of self-regulation, I believe this to be absolutely false and without substance, and I will tell you why. As soon as we heard about the disappearance of Madeleine McCann—and I am sure you have got all this in your papers but I will repeat it for the record—we got on to the British Embassy in Lisbon and said “Will you please tell the McCanns and their representatives that we stand ready to help in any way we can, this is what we can do.” We maintained contact with their press representatives—

Q369 Paul Farrelly: You will be aware that Mr McCann told us that that message was not received. Sir Christopher Meyer: He told me it was not received as well, because I then saw him on 13 July 2007—he happened to come round to my house to see my wife who runs a charity that specialises in missing and abducted children—and I took the opportunity to say to Gerry McCann, “Look, this is what we can do, here is the brochure that explains in detail how you can complain and the different ways in which you can make a complaint.” At that time he told me he had never got the message from the embassy. Whether that means the message was never conveyed to the McCann party, if you like, or whether he, Gerry, did not know that their press person at the time had got the message, I do not know and I have never been able to establish. We continued to keep in touch. At the time his press representative was a woman called Justine McGuinness and we kept in touch with her, then his press arrangements changed and I saw him again on 29 February last year. By that time he had taken the decision to sue Express Newspapers and I said to him, “If it is damages you are after, that is what you should do, but we remain ready to help”, and we have been able as you know to help on the separate issue of protecting his children and family, as I said. With the benefit of hindsight what we would have done to have acted earlier is for the McCanns to have come to us and said this or that or whatever is wrong, but we cannot be more royalist than the king, we cannot take action unless in those particular circumstances the first parties come to us and say something is going wrong. The most we can do in
Q370 Paul Farrelly: In your evidence you said to us it would have been impertinence by the PCC to have got involved sooner and contacted the McCanns directly. We put that to Gerry McCann and he told us he would not have felt that an impertinence, yet you contacted the embassy but you did not contact them directly.

Sir Christopher Meyer: You start off by contacting the embassy because you do not know how to get through to them. In the very beginning, in the first two days, yes, that was what we did. For example, if you had a similar case in the UK, say a horrible crime where the victim’s family find themselves the attention of a media scrum, one of the first things we would do is get on to the family liaison officers at the local police force who already ought to know the drill and say “The family does not want to talk to the press, they want to keep them away.” The family liaison officer will then act on our behalf, that is one way in which we do it. We did not have any phone numbers in Praia da Luz but we knew that the British Embassy had sent somebody down there from the consular section of the embassy to keep an eye on the McCanns, so you ring the embassy and say “While you are down there make sure that they know that this service is available.” In due course we made direct contact with Justine McGuiness and I personally had a meeting with Gerry McCann as I said on 13 July. In all honesty, Mr Farrelly, I do not see what else in those circumstances we could do. The truth or otherwise of what was written by the press at the time, or at least by the Express at the time, in the end had to be tested in the courts because the advice that Gerry McCann got was that this is defamation, this is libel. By definition the Press Complaints Commission does not do defamation, does not do libel.

Q371 Paul Farrelly: A lot of people reading the evidence that you have given might find that rather weak, Sir Christopher.

Sir Christopher Meyer: I am sorry, I must come back at you. Why weak? We do not apply the law Mr Farrelly.

Q372 Paul Farrelly: Let me just move on.

Sir Christopher Meyer: No, you just said something very significant.

Q373 Paul Farrelly: What is your view then on the suggestions that actually the PCC’s operations might be improved if it were more proactive and also acted on references from third parties?

Sir Christopher Meyer: We are extraordinarily proactive, it is one of the great growth areas over the last few years. We have just of our own volition, to give you the latest example—you may remember the case of Alfie Patten, a 13-year-old boy living down in Sussex who may or may not have fathered a child with a 15 or 16-year-old girl. We have not received any complaint about those stories but we are now investigating the matter and at the next meeting of the Commission the Commission will take a view on whether there has been a breach of the Code or not. We do this all the time but we must have grounds for so doing. Where a lot of our critics go wrong is that they expect us to apply the law, they expect us to be either instruments of the state or to have legal powers in areas which are reserved for the courts and for the judges. Proactive—what does it actually mean in the case of the McCanns, what does it mean in real terms beyond making sure they know what their rights are under the Code of Practice.

Q374 Paul Farrelly: Can you just clarify how the PCC acted in the instance of the story about Prince Philip in the Standard; did the PCC act after receiving a formal complaint from the palace?

Mr Toulmin: Yes, through his lawyer Gerard Tyrrell.

Q375 Paul Farrelly: The PCC did not proactively offer its services before that.

Mr Toulmin: No. It is well-known that the Royal Family knows how to use the PCC; Prince Philip instructed Harbottle and Lewis and they complained on his behalf.

Q376 Paul Farrelly: In the McCann case has the PCC censured the Express?

Mr Toulmin: We did not have a complaint about the Express.

Sir Christopher Meyer: There are two different jurisdictions here. We cannot censure them unless there is a case before us; there was not a case before us. The McCanns took a deliberate decision not to come to us except on the question of protecting their children, because they had been persuaded by lawyers—I am not going to quarrel with their decision—that they had been defamed and they had a case at law. They chose to go down that path.

Q377 Paul Farrelly: On what complaint was any censure made in the McCann case? Has the PCC issued any censure at all?

Mr Toulmin: The extent to which the PCC was used by the McCanns related to pre-publication work, harassment and so on where the remedy if you like was the minimising or indeed the cessation of like the physical activity. That was the bit that they came to us over. No investigation was necessary because it was about the whole pre-publication area. They did not complain to us about the subject-matter of the
articles and they went to court instead, as do some people every year. We do not ambulance-chase libel cases and then go after them.

Q378 Paul Farrelly: In conclusion, as an industry self-regulator after months of false coverage the PCC has issued no comment on the standards employed by the press in the McCann case.

Sir Christopher Meyer: Wrong Mr Farrelly.

Q379 Paul Farrelly: It is a question, has it?

Sir Christopher Meyer: First of all you are looking at this with 20:20 hindsight, forgive me for saying it, but what is obvious now was not obvious at the time. On 19 March when the judgment became public I rose from my sickbed, stuffed myself with paracetamol, staggered out to a radio car and on the PM programme castigated Peter Hill and Richard Desmond for a bad day for British journalism. Contrast and compare—I say this myself—with some of the reactions of the BBC Trust in recent cases. There was no question of us remaining silent; I said it was a bad day for British journalism, that Peter Hill should consider his position and that Mr Desmond should make a greater effort to ensure higher journalistic standards across all his publications.

Q380 Paul Farrelly: What position does Peter Hill occupy at the moment?

Sir Christopher Meyer: I have not a clue—he is still the editor of the Express. If you think, Mr Farrelly, that I should march around to the offices of the Daily Express and put my heavy hand on his collar and say “You are fired”—when you have Desmond and Hill before you, you can ask them these questions. I am not going to sack an editor but I can sure as hell express my view on the standards of journalism. There was never a question of a formal adjudication against Peter Hill because there was no formal matter that could come before us under the Code of Practice. I made my views pellucidly plain and some people in the industry did not like me saying that.

Q381 Paul Farrelly: One of my colleagues earlier asked how the PCC might be strengthened and there was not much beyond advertising the PCC’s services. Sir Christopher, from your diplomatic career are you familiar with the expression “going native”?

Sir Christopher Meyer: I know which way you are going, Mr Farrelly, and let me tell you this. After serving in the Soviet Union between 1968 and 1970 I have been permanently inoculated against nativeness and it is as strong now as it has ever been. If your suggestion is—and let us call a spade a spade because that is what you were asking me to do 20 minutes ago—that I have corruptly performed my job as chairman on the Press Complaints Commission by showing unseemly favouritism towards the industry, then I repudiate that utterly. I will not say any more because I am getting angry.

Q382 Paul Farrelly: That was not an allegation I made, for the record.

Sir Christopher Meyer: I hope you did not, but there is no question of going native.

Q383 Paul Farrelly: Is there no way the PCC could be strengthened?

Mr Toulmin: In terms of where we are in the media at the moment—and it is changing so quickly, we have obviously a digitalised and globalised media now—that has happened actually comparatively rapidly and, clearly, we have a job to do to adapt to that, and the penetration of the PCC will intensify online. It is only in the last week that the Sun has announced they are effectively launching a radio station online which the PCC Code will cover; we will be talking to them about that, how it will work in practice. These are all going to be big challenges for us and growth areas as well. This will obviously require that we are properly resourced in the future and the industry remains committed to that and so on. Asking about how the PCC can improve, it is clearly going to be in that area where our lack of statutory basis is a huge advantage because we can move quickly. There are a lot of conversations that we have with other regulators, of course—Ofcom—and with the industry itself.

Q384 Paul Farrelly: Just going back to the finance and the position of the PCC does the absence of the Express Group at the moment undermine the principle of self-regulation and what steps have you taken to get them back on board?

Sir Christopher Meyer: We have taken a very clear policy decision on this that we operate a public service and it is our responsibility to the readers and viewers of the Express newspapers to continue to take complaints from them as and when they come in. As far as we are concerned so long as the editors of this publishing group continue to accept our competence and publish our adjudications or whatever then we will continue that service. That is the situation right now. There are of course implications for the industry, to which Tim is much better equipped to speak than me.

Mr Toulmin: Can I just say that this is quite a curious dispute in that they have not walked out on the PCC—because you asked about the issue of principle here. The editors are buying into this system still, they are co-operating, they are publishing corrections and apologies and there are adjudications against their titles. As Mr Bowdler will explain this has its roots in an industry dispute about the financing of the Newspaper Publishers Association. It is not actually an Express versus PCC issue, we are victims of it really.

Sir Christopher Meyer: Collateral damage is the right expression for this.

Q385 Paul Farrelly: Just one final question, Chairman. On reflection, Sir Christopher, in the Motorman case the editor of the News of the World escaped the jurisdiction of the PCC by resigning beforehand.

Sir Christopher Meyer: You do not mean Motorman, you mean Mulcaire and Goodman. There is a big difference. There is a huge difference.
Chairman: Yes, there is a difference.

Q386 Paul Farrelly: Sorry, Chairman, we were covering both at the same time. In that instance—and thank you for the correction—do you think the PCC on reflection missed a trick by not summoning him anyway and letting him refuse?

Sir Christopher Meyer: You have slightly got the wrong end of the stick here. Indeed, Mr Coulson fell on his sword and this was after or during a police investigation conducted not even under the Data Protection Act but under the Regulation of Investigatory Practices Act. It was for a violation of that Act that Messrs Goodman and Mulcaire went to jail. We conducted afterwards a very thorough investigation, both of the News of the World and of the entire newspaper and magazine industry of the United Kingdom and came out with a report which set out some very clear principles of good practice for the industry as a whole, and no lesser authority than Professor Roy Greenslade, who is not always the best friend of the PCC, wrote that he was surprised by our rigour and thoroughness—if those are the words that were used. We did this by going very deeply and very forensically, among other things, into the News of the World, into the new editor Colin Myler, to find out exactly what had happened. I could see no purpose in summoning—I could not summon him, I had no authority—an editor, and I really wonder what you think we would have got from Mr Coulson that the police had not already succeeded in getting. Are you saying to me that Andy Coulson would have come stumbling into my office, weeping, saying “Christopher, I have got to tell you I have sinned, no I did not tell all the truth to the authorities”? I could see no useful purpose in talking to him about it. I had an exchange of correspondence with him before he resigned and I also spoke to the then chairman and chief executive of News International, Mr Les Hinton, about this; so it is not that there was no contact between the PCC and the News of the World and News International before Coulson resigned and before the courts rendered their judgment; there was, but once that had happened our view was, yes, there needed to be a really thorough investigation—which we did—but it would be pointless at that precise moment, even if we had the authority, to call an editor. That was the reason.

Q387 Chairman: I want to come back to the Express in particular and the general question. You will be aware that the PCC’s genesis was at least in part in order to stave off statutory regulation. Surely a self-regulatory system will only ever work if everybody buys into it. If you have a part of your industry that is not fully co-operating with the self-regulatory system that must pose a real threat to the whole survival of self-regulation.

Sir Christopher Meyer: My answer to that would be this is a problem and it needs to be fixed and it is for the industry to fix it, and Tim Bowdler I am sure will want to say something in a minute. We have been here before, the Mirror Group fell out a couple of times, I believe, and then were brought back in again, so we have had this problem before: it is not as if it is unprecedented but it does need to be dealt with.

Mr Bowdler: In answering you I would like first to just go back to Mr Farrelly’s question about funding and the implications of the Express Group not paying their fees and what impact it has had on the PCC. The answer to that is currently none because the industry takes a very responsible view of our commitment to self-regulation, so the industry is funding the shortfall. We are doing so at the moment by dipping into our reserves which obviously is not something we can do indefinitely. The commitment the industry has made to date is to say that despite the fact that income is not available from the Express we will continue to fund the PCC in the way that it requires, and the relationship between Pressbof and the PCC is a very open one in the sense that the PCC prepares its budget, it decides what resources it requires, it conducts its operations, of course that budget is discussed with Pressbof but as a matter of telling us where they have reached in terms of the funding requirements. Naturally we might comment on it, but we have supported those needs and continue to do so. Coming to the whole issue of the Express and funding more generally, if you take the position prior to the Express withdrawing we achieved a 98.5% return from the newspaper industry; in other words there was 1.5% which did not pay, so the first thing to say is it has never been absolutely universal. There have been some publications, relatively small of course, which have remained outside. If you extend that to magazines the return is rather less, something in the region of 80%, which means quite a few of the smaller magazines also choose to be outside the system. That has not in any way undermined the validity of self-regulation, it has continued to work very effectively; however, it has meant that it is not 100%. In the case of the Express when we were told—we being the Press Board of Finance—in early 2008 that the Express through a separate dispute with the industry, the national newspaper publishers, would not therefore be paying their fees to Pressbof we entered a dialogue. That dialogue has continued, I have had meetings with the Express Newspapers’ management, with Mr Desmond, we have had a continuing dialogue by email and conversation during that period. I have not given up, I still think it is possible that they will recognise that it would be advantageous for them to return, but in the end they have to understand what the implications will be if they do not do so. In practice, at some point in time, Pressbof might say to Christopher or his successor, Baroness Buscombe, that the PCC should not continue to adjudicate indefinitely in a way that Christopher has described, and on the board of the PCC that continues to be a difficult issue for you to grapple with. If they were not covered then they would face additional costs, increased litigation because complaints could only go through the legal route supported by CFAs. In the end it will be a variety of pressures that hopefully will bring them back in, but it would be a terrible mistake to suggest
that the system itself is undermined irreparably by the fact that there is one rogue publisher who does not subscribe to it.

**Q388 Chairman:** Would you like to see more ability to exert influence on him to come back into the fold?  
**Mr Bowdler:** Yes, in a word. Self-regulation is not helped by their exclusion at their own behest and in the end if they are disadvantaged by that decision that would be a helpful outcome.

**Q389 Chairman:** But the solution that you are suggesting, which is that at the moment it appears the *Daily Express* are willing still to bide by PCC rulings even though their proprietor is not paying for the PCC, if you were to withdraw that in a sense that is going to undermine the system still further because you then have a major national newspaper which is not accepting PCC rulings.

**Mr Bowdler:** Clearly it makes life more difficult in relation to complainants against Express Newspapers if that were to happen, but I do not see that that undermines the system because the vast majority of publications, the overwhelming majority, remain part of the system. Simply because there is a rogue publisher—

**Q390 Chairman:** We are not talking about the *Gardening Times* we are talking about the *Daily Express*, it is one of the big national newspapers that is outside.

**Mr Bowdler:** The decision as to whether they would be outside the system in terms of adjudications is a PCC matter and Christopher has expressed his view. To suggest that even if they were that the whole system was failing would be a huge assumption to make. The vast majority of newspapers observe, support, fund self-regulation.

**Q391 Chairman:** But you are still hopeful that Mr Desmond will change his position.  
**Mr Bowdler:** We continue to have a dialogue.

**Q392 Chairman:** That is not the same thing.  
**Mr Bowdler:** I am not in a position today where I could say I am hopeful though we do continue to discuss their return.

**Q393 Chairman:** Can I just turn to one other issue? The Committee last week heard evidence in private from some of those affected by the suicides in Bridgend, and one thing came across very clearly from a family member. This was somebody who was an ordinary person, they had no experience of dealing with the press, with loads of national newspapers, and he discovered that his child had died and was then told that within a relatively short period of time this information would become public and he would be subjected to the full glare and pressure of the media, which obviously was something he had no experience of and did not really know how to deal with. Is there not a role for the PCC here? I know you take a proactive role but could not more be done, perhaps through the police, so that anybody who suddenly finds themselves in a position where they are like to be subject to huge media exposure could be told “This is going to happen to you but there is a remedy or at least there is advice on hand, the PCC”?

**Sir Christopher Meyer:** When we went down to Bridgend in May of last year—and we had done a great deal before then to alert people in South Wales to the fact of our existence, not only remind the police of their responsibilities but also getting in touch with local schools and community organisations, and we were doing that from February of last year onwards—one of the things we discovered when we got down to Bridgend was that to some extent anyway, particularly when we had a closed session with about a dozen families who had lost children through suicide, and the police were there, was that the family liaison officer system that the police operate for families in distress, so far as conveying to them the fact of our existence had broken down. It had not happened. One of our painting the Forth Bridge tasks is constantly to remind police forces around the country that they really must, in situations of suicide or murder or whatever, tell families how to deal with the press. Some people find it cathartic to talk to journalists, others hate it, and we saw that variety of opinion when we went to see the families in Bridgend. The key thing—and this is where we are dependent on others—is to get it over to police forces and also into coroners’ courts, into the rooms. The coroners themselves make all these people aware that they are dealing with individuals who have no experience of dealing with the press, so we keep on plugging away and when we go on our missions outside London we always invite to the events or to a lunch or whatever the local coroner or the local coronors, depending on how many there are, as well as the local judges. A number of times we have found that the system has not worked properly and a coroner has said “I did not know about that”, so we send them all the stuff and say “Please make sure that you and your staff know about this”. It is a permanent struggle to be perfectly frank.

**Q394 Adam Price:** One of the issues raised by Mr Farrelly was the question of third party complaints.  
**Sir Christopher Meyer:** Sorry, I failed to answer that.

**Q395 Adam Price:** The public may be a little bit confused because there is Ofcom, the Advertising Standards Authority, the BBC Trust who accept third party complaints whereas as a rule the Press Complaints Commission does not. In the case of another Northern shareholder publication, *OK* magazine, in the last few days, there was the so-called tribute to Jade Goody, which was effectively an obituary, black-edged cover et cetera, published in advance of her death. That has elicited a large number of complaints from the public and you are considering, it has been reported, whether to launch an inquiry. Is that true and how do you assess, therefore, when a third party complaint is legitimate and should result in an inquiry?
Sir Christopher Meyer: I will let Tim say something about this as well. Let me be clear, we do entertain third party complaints but not all that often, and the reason for that is because we cannot find ourselves in a situation where the third party trumps the interests of the first party. Sometimes something will happen, people will be affected, they choose not to use our services but sometimes an indignant third party sees something reported and will complain to us, but if the family, say, of a dead footballer who was photographed dead on a pitch, as happened several years ago, does not want to pursue the matter, we are not going to pursue it with a third party. That is the basic position of principle. The Jade Goody thing is complicated because on the one hand the family—and we have been in touch with them through their representatives—do not want to pursue any kind of complaint. The issue then arises whether the third parties—and we have received a lot of complaints—have a justification nonetheless for coming to us and having the case examined because they have been misled by the front page. Also, are we talking about something that is taste and decency and does not fall under the Code—there are a number of issues here that need to be considered and Tim and his team have already put out a statement for the time being. I think what is going to happen is that commissioners will have to be consulted on this. The next formal meeting of the Commission takes place after I have gone, under Peta Buscombe, and what we would do, as Christopher has suggested in the Jade Goody case, is if we get a third party complaint then we will alert the first party. It always has to be up to the first party to want to complain and there may be all sorts of reasons why they do not want to complain. In this instance the family of Jade Goody and her representatives do not want to complain about that, and that has to be a matter for them. As Christopher said, at a later stage the Commission will make an assessment as to whether the members of the public who have complained also have a right to complain about this but that has not yet been decided.

Mr Toulmin: Might I add on a general point that actually on a like for like basis we are exactly the same as Ofcom; they will on privacy issues, where there is a first party for instance, take a complaint and we have already put out a statement for the time being. I think what is going to happen is that commissioners will have to be consulted on this. The next formal meeting of the Commission takes place after I have gone, under Peta Buscombe, and what we would do, as Christopher has suggested in the Jade Goody case, is if we get a third party complaint then we will alert the first party. It always has to be up to the first party to want to complain and there may be all sorts of reasons why they do not want to complain. In this instance the family of Jade Goody and her representatives do not want to complain about that, and that has to be a matter for them. As Christopher said, at a later stage the Commission will make an assessment as to whether the members of the public who have complained also have a right to complain about this but that has not yet been decided.

Q396 Paul Farrelly: Sir Christopher, after your long tenure at the PCC I have no feeling at all from this session that you think in any way that the PCC either could or should be more proactive in monitoring compliance with the Code of Practice as other regulators—from the Takeover Panel to Ofsted for example—do. We have discussed the McCann case where the McCanns were complaining of irresponsible journalism and people like Sir Max Hastings were, at an early stage, professing to hang their head in shame at the way the press were behaving, and yet you did not step in.

Sir Christopher Meyer: Sorry, how would we have stepped in?

Q397 Paul Farrelly: Can I give you another example of where the public might well feel that the PCC should be more proactive in monitoring the Code of Compliance. In this day and age it is the practice now—and Mr Bowdler you would know very well from your group—for newspapers to invite comments on stories. On New Year’s Eve a close friend of mine lost his 16-year old son tragically in an accident and that was covered in the local newspaper in Sussex, and some of the comments that were written by people on that news were just sick really, I would suggest that one way we might proactively look at compliance with the Code is to take a snapshot of websites at any point in time and just monitor whether newspapers are complying with the Code. I do not know whether that is the sort of action you would ever consider at the PCC.

Sir Christopher Meyer: Of course we do. We do our very best to monitor the press and, okay, the one charge that cannot be levelled against us in 2009 is that we are not proactive, but there are limits to what you can do. There are thousands of publications in the United Kingdom with an equal number of websites; there is a limit to what you can monitor. We have already had our discussion about the McCanns and the Express and I suspect that you and I are never going to agree on this, but that is another matter. As for the newspaper and magazine industry of the United Kingdom as a whole of course we do our best to monitor what is going on, but short of employing another 25,000 people to add to the 14 or 15 we have already I do not see how we can do this universally.

Q398 Paul Farrelly: Take a snapshot.

Sir Christopher Meyer: That is what we do, we do take a snapshot. We see a summary of stories every day but by definition it is not universal and it never will be universal.

Mr Toulmin: Your point actually illustrates a general advantage of the PCC in terms of its flexibility because this reveals the way in which new technology is being used. We have seen some appalling examples of comments on news stories, and after our intervention, newspapers have changed their practice. People can complain about them if the editor is editorially responsible for them and the PCC moves very, very quickly to sort that out. The example you raise is an absolute classic case where we could have helped very quickly actually.

Q399 Paul Farrelly: If you see an instance like that—and it is replicated across many websites—and you think it is sick, and you think it is in clear breach of compliance with the Code, would you act without a third party complaint?

Mr Toulmin: We would; certainly if a third party brought it to our attention we would absolutely be in touch with the first party. What we would not do, as
Christopher said earlier, is unilaterally launch an inquiry because the interests of the first party are actually the whole basis of the PCC, it is there as a form of redress for people who have a problem with newspapers and magazines. Absolutely, if that was brought to our attention there is no question about that, and in fact I think we have done that.

Sir Christopher Meyer: I know you want to end but a tiny codicil?

Q400 Chairman: A very, very short codicil.

Sir Christopher Meyer: Just to illustrate to Mr Farrelly that despite all the technological development we still hold to the principle that the buck stops with the editor in the sense that the editorial decision on content, be it online or in print, be it static or audiovisual, the responsibility still in the end falls to the editor, because unless you have that as a cornerstone of this system you start to get in terrible trouble about who is responsible for what. It may be difficult for an editor now to control everything that goes on in the empire, but the principle has not changed.

Q401 Adam Price: Finally, looking 10 years down the line, we are in the internet age but we are actually moving towards convergence. If you go to most national newspapers these days they look half like a television studio or a radio studio. Jon Gaunt gets sacked on TalkSport and now is going to be fronting up the Sun’s Sun Talk live morning show where he will probably be reproducing much of the same stuff. If he calls somebody, as he did, a Nazi or an ignorant pig you will be able to intervene, but if he offends taste or decency—if he had been on radio of course there would have been an inquiry—you are not going to intervene. Is that not a contradiction?

Sir Christopher Meyer: There is a big structural question in what you have just said and also there is an immediate question. I can tell you—and the Sun will confirm this—that the Jon Gaunt radio show will be under our jurisdiction. We have managed so far to handle the visual side of audiovisual perfectly well and now we are getting the audio side of audiovisual and I have every confidence we will handle that equally well. Down the line, 10 years from now—and I have said this before—I would be most surprised if the regulatory architecture were the same as it is today for precisely convergence reasons. I had this dream—which may be no more than a fantasy—that actually in the end Ofcom will get out of content, will get out of television broadcasting content, because the only way to go in the digital age is self-regulatory. Only self-regulation has the flexibility and the buy-in from the industry to create clearings of order in the jungle of the internet.

Adam Price: There is a thought.

Chairman: I am not sure that at 12 minutes past one we can reopen the entire Communications Act; that is for another day perhaps. Can I thank all three of you very much.
Tuesday 21 April 2009

Members present
Mr John Whittingdale, in the Chair

Janet Anderson Philip Davies Mr Nigel Evans Paul Farrelly Mr Mike Hall

Alan Keen Rosemary McKenna Adam Price Mr Adrian Sanders Helen Southworth

Witnesses: Mr Nick Davies, writer and journalist, and Mr Roy Greenslade, Professor of Journalism, City University and columnist and blogger, the Guardian, gave evidence.

Chairman: Good morning. Can I welcome Nick Davies, writer, journalist and author of Flat Earth News, and Roy Greenslade, Professor of Journalism at City University and previous editor of various newspapers. Nigel Evans is going to ask the first question.

Q402 Mr Evans: Could I start by asking you about your concept of “churnalism” which you mention in your book (of which you seem to have a copy on the table and if we were being televised you could hold it up and do a little plug)? Could you just tell us a little bit about the concept of churnalism?

Mr Davies: What I really writing about in the book is the way in which commercialism has invaded our newsrooms and undermined the values of journalism. There are all sorts of aspects to that; the impact is subtle and manifold. The big, obvious structural impact is what is being called churnalism which is essentially that the big corporations have cut their costs by reducing the number of journalists but increased their output because the more pages you print, the more advertising you carry and therefore the more money you can earn. The impact of that is that journalists just do not have enough time to do their job. As a single example of that, I commissioned this piece of research into news stories in our quality newspapers. We took a sample of two weeks’ output, more than 2000 stories and said, insofar as each of these stories rests on a central factual statement, is there evidence that that statement has been thoroughly checked? The answer you are bound to get is 100% because that is what we do, we check to discriminate between falsehood and truth. The answer they got was not 100%; it was 12%. These are the quality newspapers. That is the kind of things that happens when you take time away from working journalists which is what the commercialism has done.

Q403 Mr Evans: This is not a new thing though. It has always struck me that stories, for instance, that appear in local newspapers must be scanned and scoured by national journalists who then pick and choose and lift those stories to print them. With the number of free sheets that we have now it does seem that some of the stories you have read before and the detail has not really been altered that much. So it is not a new thing, is it?

Mr Davies: There has never been a time when journalists were simply able to tell the truth about everything. We have always been tethered by time problems because we are writing about events as they occur and traditionally we have tried to put them in the paper the next day. So there has always been a time problem. However, that time problem has certainly got worse in the 32 years that I have been working as a reporter and we attempted to measure it with this research I commissioned from Cardiff University. It is a crude figure, but what they found was that on average a Fleet Street reporter now is filling three times as much space as he or she was in the mid-1980s which means operationally, on average, only a third of the time, story by story. It is a very, very important shift and the degree of the time shortage is new.

Q404 Mr Evans: When did you do that analysis?

Mr Davies: About two years ago.

Q405 Mr Evans: In which case, if your statement was right then, it must have got worse now because the number of journalists—as we have all seen in local and national papers—has dropped. Indeed, the pressure on journalists to even carry camcorders and do things for web pages seems to have increased.

Mr Davies: Definitely. That is really the reason that the book took off. I am travelling the world now. I have just come back from China talking about it; I have been in Australia; I have been all over Western Europe. All across the developed world those same forces of commercialism, now aggravated by the credit crisis, are undermining the ability of journalists to do their job properly. The churnalism—the shortage of time—is one aspect of that. If you are looking at the problems of the standards of the press, the primary criteria for judging us is truth telling and we are failing on that primary standard more and more often.

Q406 Mr Evans: Would you say that compared to the past the quality of journalism is as good as it was in the past, maybe better than it was in the past or is it now worse than it was in the past?

Mr Davies: If we take a baseline of 32 years ago when I started—because I have experience as well as research—the quality of the journalists is probably better; the quality of the journalism is undoubtedly worse because of this professional straightjacket in
which we are now compelled to work. When the book came out there were some senior journalists who just hated it; I was being bombarded with hostility and some of the people who came out badly from the book did not like it. What then happened was that I was contacted by journalists from up and down this country and all across the developed world effectively saying the same thing, “Thank God you said that because it is the same in my newsroom”. There is a really serious problem here.

Q407 Mr Evans: Do you believe as well that there is simply lifting of stories from other papers which are slightly changed but without the proper investigative journalism with journalists talking to the people they are writing about and finding out whether the story was true originally?

Mr Davies: There is a bit of lifting from other papers. There are two key sources of second hand information: the wire agency (Reuters, AP) and there is the PR industry. Those are the two primary sources of second hand material which flow through the newsrooms and which we churn—recycle—into print without really checking. I think that means that we are structurally likely to fail to tell the truth because the news agencies are too short of staff themselves to know the truth about what is going on on their patch and the PR industry is specifically designed to serve the interests—political or commercial—of those who pay for it, not the interests of truth.

Q408 Mr Evans: So the old line of “It’s got to be true. I read it in the newspaper” no longer holds any sway.

Mr Davies: I do not think it ever was entirely true. There has always been a problem with it, but that problem I insist has got significantly worse and continues to deteriorate because of the credit crisis.

Q409 Chairman: Roy, do you recognise this?

Mr Greenslade: Yes, I certainly do recognise it. We are now getting evidence from across the country of courts that are going unreported, of council meetings that are not being properly covered, of local paper journalists who never leave the office, of local paper journalists who are required to perform a sort of wordage count per day or a number of stories per day. All of this links entirely to what Nick says about churnalism which is really that it becomes a kind of factory of words rather than an industry which is dedicated to telling the truth. Certainly papers come out and certainly papers contain stories, but the stories are different from the truth, as we know. You can get your PR feed and in your PR feed you get a story. You might balance that, if you have a chance, by making one phone call to get the other side, but that is not what journalism is really about. It is not about presenting one side and the other side; it is about trying to get to the truth and you can only do that without time constraints. In his book Nick has avoided making the mistake (of which he has been accused many times) of looking back to a golden age. He agrees with me that there was no golden age; there was no time in which it was absolutely great and perfect. If I look back to my first local paper, as I did recently at Colindale Newspaper Library, I realised that it was not the be all and end all of journalism then either. However, it was packed with stories, packed with material which had involved us journalists—a very small number of us—actually going out, meeting people, making contacts and so on. That does not happen any more. However, I ought to just stress finally that you have to see it from the other side too, and that is that councils have made it much more difficult for journalists to report and so have the police. When I was first a reporter I went to the police station every morning—I happened to live next door to it—and spoke to the duty sergeant who would turn the book round and we would go through what was interesting. No duty sergeant will allow that to happen nowadays because there is a whole PR outfit created to prevent that happening. It is not simply that journalists have become denuded of time and opportunity, it is also that the authorities on which we regularly called have made it that much more difficult to do it. I think we need to see that context.

Q410 Chairman: Both of you have been focussing to some extent on local newspapers. I do not want to pre-empt the Committee’s next inquiry which is into the future of local newspapers, but is this not because of the growth of on-line distribution, the migration of advertising away from local traditional news outlets? This is a structural change which really is inevitable. It is not something we can reverse.

Mr Davies: You have actually got three phases of work here. Phase number one: the local newspapers which, on the whole, tend to belong to local families are bought up by big corporations. You will know that there are four corporations which own most of the local newspapers nowadays and they ransacked those local newsrooms for profit, laying off journalists, increasing the output, closing the offices in the middle of towns so they can sell the building for profit and moving it out to some industrial estate where it is cheaper. All that damages the quality of the local news but it makes a lot of money. Phase two: along comes the internet, news is free, advertising starts to drift off to websites where it does not have to pay and/or is more precisely focused on the market it is trying to reach. Phase three: the credit crisis, advertising starts to crash downwards. Whereas previously these corporations were damaging the quality of journalism in order to increase their profits, now they are damaging the quality of journalism in order to try to stay afloat. You have masses and masses of journalists losing their jobs.

Mr Greenslade: We will come back to the nationals probably because that is your central focus, the important thing about corporatised journalism as described by Nick is that that is also evident in national newspapers too. Although not in every group, it is really very clear in, say, Trinity Mirror and the Express group and so on where the idea is that you simply use the kind of mechanisms that I have described in terms of local papers in national papers, that is smaller and smaller staff required to respond to a prompt by the news desk to follow up
what is provided by agencies or stringers rather than actually generating material themselves. That is what I describe as corporatised journalism and reactive journalism. Journalism has to be pro-active and that is the difference. The same structures that we have seen in local newspapers are being repeated to an extent in nationals.

Q411 Chairman: On top of that there appears to have been a steady movement away from hard, investigative journalism towards celebrity sensations.

Mr Greenslade: There is investigative journalism—let us not say there is not—but it is less evident than before. The very phrase “investigative journalism” suggests that there are things which are separate from other kinds of journalism. Really all journalism should be investigative journalism in the sense that, even if it is a relatively small story, it takes that journalist some time to research and investigate it. It is not that the big, set piece investigative journalism is not going on because it is, but it is that kind of regular, subjecting every story to that penetrating analysis which is not happening.

Mr Davies: I slightly disagree with that. I agree that all journalism should be investigative; it should be truth telling; it should involve checking and there has been a serious decline in that, the routine checking of truth telling; it should involve checking and there has been a steady movement away from hard, investigative journalism towards celebrity sensations.

Q412 Rosemary McKenna: Can I just follow up on the point the Chairman made about the celebrity thing. Is it because of the drop in real journalism and the easy way it is to fill newspapers with celebrities? Which came first?

Mr Greenslade: That is wonderfully “chicken and egg”. We do live in a celebrity age and quite why that is, we have seen in local newspapers are being repeated to an extent in nationals. Mr Greenslade: There is investigative journalism—let us not say there is not—but it is less evident than before. The very phrase “investigative journalism” suggests that there are things which are separate from other kinds of journalism. Really all journalism should be investigative journalism in the sense that, even if it is a relatively small story, it takes that journalist some time to research and investigate it. It is not that the big, set piece investigative journalism is not going on because it is, but it is that kind of regular, subjecting every story to that penetrating analysis which is not happening.

Mr Davies: I slightly disagree with that. I agree that all journalism should be investigative; it should be truth telling; it should involve checking and there has been a serious decline in that, the routine checking of truth telling; it should involve checking and there has been a steady movement away from hard, investigative journalism towards celebrity sensations. If you want to understand why we got the story on weapons of mass destruction wrong, why we misreported the death of Ian Tomlinson at the G20, that is what it is about; we rewrite press releases that interested parties put out serving their interests. Celebrity news is driven by their part of the PR machine, putting out cheap, easy to run “sexy” stories with pictures which fill more space and sell papers.

Mr Greenslade: The other important thing about celebrities is that they have the highest paid, best PRs and therefore they are much more exploitative and they get up to all sorts of things. I was at a conference in Derry a couple of years ago when a PR stood up and said that he was disgusted with the run down of journalism and he often wrote PR handouts that had appeared verbatim in the press. He held up in front of everyone at the conference a page about which he was disgusted when it happened; he said, “They even ran my byline”.

Q413 Mr Hall: Could I explore the concept of responsible journalism? It is permissible for the press to run stories that are defamatory as long as they have been well researched, professionally presented and in the public interest. That seems to be the defence. Is that sort of defence still relevant today?

Mr Davies: It is okay for the press to run defamatory stories—

Q414 Mr Hall: This is the House of Lords ruling in Reynolds, that journalists making statements which were subsequently found to be defamatory or untrue were protected in law if the story had been researched, presented professionally and the subject matter was in the public interest.

Mr Davies: The Reynolds judgment has been updated and we now call it Jannet. That is a bad solution to a very bad problem. The very bad
problem is that we have a libel law which does not work for either side. There are masses of people who are factually wronged and damaged by newspapers who cannot use libel law to correct the errors because it is too expensive. Then from the newspapers' point of view, the legal fees that are involved (I am sure you will have been told this by other witnesses) are so terrifying that there is a constant chilling effect, a constant inhibition on us. The libel laws are a mess. Along comes the High Court and they say, “We will try to help you out here”. Essentially what they are saying in Reynolds and Jameel is, “If you go through the correct processes so that we reckon you have behaved in a responsible way, even if you have blown it we will let you get away with it”. I do not like that because it encourages a kind of “he said/she said” journalism where we do not get to the truth. In fact I think it licenses damaging falsehoods. If somebody comes along to me and says, “Mike Hall is a paedophile” I ring you up and act responsibly and you say, “No I am not”—

Q415 Mr Hall: Just for the record, I am not.

Mr Davies: No, I understand that but the Reynolds judgment licenses me to run that story as long as it is full of your denials and I have behaved in a responsible way. If Charlie down the road who has told me this is lying, that is a licence to run malicious falsehoods. I say this with some passion because when the book came out there were several attempts to do that to me. I suddenly found myself on the receiving end of really dishonest journalism. I had to really, really fight to stop a grotesque sexual smear about my wife going into the paper. Part of what helped me was that I have never had a wife. It was just bonkers. I finally only stopped that story going into the paper because I tape recorded the conversation with the reporter in which he acknowledged that the fact that I did not have a wife probably meant that the story was not true. At the end of the day the editor said, “I am going to run it anyway with your denial”. That is not good enough. I said, “If you run that story I will publish the tapes in which your own reporter admits that the story is not true” and then he backed off. I am not happy with Reynolds and Jameel but a lot of journalists are because it is one way of dealing with the wretched libel law.

Q416 Chairman: Are you willing to tell us which paper it was?

Mr Davies: I do not think I should. The sleeping dog is lying and I will leave it there.

Mr Greenslade: I am sympathetic to what Nick says of course, but I do believe that Reynolds and Jameel do offer a way of getting material into the public domain that needs to be put there. Of course it is a grotesque example that Nick quotes but I think there have been plenty of other examples where that has been valuable, not least in the Jameel case. I think the key to this is the word “responsible”. As journalists we wish to exercise the greatest amount of licence and freedom, but with freedom comes responsibility and it is about how we go about our job. Most of what the Reynolds judgment said was that we should do certain things properly and I think that was important in the case of George Galloway v The Daily Telegraph where the Telegraph had failed to act responsibly and the reason I believe the judgment was made in Galloway’s favour was because his counsel were able to show that the paper had behaved irresponsibly. I think that was very important in that case and it is important in other cases too. I attended the Committee to hear Max Mosley speak and although I have differing views from him about prior notification, it is certainly a case that responsible journalism means that you should approach the other party before you go to print when you are about to print something which intrudes so heavily into their privacy for instance, or indeed which may libel. I think it is responsible journalism. I do not think it is a “he said/she said” in those situations; you should give the other side an opportunity to explain themselves. That is there in Reynolds and it is something again that was ignored in the case of the News of the World in carrying out the Mosley investigation.

Q417 Mr Hall: We have heard evidence from quite a number of what you would call reputable newspapers in America. The one absolutely staggering thought in America is that they can publish anything they like about people in public life. There is no actual recourse to a court of law to resolve that.

Mr Greenslade: You have to show malice.

Q418 Mr Hall: Absolutely. The person or organisation or individual who are put under the spotlight get the opportunity to rebut and because of that the American press seems to take a far more responsible attitude. We have heard that they are only allowed one anonymous source; they have to cross-reference their story with two separate reference points. Only then, if it stacks up, do they publish.

Mr Greenslade: The important thing is about the specificity of culture and this goes across the world. We have highly competitive sets of national newspapers and competition is supposed to be a good thing—many people around this table might think that competition is the be all and end all in life—however, sometimes competition has bad effects too. The bad results of competition in our press, as distinct from the American press, are that it has led to extremely poor behaviour. If I might just indulge a moment of history here, in the 1948 Royal Commission on the press it was suggested that there should be the setting up of a press council and, at the same time, there should be some kind of code from which the press council would operate. It took five years before the Press Council was set up and without any kind of code at all so journalists were simply working as they decided. Out of that freedom that the press enjoyed gradually, over a prolonged period, standards fell and fell and the Press Council fell into a situation in which it was disregarded by the bulk of the press. This led to a kind of Wild West period in the late 1980s which is the very reason why
the Press Council was abandoned. We set up the PCC and at last, 50 years later, we created a code of ethics to make journalists abide by. Then of course we created an administration called the PCC that was weak enough to ensure that the Code could be ignored.

**Q419 Mr Hall:** The Americans are very keen of checking the facts of the story before they go to press.

**Mr Greenslade:** They are, but they have a totally split thing. They have weird and crazy newspapers—the supermarket checkout newspapers—which no-one really believes that much and which even stars occasionally sue for but largely ignore and treat as going with the territory of fame as it were. Then we have newspapers which, for a variety of reasons, have created their own set of ethics and ethical guidelines and they stick very closely to them. In Britain American newspapers are regarded as incredibly dull because they do that. You will undoubtedly hear evidence from some editors who think that dullness is something that must never occur in a newspaper, you must not deal with anything seriously, that we need all the guff, gossip and trivia to ensure that we keep readership up and that way justify the odd bits of serious news that we cover. I see it in a different way; I think that essentially journalism is about doing public good—not entertaining the public but doing public good—and we should use that as our yardstick or our criteria for everything we do in journalism. This may be unrelievedly dull but I think it is very important in terms of our democracy.

**Q420 Mr Hall:** I think it is paradoxical that the American press have as much freedom as they could possibly have yet they act so responsibly in the way they actually check their stories before they publish them. If we had the same approach here would our press respond in the same way?

**Mr Greenslade:** I do not want to be too much defending the American press here. I thought the way they behaved over Hillary Clinton and Whitewater was hardly responsible. They accept leaks from grand juries and indeed their whole treatment of Clinton can be seen as pretty poor as well. It is not as if they are terrific. They, too, often bend the rules.

**Mr Davies:** Just to come back to where you started with Reynolds, if you would just look at the two things which have to be balanced here, the serious journalists need to be able to tell the truth about powerful people without being punished in the way that currently we can be by greedy lawyers. On the other hand, ordinary people who are the victims of grossly unfair and inaccurate reporting must have a mechanism by which newspapers are compelled to correct the damage. Neither of those two goals has been secured at the moment because the libel law is wrong and the PCC is not really doing its job either. The question about Reynolds I think goes to that big underlying problem. If you can kick the libel law into touch you would be doing everybody a big service.

**Q421 Adam Price:** There are some Americans who look over at British newspapers with some admiration; they like the fearlessness, lack of deference. You mentioned Clinton, but did Newsweek know about Monica Lewinsky and they spiked the story? There was an example recently as well when the Sunday Telegraph ran a story about the DVD gift that Obama gave to Brown and it was said that some people thought it was a rather cheap gift and that he was overwhelmed, quoting some anonymous sources. The American newspapers would not have run that but then that was picked up in America by the talk radio shows and it eventually became a mainstream story. Is that not an example of the strength of the British newspaper culture versus Americans who are almost simpering in their attitude sometimes to American politicians?

**Mr Greenslade:** There are virtues in our more probing side. If you took the analogy of our radio and television interviewers—John Humphries and Jeremy Paxman—they do not exist in the United States and they are quite shocked when they see what they do here. I think that is true of our print journalism too. We do tend to be more fearless and that is the best side of our competition. It does not mean, however, that that fearlessness should be transformed into recklessness. Marching on that narrow tightrope is what counts.

**Q422 Adam Price:** Do you think there is a cultural difference as well? It is often said that in America journalism is seen as a profession whereas in Britain it is seen as a trade. British newspapers, even political journalists, see their job as much to entertain as to inform. Is there a cultural distinction as much as anything else?

**Mr Greenslade:** There is a cultural distinction but that is because of the nature of the growth of the American republic in which journalism, which was very helpful in forging that republic and winning independence from the awful colonising power, in so doing it saw journalism as a bulwark of democracy (the famous Jefferson quote). We did not see it that way. Ours was in fact a lengthy struggle against the state to win a freedom to do as we like which was secured eventually in 1855. We therefore saw ourselves not as helpful to democracy (because we did not have a democracy back in 1855 in the way we now recognise it) and therefore we pitched ourselves as being anti-democratic in a sense by at least being anti-parliamentary, anti-state. The difference in the United States was that they did not see that that was the function of journalism.

**Mr Davies:** When I started work most journalists trained by working on local newspapers. I think you would call that a trade in a sense; they were learning from other people who did the job by copying them.
Now that has all changed for various reasons which I need not go into and the intake of journalists tends to be graduates coming through university courses. In a certain sort of sense it has become more professional but there is a problem now with the training of journalists in colleges which is that they measure their success by their ability to get their students' jobs. An awful lot of these courses are therefore training journalists to be churnalists. Roy was referring earlier to the collapse in court reporting because that is time consuming. The good courses should be training them how to do court reporting. A lot of them have stopped; a lot of them have stopped even training them how to do shorthand because if you are not going out and interviewing people you do not need it. So we are collapsing in the skills department and I think that will feed into a further deterioration in standards if people are not being trained to do their job well. The colleges have discovered that if they put the word “media” or “journalism” in a course title masses of kids come along who want to be great journalists and save the world. Of all the hundreds of journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job. It is journalism courses in the country there are four or five that I would say are doing a good job.

**Q423 Adam Price:** Do you think the quality of British journalism has risen in proportion to the quantity of alcohol consumed?

**Mr Davies:** It is a less boozy world.

**Q424 Adam Price:** That has to have improved the level of professionalism.

**Mr Davies:** I think we are more sober. A lot of the drinking was actually to do with getting stories so crime reporters were getting drunk with coppers and getting stories out of them. Phil Knightley, who is one of the greatest reporters who has been working in this country since the war, says that to be able to consume huge amounts of alcohol without going under the table is an essential skill for reporting.

**Q425 Paul Farrelly:** I want to press on the responsible journalism defence. Clearly there are criticisms of it, but one of the criticisms must be that in a democracy such as ours it has been entirely judgmental and it depends on the judge you get as to whether the boundaries can be pushed even further. Do you see that there is a case for some statutory protection for responsible journalism which might involve a trade-off with privacy.

**Mr Davies:** I am not quite sure what you have in mind in concrete terms.

**Q426 Paul Farrelly:** Would it be welcome progress if an extended *Jameel* defence were enshrined in the statutes so there would be a statutory protection in our libel laws for responsible journalism.

**Mr Davies:** I want to get rid of the libel law.

**Q427 Paul Farrelly:** The world is not perfect.

**Mr Davies:** If we are looking for ways to live with the monster in our home, would that help? I suppose it would help, but I come back to the point that basically we have a bad solution to a bad problem. I would rather get rid of the problem.

**Mr Greenslade:** In all of our criticisms of journalism we should really underline the fact that we have to be free to be wrong too on occasion. I feel that if you created some kind of statute which told us exactly how to carry out our job which was hugely prescriptive then freedom is at an end. That is why, despite my sympathies for Max Mosley, I was worried about prior notification being prescriptive in a sense that sometimes it may not either be possible or reasonable to go to the person in certain circumstances. Sometimes you will and sometimes you will not; in his case I do not think you should.

**Mr Davies:** You are also not going to be helping the ordinary people who are suffering from media falsehood; they would still have to wade their way through the libel courts which they cannot afford to.

**Mr Greenslade:** Even if you created a statute that was different or separate or a tack-on, you would still be in the same position. You have the argument about conditional fee agreements and who would be using them anyway, and you would not be helping most people most of the time.

**Q428 Paul Farrelly:** One case that we have heard about is the Tesco libel case against the *Guardian*. In the US of course Tesco would have no course of action.

**Mr Greenslade:** That is right.

**Q429 Paul Farrelly:** Here we have the absurd spectacle of the country’s biggest retailer, making over £3 billion of profits going to court to seek to ask a judge to exclude evidence from *Private Eye* that it was actually doing what was alleged in the broad thrust anyway. That is absolute abuse of the courts.

**Mr Greenslade:** I obviously declare an interest in that I write for the *Guardian* but, that said, I am behind the view that corporations should not be able to sue for libel and that corporations anyway should not be in a position, as in Tesco’s case, to actually do what they did in that instance.

**Mr Davies:** I agree with that, but if you come back to this basic point, the corporation which is seriously maligned by a newspaper ought to have some mechanism by which it can compel us to correct it. Its share price may dive, it may lose customers because we have invented some ghastly falsehood about them. I agree they should not be suing us for libel; what Tesco did was an outrageous piece of bullying. If we come back to basics, we have not got the mechanism to do the job for either side.

**Q430 Paul Farrelly:** In terms of responsible journalism, one further thing we heard in America—it is in some of the evidence that the American publishers have given to us—concerns particularly non-government organisations. We cannot rely on
documents produced by bodies such as the United Nations which name individuals or organisations, for instance arms dealing in Africa. Because of UK libel laws we are not able to produce all the evidence that got into that report and therefore the newspapers shun NGOs’ activities and newspapers cannot rely on any documents from overseas if you have a particularly litigious person or company. Again it is a question of whether there should be some sort of statutory protection for responsible journalism.

**Mr Greenslade:** I am not out of sympathy with that, however I do not know how you could create this statutory protection that you seek. I think that the single yardstick we ought to use is: what is in the greater public interest? As long as we can defend that and defend that whether we are sued on privacy or libel, then I think that we stand or fall by that. However, that is not to say that I would not like to see a complete reform of the libel laws.

**Q431 Mr Sanders:** The National Union of Journalists has campaigned to include a conscience clause in the PCC Code to allow journalists to effectively refuse assignments from editors. Do you think there is a need for this?

**Mr Greenslade:** I noted that particular one. I think that if employers make the PCC Code part of the contract of employment—which most of them do—then it is only reasonable that any journalist can refuse to carry out something which would be knowingly in breach of the Code.

**Q432 Mr Sanders:** So could it work in practice if it were not part of a contract of employment?

**Mr Greenslade:** There would be no muscle at all there but once it is in your contract I think you will be able to defend your position. You might very well in practice get sacked but at least you are going to get compensation because you will be able to show that is part of your contract and you refused to do it.

**Mr Davies:** It is a tricky business though. It is not just to do with refusing assignments, it is to do with whether or not you tell the truth about the assignment that you are on. For example, last year all hacks went down to Jersey to do this story about kids being killed and buried in the children’s home. Any professional journalist looking at that story at the time it broke can say, “This does not look right; this needs checking”. I wrote at the time that I did not think this was true. The journalists working on that story knew it was not true. The problem is this, if you are sent down on this exciting story about dead kids being buried in a cellar and you phone up and say, “This is crap” you will not be thanked because everybody else is going to run the story. It all means is that we do not get to sell our paper. So there is this constant pressure to engage in irresponsible, unprofessional practice. I think it would be great if it were there in our contract, that here we have a code of conduct and here is our right to say no, not just to assignments but to angles and general bad journalism. The difficulty would be what would actually happen to the individual journalist who stood out against the crowd. I think he would find himself being sidelined and not being offered a decent story to work on, not getting his byline in the paper. I guess he could then sue for constructive dismissal at an employment tribunal. It is a tricky one, the internal pressures are so powerful.

**Mr Greenslade:** Looking back on how reporters were considered to be good reporters by their news desk and therefore by the hierarchy, they were the ones who stood up the stories that the news desk wanted them to stand up and bad reporters were those who rang up and said that this story does not stand up.

**Mr Davies:** That is true but it is very unhealthy.

**Mr Greenslade:** It is unhealthy but that is exactly what has happened in the practice of journalism. Reporters who can suddenly, as it were, make the prejudices of the news editor and the editor come to fruition are those who are generally promoted and thought well of and those who say, “There is no story here, this is not true” or whatever find themselves consigned gradually to the edges of the universe in newspaper terms.

**Q433 Mr Sanders:** That is extremely depressing. We did have an example with the McCanns when they were before us.

**Mr Greenslade:** The McCanns are a classic case. I know Nick wants to address you on this so I will just do this very shortly. The McCanns is a perfect example where reporters were encouraged to get a story or several stories and their only source for most of those stories were other journalists in Portugal who were themselves receiving probably unauthorised and inaccurate leaks and then they would be spun by British journalists. The whole McCann saga is an indictment of our competitive nature of journalism, of 24 hour news and also of the PCC for failing to stamp on it at its outset. Perhaps Nick wants to come in now.

**Mr Davies:** It is the PCC point that I wanted to get into but perhaps that is not where you are with your questioning.

**Q434 Mr Sanders:** How effective do you think the PCC is in upholding standards?

**Mr Davies:** I would say the PCC’s performance is so weak that it threatens the concept of self-regulation. If the PCC does not lift its game then the whole notion of self-regulation is going to be discoloured by them. The McCanns is one of numerous examples. I was reading yesterday, in preparation for coming here, the evidence when Christopher Meyer was being questioned by Mr Farrelly and he was saying, for example, “We could not contact the McCanns directly when the story broke because we did not know their phone number”. That is pathetic. That is bad faith on Mayer’s part. He is in touch with all those editors who have all their journalists down on the ground there. It really, really is not difficult to use those editors to ask those journalists, “What is the street address in Portugal of this family so that we can write to them direct and ask them to complain so that we can then get involved?” In answer to your questions he was saying, “What could we do? What were we supposed to do?” This is the PCC that wants to be able to claim that
Mr Greenslade: I agree but let us specify some areas that are wrong about the PCC. I said that it was founded specifically to overcome the fact that we were going through a bout of particularly bad behaviour in the 1980s from the tabloids, particularly the News of the World and particularly at that time the Sun (which is less true nowadays I ought to say). There have been different phases and periods in the life of the PCC and in my view it has done some things that are pretty good because it has made journalists very conscious of the idea of their being a code. It only came to light in 1991 when the PCC actually began after we drew up the Code in 1990; Meyer calls it a “healthy teenager” but it still is only a teenager and it has a way to go to mature. They have done some things well but they are not and never are really proactive enough. They will say that this is due to funding or they will say it is because they do not have phone numbers, but they are not proactive. So it does mean that when there are feeding frenzies—let us admit that the ultimate feeding frenzy was the treatment of the McCanns and, by the way, Robert Murat—they are allowed to go forward because they fail to be proactive. The famous telephone call between Meyer and McCann about whether he advised him to go to law or not has been somewhat obfuscated I think. The truth is that at that point Meyer could have said, “Look, you’re worried; we’re going to take some action. If you want to go to law later that is your view”, but instead the PCC attitude is, “If you’re going to go to law we are having nothing to do with it”. I think that is wrong. I think that self-regulation should mean that the PCC respects it, that it matters what the PCC says. What they could have done, if they were acting in good faith and not bad faith, is contact that family, invite them to make a complaint and then put out a clear public statement to these journalists: you have a clause in your code of conduct that says you have to tell the truth; it looks to us that you are breaking it and we are now handling complaints from this family, we are going to go into it and we are going to name names. Why did they not do that? Because they are not really there for the readers and the victims of the press over and over again. They do not stand up as a genuinely independent referee. Over and over again they end up siding towards defending the bad practice of the media.

Ms Davies: I wonder if I could ask you about something since this is an independent inquiry? It was the same with the IPCC which was set up in such a way that it could not possibly disclose the truth about that illegal activity. Why? Why did they not conduct a proper, independent inquiry? It was the same with the information commissioner after Operation Motorman. We used the Freedom of Information Act on the information commissioner and got hold of the e-mails and letters between the commissioner and the PCC. You can see there the information commissioner saying, “Look, we have just busted this private eye. It is horrifying what newspapers are doing. Will you put out a clear warning to these journalists that they must obey the law?” The short answer was, “No, not if we can help it”. You may be familiar with all this—

Q435 Chairman: We had an inquiry into Motorman. Ms Davies: Did you have the e-mails and so on?

Q436 Chairman: We had representatives of News International and so on.
Mr Davies: I thought the whole handling of the Max Mosley thing was really shocking. There is this bloke who suddenly discovers himself one Sunday morning naked, having sex on a newspaper’s website. You may think there was an invasion of privacy here. As I understand it, he did go to the PCC at that early stage and they said—as so often they do—“We are not going to handle your complaint”. So he sues on breach of privacy and wins the biggest payment ever made on breach of privacy in this country. So what do the PCC do? Surely they will call in the editor of the News of the World for a serious dressing down and surely they will put out clear guidelines to newspapers: you cannot keep behaving this way. They do not. They do nothing. Meyer then appears here and talks about Mosley in the most derogatory terms, giggling about his shaved buttocks and his crevices. Where is the independence from Christopher Meyer? He is not acting as an independent referee; he is there on the side of the newspapers against a man who was grievously wronged by the News of the World.

Q437 Paul Farrelly: You do feel sometimes in those high profile cases that the Press Complaints Commission will not operate because it would not be allowed to operate because the matter is too newsworthy.

Mr Davies: Meyer has really brought discredit to the PCC. I am glad he has gone. If there is to be a chance of self-regulation surviving in this country it will be without the likes of Christopher Meyer. He is a bad man.

Q438 Helen Southworth: How is the PCC structured? There has been a suggestion that it could be enhanced significantly by having professional journalists as part of its body. Do you have an opinion on that or on the structure generally?

Mr Greenslade: I have always regarded editors as professional journalists.

Mr Davies: Do you mean to research cases?

Q439 Helen Southworth: At the moment it has editors and it has lay people but should there be journalists working at other levels?

Mr Greenslade: I do not think that is the case. I think it is reasonable to have editors on it for a start. I think that is perfectly okay. Some people disagree with me; some people think there should be no editors represented at all but I think it is very helpful that they are there.

Q440 Helen Southworth: I was not saying it to the exclusion of.

Mr Greenslade: You want more journalists on there?

Q441 Helen Southworth: I am asking you.

Mr Greenslade: No, I do not think so. I do not know where you would select your journalists from but I think it would lead to the sorting out of what we might call petty, internal squabbles.

Mr Davies: I think there are two potential roles here. If you say: could the PCC do with some professional journalists to go out and investigate what has gone wrong with a particular story? I think there could be some virtue in that, ex-journalists, people who actually know how other hacks behave. As far as I know Tim Toumin has never written a word in anger. He is not a journalist; he does not understand the tricks we get up to. I think at that kind of investigative level it could be really helpful, but if you look at the Commission I do not think there should be any professional journalists or editors on that Commission. They proudly say that they have a majority or lay people but if you compare that to the position of a jury, if you were told, “Well, here we have the 12 jurors; five of the 12 share commercial, professional interests with the defendant on trial” you would say, “We can’t have that, even if seven of them are independent”. The entire Commission should be made up of lay people. It should not be weighted with people who produce the same newspapers that are coming up to be judged. That is wrong.

Mr Greenslade: I disagree because I think that the important feature of the Commission is that editors sit in judgment on themselves and when they do adjudicate it does meant that the whole of the industry stands behind it. One of the differences between the adjudications carried out by the PCC and those carried out previously by the Press Council is that there has never been any public demur from those decisions. There are too few of them as I have mentioned, but those that are made are never challenged again in the newspapers which are forced to carry the adjudications. By the way, they have improved slightly on the positioning of those adjudications as well. That is one thing Meyer did improve.

Q442 Helen Southworth: In terms of the structure I think you have both expressed concerns about the independent distance of the PCC. How would you see the structure being improved? Is there a way that the structure could be enhanced?

Mr Greenslade: First of all I think there should be a totally independent appointments commission and they should appoint every position in the PCC. I think the editors could be self-selected from within the industry and they do it on a rota basis anyway; that is fine and I am quite happy about that. I think the appointments commission could even be appointed, dare I say it, by politicians. At least it should be so totally independent from the industry that we can feel that the charter commissioner and the compliance commissioner and all the members of the commission are appointed with absolutely no influence from the industry itself. That would be a major improvement. In terms of the rest of the structure I think it is under-funded and this is something about which I agree totally with Christopher Meyer. It is under-funded and part of that funding should, as Nick suggests, go into investigating cases and being more proactive.

Mr Davies: It is not just a question of who appoints the people who are running it; it is also who defines the rules according to which it runs. Why do they have a rule which says, “If a complaint comes from a third party we are bound to dismiss it”? This
happened to me. I wrote a story about a school where the deputy head teacher came out rather badly. Two parents complained to the PCC. It was a real nuisance. I had to spend a lot of time preparing a response, and the next thing I heard it was kicked into touch. Why? Because the deputy head teacher himself had not complained. Where is the sense in that? If my story is wrong we should have to correct it wherever the complaint comes from, but they have written this rule. They have written the rule that if you are suing you cannot come to the PCC. There are thousands and thousands of complaints which they reject on technical grounds. I would say the first thing is to get somebody independent to overhaul the rules on which they are running as well as the appointment of independent people so that you have an organisation which is structurally more likely to be honest with its complainants.

Q443 Chairman: On Thursday our next witness in this inquiry is the chairman of the PCC Code Committee who also happens to be the editor of the Daily Mail, Mr Dacre. It has been said that one of the most serious conflicts of interest is the fact that the editor of a newspaper which has a reputation for occasionally testing the Code should also be in charge of the Code. Would you agree with that?

Mr Davies: I did an analysis of all the occasions on which adjudications have actually taken place and drew up a sort of league table to see which newspaper had most frequently been found to have breached the PCC code and the Daily Mail are way out ahead of the others.

Q444 Chairman: Is that in your book?

Mr Davies: Yes, in the Daily Mail chapter.

Mr Greenslade: I am altogether more relaxed about Mr Dacre being head of the Code Committee because in fact I do not have that much of a problem with the Code. The editor of the Guardian and other responsible journalists are there too. Obviously the code can, as it has been, changed over time. The Code is not the problem; it is the application of the Code and the administration by the Press Complaints Commission of that Code itself. I think the Code Committee is a bit of a red herring.

Mr Davies: I agree with that, but where is the Code Committee saying that you have to stop using private investigators to get illegal access to—

Mr Greenslade: That is not the Code Committee’s job.

Mr Davies: It needs a clause in there to say that this is a disciplinary offence. Paul Dacre, in his speech to the Society of Editors last November, defended this practice and actually cited among the things which they should be able to access are not just your driving licence details but medical records. That surely is private but he is saying that we should be allowed to get access to that. I thought it was particularly alarming, if you read that speech, that he confessed publicly what we had suspected, that the reason that the Data Protection Act was not give a custodial sentence in the Criminal Justice Bill last year was because Paul Dacre, Murdoch MacLennan and Les Hinton went in to see Gordon Brown and stopped him doing it. That is a rather extraordinary situation. It is as if you allow burglars to go in and re-write the legislation on burglary. These are the guys who are breaking the law but they are being allowed to define its penalties.

Q445 Rosemary McKenna: It is interesting that the man who wants access to our medical records is so violently opposed to ID cards.

Mr Davies: Also, when he goes into hospital to have operations on his heart, there is always a message sent round Fleet Street saying, “Mr Dacre’s in hospital, please do not report it”. Medical records are supposed to be plundered by Harry Hack with beer on his breath and egg on his tie. It is wrong but they are not doing anything about it and that continues despite Motorman. All that has happened is that they have got a little bit more careful about it. I actually got to know that network of private investigators who were exposed in Motorman. Years after that I was in the office of one of them and he was taking phone calls from newspapers while I was there. It has not stopped; it has just got a bit more careful. It had got so casual that every reporter in the newsroom was allowed to ring up and commission illegal access to confidential information, now they have pulled it back so that you have to get the news editor to do it or the news desk’s permission. It is still going on and it is against the law.

Q446 Paul Farrelly: Do you think the PCC missed a trick with its own standing reputation in not summoning Mr Coulson?

Mr Greenslade: I wrote at the time and have maintained ever since that the Goodman affair was a very, very black moment in the history of the PCC. This man was jailed for breaking the law. His editor immediately resigned but there were huge questions to ask about the culture of the News of the World newsroom which only the man in charge of that newsroom could answer. When I challenged the PCC about why they had failed to call Mr Coulson they said that he was no longer a member of the press. That seems to me to be a complete abnegation of the responsibilities of the PCC for the public good. In other words, to use a phrase Nick has already used, it was getting off with a technicality.

Mr Davies: If you say to Coulson, “Come and give evidence even though you are no longer an editor” and if he says, “No” then that is an interesting tactical failure on his part. It is not just the editor of the paper; what about the managing editor? Why not call Stuart Kuttner, the managing editor of the News of the World, who has been there for years and who has a special responsibility for contracts and money? Why not call him to give evidence? There was a real will on the part of the PCC to avoid uncovering the truth about phone hacking.

Q447 Chairman: We did do an investigation both into Motorman and into Goodman so I do not want to revisit old ground too much.
**Mr Davies:** It is what it tells you about the PCC.

**Q448 Rosemary McKenna:** There is no obligation on journalists to let people know that they are going to be printing stories about them and invading their privacy. I am very concerned about ordinary people. Would it help to have a requirement for a journalist to really check his story or to prior notify the people they were going to be the subject of a story? Would that help and how could it be done?

**Mr Davies:** It is a problem because the journalist’s instinct is to go to the other side to check because you do not want to get caught out with some killer fact then your story is wrong. However, if you are doing a story which could be deemed to be confidential or—which is slightly different but similar—private, you are very, very reluctant to go to the other side because they can injunct you and these injunctions can sit there for months, particularly on breach of confidence. There is a problem there. I do not want Neville Thurlbeck from the *News of the World* in my bedroom filming me making love. I do not want it to happen. It is wrong. They should not have done it to Max Mosley.

**Q449 Chairman:** Can I just interrupt you on that point? The argument put by Mosley who is very much in favour of this is that no judge will grant an injunction if there is a public interest. So actually if there is a serious story there then an injunction will not be a problem.

**Mr Davies:** The trouble is that the courts have a history of being hostile to the journalists and we do not trust them. It is particularly difficult because nobody really knows what we mean by public interest. It is fuzzy. There are some cases which are clear but there are an awful lot that are fuzzy in the interest. It is fuzzy. There are some cases which are nobody really knows what we mean by public interest. It is what it tells you about the PCC.

**Q450 Rosemary McKenna:** Is there a mechanism?

**Mr Greenslade:** I was surprised—although not that surprised—by Max Mosley’s view that he has greater faith in judges because he is a gentleman who came up through the law. The idea that judges would be better at making these decisions than editors is not absolutely proved. I also imagine that if every time you did a story you had to go to court to put it in front of a judge, think of the extra costs involved in that and that would have a gradual chilling effect on journalism itself. I think responsible journalism means that in most cases you would want to put to the victim the other side; you would want to go to them. However, there are occasions—as Nick has mentioned—where you would not. To go back to my dear, late unlamented employer Robert Maxwell, it is definitely the case that people like Robert Maxwell would have tied you up in the courts for ever. He managed to make life extremely difficult for his biographer Tom Bower for that very reason. In most cases I think we should do it but in some cases you should not and indeed it would be counter productive so to do.

**Mr Davies:** The only other mechanism I can think of and I hesitate to suggest it, is the prospect of some ghastly penalty. So if I publish a story that breaches your privacy and I have not approached you before publication because I do not want you to injunct me, if the law permitted you then to say, “Okay, I’m going to go to court and if the court says that you in fact you did breach my privacy then there is whopping great penalty going to descend on your head or the newspaper’s head”. In anticipating that I would be much more careful and the *News of the World* would be much more careful.

**Rosemary McKenna:** Ordinary people do not have the means to take action and to go to court.

**Q451 Chairman:** As I understand it that is roughly what Mosley was proposing, that if you fail then it becomes an additional cause in any subsequent damages. Prior notification is a requirement and if you do not—

**Mr Greenslade:** He would like to see that enshrined in law.

**Mr Davies:** I would like to see prior notification out because I do think there are problems with that. Maxwell is a very good example of someone who did injunct and suppress the story, but you could put something else out there which would restrain the feral end of Fleet Street. The feral end of Fleet Street is out of control.

**Q452 Rosemary McKenna:** There is in the way they are operating in terms of every aspect of society from celebrity right through government, right through the police. I do not know whether it is the death throws of the journalism profession because they see that the newspapers are failing so badly. Having spent all my life reading newspapers—that is a long time—I see such a deterioration in standards.

**Mr Davies:** There is a bullying and an aggression and a constant poisoning of public debate. There is an irony here. If you go back to the 1970s Fleet Street were all attacking the trade union movement because they were this unelected, undemocratic, over-powerful group and they insisted in taking powers away from the trade union. Now who plays that role? The worst end of Fleet Street is now exactly the same: unelected, undemocratic, over-powerful, throwing its weight around and causing damage.

**Q453 Rosemary McKenna:** There are no sanctions.

**Mr Davies:** No, just the irony of them stepping in and filling the gap made by the trades union they used to attack.

**Q454 Paul Farrelly:** Max Mosley told us that not only did they not speak to him beforehand—presumably because they got him bang to rights in their view—but they went out of their way to publish a dummy edition. That may have the effect of not allowing him to injunct, but to my mind that is a classic spoiler to stop the opposition—

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**Culture, Media and Sport: Evidence**

**Ev 135**

21 April 2009  Mr Nick Davies and Mr Roy Greenslade
**Mr Greenslade:** He did not understand about the culture of competitive newspapers. He made a slight error; I was sitting back here and I wish I had leant forward to correct him on that. The spoof edition was simple to ensure they kept the story; it had nothing to do with avoiding an injunction.

Q455 Chairman: Do you not think it was both?

**Mr Greenslade:** No, I do not really. Even if he picked up an edition say at seven o’clock in the evening, the chances of him finding a duty judge to prevent the rest of the run at that stage would have been very minimal indeed. As we know that he did not pick up a copy until the next morning.

Q456 Paul Farrelly: Is there not a problem in enshrining primary legislation in a statute? It adds to the armoury that people like Robert Maxwell try to use to prevent publication.

**Mr Davies:** Yes, definitely. A few years ago I did a big thing in the *Guardian* about the tax avoidance strategies of the richest man in Britain. I spent months and months and months digging this out and it showed that he was earning a million pounds a day but paying less tax than me, which was quite offensive. I had a lot of legal advice and the libel lawyers were all saying, “You must go to this guy and check the story” but the lawyers who specialise in confidence were saying, “Don’t go anywhere near him”. If I had gone near him he would have injunctioned us, the judge would have said, “Financial affairs are private, you cannot publish this story. If you have talked to people who once worked for him they have breached their contract of employment in talking to you.” The story does not get out but that was the story that kicked off the whole public debate about non-domiciles which is important stuff.

Q457 Paul Farrelly: Max Mosley says he would rather trust a judge than anybody else but there is no consistency. If we take the judgment that the video of Mosley can remain on the website but in the case of the *Guardian* documents that are already in the public domain were injunctioned and had to be removed. Linklaters found a judgment in the early hours of the morning which of course ordinary people are not able to do.

**Mr Davies:** The problems with prior notification actually go beyond this. It is not just privacy and confidentiality, there is the protection of sources. If I have to go to a central figure in a story some reasonable time before publication, there is a real risk of my sources being interfered with. When I was investigating the *Daily Mail* newsroom I did not go anywhere near Paul Dacre because he is a very aggressive man. It is difficult enough to get him people to talk without him threatening them. There is also the problem where you are writing a story about people who have professional PR advice and there is a real risk if you give them prior notification of your story. Alistair Campbell used to do this a lot, he would put out the story on his own terms with his own angle. There was a big example of that with Charles Kennedy where *ITV* decided to expose the fact that he had a problem with drinking and they went to him early in the day and said, “What do you want to say about this?” I think they were being a bit greedy actually, they wanted him on screen looking upset. However, as it was, Kennedy’s PR people said, “Sod this, we’re not going to let *ITV* attack you. We will hold a press conference at four o’clock in the afternoon, give the story to the opposition and change the angle. It is not ‘I have a problem with drink’, it is ‘I am on top of the problem, it used to cause me trouble’.” From a journalist’s point of view, if you make it a legal requirement for prior notification you are causing a lot of problems so I think we have to look to another mechanism.

**Mr Greenslade:** I concur absolutely with that because that is a central problem. Prior notification will lead to spinners getting their opportunity to ruin your exclusive story or ruin your source. There is also the problem where you are writing a story about non-domiciles which is important stuff.

Q458 Paul Farrelly: Unless you have some statutory codification of what could be considered to be in the public interest you are allowing in each of these different areas judges to take them case by case.

**Mr Greenslade:** You have put your finger on it. No-one has ever drafted a perfect definition of public interest. Nick has rightly pointed to its fuzziness. Even in the editor’s code of practice it is a really wide definition that they have and it is impossible I think to encode the public interest which is, by the way, a moving feast.

Q459 Chairman: You have a concern about the spinners getting to it if you have prior notification, but actually the newspapers themselves are frequently guilty of this in that they go to the person and say, “We are going to write this story but actually if you play ball with us we will do it this way”. The classic was the women A, B and C who were approached by the *News of the World* who said, “We are going to name you, we are going to have your picture in the paper unless you cooperate and if you cooperate then mysteriously these things will not need to be mentioned”.

**Mr Greenslade:** It is a long term tactic of tabloids to go to the person when you do not have quite enough information that you need. The classic example is when, many, many years ago—I hate to bring his name into the public domain—the *News of the World* had some information about Frank Bough but only from a prostitute. They went to him and said, “We have got this information” and foolishly, instead of saying “Get lost” he was advised by a friend—a foolish friend—to do a deal in which he agreed to some of the stuff appearing and some being held back. That was a terrible mistake on his part but it is a classic method of operation in which you use prior notification in a way almost to blackmail.

Q460 Chairman: So it is all right to use prior notification to sort of try and put pressure on the person to help you, not to give him a chance to—
Mr Greenslade: Exactly.

Mr Davies: Honest journalists need the option of whether to do the prior notification or not because it is a tactical requirement depending on legal or PR threats or threats to witnesses. If you tie us into a law that says we always have to go to the other side you will lose important stories so we need to find another mechanism.

Mr Greenslade: The Guardian famously went to Tesco to try and tease out the truth about the tax affairs only for Tesco to be unhelpful and then later sue them which I think is a disgraceful example of the way in which a paper tried to do the right thing and the corporation turned on them.

Q461 Paul Farrelly: I imagine it might be a tactic if I were a tabloid reporter trying to tease them to say that court privacy laws guarantee your anonymity and of course that is absolute nonsense. I am sure that is a tactic that is being used now. Maybe I am just too cynical. You mentioned the chilling effect in relation to Robert Maxwell and that Tom Bower was very brave in treading where others feared to go because Maxwell would always sue. Do you have any other examples of the chilling effect?

Mr Davies: Jimmy Goldsmith harassed the press for years with injunctions and legal actions of one kind or another.

Mr Greenslade: Tiny Roland.

Q462 Chairman: It is suggested to us that some of the East European oligarchs have taken an aggressive attitude. Do you have experience of that?

Mr Davies: I personally have not. There are various wealthy characters from the Middle East who have been throwing their weight around in the courts as well.

Mr Greenslade: I ought to mention that I write about the media and I am constantly under threat from owners, publishers and editors who absolutely loath the libel laws except when they can use them themselves. I have been threatened by the Barclay brothers. One action is on-going so I will not mention that. There are plenty of examples in which journalists are prime users of the libel law they effect to dislike.

Mr Davies: You do not actually have to have some bully throwing their weight around for the chilling effect to occur. While you are writing the story you know you are going to have to put it through the lawyer. Most newspaper lawyers like to play safe and so there is going to be this pressure to take out the key allegations or to soften them, not to tell the truth.

Mr Greenslade: The last person to threat me with libel was the News of the World's lawyer.

Q463 Paul Farrelly: I have received a letter from Carter-Ruck over my declaration of interests. It is the only letter I have received from Carter-Ruck in my life where they have not threatened to hang, draw and quarter me because of privilege. The investigative journalism which you were talking about earlier on is expensive because it is painstaking. With the libel laws on top of that does that make it even more expensive?

Mr Davies: Certainly. The prospect of having to pay huge legal costs in damages is one of the many obstacles in the way of the so-called investigative work; I think broader than that, truth telling journalism generally. Particularly in these commercially pressured newsrooms it is so tempting to go for the same story that everybody else has done, a little bit of trivial tat keeps the readers happy. That is not what we should be doing; we should be asking difficult questions.

Q464 Paul Farrelly: Then we come to CFAs. What has been your professional experience either at the coal face or as commentators?

Mr Greenslade: I have changed my mind about CFAs. When they first came in I believed that this would offer a genuine opportunity for ordinary members of the public to get justice but conditional fee arrangements have been largely used by extremely rich people and the well-heeled and they have been used to ramp up to an unacceptable level costs that newspapers may pay. Sometimes one can be somewhat sympathetic to that if the paper has misbehaved, but they are now, I think, a massive chilling effect on journalism. I understand the doubling of the fee and so on. I understand why they do it but it is completely disgraceful. It is so rare to find that an ordinary member of the public has taken advantage of a CFA, to be honest.

Q465 Chairman: We have had plenty of evidence of the ramping up the costs. We have not had evidence specifically saying they are the preserve of rich people rather than poor people. Are you aware of actual analysis that will show that?

Mr Greenslade: No, that is very much an anecdotal view of mine; I do not have evidence to show that. However, I think it would be easy enough to obtain given that there are plenty of organisations—Lovells Solicitors for instance—who keep a record of every CFA. When they first came in I believed that this was a perfect system and that in effect you are trying to

Q466 Philip Davies: It seems to me that there is no perfect system and that in effect you are trying to trade off which is the lesser evil. Is having as free a press as possible more important than having access to the law for people who have been maligned? It seems to me it is where you strike that particular balance. As Paul mentioned, my chief concern would be if journalists were not able to expose wrongdoings by people in authority because they were scared of the potential cost of doing so. You have both mentioned during the course of this
morning that you would want to either get rid of the libel laws and Roy said there should be a radical change. We understand where the problem is but where would you put the solution? What would be the end solution?

**Mr Davies:** There are two sides to this. The serious journalists need to be able to tell the truth without fear. The media victim needs to be able to have recourse to justice. I would deal with the first problem, the serious journalist being to tell the truth by going to the American model on libel law; that is a good place to start. On the justice for the media victim, if I then take advantage of that American model to write something disgustingly untrue about you then we want the PCC to do its job properly and not as it has been doing with the kind of independent elements built in that we have been talking about. If the only recourse for media victims is through the courts you immediately run into some sort of cost problem. It requires lawyers and who is going to pay for that? In principal the self-regulation model ought to work but it has been in the hands of people working with bad faith and that has to be stopped. I want to give self-regulation another chance despite everything that Christopher Meyer has done.

**Q467 Philip Davies:** So beef up the PCC.

**Mr Davies:** Yes, a decent independent PCC that really acts as a referee and not as a defender of the press; it should help people who are media victims.

**Mr Greenslade:** I agree with that. We have two presses in Britain and that is the difference between the United States and us. We still have a press which is the venal press at the bottom and many of the problems that they cause cause people to say that we need a privacy law, we need harsher action; we are lucky we have the libel laws because of their misbehaviour. We want to enhance responsible journalism. I think that having a self-regulation is the answer because it is the only way that I think the ordinary members of the public are ever going to get any chance of correcting inaccuracies, not having their privacy intruded upon and so on, must be through that method. We need to reform the libel law. I am not saying that we do away with it totally because I still think people need to be able to protect their professional reputation—that seems only fair—but you need to show just on the American model that there is malice involved, that you have not gone through responsible journalism to actually attack somebody. It is iniquitous to me when you start out on a story to find out that you cannot make allegations or mount evidence about people because they will immediately respond by going to law and you can get that chance because your own office lawyers, who are the greatest chilling effect in the world, will tell you that you dare not do that. Obviously I have examples of that but I cannot go into those because even with the privilege here that would be foolish. There are plenty of examples where I have written about editors and publishers and have never managed to get those stories into the public domain. That is absolutely not a good way of proceeding.

**Q468 Philip Davies:** We heard in America that if you are a public figure it is very difficult to sue, that in effect it is a free for all and I have a lot of sympathy of that. What in your mind constitutes somebody who is a public figure? Certainly not Max Mosley.

**Mr Greenslade:** He is president of Formula One.

**Q469 Philip Davies:** Does that count as a public figure? Is a public figure somebody who lots of people in the public have heard of? It seems to me that that is a difficult one to pin down.

**Mr Greenslade:** It is difficult and it changes over time. Some people might retreat into what we might call privacy or wish for a private life. I think it is always difficult. I did not regard Max Mosley as a public figure because I do not regard the man who happens to run Formula One racing—whose name I had only ever heard of because of his father—as a public figure. Let me put it this way, it is a grey area. I think all of you elected politicians have to be regarded as public figures. Most people who serve in the bureaucracy—Whitehall and so on—have to be regarded as public figures even though they are not that well known to the public.

**Q470 Chairman:** Is Paul Dacre a public figure?

**Mr Greenslade:** Yes, Paul Dacre is a public figure. I think editors and publishers are.

**Mr Davies:** It actually comes back to the public interest point. I am thinking that you could have somebody who is not inherently a public figure but becomes a public figure because it is in the public interest that they are. The man who is storing firearms in his house so that he can go out into the street and massacre strangers, it is in the public interest that we should be able to treat him as a public figure and say that without risk of him suing us. He has become public because of what he is doing.

**Q471 Chairman:** So did Gerry McCann become a public figure?

**Mr Davies:** In that he should have been exempted from the standard protection against libel. Both of these concepts, public figure and public interest, are fuzzy but I think public interest is probably more helpful to deal with: is it in the public interest for Gerry McCann to be exempted from libel protection? I do not think it is. He does not have power over people, does he? People do not need to know. The man with guns in his house we need to know about; politicians we need to know about; we need to know about editors.

**Mr Greenslade:** We needed to know about Damien McBride.

**Mr Davies:** I would say that there is a strong argument saying that the entire Monica Lewinsky story is not in the public interest. What does it matter who the President has sex with? That is the more fruitful way, asking about public interest rather than public figure.

**Mr Greenslade:** I think you would have to apply that test on each occasion, story by story and context by context which again is a first class example of why you cannot really enshrine this in a statute.
Q472 Paul Farrelly: Paul Dacre?
Mr Greenslade: Paul Dacre is not a public figure the instant he is no longer in power of the newspapers but he is now a public figure.

Q473 Paul Farrelly: I want to go back to CFAs and the potential reform of CFAs. Before CFAs would you say that it would be a fair comment that the costs of taking out libel actions were in some way responsible for the culture of tabloid journalism we have now because tabloids would say, “They can’t afford to sue us and if they cannot sue us we have nothing to be afraid of and if they don’t sue us it must be true”?
Mr Davies: It is not just the tabloids I am afraid. The Guardian is the most sophisticated and honest newspaper in this country but it is common for lawyers there to say, “Has this chap got money?” Any reasonable lawyer will anticipate that because if they are poor they cannot afford to sue us whoever we work for.
Mr Greenslade: Journalists have always made that judgment in my experience. You take greater risk with those unlikely to sue.
Mr Davies: There was a perfectly good line of logic to say that we should introduce these CFAs so that ordinary people are no longer cut out of this legal redress. It is the doubling of the fees that has really caused the problem.

Q474 Paul Farrelly: There are a lot of interesting proposals for a reform of the system in the Ministry of Justice document that has been issued on cost capping through a process that hopefully this Committee will be able to feed into in its reports. It would be very interesting to get from Lovell White Durrant the record of libel actions from the past.
Mr Greenslade: It is a key bit of information that the Committee should have which describes, into public figures.
Mr Davies: They have been transformed, as we have described, into public figures.
Mr Davies: They would not have been able to sue unless the CFA was there for them. They would not have been able to sue us if they were writing a story about a company and I own shares in that company. If a journalist is writing a story on a subject in which he has some kind of commercial vested interest then that needs to be on the table. If that is not declared then that is a problem. Is that what you are saying?

Q475 Paul Farrelly: The highest profile case of ordinary people using the CFA was the McCann case. They could not have done it otherwise.
Mr Greenslade: They have been transformed, as we have described, into public figures.
Mr Davies: They would not have been able to sue unless the CFA was there for them. They could not have afforded the lawyers.
Mr Greenslade: No, I do not think they would have done.

Q476 Paul Farrelly: Do you think there is a danger then from using one case and saying that CFAs across the board are a good thing.
Mr Davies: There are two different elements. The CFA allows people who do not have money to hire lawyers to go in for free and then pay the lawyer. That is a good thing. It is the lawyers who appear not to be willing to accept that unless they have this secondary factor that they can ratchet up their fees if they win.
Mr Greenslade: Worse, of course, are the examples of people from abroad using CFAs which opens another can of worms about libel tourism and is an example of how you can have a chilling effect on publications that perhaps only circulate a relatively small number of publications—books or magazines or even websites—which are only seen by a minority of people. We have been there and I think that is another example of the way in which our libel laws, compared to anywhere else in the world except perhaps possibly Ireland, are iniquitous.

Q477 Paul Farrelly: Are you aware of any examples of foreigners using CFAs or being offered CFAs?
Mr Greenslade: No.

Q478 Alan Keen: It has been mentioned to me by more than one Member of Parliament that people who set themselves up as investigators should be subject to FOI because sometimes they have a special interest in why they are doing it. Do you think there is a case for that?
Mr Greenslade: I think that journalism is about disclosure and disclosure usually means that you are going to have sources who wish to remain confidential and applying an FOI to journalists in those circumstances would be an even greater chilling effect on proper journalism.
Mr Davies: I think I would find it very difficult to persuade people to talk to me off the record if they thought there was as a risk that the Freedom of Information Act could be used to disclose it because it would be beyond my capacity to control it.

Q479 Alan Keen: There are cases of morality where if you want to disclose stuff about somebody else you should honestly say, “Here I am, I am doing it”. I am not talking about disclosing those people but you were saying it would lead to that. I think the MPs who have raised this with me are talking more about the people who have lobby passes here, should they have to disclose commercial interests?
Mr Greenslade: I think everyone who works either in elected office or for elected people should be completely transparent about all their interests.
Mr Davies: If a journalist is writing a story on a subject in which he has some kind of commercial vested interest then that needs to be on the table. If that is not declared then that is a problem. Is that what you are saying?

Q480 Alan Keen: Yes. I am saying also that it should be transparent, they should have to declare what their interests are before they start.
Mr Davies: You deal with that with code of conduct stuff rather than by introducing Freedom of Information legislation. I think that is right. If I am writing a story about a company and I own shares in the company then I should declare it. Actually, I should not be writing the story, they should give it to another journalist.
Q481 Alan Keen: I understand that. I was asking about lobby journalists.

Mr Greenslade: Should lobby journalists have a declaration of interests similar to that which MPs have?

Q482 Alan Keen: Yes.

Mr Greenslade: That is interesting. I have never really thought about that but it does not sound to me to be a bad idea. You mean shareholdings et cetera?

Q483 Alan Keen: Yes.

Mr Greenslade: I am a bit of a purist; I do not think journalists should have shares.

Q484 Alan Keen: There is a woman who has frequently been on television and in the press who appears to me to be a campaigner for freedom of information, an American I think.

Mr Davies: Heather Brooke?

Q485 Alan Keen: Yes. Does she earn a living from this?

Mr Davies: She is a journalist. She is a specialist in freedom of information. I think she is actually British and she worked in America and used their Freedom of Information Act, came back to this country just as ours was about to come into force so Freedom of Information Act, I think she is actually a journalist. She is a specialist in freedom of information, an American I think.

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have under the European Convention—the right of freedom of expression and the right to privacy—and flesh out the tension between them by having two statutes running in parallel. The privacy one is not just about the press and media, it is also about privacy in terms of public authorities, it is about data protection surveillance, it is about privacy per se. Would that not be a better way rather than having case by case judicial activity?

**Mr Greenslade:** The Irish are very late into the concept of self-regulation. The creation of the ombudsman and so on is fairly modern. The setting up of that was a trade-off and the trade-off was that they would reform the libel laws. However, the lessons are easily learned in that matter and indeed many newspapers have got away with things because they were not sued. They just chose to go for the most obvious examples in the *Express* newspapers. By the way, when you talk about the McCanns you must include Mr Murat as well who was severely libelled throughout. I think it was an extraordinary case but which brought to light what goes on at a lower level day after day after day, which is irresponsible behaviour and the publishing of stories which are inaccurate. In that sense, although it was an extraordinary story and an extraordinary episode in the life of the press, it was not one which in some ways was an aberration and will never happen again and that was an aberration that had never happened before. It is in fact part of the on-going culture of popular journalism in Britain.

**Mr Davies:** I would agree. You have to look at the underlying drivers here. There was a similar case with that guy who was killed in the bush in Australia and his girlfriend was blamed by the press. The guy who died was called Falconio. Do you remember that case? It is rather similar. There is a crime, we do not know what the answer is; okay, we will blame one of the players. There was a ghastly press campaign against this poor girl and he was completely innocent. The underlying drivers are what I wrote the whole book about, the underlying drivers commercially driven organisations desperate to sell papers and get ratings, feeding off each other’s sources of information, not checking. It is that commercial pollution that has occurred which is very, very common. The McCann case was particularly big and particularly cruel but not unusual in the drivers behind it. You ask about lessons learned, there is no reason to think that lessons have been learned because, if anything, commercial drivers have become more powerful because of the financial problems than now encroach on newsrooms.

**Q491 Paul Farrelly:** The tabloid press has said that the McCann case was a one-off so that is a refreshing counter-argument. There are inaccuracies that may not affect people’s whole lives; with the McCanns of course it did affect their lives. There is also the question of whether it is accurate or is irresponsible and I just wanted to read into the record another case. recently, the way the British tabloids treated the daughter, Elizabeth Fritzl, and the Sun in pursuing her to her new home, published a pixellated face. Then on 11 March the *Daily Mail* actually felt the need to publish the name of the village where she lives. The Austrian press referred to our press as “Satan’s reporters”. Florian Klenk of the *Falter* newspaper in Vienna, in the case of Elizabeth, has said that their new existence has been destroyed thanks to the British reporters who have divulged the name of her village. Is that not another example, when there is such a big story like this, that every new fact, every new angle is a fresh lead and a fresh headline, and nobody steps back to ask, “Should we be doing this?”

**Mr Greenslade:** That is a very good example of Mr Whittingdale asking whether they had learned any lessons. That would suggest that no lessons at all have been learned. By the way, just to add to your record is the fact that the chequebook came out and there were offers to Mr Fritzl for his story which completely runs against the spirit and letter of the code of conduct.

**Mr Davies:** As a secondary point, the *Mail* disclosed the name of the village on 11 March; two days later the *Express* did the same and the *Independent* followed by *Scotland on Sunday*. So it is not as if it was just the freakish *Mail*; they led the way but others were perfectly happy to follow.

**Mr Greenslade:** This is a really good example of how feeding frenzies take off in that one paper does something and the others feel they have to catch up or at least feel that this is in the public domain therefore we are justified in doing it. In no time that creates a vicious circle. In many ways the McCanns—the case which was an extraordinary example—is merely the tip of an iceberg in the sense that this is fairly common stuff. I have great respect for the *Independent* and I know that Nick does, but is it not disgraceful that a newspaper of that sort would feel able to do it and it felt able to do it because it would use the defence that it was already out there. That is not responsible. It should actually have been critical of the *Mail* for having done it in the first place.

**Chairman:** We have reached the end of the questions, but Mike Hall just wants to raise one issue.
Q492 Mr Hall: Nick, in answer to my questions at the start of the session you made a rather unfortunate remark about me. That is an example of how a story could actually run and get out of hand. I would like you to put on record that what you actually said was without any foundation whatsoever.
Mr Davies: Are you serious?

Q493 Mr Hall: Yes.
Mr Davies: Then of course I would. We were talking purely hypothetically. I would be just as happy to say, “Let us just imagine a newspaper wants to run a story saying that Nick Davies is a paedophile”; we are talking hypothetically.

Q494 Mr Hall: To have it reported would be very, very damaging.
Mr Davies: The trouble is, once information falls into the hands of organisations who do not put honesty as a priority all of us are at risk and anything could be taken out of context and misreported. It really is worrying. I hope I have put on the record what needs to be put on the record.

Mr Greenslade: Can I just say one thing? I just want to read to you about what Mr Dacre said at the Society of Editors Conference in November last year: “If the News of the World cannot carry such stories as the Mosley orgy then it and its political reportage and analysis will eventually probably die”. That is an extraordinary statement when you actually think about it. What he is saying is that papers like the News of the World should have the right to break the law, to intrude into personal privacy in order that their political reportage will go on and that they will continue to exist. In other words, newspapers should be allowed to be law breakers and be famous simply so that they can exist for the general public good with the odd bit of political reportage. I just wanted to put on the record that that is a disgusting idea.

Q495 Chairman: We are hearing from Mr Dacre on Thursday.
Mr Greenslade: I hope I will be here.
Chairman: Thank you both very much.
Chairman: Good morning. This is the seventh session of the Committee’s inquiry into Press Standards, Privacy and Libel, and we are pleased to welcome this morning to give evidence Paul Dacre, Editor-in-Chief of the Daily Mail and also Chairman of the Code Committee of the PCC, and Robin Esser, the Executive Managing Editor of the Daily Mail.

Witnesses: Mr Paul Dacre, Editor-in-Chief and Mr Robin Esser, Executive Managing Editor, Associated Newspapers, gave evidence.

Chairman: You, Mr Dacre, in your speech to the Society of Editors last year, identified a "chilling" effect on the media caused by conditional fee arrangements, and those of us who believe very much in the freedom of the press and believe that the freedom of the press is the best of the democracy that we have, would be very concerned by what you said when you said that: “The result is that today, newspapers—even wealthy ones like the Mail—think long and hard before contesting actions, even if they know they are in the right, for fear of the ruinous financial implications.” Are there any specific examples you can give where CFAs specifically have been the cause of you ducking out of actions where you feel that you are in the right?

Mr Dacre: Before I answer that question, could I just say what the real chilling effect on journalism at the moment is? I have been a journalist for 40 years, and I have never known chillier times for newspapers. The industry is in a truly parlous state, particularly the provincial newspaper industry; there is a very serious question whether many provincial newspapers are going to survive in the future. That has huge and dire implications for local democracy and that is why I welcome this Committee’s initiative to look into this very, very real and pressing problem, and the sooner and bolder you are the better in my view. I read yesterday that 80% of American newspapers are going to be gone within the next 18 months—80%. The situation is not nearly so gloomy for the national press in Britain. Unfortunately many are losing substantial sums and their future viability must be under question. I am sorry to disappoint you, the Mail is still making an honest shilling, but be under no misapprehensions, there are very chill winds blowing through the printed media industry. Now, to answer your question, could I put a little context to it first? Forgive me if I am telling you what you all know. There is undoubtedly a chilling effect on the press at the moment. There is a combination of two thoroughly well-intentioned pieces of legislation, the first is obviously CFAs and the second, which I think we are going to talk about later, is the Human Rights Act. Individually they are pretty damaging to the press: together they present a lethal weapon in crushing press freedom. As I say, it was a thoroughly well-intentioned piece; it is absolutely right that poor people should have access to the law and this was, on the surface, a sensible way of providing them with it. Unfortunately when it was introduced it was immediately grabbed by a few law firms who used unscrupulous methods to exploit it. They did this, as you know, by charging very, very high fees and taking inordinately long to settle otherwise simple complaints, with the result that newspapers were having to pay enormous sums of money. It is a scandalous situation—that is not my word; that is the word that Jack Straw used to describe the CFA system. Can I first, before answering your question whether I can think of any way in which it has influenced us, give you an example of one that did affect us? I did refer to it in my speech but several members of the Committee may not be aware of it. Just to explain again how CFA works, as many of you know the bills can be almost infinite. With lawyers entitled to success fees of up to 100% on their actual bills. This gives them a positive financial incentive to take relatively straightforward cases worth just a few thousand pounds and run them as long as possible. We then have the CFA claimants being able to take out after-the-event insurance. I do not know whether you are aware how that works but it protects them. If they lose—and this is the cynicism of it all—the insurer rarely enforces the charge because the claimant invariably cannot afford to pay. So let me now give you an example of my Group’s involvement in this. One of your colleagues, Martyn Jones, an MP, sued the Mail on Sunday over their claim that he had sworn at a Commons official. These figures I think are very interesting. The Mail on Sunday believed it had rock solid witnesses and decided to fight the case. In the event they lost and they were ordered to pay £5,000 in damages, a relatively footing sum. The MP’s lawyers claimed costs of £387,855—solicitors’ costs of £68,000 plus success fees, and the barrister’s fees as well. Anyway, the total with VAT and ATE insurance came to £520,000. Everything had been doubled up with the success fees and that was for damages being awarded of £5,000. Can I think of specific examples where it has provided a chilling effect? I am afraid I cannot think of a specific example apart from telling you that every day—every day—we are not going quite
as far as we used to and we are settling things even at the expense of paying disproportionately high damages not to go to court. Now, if Schillings & Co are listening we will still fight the ones we feel passionate about. The ones before which we automatically thought would go to court, maybe not us but certainly other newspapers would be paying the damages, probably disproportionate damages not to fight them. The problem is the provincial press. They do not have the money to do any of this and, therefore, they dare not print anything that puts them in that situation. The money we can lose in one case could bankrupt a provincial newspaper chain, and that is no exaggeration in the present time.

**Q497 Philip Davies:** Have we got to the stage where there are certain people who are so wealthy and so potentially litigious that even a paper as successful as the Daily Mail would not take them on because of the potential consequences?

**Mr Dacre:** I cannot give you an answer; I doubt that for the Daily Mail. The Daily Mail is a very successful and strong paper. If I say we are not going to take them on I am going to give this Committee a green light for every lawyer to think they can get away with it. No, I think if we passionately felt we were in the right we still would, but there are several newspapers in Fleet Street that are not only not making money but losing substantial sums of money, so the kind of money we are talking about here could double their losses.

**Q498 Philip Davies:** Sure. I think many of us share your concern about CFAs, I think I described them as a racket in one of our previous sessions, but how would you alter them so that they did not have these potentially crippling consequences for the press but still maintain some access to justice for people who were not wealthy who were maligned by a paper?

**Mr Dacre:** Who incidentally, in our experience, and we will come on to cases they think are going to win, so the real people possibly encourages more clients to come to them, because they get a lot of publicity which otherwise admirable piece of legislation.

**Q499 Paul Farrelly:** I want to ask you your opinion. The word “racket” has been used and the racket is not just isolated to the media and libel but applies to the cost to the NHS of CFAs with ambulance-chasing lawyers.

**Mr Dacre:** Absolutely. And local councils, yes.

**Q500 Paul Farrelly:** In terms of access to justice for people, in your experience, and we will come on to the McCanns later though I do not want to use them as a typical example, would you perhaps characterise the cherry-picking that goes on by lawyers as not “No Win, No Fee” but really “Always Win, Double The Fee”?

**Mr Dacre:** I think I probably would. I think you will find that most of the CFA cases they take on they win. What concerns me is they are increasingly used by the celebrity class and the rich—I know about the NHS and all that and it is a very worrying matter—so in that sense I think they are cherry-picking their clients, although they get a lot of publicity which encourages more clients to come to them, and they are in a position where they only take on cases they think are going to win, so the real people who have a case on the cusp where they might not win I suspect do not get much of a hearing.

**Q501 Paul Farrelly:** Have you had experience of the likes of Carter Ruck and Schillings actually touting for business among people who might not realise
that what was printed in the United Kingdom was actually there and saying: “Hey, we can win something for you here”?

**Mr Dacre:** The honest answer is I do not know. I am astonished if they are not touting for business. The number of letters that we get in to the Daily Mail from Carter Ruck and Schillings must be depleting the forestation of the globe quite dramatically. They are rapacious, greedy, unscrupulous in the methods they use. I would be astonished if they were not ambulance-chasing rich clients and saying, “We saw that picture of you, do you realise we can get you X sum of money for that” —

**Q502 Paul Farrelly:** And overseas clients as well?

**Mr Dacre:** It is a massive hypocrisy because often those are celebrity clients who are implicitly at work with paparazzi photographers to keep their pictures in the public eye which, of course, makes them more and more money.

**Q503 Rosemary McKenna:** The other thing that seems to exercise you greatly in your speech is what you call the introduction of “a privacy law by the back door”, but is it not the case that the judges are, in fact, applying the law as it stands through the introduction of the Human Rights Act?

**Mr Dacre:** Again, if I can put some context on this, the Human Rights Act/CFA was a very well-intentioned act; who could deny human rights to anybody. When it is combined with CFA, again I think it has a considerable deleterious effect on freedom of the press —agin, interestingly, one that is exploited by the rich and celebrity classes. You know, and forgive me if I am telling you how to suck eggs, that the Human Rights Convention was devised in 1950 and came into British legislation in 1998, and it is very interesting that before 1998 it was never, ever used as an attempt to suppress the press or used in privacy cases, this despite the fact that I suspect in the bad days of the 80s there were far more egregious offences against privacy in a much less well-behaved newspaper industry. It was never used. In 1998 it came into legislation, again pounced upon by lawyers who have since made a huge industry and a lot of money out of it. The real problem of the Human Rights Act is that it gives powers to judges to interpret the European Convention on Human Rights —sitting in Strasbourg, of course, because it was created in Strasbourg —rather than to enact laws created by the Westminster Parliament. The problem also that we have found is that British judges, and there are very few judges that rule in this area, give more weight to privacy than to freedom of expression. Now, they may be doing that because they have no alternative under the case law created by the Strasbourg Court, but I would like to come on to that in a minute. Whatever, there are huge implications for society: we are now repeatedly losing cases in court which have traditionally been defined as areas of press freedom. Not only am I concerned about that; the Justice Minister Jack Straw has said he is concerned about it. When he unveiled the Human Rights Act he declared at that stage that it would have no effect on press freedom. I think he concedes now that it does and I think he is looking at it. The Opposition, of course, are very much concerned about it. Both the Justice Minister and the Tories have indicated they would like to see some amendments, they would like to see—I do not know, some Bill of Rights giving more rights to recognising the need for newspapers to have freedom of expression. This brings us to the Court itself. I do not know whether any of you read it but Lord Hoffmann, the second most senior judge in Britain, recently made a brilliant speech. It described how federal law was now being imposed on United Kingdom law. He criticised the lack of expertise of the members of the European Court of Human Rights. You will be aware that very few of them are judges, there are quite a few academics who quite often have very little expertise. He highlighted the difference in local traditions, legally and morally, of those 48 different Member States; he criticised their self-aggrandisement, their aggrandising tactics and their activisms. He pointed out that minority nations have far too much power in the court, pointing out that four of the countries had a combined population of less than the borough of Islington yet, of course, an equal vote in deciding matters of huge issue to the press; and generally that a lot of those countries came from totally different traditions. It is very interesting. In one of their most important decisions where they found against newspapers carrying photographs of Princess Caroline of Monaco, that the Slovenian judge said “We must move away from this American inspired fetish with press freedom”, and that was one of his reasons for finding against the newspaper, and very quickly I would just like to read it because I think it does summarise this, and I did not include it in my speech but it was something I had: “By passing the Human Rights Act Parliament surrendered legal sovereignty over any case that anyone claims involves a human right, such as privacy, to the ultimate decision of a European Court staffed by judges, appointed by the very many countries, many of them former Communist regimes, which are nowadays signatories to the Convention. The experience of such judges and the societies in which they have been brought up are in many cases radically different from the experiences of our own judges and the norms of our own society, yet our own judges are now duty bound by law loyally to follow the decisions of the Strasbourg Court, many of whose members come from countries that have no traditions of respecting the right to free speech, and others of whom come from countries whose traditions are far more repressive than our own. The upshot is that British notions of where the proper boundaries lie between privacy rights and the right of the public to be informed about the weaknesses and failings of our leaders and other public men and women are gradually being usurped by different and foreign ideas which, if left unchecked, risk the creeping and insidious destruction of ancient and hard won freedoms.”

**Q504 Rosemary McKenna:** But actually I asked you a question about a British judge, not about foreign judges.
**Mr Dacre:** But the whole point, with the greatest respect, is that British judges have to respond to the decisions being made by this Court. It is absolutely vital.

**Q505 Rosemary McKenna:** But I do not think it is necessary to rehearse exactly your views of those courts. I want you to speak about the judge in particular that you mentioned—

**Mr Dacre:** I will come to that, if I may.

**Q506 Rosemary McKenna:** —but you are now talking about other countries and regimes that you do not agree with.

**Mr Dacre:** That is absolute nonsense—

**Q507 Rosemary McKenna:** But that is what you are talking about.

**Mr Dacre:** With the greatest respect the judges I am talking about are British judges who have to refer to the jurisprudence created by this Court, and therefore it is vital you understand the nature and make-up of that Court. Your rights as MPs in Westminster ruling on this are being usurped.

**Q508 Rosemary McKenna:** That is your view—

**Mr Dacre:** It is not my view; it is Lord Hoffmann’s view.

**Q509 Rosemary McKenna:** But would you like to refer to the fact that you have said it is “a privacy law by the back door”, which was the question I asked?

**Mr Dacre:** I will come to that, if I may. I am afraid you have thrown me, give me a minute. This brings me to the judge you are referring to, my criticism of Judge Eady. That is what you are referring to, is it not?

**Q510 Rosemary McKenna:** Yes.

**Mr Dacre:** Judge Eady is clearly a brilliant judge but what mystifies many editors is why one judge seemingly is presiding over almost all the very controversial privacy cases. Judge Eady clearly has a background; we know where he comes from; he was a member of the Calcutt Commission which looked into abuses of press freedom in the late ’80s when, in my view, newspapers did behave badly and have since cleaned up their act considerably. At that stage Judge Eady wanted to impose a privacy law on the British press and, indeed, drafted one for Calcutt. Wiser and different heads prevailed and it never went ahead. There is a feeling you need to know amongst many newspaper editors, particularly at the popular newspaper end which are read by the great majority of the British people, that Judge Eady has an animus against the popular press. Certainly I have seen speeches he has given to private gatherings of journalists, et cetera. In my speech I described his judgments as “arrogant” and “amoral”. I am aware those are strong words—they are not personal, I am talking about his judgments—but I used those words because I felt passionately that he was adjudicating in matters that Parliament should be deciding, and the fact he was not taking on board Parliament, which represents the public, has huge implications for British society.

**Q511 Rosemary McKenna:** Then, if Parliament should decide, would you support a statutory privacy law brought in by Parliament?

**Mr Dacre:** Before I answer that, you gave Mr Mosley a huge length of time to put his position on these matters. Could I deal with that before I answer in that respect? As I said, “arrogant” and “amoral”—

**Q512 Rosemary McKenna:** So you are suggesting that I am treating you differently than we treated Mr Mosley?

**Mr Dacre:** Not at all, but you did give him a great deal of time—

**Rosemary McKenna:** I think you have had quite a lot of time too, and you have the rest of the morning.

**Q513 Chairman:** We are quite happy to continue for as long as you would like to, so please go ahead.

**Mr Dacre:** Thank you very much, Chairman.

**Q514 Chairman:** We will want to come back and press you on points.

**Mr Dacre:** Please, I would welcome that. Yes, I accused him of being arrogant and immoral, arrogant because he was setting himself above Parliament, and amoral because he was not setting his decisions in a British legal and moral context, and two cases illustrate this and I am sorry if I am being too prolix for Ms McKenna but I do think it is absolutely vital that you understand my position, as I say you did give Mr Mosley a lot of space. Two years ago Mr Justice Eady ruled that a cuckolded husband could not sell his story to the press about a married man, a wealthy sporting celebrity who had seduced the man’s wife. The judge was worried about the effect of the revelations on the celebrity’s own wife, and the Judge, in an unashamed reversal of centuries of moral and social thinking placed the rights of the adulterer above society’s age-old belief that adultery should be condemned. Recently, of course, Mr Justice Eady effectively ruled that it is perfectly accepted, and this is where we come to Mr Mosley, for the multi-millionaire head of a multi-million pound sport that is followed by countless young people to pay five women £2,500 to take part in acts of sexual perversion. The judge found that Mr Mosley had not engaged in a “sick Nazi orgy”, as the News of the World contested, even though the participants were dressed in military-style uniforms, Mr Mosley was issuing commands in German while one prostitute pretended to pick lice from his hair—

**Q515 Chairman:** Can I just interrupt you for a second? Whilst obviously I am perfectly keen that you should have the opportunity to make points, we have all had copies of your speech and read it, so to that extent you do not need to repeat what you said in the speech.
Mr Dacre: Fair enough. I had not realised that you followed my words so punctiliously. Well, I would just like to say one thing. Mr Mosley, when he gave evidence to this Committee, with the greatest respect to you, I think a lot of us were very surprised at the soft time you gave him. For Max Mosley to present himself as a knight in shining armour proclaiming sanctimonious and aggrieved self-righteousness in his crusade to clean up the press is an almost surreal conversion of the moral values of normal civilised society. Indeed, for Mr Mosley to crusade against the media is a bit like being the Yorkshire Ripper campaigning against men who batter women. Let me explain why I feel so strongly about this case, and this was not in my speech. There is a growing belief centred on the Mosley case that what people do in their private lives is up to them and nothing to do with newspapers. Fair enough. If Mr Mosley wishes to persuade Mrs Mosley in the privacy of their bedroom to dress up in military uniform, give her instructions in German and whack him on the backside—fair enough, that is nothing to do with newspapers. If Mr Mosley wants to persuade the neighbours to come in and dress him in prison uniform, pretend to pick lice out of each other’s heads and whack him on the bottom—again, nothing whatsoever to do with the newspapers. This was a totally different situation. This was a case of a man who went to a flat rented for the purpose, paid five women procured by a madam £500 each to engage in acts that exploited and degraded and humiliated those women. Go further down the road from that flat and you will probably find a massage parlour. Inside are poor East European girls; rather than a madam there is probably a pimp; they are being exploited at £75 a go by punters. Parliament, your party with great respect, Mrs McKenna, has said the latter is unacceptable, totally wrong, outrageous, the law must be changed, prosecute those men if they are being procured by a pimp. Justice Eady says that Mr Mosley’s behaviour is merely unconventional, not illegal. I see, I am afraid, a direct curve, a direct line, from the acceptance of Mr Mosley’s behaviour to the treatment meted out to those girls in a massage parlour by guys who have nothing like the money of Mr Mosley. I find the one legitimises the other and I very humbly suggest to you that that should be of huge concern to MPs, particularly women MPs.

Q516 Chairman: The difference is that nobody is suggested that what Mr Mosley was doing was illegal, whereas the courts did rule that, despite your strongly held view, what you did or at least what your newspaper did was in breach of law?

Mr Dacre: My newspaper?

Q517 Chairman: Sorry, the News of the World. I take that back.

Mr Dacre: The Daily Mail would not have published that story. I find myself in a difficult position defending a paper that I—

Q518 Chairman: You are passionately defending the newspaper—

Mr Dacre: Well, freedom of the press. Yes. I am not suggesting whether it is legal or not; what I am saying is that by accepting that it is acceptable behaviour, if unconventional, you are legitimising what is going on in that massage parlour, and it seems inconsistent that you should be concerned about one and not the other.

Q519 Rosemary McKenna: Do not assume for one minute that we are not concerned about those places. We are, and we deal with that every day. However, this is about press and media intrusion, not about that, and I asked you if you would support Parliament bringing in a statutory privacy law. Since you obviously do not like the effect of the Human Rights Act and the way it is being interpreted by judges, is the alternative bringing in a privacy law?

Mr Dacre: That is a good and very fair question. Can I try and answer it? Unequivocally I would not be in favour of a Privacy Act. I believe it would have a very deleterious effect, a chilling effect, on the press and the media in general. I believe that the Human Rights Act needs to be amended: I believe it needs to be recalibrated to give greater recognition to the importance of the democratic process of the vital and vibrant free press. I believe it needs to be recalibrated to give more weight to freedom of expression over right to privacy. Again, those are not my views: those are held by the Opposition and Jack Straw himself. The crucial question in the privacy law would be what is in the public interest. My problem is I am not sure that judges—whom I respect enormously but who come from a narrow and privileged background—always understand or accept what is in the public interest. One or two of them have a low opinion of the popular press. They are not elected. I would argue that what is in the public interest by and large be decided by the public—which means Parliament—and I would like a debate of Parliament on that subject. Another problem with it is that all stories involve an element of privacy, whether it is a gossip page paragraph or a major investigation, and it could therefore be used by lawyers to injunct a paper. My experience of injunctions is that judges invariably grant them because there is less risk in them granting them than making a decision on the spur of the moment and in difficult and fast and rapid circumstances. That, again, involves huge amounts of money and lawyers and time. I believe that privacy law would have a chilling effect on journalism. Can I give you an example? If an individual found out that a newspaper was making inquiries about him the first thing he can do is rush to the courts and try and get an injunction. Maybe that newspaper had not had time to do all its inquiries, or was not ready to go to publication. The injunction would be granted; it would get ground down to a hugely expensive process; I believe this would be a dangerous form of prior restraint. Journalists would immediately find themselves under great pressure to reveal their sources; they would not reveal their sources. As you know, it is an act of faith in journalism not to: it is more time, more costs. News is often very perishable and the story could be negated. So for all those
Q520 Philip Davies: Can I press you slightly on your point about Max Mosley in one regard in particular? Journalists have said to me that they consider the fact that he was the head of Formula 1, which is an international sport, means he constitutes a public figure and, therefore, his activities should have been exposed on that basis, that he was a public figure, but from what you have said it seems to me that that was not particularly your justification. It was not that Max Mosley was a public figure: it was the activities which he was pursuing. What you seem to be suggesting is that if anybody had been pursuing that particular activity, that would have been legitimate for the press to report.

Mr Dacre: I think it is much worse if it is a public figure who should be setting a better example to the public. I personally feel that if any figure had done that and paid money to women it is not acceptable behaviour, but that is a personal view.

Q521 Philip Davies: So, just to clarify the philosophy, if anybody had indulged in it that would have been fair game?

Mr Dacre: I think it is very important that Max Mosley—by the way, you keep saying “you”. The Daily Mail did not—

Q522 Philip Davies: I mean you as a profession, not you individually.

Mr Dacre: I think the fact that he was a public figure in charge of a huge multi-million pound sport followed by millions of people gave much greater justification to the newspapers and the News of the World in carrying that story.

Q523 Paul Farrelly: Again, on Max Mosley, I remember the case in years gone by of the author, journalist, father and husband Paul Johnson who was a prolific columnist and moralizer. After he was “exposed” for similar private activities, did the Daily Mail or Associated Newspapers ever print an article or column by him afterwards?

Mr Dacre: From memory—and I could be wrong—I think that he had left the Daily Mail by then and worked for the Daily Express, but to answer your question, that fell into my category. I believe this was a former girlfriend of Mr Johnson’s, and I do not think it would be of any interest to any newspaper if he went and had an affair with a private lady. As far as I am concerned there was no payment. You know more about this than me—

Q524 Paul Farrelly: I remember differently.

Mr Dacre: Payment?

Q525 Paul Farrelly: I remember the story differently, but the question is did you ever print anything by him afterwards and pay him for anything afterwards?

Mr Dacre: My honest answer is that I believe he had left the Daily Mail by then. If I have mis-stated that, then I apologise, but it is a very long time ago.

Q526 Paul Farrelly: We can check the history. I have been a journalist but not with Associated Newspapers. Do you have a moral clause in contracts of employment so that your staff can be dismissed if they are not whiter than white?

Mr Dacre: No, but the PCC Code is in their contract and—if, of course, we do not have a moral code.

Q527 Alan Keen: Your objection to Mr Mosley you said was because he was married and also paid money to women.

Mr Dacre: My main objection was the way he exploited and humiliated and degraded women in this way. Paid women, yes.

Q528 Alan Keen: Do you think it is right, or is it not right, that you should expose a married man who is a closet homosexual? Would you expose that even if he was not paying money to another man? Do you think that is something that the press should expose? I have known many, many men who were homosexuals but who fitted in with society’s demands on them and then later in life found they could not contain their preferences and carried on a homosexual relationship with somebody else. Is that something the press should be allowed to expose?

Mr Dacre: I do not think they would report that or should report that because of changes in society, firstly, some of the influences of the Human Rights Act, but also I think that would be a justifiable matter of privacy. Now, if that individual was going around willy nilly exploiting rent boys and if he was a Member of Parliament, I suspect a paper like the News of the World would think it was justified in running that story. It is not a story the Daily Mail would carry.

Q529 Alan Keen: Do you think the public is entitled to any privacy? You have explained one or two examples. Medical records?

Mr Dacre: Absolute privacy granted, it is part of the PCC Code. No question.

Q530 Alan Keen: Medical records?

Mr Dacre: Absolutely.

Q531 Alan Keen: There was a case where the Daily Mail admitted paying money for stolen records?

Mr Dacre: I do not know that case. I am not aware of that.

Q532 Chairman: I think Alan is referring to the Motorman case.

Mr Dacre: Motorman? Yes. Well, can I just explain what that was? Ten years or so ago data protection was becoming a matter of greater and greater concern. All newspapers in common with insurance companies, law firms, used the services of inquiry agents. Mostly for newspapers it was to act quickly, get hold of addresses, phone numbers and areas like that so they could move quicker on stories. They
used these agents who had access to electoral registers and things like that. The Data Protection Commissioner 10 years ago produced a poll of findings of one inquiry agent and we had a lot of inquiries with that agent, in common with all other newspapers, Observer, the Sunday Mirror; I will be very honest with you, I had not been aware they had been that extensive. There was no suggestion that it was used to get medical records or had been used in any other way. I am not saying it was not. The Information Commissioner never told us what was in those inquiry agency’s files. What I can tell you, and I want to stress this very loud and clear, was following the concerns raised by the Information Commissioner we as a newspaper tightened up our procedures massively; we banned the use of all these agents; we wrote it into people’s contracts of employment that they must observe the Data Protection Act; we held seminars for our staff to alert them to the problems presented by obtaining information that could be covered by the Data Protection Act. The industry itself, the PCC, prepared extensive guidance notes for the whole industry; it changed its code book to inform people and it changed its Code to prevent and ban this kind of thing. So I refute utterly that we have used these methods to find medical records. As I say, my experience was that it was mostly used to get phone numbers and addresses, but anyway it has all changed. I cannot think of any rigorous things we could have done to ensure that all abuses were completely—

Q533 Alan Keen: Can I turn to a different issue? We have come across it in the inquiry already and some people have agreed, others have said it might be difficult to deal with, but one technique which newspapers use, and you must be very familiar with it, is headlines to attract people to buy newspapers but where the body of the article is often nowhere near as serious as the headline appears to be, and then even further down it might say: “But he did not really do anything wrong.” It is a very easy way for a newspaper to mislead the public on a particular issue. Would you clamp down on your journalists and sub editors if they did that sort of thing?

Mr Dacre: That is a very fair question. I would like to think it does not happen in the Mail, although I would not put my hand on my heart and say that it does not. It does happen in some areas of the media. I think the position of the PCC on that is that it gives a fair degree of latitude on headlines as long as the copy underneath is absolutely accurate and balanced. It is a question of proportion. If they feel the headline has so badly misrepresented the piece they will find against the newspaper, but I think it is a fair question. You have to understand that newspapers in a very difficult market have to persuade readers to buy their papers, pay 50p/70p a pound in the rain, and they use some tried and tested techniques to draw the readers in. I think latitude should be given in headlines: I believe the copy should be absolutely right and fair.

Q534 Chairman: It is fair to say that the Daily Mail has on a number of occasions been censured by the PCC for running stories with headlines—

Mr Dacre: I do not think it has. I can check and get back to you. I am pretty sure we have not.

Q535 Chairman: Can I give you one example?

Mr Dacre: I am sorry, I am being told that we have a few times.

Q536 Chairman: An anodyne feature about the biography of Otto Frank, father of Anne Frank, who died in a Nazi concentration camp, was transformed by a headline which asked: “Did Anne Franks’ father betray her?” The story produced not one single word of evidence to suggest that Otto Frank had betrayed any of his family in any way. The Mail dealt with the problem a week later by publishing a short letter of complaint from the Anne Frank Trust on page 68.

Mr Dacre: Yes, but they did not adjudicate against us, did they? We put it right, that is what I am trying to say.

Q537 Chairman: Well, you ran a headline which did not bear any relation to the story, and then carried a letter on page 68.

Mr Dacre: It is the best read page in the paper, the letters page. I take your point, and I am sorry. At the risk of being pedantic I do not think there have ever been adjudications against us on that. I regret that. If that happened, I regret it. All I can say is if you produce 120 pages every night live on edition which is half as long as War and Peace, we make mistakes. But I accept your point.

Q538 Paul Farrelly: Just picking up on Operation Motorman briefly, if I might, it would be wrong to categorise Associated Newspapers as the most “prolific” offender, because adding up the table Mirror Group newspapers came in with 300 more than Associated.

Mr Dacre: I do not want to be overly offensive about but this was one inquiry agent. There are others. You have seen News International, the Sun, and the Sunday Times do not figure on that.

Q539 Paul Farrelly: I am aware of that. When I was a journalist I would certainly use people to get electoral information, just to check where people lived, and that information was a matter of public record so that is not illegal, but I do remember every time I needed an ex-directory or a mobile telephone number I would painstakingly go and talk to people close to the person to get them to give it to me so I was not doing anything illegal. You mentioned the word “quick” information. It is quick, it is lazy.

Mr Dacre: Well—

Q540 Paul Farrelly: You have been quite specific about contracts but are there any circumstances in which you can say that the Daily Mail would use such services to get a number?
Mr Dacre: Well, there is a very strong public interest, of course, and if we were convinced—and, by God, we have put in place a structure whereby they have to clear it with the news editor—

Q541 Paul Farrelly: And there would be a certificating procedure?
Mr Dacre: It is not certificated but it is laid down that if you want to do this you have to go, and it has to be given and put in writing.

Q542 Paul Farrelly: So it does happen?
Mr Dacre: Yes, and long may we be free to do that.

Q543 Paul Farrelly: And the kids do not have access across the board to the cookie jar any more? It has to go through a procedure?
Mr Dacre: Yes. I do not want to tell any tales out of school but we had to let someone go recently because we found they had offended against this.

Q544 Alan Keen: You have campaigned against intrusion by government into people’s ID cards. Should not individuals be protected also against newspapers? What is the difference between a newspaper and government? We all appreciate newspapers and the freedom of the press in order to expose government, but to a private individual what is the difference between government probing and a newspaper probing? Should not the citizen be protected against both?
Mr Dacre: I could not agree with you more; the Code is very strong on this. People are entitled to their privacy, their family and their health, their children, and I hope that a newspaper is not failing if it had a good public interest reason to do so. If it did not it is a cause of complaint to the PCC.

Q545 Alan Keen: It is hard for newspaper readers, whether members of Parliament or not, to think that your decision is better than a judge’s decision. It is very difficult. Whatever you say about the headline not misleading, or you do not agree with that sort of journalism, it is very difficult for us as ordinary people to think: “Well, I trust Mr Dacre more than I trust a judge.”
Mr Dacre: But you do not have to trust me. If I get it wrong you can take me to court, or stop buying the newspaper.

Q546 Alan Keen: Well, not if the last sentence of the article says: “But he did not do anything wrong”. Who reads that? We all know that people do not really read every word. They love to see the salacious—
Mr Dacre: I think you make a reasonable point. I hope that journalism does not go on as much as you imply. I think the PCC would find against that newspaper if it was literally the last sentence which refuted the rest of the story. I really do believe that.

Q547 Chairman: Can I move on to journalistic standards? You may be aware that the day before yesterday the Committee took evidence from Mr Nick Davies, the author of Flat Earth News. Now he said that your newspaper is the most successful and probably the most powerful in the country, but he also goes on to say that it is characterised by a level of ruthless aggression and spite which is far greater than any other newspaper in Fleet Street. He also points out that the Daily Mail time and again has had to pay damages in cases where it was shown that there was no truth in what was written, and that the Daily Mail has had a number of findings against it from the PCC, something like three times greater than any other newspaper. How do you respond to those charges?
Mr Dacre: Firstly, I do not know whether that is correct about the number of adjudications. I think there have been a number of complaints that have come out but I do not think it is correct, no.

Q548 Chairman: To give you his specific allegation, he says he drew up a league table of complaints—
Mr Dacre: Complaints?

Q549 Chairman: —which have succeeded, either because the PCC have eventually adjudicated against the newspaper, or because the paper had agreed some kind of resolution to satisfy.
Mr Dacre: I think that second is rather important. If it had been resolved then I do not think it is fair—

Q550 Chairman: He goes on to say that only four newspapers had suffered more than 50 successful complaints, and that the Daily Mail was at 153 compared with 43—
Mr Dacre: Successful adjudications? No. They are complaints, you see. There is a big difference.

Q551 Chairman: He says successful complaints, in that you had accepted—
Mr Dacre: But he is defining a successful complaint there as it was resolved by conciliation and the newspaper either clarified it or not. That is not an adjudication against that newspaper.

Q552 Chairman: So your answer to him is that actually the Daily Mail has not suffered or been shown to be in breach of the code any more than any other newspaper?
Mr Dacre: Certainly not in breach—well, we have not been adjudicated against more than any other newspaper. After this I can send a note to the Committee to give you the exact figures, but I do not have them at my fingertips. I just want to say that Nick Davies is a brilliant reporter, I have paid him very well to appear in the Mail in the past, but he is one of those people who sees conspiracy in everything. Like many people who write mainly for the Guardian he believes that only they have the right to claim the moral high ground, and that the popular press is blind, irresponsible and beyond salvation. His book does not do himself or our industry justice. Parts of it are a mish-mash of innuendo, gossip, smear and half-truths masquerading as truths, the very thing he accuses newspapers of indulging in. It was written without affording the basic journalistic courtesy of checking his allegations with the newspapers concerned, and to take Paul’s case nor
did he allow us to put our answers to his allegations. I regret all that. The *Daily Mail* is a strong and powerful paper; it has more pages than most papers and more stories; it is an aggressive paper—I plead guilty to all those charges. I do not believe it is a spiteful paper; I believe it is a very compassionate paper that has fought very hard to represent its voices, readers, interests and anxieties and represent those interests and anxieties; I think we are very aggressive on politicians and the famous and rich, and therefore I think we sometimes get a reputation of being too hard in that area. All I can say is if we are too hard our newspaper readers will let us know very, very quickly and they are the best judges of all.

Q553 Chairman: Can I ask you whether you agree with the central thesis of his book, which is not directed at the *Daily Mail* but is a more general concern, that due to the financial pressures which you recognised in your opening remarks which are now on all newspapers that the level of investigative journalism is declining and more and more we are seeing what he has termed “churnalism”, a simple reproduction of press releases received by spin doctors?

Mr Dacre: I accept the case he makes applied to some newspapers, particularly, sadly, the provincial press because they have such extraordinarily small resources these days and I fear they have sometimes no alternative but to put council press releases in their papers and that is very sad and regrettable. I accept it is happening to one or two national newspapers who, again, do not have the resources. Sometimes they do and they are owned by people who hold journalism or journalists in contempt despite the heroic efforts of journalists in those papers, and standards have fallen very badly on those papers. I do not want to sound arrogant but I refute that charge for the *Daily Mail*. I would suggest to you the *Daily Mail* is both famous and infamous indeed, in the context of your earlier remarks for taking Whitehall and government press releases and going behind them and finding the truth behind the spin and propaganda. Certainly our reporters when they get freelance copy should and are encouraged to go behind them and find the truth behind the sensational methodology to do that; I would defend that and in a ditch to defend it. They get a lot of the stuff that happens in this building to their readers and concerns. There is an over-pejorative use of the word “tabloid” particularly by the BBC which invariably refers to the “tabloid press” and then tells the whole story itself, and, of course, it is a nonsense. the *Times* and the *Independent* are tabloids, and tabloids are read by most of the people, and indeed the *Mail* has more ABC1 readers than all those papers put together but that is another matter. The word “personal” confuses me. All stories are personal. Most stories are told through people, particularly in the popular press. Telling stories through people is a very effective way of getting across dry and complicated stories. Celebrities personalise their lives. They do it to put their image more in the public’s eye and they make a lot of money out of it. Politicians—not all but a lot—personalise their lives; very understandably they want to identify with the voters and gain their voters’ support, so yes, I plead totally guilty to personalising stories. If you want a paper dominated by issues you would probably buy the *Guardian*, circulation 250,000, subsidised to the tune of £30 million by the Scott Trust. If you want a story about people, gossip, and news is people and gossip, but to also get across serious analysis of politics and news, you will buy the *Sun*, circulation 3 million. The *Sun* uses much more sensational methodology to do that; I would defend that and die in a ditch to defend it. They get a lot of the stuff that happens in this building to their readers by inducing them to read their paper through the methods I have just described. Does that answer your question?

Q555 Janet Anderson: So really your answer to my question is yes, you would publish both types of story?

Mr Dacre: Well, the *Mail* publishes lots of human stories, yes, and personalises a lot of its journalism and I have tried to explain why. You will not probably agree with this but I actually believe that what interests the public is by and large in the public interest—by and large. Of course I accept there are exceptions, and if we go too far readers put it correct. What slightly concerns me, and of course I accept judges’ integrity, is that it is very difficult for judges to define what is in the public interest. One judge’s interpretation of that would be that an article in the *Guardian* is in the public interest, and a horrible sensational story in the *Sun* is not. I do not agree with that.

Q554 Janet Anderson: Mr Dacre, I wonder if I could press you on what is in the public interest and so on. Do you believe that newspapers should be free to publish stories about individuals in which the public are interested, ie which the public want to read, rather than just those that are in the public interest? Could you give us some examples of when you believe a story is in the public interest and when it is not, and whether you would publish in both cases?

Mr Dacre: Forgive me, I do not mean to be aggressive but I think there is a rather patronising element in this question. I passionately believe in popular newspapers; I believe they do a very good job giving voice to their readers’ interests, anxieties and concerns. There is an over-pejorative use of the word “tabloid” particularly by the BBC which invariably refers to the “tabloid press” and then tells the whole story itself, and, of course, it is a nonsense. the *Times* and the *Independent* are tabloids, and tabloids are read by most of the people, and indeed the *Mail* has more ABC1 readers than all those papers put together but that is another matter. The word “personal” confuses me. All stories are personal. Most stories are told through people, particularly in the popular press. Telling stories through people is a very effective way of getting across dry and complicated stories. Celebrities personalise their lives. They do it to put their image more in the public’s eye and they make a lot of money out of it. Politicians—not all but a lot—personalise their lives; very understandably they want to identify with the voters and gain their voters’ support, so yes, I plead totally guilty to personalising stories. If you want a paper dominated by issues you would probably buy the *Guardian*, circulation 250,000, subsidised to the tune of £30 million by the Scott Trust. If you want a story about people, gossip, and news is people and gossip, but to also get across serious analysis of politics and news, you will buy the *Sun*, circulation 3 million. The *Sun* uses much more sensational methodology to do that; I would defend that and die in a ditch to defend it. They get a lot of the stuff that happens in this building to their readers by inducing them to read their paper through the methods I have just described. Does that answer your question?

Q556 Janet Anderson: And if you had a story that you were going to run and you thought to yourself: “Actually we might get sued if I publish this story, but it is going to do so much to boost sales that I am going to go ahead with it anyway”, would you run that risk?

Mr Dacre: That, with the greatest possible respect, is balderdash. It is almost a Mosley suggestion that we have accountants on our floor working out what the
circulation increase versus the costs of a legal action would be. Nonsense. I have never allowed an accountant on the floor of the Daily Mail and I am not going to start right now.

Q557 Chairman: Obviously he is not your responsibility in the very least but Piers Morgan, of course, did say he did precisely that.

Mr Dacre: Well, I am not going to speak on behalf of Mr Piers Morgan. I think that is a very unfair question! He is a television star now anyway. He was sacked from two newspapers, and I think that speaks for itself, although I think he contributes to the sum of human fun. No, that is kamikaze journalism. You have heard the costs I described to you earlier. You do not understand—we print a story because we believe it is right, we believe it is true, and we believe it interests our readers. If we get it wrong and the readers do not like it they do not buy our paper. They pay 50p for each day in the rain and if we go over the top we get sued and the sums of money are absurd. No, no. I hope that is clear!

Q558 Paul Farrelly: You said in your now famous speech, Mr Dacre, that if mass circulation—

Mr Dacre: I had not realised it was so read.

Q559 Paul Farrelly: If you do it on Clicks and Links you are top of the Google list! You said: “[. . .] if mass-circulation newspapers, which also devote considerable space to reporting analysis of public affairs, do not have the freedom to write about scandal, I doubt whether they will retain their mass circulations with the obvious worrying implications for the democratic process”. That seems to say in shorthand that if we do not run tons of titillating stories we cannot afford to carry the staff to do the occasional serious stuff. Can you explain what you mean?

Mr Dacre: Look, you may not approve of the News of the World. I do not particularly approve of the News of the World but I would die in this ditch to carry the tittle tattle and the scandal and the sensation it does because in the middle of the News of the World is some very serious political analysis. The News of the World in its time has broken some very important stories. They have to be free to interest the public to get the large number of readers they do which also communicates the serious news that you need as the life blood of democracy. But that is not just my view. Could I refer to—and I know you have read the speech but I want to repeat it—Lord Woolf in the 2002 Appeal Court Judgment? “The courts must not ignore the fact that if newspapers do not publish information which the public are interested in, then there will be fewer newspapers published, which will not be in the public interest”, and Baroness Hale in another famous hearing said: “One reason why freedom of the press is so important is that we need newspapers to sell in order to ensure that we still have newspapers at all. It may be said that newspapers should be allowed considerable latitude in the intrusions into private grief so that they can maintain circulation and the rest of us can continue to enjoy the variety of newspapers and other mass media which were available in this country.”

Q560 Paul Farrelly: So people have to take the rough with the smooth, basically?

Mr Dacre: I do not know whether I would choose those words but roughly, yes.

Q561 Paul Farrelly: I would be interested in your opinion as to what was wrong with the newspaper reporting of the McCann case, and whether you think it was a one-off and unique.

Mr Dacre: Firstly, the obvious point: it was not just the newspapers. The BBC carried live interviews on the doorstep of one of the witnesses there; BBC talk shows were full of speculation about this, ITV was equally involved. Again, let’s examine the context. This was a great human story. Terrible night, parents racked with guilt about should they have been there when a terrible thing happened to their daughter, but let’s be very, very clear about this: The McCanns went out of their way to enlist press help. They invited the press into their lives—very understandably; they wanted to keep the story going because the more pictures were carried the more the chances were that their daughter might have been seen if she had been abducted, but nevertheless, far from shrinking the oxygen of publicity, they sought it. They did endless photo opportunities—they played to the media brilliantly. The trouble is this created a vortex, I suspect, where some newspapers saw it as open season to carry stories, if they thought they had the implicit permission of the McCanns almost to publish any story if it kept the story alive, i.e. kept interest in the story going so the chances of spotting the poor child would have been increased. This was compounded by the Portuguese police who, of course, labelled the McCanns suspects. They were busy smearing the McCanns. Portuguese newspapers were carrying many irresponsible stories about this; again, regrettably in some areas of the press these were picked up too assiduously. There was war between the British police and the Portuguese police, both sides furiously leaking against each other, and yes, there was the issue of circulation. I do not remember a story for some time now that actually increased circulation like the McCann story. I remember the furiously rows we used to have in our office at time because other papers, opposition papers possibly, were putting the McCanns on the front page and you could see the next week their circulation had gone up that day and there were great recriminations about whether we should engage in that and carry those kinds of stories. By and large I think we resisted that temptation—and by and large—but what I do deeply regret is that the PCC, I believe, did contact the McCanns in the early days and offer their services particularly regarding harassment, and I deeply regret that the McCanns, if they felt they were being portrayed in such an inaccurate way, did not immediately lodge a complaint with the PCC which I believe profoundly—
Q562 Paul Farrelly: In shorthand you seem to be suggesting they were fair game?

M r Dacre: No, not at all. I am saying some newspapers did, and wrongly so.

Q563 Paul Farrelly: But when you are saying “some newspapers and the press” it just reminds me, and you are talking in the third party, of the famous attribute attributed to the Royals: “We are not amused”. Are you saying you bore no responsibility for any of the reporting at all?

M r Dacre: Of course not. I have said by and large I hope we resisted the more extreme reckless behaviour that some newspapers manifested over the McCann story.

Q564 Paul Farrelly: But in inviting the press to help with their search and publicising the case you seem to be suggesting they also invited you into their parlour room to suggest that they were in some way responsible?

M r Dacre: Not at all. I think with great respect that is very unfair interpretation of what I have said. Yes, they sought publicity assiduously very, very understandably, and I think some newspapers took that as a green light to carry anything about them. But I do wish they had lodged a complaint with the PCC. It would have been adjudicated on very quickly—

Q565 Paul Farrelly: We have heard some evidence from Sir Christopher Meyer which was not terribly persuasive in the way they went about it. But you reached an out-of-court settlement with the McCanns. Can I ask you what lessons you have learned and communicated to your reporters out of the affair?

M r Dacre: You said we reached an out-of-court settlement. That is slightly misleading. There was not a writ served and nothing was read out on the steps of the Court or anything. I believe the McCanns did write to a set of newspapers. They raised some concerns. They mostly focused on the Evening Standard. By and large the Mail was not concerned. There were civilised and positive discussions. As a result of them the Evening Standard, the Standard, carried a brief statement expressing regret together with an appeal for its readers to assist in the search for Madeleine and made a donation for the purpose. That was the Standard. The Mail interestingly before all that had been carrying free adverts in its continental edition for the McCanns which I think they were very grateful for. Yes, there were intense discussions in all papers I think about the McCann case afterwards. Not related to it but as a result of a whole sequence of events we certainly now hold seminars for all our staff on data protection, privacy, defamation—everything. It is a matter of great concern to us that all our reporters understand this.

Q566 Chairman: Did you take any action against the journalists who wrote the specific stories?

M r Dacre: On the Standard?

Q567 Chairman: Yes.

M r Dacre: By and large, I think it was mostly the Standard, and the answer is no. The Standard is now owned by another owner, and the editor is no longer there.

Q568 Paul Farrelly: One of the reasons to prompt this inquiry, and you may think “Who are we to judge the press”, was that, in any other sphere of life, if something like this had happened that was a collective failure of standards there would be demands for an inquiry. The press jumps up and down for inquiries into the police or social services when they get things wrong but in this case there has been no inquiry, certainly not by the PCC, and the press has not jumped up and down to demand an inquiry. Is that not hypocritical?

M r Dacre: I make no comment. No newspaper or television company has a perfect record in this area, on the McCanns. I am not sure it is a “collective” failure; I think some newspapers went too far. There was a huge court case, as you know.

Q569 Paul Farrelly: Was the McCann case unique in your view? Should no lessons be drawn from this?

M r Dacre: Oh yes, I think lessons should be learned from it. It was not unique but it was one of the greatest human stories.

Q570 Paul Farrelly: And what lessons should be drawn from it?

M r Dacre: The lesson should be learned that however considerable the interest in that story the correct boundaries of correct newspaper journalism should be observed. What was unique about it was that those boundaries were transgressed rather recklessly by some areas of the industry.

Q571 Paul Farrelly: And you would say that you have not since then transgressed those boundaries again? Can you think of a case where you might have done?

M r Dacre: I am sure we have. As I said, it is a 120-page paper.

Q572 Paul Farrelly: You read every word presumably?

M r Dacre: Of course not, no.

Q573 Paul Farrelly: As a good editor?

M r Dacre: As a journalist you know that is not possible. I read more words of my paper than most editors; I do not read every word in the sports pages—

Q574 Paul Farrelly: But you read the lead stories of most interest?

M r Dacre: I read the features and the commentary and a lot of the news stories, yes.
Q575 Paul Farrelly: And are there any examples since the McCann case where you would say yes, in our heart of hearts we have gone over the boundary this time and we will not do it again?
Mr Dacre: Mr Farrelly, I will be very honest with you, there may possibly have been, I hope we did not do it deliberately or intentionally, but I cannot honestly say.

Q576 Paul Farrelly: One specific question. Why on 11 March did you publish the name of the village where Elisabeth, the daughter of Josef Fritzl lived who was trying to be resettled to live what you would hope would be a normal-ish life, given what she has been through?
Mr Dacre: You have caught me absolutely cold. I am not aware we did—

Q577 Paul Farrelly: You did.
Mr Dacre: I do not know the answer. Did other newspapers?

Q578 Paul Farrelly: You did it first and they followed you.
Mr Dacre: Could I look into it and send you a note on that?

Q579 Paul Farrelly: Given that you did, would you say that was responsible journalism?
Mr Dacre: I do not know the circumstances, whether it came over from a news agency, whether it was our journalist who did it. I am very happy to look into it.

Q580 Paul Farrelly: I am surprised you do not remember it because it has attracted some comment in the media.
Mr Dacre: In Britain?

Q581 Paul Farrelly: And it was a story of great human interest.
Mr Dacre: Oh, yes, the Fritzl case. I am not being evasive, I really was unaware of it. I am very happy to look into it when I get back and send you a very full note on it.

Q582 Paul Farrelly: The final question on this point. You said in your speech that some people revile a moralising media. Others such as myself believe it is the duty of the media to take an ethical stand, and the word “morality” courses through your speech, and I would just like to ask you whether you feel that publishing the name of a village where somebody had been resettled who had been through such a horrific experience was a moral thing to do?
Mr Dacre: I cannot answer you because I do not know what the news agencies were doing. I do not know what the news agencies were doing. I can give you this assurance, that I will send every member of this Committee an answer to that, and if we were wrong I will apologise.

Q583 Paul Farrelly: If you could, because if you are saying: “I do not know what the agencies were carrying, I do not know what the other newspapers were carrying”, it rather sounds like the excuse. We were only following the others or following orders.
Mr Dacre: No, it does not. You must know the speed newspapers work at. We come out six days a week, we print thousands and thousands of words, I do not know whether it slipped through as an act of calculated irresponsibility by the journalists—I will look into it and get back to you.

Q584 Paul Farrelly: If you could.
Mr Dacre: Of course.

Q585 Philip Davies: Specifically on the PCC I think you said in answer to a question earlier that you regret that the McCanns did not pursue their complaint through the PCC. In the evidence that Gerry McCann gave he said he had been advised by both his legal advisers and by the PCC itself that they were not the most effective route for them to go through. Furthermore, the nub of the issue seems to me was that he said: “I did think it was surprising that an editor of a paper which had so fragrantly libelled us with the most devastating stories could hold a position on the board of the PCC.” Do you not think that undermines the credibility of the PCC and people’s preparedness to go through that route when they see that the people who they are complaining about are there to sit in potential judgment?
Mr Dacre: Firstly, he would have been one of the seven editors on the PCC with a majority of 10 lay members. Secondly, and I was not on the PCC, I do not think, at the time but my recollection is he left the PCC after the furore over the McCanns, and all I can say as someone who has sat on the PCC for many years that the lay members would have had their say on this and the McCanns would have got justice. What I would say is that the PCC does not exist apart from the courts, it exists alongside them, and my only regret was in the early days, when they thought the newspapers were behaving badly and not observing accuracy, if they had lodged a complaint then with the PCC a lot of grief could have been saved. That was the only point I was trying to make.

Q586 Philip Davies: I would be interested in your thoughts about what is the right make-up of the PCC. I think one of the people giving evidence to us earlier this week said it was like having a jury of twelve and finding if you are being prosecuted that five people on the jury were members of the family of the defendant, and the fact that seven might not be is not really much of a comfort to you. Would you share that particular concern?
Mr Dacre: I would not at all, no. This is self-regulation. Obviously you have to have editors on the Commission; they have to buy into this process. I have huge respect for you all and I do not want to intrude into grief, but perhaps it beholds MPs to ask journalists about self-regulation. At least we have members on our Commission; you have none on
your regulatory body. We have an independent Chairman; we have independent Appointments Commissioners. It is a much more robust form of self-regulation than exists in Parliament.

**Q587 Philip Davies:** You might have confidence, and you work closely on it so you see it at first hand, but would you accept that there is a general perception that newspapers do not really take complaints to the PCC seriously so the only thing that is really going to get a newspaper editor to get concerned about something is if Carter Ruck sends a letter with the potential huge costs that you talked about earlier that really make you sit up, but actually a complaint to the PCC is neither here nor there?

**Mr Dacre:** I think that is a totally unfair misreading of the situation. It is a matter of huge shame if an editor has an adjudication against him; it is a matter of shame for him and his paper. That is why self-regulation is the most potent form of regulation, and we buy into it. We do not want to be shamed.

**Q588 Philip Davies:** But do you think that is the general perception of the PCC?

**Mr Dacre:** I think the perception of the PCC has improved considerably from what it has been in the past. What gets my goat a little bit is the refusal of a, to be fair decreasing, minority to accept that standards have not improved very considerably in the press since the start of the Commission. I have been in this business forty years; the journalistic landscape has changed dramatically since the 80s; journalists are much better behaved. There is an argument that the Code and the Commission has toughened things up so much that, vis-à-vis the earlier conversation, it is blunting the ability of some of the red top papers and the red top Sunday market to sell newspapers. I think it is churlish not to accept there have been improvements. I think it is counterproductive. Yes, further improvements could be made; the Code is organic, it is always changing, we are amending it, but what sickens me, frankly, is the charge that we are not independent. It trudes the independence of the Appointments Commissioners who have to ratify all the Commissioners to the Commission, and they are most senior people, former Lord Chancellors; it trudes the integrity of the lay members, the Bishops, trade union leaders, ex MPs; it trudes the integrity of the Compliance Officer. Self-regulation works and it would be nice if occasionally that was recognised, along with the fact that we have continual vigilance, we continually update things, we change things, we change the Code in response to public worries. We do not always get it right but we try.

**Q589 Philip Davies:** I think many of us would support self-regulation. I am sure everybody would agree that people want to be as effective as possible and have as much confidence as possible. Are there any areas where you yourself think it could be strengthened or improved?

**Mr Dacre:** Yes. I do not want to hold any hostages to fortune here but there is a lot of thought going on about this at the moment on various levels and more thought needs to go into privacy, and we are grappling with this at the moment, how we change the Code to tighten up on it because clearly it is a matter of concern. The problem with the Code is it cannot be above the law, obviously. I cannot think of any other areas at the moment but recently we tightened up on things like suicide reporting and areas like that.

**Q590 Chairman:** When you have had an adverse verdict from the PCC, as an editor what do you then do?

**Mr Dacre:** What do you do? Well, you kick the reporters in the head who landed you in it but—

**Q591 Chairman:** Well, without being too jokey about it, do you take action against the reporter?

**Mr Dacre:** Oh, goodness me, certainly disciplinary action, yes. It is difficult to convey this because it sounds like we are being sanctimonious but there is deep shame when you have to carry an adjudication, and there is a major investigation. My managing editor has an office of four or five people investigating every mistake; we issue official warnings if we think they are right or the reporter concerned has behaved badly—we want to get it right. There is no percentage in getting things wrong.

**Q592 Alan Keen:** What was the reaction when you realised the anti MMR campaign was wrong? Did you take serious action then against journalists? Did you agree it was wrong? You are not running it now.

**Mr Dacre:** Well, there is a bit of an urban myth grown up that the Daily Mail was against the triple jab. All newspapers at the time had deep concerns about the triple jab. As you know, a senior doctor was leading a campaign against it; as you know, there was a group of grieving parents who had formed a class action; there was a great concern they were being denied legal aid. The Mail's particular gloss on this was we thought it was deeply hypocritical of the then Prime Minister not to reveal whether his own child had had a triple jab because he was such an eloquent advocate for it. Since then we have carried articles for it, articles against it, but all newspapers were carrying very rigorous articles at the time questioning the MMR jab. To this day I accept the science but I still do not understand why people cannot be given three individual jabs if they so wish.

**Q593 Chairman:** We are nearly at the end but may I just ask you a couple of things? We are very conscious of the financial climate in which newspapers are operating which you have highlighted, and it is obviously putting huge pressure on you. One of the things where there is a perception growing is that the rigour with which stories are tested and checked prior to publication has diminished, partially as a result of this. To what extent does the Daily Mail undertake fact-checking before you publish?
Mr Dacre: We do not have a fact-checking process like some American newspapers have. I do not think any British newspaper does. The cost involved is worrying those American newspapers all the time. Our reporters are extremely professional operators; they have all had extensive training on local papers and provincial newspapers. Accuracy is the most important thing in their operations. If they get things wrong a most serious attitude is taken by the paper. We have a very extensive sub-editing process which is encouraged to check facts where possible. I do not see what more you can do than employ first rate reporters and first rate subs who self-evidently are interested in getting things right.

Q594 Chairman: And do you also believe that, in order that you are able to reflect every side of the argument or to give an opportunity to somebody who you are going to write an article about that you should hear their version or their side of the story, you should inform somebody that you are going to write an article about them before you publish it?

Mr Dacre: Ninety-nine times out of 100 yes, I think it is the most important thing. Ninety-nine times out of 100, I think we always do, and indeed the PCC, although I do not think it can codify it, will find against the newspaper if the newspaper has not given space to the other person’s side.

Q595 Chairman: You say 99 times out of a hundred. I retracted my earlier remark and I fully accept you were not the editor of the newspaper responsible, but in the case of Max Mosley was that a one in a hundred case where it was right not to tell him, or do you think he should have been told?

Mr Dacre: Well, this is the age-old problem. Almost certainly if they had told him he would have injunctioned them. Almost certainly if it had been a Saturday morning you would have had a part-time judge on who would not be expert in defamation or privacy. Almost certainly that judge would have granted an injunction. Almost certainly it would have got bogged down in the long grass and taken several weeks. The way Strasbourg is deciding on privacy there is a good possibility that the injunction might have stuck. It goes across the spectrum of journalism. I hope I am not talking out of turn but I was talking to the editor of a paper that carried an article about tax evasion by British banks and he confessed they were not able to put the charges to the banks for that very reason, because they knew they would be injunctioned.

Q596 Chairman: But if that is the consideration then it would suggest to me certainly that it is not going to be 99 times out of 100 that you notify; there would be a very large number of times that you do not.

Mr Dacre: With great respect, Chairman, these stories do not come up that often; they are quite rare, particularly for a paper like the Mail. We do not, by and large, go in for that kind of journalism.

Q597 Paul Farrelly: When you were referring to Nick Davies’ book in your speech last November you did say: “Heaven forbid that its author should have observed the basic journalistic nicety of checking those facts with the parties concerned” which seems—

Mr Dacre: I cannot see in this instance why he should not have checked them, do you? I do not think the Daily Mail is going to injunct.

Q598 Paul Farrelly: In the Mosley case, had you had that story would you have given him the opportunity of comment? Would you have said: “Look, Max, we have you bang to rights, we have video footage, the person who took it is very well qualified, she is married to a British agent, she had a camera down her bra, but there is one thing we are uncertain about, did it have a Nazi theme? Would you like to comment?”

Mr Dacre: Can I just short-circuit this please? The Daily Mail would not have broken that story. We are a family newspaper, our readers do not expect us to print those kinds of stories. This is the irony of the situation.

Q599 Chairman: You did publish quite a lot about it after it appeared.

Mr Dacre: Of course we did. So did the BBC and so did the Guardian.

Q600 Chairman: So you would not have broken it but then it was fine?

Mr Dacre: No, I would not, but then it became a huge public story.

Q601 Paul Farrelly: So you are saying seriously that despite your moral crusade to the community clean up public and private life you would not have broken that story if it fell into your lap?

Mr Dacre: I really recoil from the phrase “moral crusade”, but anyway, what was the question?

Q602 Paul Farrelly: You would not have published that story if it fell into your lap, to coin a phrase?

Mr Dacre: No. We are a family newspaper. Our readers would cancel the paper on it, and quite rightly too, but I defend the right of the News of the World to publish it.

Q603 Chairman: Thank you. I think that is all we have.

Mr Dacre: Can I apologise if I somewhat bored you? I was genuinely unaware you had read the speech.

Chairman: Please do not worry. Thank you very much.
Written evidence submitted by the Daily Mail

It is typical of the half-truths in Mr Davies’ book that he conflates PCC adjudications with the figures for complaints and to pretend the numbers are some sort of indication of accuracy. It is not that simple.

In the last five years, according to the PCC itself, the Daily Mail newspaper has not had to print an adverse adjudication from the Press Complaints Commission.

While it is true that the Daily Mail gets a robust number of complaints it is not always true that it gets more than others. In 2008 there were over 700 complaints about the Times, compared to around 520 about the Daily Mail.

It is important to realise that the quality and quantity of complaints varies from the trivial to the serious, from a single protest about one story to multiple complaints about one article.

In our case:
— Some of them end up with the complainant deciding not to pursue the complaint.
— Some end up with a pleasant exchange of explanatory letters between the complainant and the paper’s Managing Editors acting for the Editor.
— Some end up with a published letter.
— A few end up with a clarification or an apology in the newspaper.

The vast majority are resolved to the satisfaction of the complainant.

It is pointless, in any event, to have “league tables” of numbers of complaints. They are no indicators of lack of quality or careless journalism.

There are several reasons for the number of complaints we do get:

1. The Daily Mail has a huge circulation and is read by more people than any other paper except the Sun.
2. The Mail has the most discerning and intelligent newspaper audience who take what we print seriously—but often do not put the same weight on things published in the red-tops.
3. People who do not read the Mail nevertheless take careful note of what we publish.
4. We have a vigorous and robust style which naturally brings debate and dissension to the fore.
5. We publish more pages and more stories than any of the popular, widely read newspapers.
6. We publish regular free advertisements in our paper and on the website advertising the PCC’s services and inviting our readers to use them if they think we have gone wrong.

As the Committee heard, we publish the equivalent of half of War and Peace every day and yes there will be errors on occasion. Where mistakes are discovered we also strive to put them right at the earliest opportunity.

I trust you will find the above helpful.

April 2009

Supplementary written evidence submitted by the Daily Mail

We have investigated the suggestion that it was the Daily Mail which revealed the location of the house where Josef Fritzl’s daughter has been re-housed.

On 11 March 2009 there was one single mention of the village in the middle of a 2,000 word feature on the impending opening of the Fritzl trial. It was written by a Berlin-based freelance journalist (he is also the author of a book on the case).

It is regrettable that the reference was not removed by the sub editor concerned but as the article referred to the daughter being re-housed there “in a house provided by the authorities” the freelance’s words could have given the impression that this was general knowledge.

The reference was made in passing and certainly there was no intention by the author or the Daily Mail to claim her whereabouts as any sort of revelation. Equally no-one here—or I suspect in the British media as a whole—was aware over the sensitivity of this matter.

It is perhaps worth noting that the name of the village had also been given widespread media coverage when the story first broke as another member of the Fritzl family lived there.

The village was well known to Austrian media and it was named in Britain in a feature in the Independent.

Neither the author of the article, the Daily Mail nor the PCC have received any complaint relating to this reference.
We have immediately removed it from our website and marked our cuttings accordingly though unfortunately the fact that it was raised in the public forum of your Committee has meant that extra attention was briefly focused on it.

Nevertheless I have used this instance as an opportunity to send round a further reminder to our writers and sub editors on the need for constant vigilance on these matters.

April 2009
Tuesday 28 April 2009

Members present
Mr John Whittingdale, in the Chair
Philip Davies
Paul Farrelly
Mr Mike Hall
Alan Keen
Rosemary McKenna
Helen Southworth

Written evidence submitted on behalf of Express Newspapers

I make this short submission on behalf of Express Newspapers, in response to the Committee’s invitation to interested parties to do so.

I am aware that the Media Lawyers Association (MLA) is making a submission. In general I agree with the points made by the MLA of which I am a member. I consider it proper however to deal separately with the first two questions raised by your Committee.

The self-regulatory system and the McCann case.

We do not think that the McCann case has altered the role and/or the effectiveness of the Press Complaints Commission (PCC).

The McCanns and others chose to use the legal route rather than resorting to the services of the PCC that was their right and their decision. The complaints were settled speedily by means of the normal legal processes and with the advice of leading counsel.

As the McCann investigation continued to unfold it was unique in that the public’s interest in its every detail was unprecedented. It remained of such long running interest for several reasons.

The McCanns, for the best of motives, wished for and encouraged this public interest to continue for as long as possible, in the hope that Maddie would remain in the news and thus increase the possibility of finding her. The Portuguese police were continually supplying and/or leaking information to the media. They also took the important step of naming the McCanns as arguidos, giving them the official status of suspects under Portuguese law. The media throughout Europe continued to receive and give extensive coverage to the flow of information coming from either the McCanns or their friends, and/or the Portuguese police.

It is extremely unlikely that all these unusual factors, together with the tragic nature of the case, will combine again to create a saga of such public fascination.

I stated above that the points made on behalf of the MLA are agreed with in general. I do, however, have an additional comment under the question of financial penalties. The question implies it might be thought appropriate for the self-regulatory body to award financial penalties. I do not consider it appropriate. Were the PCC to have that power, which might include the award of compensation, it would in effect create a parallel system to the courts with the attendant procedural requirements and provision for appeal ultimately to the courts. The result would be that a speedy and relatively cheap method of dealing with complaints, which by and large come directly from members of the public, would be lost.

January 2009

Witness: Mr Peter Hill, Editor, Daily Express, gave evidence.

Chairman: Good morning. This is the eighth session of the Committee’s inquiry into press standards, privacy and libel. I am pleased to welcome the editor of the Daily Express, Peter Hill.

Q604 Philip Davies: Were you surprised when the McCanns decided to sue you for libel?

Mr Hill: I was surprised that the McCanns at that time sued only the Daily Express for libel. This had been a remarkable case which had had headlines around the entire world. It was in every newspaper, all the developments from the very beginning; it was in all the newspapers in Britain, it was on all the television stations in Britain. Given what happened, that the police case turned out to be a complete travesty, because all the media all around the world had repeated the allegations which had been made by the Portuguese police in various ways, it was inevitable that the McCanns, certainly in British law though probably not in very many other jurisdictions, would certainly have a case to sue for libel. However, they would have been able to sue and still could sue any newspaper at all. I was a bit surprised that we were at that time the only newspaper, though since then the McCanns have settled with at least two other newspaper groups and I believe also with a television station.

Q605 Philip Davies: You give the impression that the Daily Express was just one of many newspapers.
Mr Hill: Absolutely; and it was.

Q606 Philip Davies: Would you not accept that the Daily Express was milking the story far more than anybody else, in fact when Gerry McCann gave evidence he said: “Undoubtedly, we could have sued all the newspaper groups.” “The Express was the worst offender by some distance”. Would you accept that?

Mr Hill: Absolutely not. The events surrounding the disappearance of Madeleine McCann and everything that happened afterwards were certainly on at least one television station every single day and in at least one other newspaper every single day month after month. I do not accept that at all. However, having said that, I have personally apologised to Mr and Mrs McCann for the mistakes which we made. I wrote the apology myself, I insisted that it should go on the front page; I did not have to put it on the front page but I put it on the front page. The other editors in my group also agreed to do the same and we did pay considerable damages to Mr and Mrs McCann and their costs. I acknowledge of course that we were in error, yes.

Q607 Philip Davies: You say it was on the front page of one paper or another every day.

Mr Hill: I did not say the front page; I said that it was on or in the papers every day.

Q608 Philip Davies: It was in your paper every day.

Mr Hill: All of the newspapers, even the BBC’s Panorama, all repeated these allegations because the allegations were the news.

Q609 Philip Davies: I am surprised you do not accept even at this stage that the Express was probably the worst offender. Gerry McCann said: “The Express rehashed it and it was a very easy decision as to which group of newspapers to issue the complaint against”. They identified more than 100 false stories in Express newspapers. Do you accept that there were that many false stories?

Mr Hill: I can only speak for the Daily Express. There were 38 headlines that they complained about in the Daily Express. I can equally find you more than 80 headlines which were positive towards the McCanns. Do not just think that what happened in the newspaper was completely one-sided and that we took a decision to attack Mr and Mrs McCann, because that is not the case. We did many, many stories which were positive towards them and we did quite a number of stories which were the other way round. That is because the turn of events completely changed when the police decided to make Mr and Mrs McCann suspects in the case. Of course their status as suspects continued for a very, very long time. Portugal is a fully-fledged democratic member of the European Community. How were we to know that the police force was completely incompetent in this case? In hindsight we know that this is the case but at the time we did not know. What was happening there was that Mr and Mrs McCann had a very, very strong public relations machine which they had built up quite brilliantly and quite rightly and I am not in any way criticising them for it. However, the Portuguese police, because of the rules in Portugal which forbid them from commenting on cases, resorted to leaking all manner of information to the Portuguese media and this was where we went wrong of course because we picked up these stories.

Q610 Philip Davies: We are not really looking at the accuracy of the Portuguese police and their standards. It is really about your standards at the newspaper.

Mr Hill: That is all we had to go on.

Q611 Philip Davies: It is not really a question either of whether your paper was pro the McCanns or anti the McCanns, it is about whether or not what was written in the paper was accurate or not.

Mr Hill: We know it was not accurate now. We know now in hindsight that it was not accurate but we did not know at the time. We did not publish this material maliciously. How could we know then? We know now but we did not know then. We had no idea. All I do know is that there was an insatiable clamour for information about what was going on and that clamour was all centred on this one question: what has happened to Madeleine? This was the question to which everybody in the whole country wanted to know the answer, not just in this country but many other countries and wherever you went—and I am sure you can agree with this—at that time that was what people talked about. The question on everybody’s lips was: what has happened to Madeleine? We at the Daily Express pursued every possible lead. We sent teams of people all over Europe, North Africa, to follow up sightings and I tell you, we did make genuine efforts to find Madeleine and we would still love to do that if we possibly could.

Q612 Philip Davies: The theory goes that there was a great clamour from the public and from your readers.

Mr Hill: Not just from my readers; from everybody.

Q613 Philip Davies: No, indeed. Therefore that led to a clamour from the editors, news editors, whoever it might be on the papers, to the reporters to come up with a new story each day to make sure there was something in the paper. If there was nothing to report, they must find something to report because you needed something about this in the paper. Do you accept that kind of culture went on?

Mr Hill: No, that is not the way it works. The fact of the matter is that there was a news story every day and both sides in this particular case were briefing and leaking all the time, every day; every single day people were being briefed by one side and the other side.

Q614 Philip Davies: Given that there were so many stories which were inaccurate as it happened, could you explain to us what fact-checking your paper indulged in, either then or now, to make sure what you do print is true? It seems in this particular case something went badly wrong.
Mr Hill: That is a very, very good question. In this particular case, as I explained to you, the Portuguese police were unable, because of the legal restrictions in Portugal, to make any official comment on the case. What happened was that they resorted to leaking things to the Portuguese press. We did our best to check up on these things but of course it was not very easy to do so. We always put the stories to Mr and Mrs McCann’s PR team but most of the time the people they had then, after the McCann’s had been named as suspects, did not return our calls. So this was a more difficult situation than any of us had ever encountered. Yes, there was a clamour for information and we did our best to provide it. Of course we do check as thoroughly as we can. Newspapers operate at very high speed and it is quite true that sometimes it is not possible to check things as thoroughly as you would like.

Q615 Chairman: You said there were 38 headlines which the McCanns complained about.
Mr Hill: Yes, there were.

Q616 Chairman: When you approved those headlines were you in each case confident that they were justified?
Mr Hill: At the time, yes, of course, otherwise I would not have approved them.

Q617 Chairman: So things like “Parents’ car hid a corpse” “Someone’s holding back the truth”.
Mr Hill: Many other newspapers and the media used that. This was also on television. This was what happened at the time. This came from the police and this also came from the British forensic science laboratory which had also briefed people on that. I do not know where it came from but we had every reason to believe that it was a genuine line at that time. Absolutely.

Q618 Chairman: But you printed it as fact and you say you did not know where it came from. Surely it was your duty to know where it came from?
Mr Hill: We do know where it came from. It came from the Portuguese police and similar lines came from the British forensic scientists who examined samples from the car. I agree that it is an astonishing thing but at the time it was not thought to be untrue. We had no reason to believe that it was untrue. You have to remember that this was the most astonishing train of events that anybody has seen in living memory. This was not just any old bit of a story; nothing comparable to this had been seen since the Lindbergh kidnapping in 1932. It was a very, very extraordinary situation and I certainly believe that it was a unique situation. I am a very, very experienced journalist and I have never seen anything like this, neither have my colleagues ever in their experience. The longevity of the story was another remarkable factor because it went on month after month.

Q619 Chairman: You said in your apology: “We trust that the suspicion that has clouded their lives for many months will soon be lifted”. You will acknowledge that the reason for that suspicion was in large part the activities of your newspaper and other newspapers?
Mr Hill: No. We were part of that process but the principal reason for that suspicion has to be laid at the door of the Portuguese police. They were the people who named Mr and Mrs McCann as the suspects and repeatedly questioned them for many, many hours and they were the people who leaked all the information about them. Yes, we were reporting what happened. The alternative would have been for the British press not to report anything. Do you think that would have been a possibility, when the rest of the world was reporting on this case, for the British press to say nothing? It is not practical. We are all talking here in hindsight and hindsight is a marvellous thing but the fact of the matter is that at the time these reports and these leaks were happening on a daily basis and that is the truth.

Q620 Chairman: So you reported a story about Madeleine McCann on your front page over many, many days. Can you tell us in terms roughly of newspaper sales the difference between the sales of the Daily Express on the day when you had a Madeleine McCann story and the days when you did not?
Mr Hill: It certainly increased the circulation of the Daily Express by many thousands on those days without a doubt. As would any item which was of such great interest. It also massively increased the audiences on the BBC as their Head of News has acknowledged. It did this for all newspapers. The way that newspaper people work is that their job is to report on the events which are of interest to their readers and of course this was of consuming interest to readers of all the newspapers not just the Daily Express. Yes, it was a consequence. This is what newspapers do. Their job is to sell newspapers; that is what they do.

Q621 Chairman: Their job is to sell newspapers as long as they are also telling the truth.
Mr Hill: At the time we had no reason to believe we were not telling the truth.

Q622 Chairman: You also took the decision to run a McCann story day after day. To what extent was that because you had seen the consequence it would have on your circulation?
Mr Hill: You have to understand that this was the only show around at that time. We were getting 10,000 messages—I am not just talking about hits—on our website; we were getting at least 10,000 messages a day, comments from people. Nothing like this had ever been seen. It was quite clear to me that this was what the readers wanted to read about. So naturally I would do this because that is what newspapers do.

Q623 Chairman: Did you say to your reporters in Portugal, “I want a McCann story”? 
Mr Hill: No, I do not think so. They were there and they provided them.
Q624 Chairman: You never said to them, “I don’t care what it is I want a McCann story for my front page”?
Mr Hill: No.

Q625 Chairman: All the stories which appeared originated in Portugal without your pressurising them.
Mr Hill: No, not all the stories originated in Portugal because some of them of course originated in Britain in various places.

Q626 Chairman: So you completely reject the accusation that your paper particularly, but not alone, was so desperate to increase sales that you were actually seeking out, and if necessary fabricating, Madeleine McCann stories?
Mr Hill: Completely reject. This is not the way that anyone works as far as I know. People do not think that way. What they do is follow the news. They follow the hot story. This was the hottest story for many decades.

Q627 Chairman: If you are so confident then, that actually at the time you wrote those stories they were perfectly legitimate stories based upon information that you had obtained, why did you not fight the libel action?
Mr Hill: Are you familiar with British libel law?

Q628 Chairman: Increasingly so, yes.
Mr Hill: In that case you will know that we do not have the kind of libel law where, for instance, you could say that you published material in the firm belief at the time that it was true and in that case that would be a defence, as it is in some jurisdictions a defence. It is not in this country at all.

Q629 Chairman: In actual fact it is. You may have chosen not to use it, but it is a defence.
Mr Hill: Only in matters where it could be deemed an investigation in the public interest, which in my opinion is a very, very narrow definition.

Q630 Chairman: You do not regard this as an investigation in the public interest.
Mr Hill: No. I would not regard this as a matter within that very strict definition “in the public interest”. No, it was certainly in the interests of the public but I would not describe it as “in the public interest” because in my opinion “in the public interest” means something which is of general concern to the wellbeing and safety or whatever it is of the public. This was a matter which involved a family. This was not in the public interest and could not be described as that. There would certainly have been no defence in that way; absolutely not. In this country I believe we have the most Draconian libel laws in the world. People come from all over the place to sue for libel in this country because they know they can get away with it. We have groups of lawyers who make it their business to go to people and tell them that they can sue for libel and that they will fight the case for them on a no-win no-fee basis. If they win, they can charge double the costs. It is a ridiculous and iniquitous situation. Having said all that, I accept that we did libel Mr and Mrs McCann because under the law we clearly did not tell the truth about them and as the law now stands we transgressed it. I have made no bones about apologising about it. Very few people do apologise for anything these days but I have apologised for it and I sincerely apologised and I apologise now.

Q631 Paul Farrelly: Clearly we do have some of the most Draconian libel laws in the world but efforts to reform them to make it easier for journalism that is in the public interest to be practised is difficult because people say that if papers like yours behave like this when we have these libel laws, how will they behave if we do not have them. Do you not accept that your sort of reporting, with the McCann case being the highest profile, tars every newspaper with the same brush when it comes to reforming libel laws?
Mr Hill: In the United States such a libel action would have been impossible because of the First Amendment to the Constitution which guarantees the freedom of the press. We do not have the freedom of the press in this country. We do not have a free press in this country but in my opinion a free press is a vital part of the democratic system and unfortunately that means the press have to be free to make mistakes. We have all made mistakes. Many politicians have made mistakes. I have certainly made mistakes and I do not know any editor who has not made mistakes. It is very easy to make mistakes and in my opinion we must be free to make mistakes.

Q632 Paul Farrelly: I think you will find that the McCanns, not being public figures, would have a course of action in the United States.
Mr Hill: I think not. Anyway that is beside the point because we were never actually sued by Mr and Mrs McCann. We received a complaint from Carter-Ruck and I immediately said that I believed it was better for all concerned, Mr and Mrs McCann and the newspapers, if we settled this case. It would have been unthinkable to drag Mr and Mrs McCann through the courts. I think that would have made things far, far worse. My advice prevailed that we should settle this matter as properly as we possibly could, which we did and Mr and Mrs McCann were content with the settlement and I made the apology. I could not do any more.

Q633 Paul Farrelly: You said in your submission to us “The McCanns and others chose to use the legal route rather than resorting to the services of the PCC. That was their right and their decision”.
Mr Hill: Yes.

Q634 Paul Farrelly: Then we heard from Gerry McCann that they did approach the Express to correct the stories and the offer which came back to the McCanns was that of an exclusive interview in OK magazine which is owned by Richard Desmond. You appear relatively contrite at the moment over the McCann saga.
Mr Hill: I am.

Q635 Paul Farrelly: But that response to the McCanns did not smack of any contrition at all at the time did it?
Mr Hill: I think you are talking about a meeting which took place three days after Mr and Mrs McCann were declared to be suspects by the Portuguese police. The fact of the matter is that newspaper editors receive many complaints and warnings on a weekly basis and certainly I personally did not offer this interview. It is something which is done, but I am not quite sure where we are going with that.

Q636 Paul Farrelly: I just want to come on to the alleged uniqueness of the McCann case.
Mr Hill: Absolutely unique.

Q637 Paul Farrelly: Could you satisfy one point of curiosity for me? In the UK there are reporting restrictions when people are charged, as you well know.
Mr Hill: Yes, but they were never charged.

Q638 Paul Farrelly: Can you tell me what restrictions, if any, apply to those people put in this position of being aguida?
Mr Hill: In Portugal, as I understand it, and I do not really know that much about it, there are quite severe restrictions on the press but it seems to me that all of those restrictions went by the board in this particular case because it was so different.

Q639 Paul Farrelly: Do you know what restrictions apply when somebody is an aguido?
Mr Hill: No, I do not know.

Q640 Paul Farrelly: I find that quite surprising given the number of stories you have published and that your papers would also be available in Portugal.
Mr Hill: Why would I? All I know is what was appearing in the Portuguese press and on Portuguese television and it seems to me that there were no restrictions whatsoever at the time. I have since heard that Portugal does have a press law but there was certainly no evidence of it being in operation at the time.

Q641 Paul Farrelly: That speaks for itself.
Mr Hill: Yes.

Q642 Paul Farrelly: Your submission asserts that the McCann case was unique but we have heard evidence that actually it is pretty much the tip of the iceberg and exposes a culture which is commonplace in the British tabloid press. How do you respond to that?
Mr Hill: I would say that I have never ever come upon a series of events anything like this particular case. I absolutely believe that it was unique in every sense of that word. No-one can recall anything like this ever. Here you had a successful professional couple on holiday with their family and their friends, an absolute nightmare thing happens, their daughter disappears and of course we have no idea still, absolutely no idea what happened to Madeleine. We do not know whether she was kidnapped or simply disappeared; no-one knows. This in itself was a tremendous thing that happened. On top of that, immediately Mr and Mrs McCann orchestrated the most brilliant public relations campaign, a professional public relations team was hired, they flew in a private jet to have an audience with the Pope, they themselves—this is not a criticism because who would not have done this—courted publicity as much as they possibly could day after day and we responded to that. The newspapers and the media did have a genuine wish to help to find Madeleine. Everybody wanted to know what had happened to Madeleine and people hoped and prayed she would be found. This in itself was an extraordinary thing to happen; it had never been seen before and it came at a time when, unlike in the Lindbergh case when really the newspapers were all there were, television is such a pervasive part of life; but not just television, also the internet was at that time starting to be a most astonishing phenomenon. Since then it has grown and grown and grown and now there is so much information on the internet that it is like a wild place. On top of that, if that were not enough, out of the blue Mr and Mrs McCann, this perfectly respectable couple, were accused of being responsible by the Portuguese police and, not only that, named officially as suspects and questioned repeatedly by the Portuguese police. How can anybody pretend this was anything but the most extraordinary, extraordinary chain of events? If anyone can say this was just another story, it is absolute nonsense to pretend that. Nothing like this has ever been seen before.

Q643 Paul Farrelly: Have you therefore not done anything at the Daily Express to make sure that this sort of thing never happens again?
Mr Hill: Yes, we are very, very careful. As a matter of fact, in my 10 and a half years as a newspaper editor, I have had very, very few complaints against me. We have averaged about seven complaints to the Press Complaints Commission per year and I think pretty much all of them have been settled, apart from perhaps only one. I do not think there have been any major law suits against the newspaper that I was operating at that time. No, this was a unique case, an absolutely unique case without a doubt and I think any of my colleagues would certainly say that.

Q644 Paul Farrelly: Has anyone been reprimanded, disciplined, sacked, demoted at the Express over what happened with the McCanns?
Mr Hill: I have reprimanded myself because I was responsible.

Q645 Paul Farrelly: How far did your self-reprimands go? Piers Morgan lost his job after the fake pictures and Andrew Coulson lost his job after the Clive Goodman affair. Did you offer to resign?
Mr Hill: Certainly not. If editors had to resign every time there was a libel action against them, there would be no editors.
Q646 Paul Farrelly: So it was just the libel action. 
Mr Hill: Yes, it was a libel action.

Q647 Paul Farrelly: Just a libel action, there was nothing else to consider about the way the Express reported the affair.
Mr Hill: If I were to have to resign over this particular affair, then every other newspaper editor in Britain would have to resign because everybody did it. The Chairman of the BBC would have to resign and all the directors. Everybody concerned at Sky Television and other TV stations would also have to resign. It is not a suggestion that makes any sense at all. I have not noticed members of the Government resigning over anything, so I think it somewhat ridiculous for you to suggest to me that I should resign. Has the Home Secretary resigned over abusing the parliamentary expenses system? Has the Prime Minister resigned for destroying the British economy? No. This was an unfortunate thing to have happened and I have apologised for it, which is more than most politicians have ever done. I have apologised on the front page; I apologised genuinely and sincerely but it is ridiculous to suggest that I should resign for it.

Q648 Paul Farrelly: With respect, they have not suggested that a family in effect murdered their own daughter without being professional enough as an editor to check out what Portuguese press law was? 
Mr Hill: What have Portuguese press laws got to do with it?

Q649 Paul Farrelly: Whether your reporting was actually breaking the law or not. 
Mr Hill: If I was breaking the law, then every other media outlet in Portugal was breaking the law.

Q650 Paul Farrelly: And that is a defence?  
Mr Hill: And every other newspaper that might have had a single copy go to Portugal was breaking the law. In that case yes, technically everybody was breaking the law, but I tell you this was the most astonishing chain of events which simply had to be reported; it simply had to be reported. We did not report this maliciously and our concern was genuinely to help to find Madeleine McCann. By the way, that continued all the time Mr and Mrs McCann were suspects because during that time we did not only carry stories which were making accusations against Mr and Mrs McCann, we carried many, many reports on continuing the hunt for Madeleine McCann. You are trying to present this as being a completely one-sided thing but it was not that. This entire phenomenon changed all the time. It was the most astonishing thing; absolutely.

Q651 Chairman: You said that this story was unique.  
Mr Hill: Yes.

Q652 Chairman: And that you had never known anything like it in your lifetime. 
Mr Hill: No.

Q653 Chairman: May I point to another example where your paper, day after day, carried stories which actually were completely untrue but which nevertheless I believe increased your circulation and that is the stories about the death of Princess Diana.  
Mr Hill: We did not believe the stories were untrue.

Q654 Chairman: But you believe that now. You do not believe that Princess Diana was murdered or that there was a conspiracy by the security services or that senior members of the royal family were involved.  
Mr Hill: The inquest on Princess Diana, for me, was pretty much the end of the matter. I think you will find that after the inquest we published hardly any, if any, reports or stories, about Princess Diana. Up to that time it was a similar situation but not as intense a situation as the McCanns. Our readers were absolutely avid for news about the death of Princess Diana because there certainly was a theory that Princess Diana might have been murdered.

Q655 Chairman: So you take the same view of the headlines that you printed about Princess Diana’s death that at the time they were completely justified and that they genuinely did reflect reports you were getting that actually this was a conspiracy by the security services. 
Mr Hill: That it might have been a conspiracy by the security forces. Yes, of course we believed it. I do not print stories that I believe to be untrue; that is not what I do.

Q656 Chairman: The difference is that in the McCann case you rightly say that you were acting alongside almost every other newspaper. In the Princess Diana case you were not. It was the Daily Express really which had an obsession with the story which no other paper really followed. 
Mr Hill: It is not a crime to have an obsession.

Q657 Chairman: Was it not driven by circulation?  
Mr Hill: No; not at all.

Q658 Chairman: Your decision to run Diana stories day after day was not to boost your circulation. 
Mr Hill: Everything you do in a sense is calculated to sell the newspapers. I do not go out of my way every day to put on the most boring story I can find so that nobody will buy the newspaper. That is not what I do. I try to find a story which I think will be the most interesting story for my readers and hopefully for the readers of other newspapers, so that if they see my headline and my picture on the front page they think they will buy my newspaper because it looks interesting. That is my job; that is what I do.

Q659 Chairman: But are we not verging slightly towards the sort of Daily Star type of approach of saying Elvis has been found on the moon because that is interesting.
Mr Hill: That was not the Daily Star that did that. I used to be the editor of the Daily Star and I did not run that story.

Q660 Chairman: Well the Daily Sport I believe.

Mr Hill: You cannot blame me for what other people do.

Q661 Chairman: No, but it is the same attitude. We will put in a story which is going to sell newspapers because it looks interesting but it does not matter too much if it is not supported by the facts.

Mr Hill: No, that is not the case. No, that is not what I do. I am just not that kind of person. I do not do that.

Q662 Mr Hall: I am sure you are keen to get off the McCann case.

Mr Hill: Whatever. I am here to tell you the truth and that is it.

Q663 Mr Hall: I want to explore the concept of responsible journalism but, just to satisfy my curiosity, how has the Daily Express handled the McCann story since you settled with them in court. Do you still give them the same kind of coverage or do you not report them any more?

Mr Hill: Nothing has happened; nothing has happened since. The whole point about this is that what it is all about is what happened to Madeleine. Is it possible to find Madeleine or is it possible to get to what might have happened to Madeleine? As far as I know nothing whatever has happened to help anybody to get to that truth. There have been no stories, there has been nothing. There has been no real development in this case for a long time.

Q664 Mr Hall: So the Daily Express has not published anything about this story for quite some time.

Mr Hill: A little, a very little, but I think you could say that about all the other newspapers.

Q665 Mr Hall: We are coming to the two-year anniversary, are we not, of the disappearance?

Mr Hill: Yes, I am sure we shall do something on that and if anybody can suggest a way in which I can help find Madeleine or find what happened, I am very willing to listen because we would still like to do that.

Q666 Mr Hall: May I change track now on to responsible journalism? We have the Reynolds judgment, improved by the Jameel judgment. We have written evidence now from the National Union of Journalists that they do not have much confidence now in this kind of defence in court because it is having to be tested in court and there is a cost there. On the other side of the story this is being undermined because of what we call celebrity journalism and inability to verify facts. What is your opinion about actually putting this onto a more statutory basis to bring back confidence in the responsible journalism defence?

Mr Hill: I think that these cases that you are talking about apply to matters which are deemed to be in the public interest. First of all, who is going to decide what is a matter in the public interest? That could well be a very borderline issue as to whether a matter is in the public interest. Some things are clearly in the public interest and some things are not clearly but might possibly be. It is a pretty shaky kind of defence to rely on and I would not have thought that it was very helpful in many cases at all. The fact of the matter is that you have firms of solicitors now who go to agents of celebrities whose sole object is to run up enormous costs so that they can keep their companies going and celebrities who want to manipulate people’s opinion of them and in many ways create a fake opinion of them. Those things would never fall into the realm of the public interest. It is a pretty odd sort of situation out there.

Q667 Mr Hall: If I understand what you are saying, you are saying it is difficult to define what the public interest is.

Mr Hill: I would have thought it was very difficult; not in every case of course.

Q668 Mr Hall: Therefore it would be difficult to put that on a statutory basis in terms of providing journalists with their defence?

Mr Hill: Yes, it would be very difficult; it would be very difficult to interpret. You can see that interpretation of the law is very problematic for newspapers. We have one or two judges now who appear to be trying to introduce a privacy law and who knows where that is going? Nobody knows. I do not think you could make a general rule because every case would have to be considered as though it were alone and that makes it very difficult for newspapers to have great confidence in it. I would have thought.

Q669 Mr Hall: There is a difference between what interests the public and what is in the public interest.

Mr Hill: Not always.

Q670 Mr Hall: But there can be. You have already said that the McCann story was of interest to the public but not in the public interest.

Mr Hill: Yes, I do not believe it was a matter which could be described as “in the public interest”. I feel that “in the public interest” are matters which affect the culture, the lives of people more generally or perhaps in larger groups and it is very, very seldom there is an individual case and is it not considered to be very bad law to generalise on the basis of an individual case? It is very difficult to know what is in the public interest sometimes. I can see that MPs’ expenses are in the public interest because that is a general thing and it is clearly a matter of the public interest. However, it might be quite difficult if you had something which involved a group of people, a sect or something like that. I do not know. Who knows?
Q671 Mr Hall: From what you have said to us this morning, you have actually never used the responsible journalism defence yourself. 
Mr Hill: I have never had need to. It certainly was not considered in the case of Mr and Mrs McCann and I do not believe there have been any cases since so I have not had to.

Q672 Rosemary McKenna: On responsible journalism, in fairness, when the Committee interviewed Max Mosley a few weeks ago the room was full of sketch writers and journalists with pages and pages of copy rewritten with salacious information and details of his case and swipes at the Committee of course; perfectly fair. Last week we had Paul Dacre, the editor of the Daily Mail in front of us. There was no coverage. Does that surprise you? Would you expect to be treated similarly? Is there an unwritten code between newspapers that everyone else is fair game but journalists are protected?
Mr Hill: No, I do not agree with you. I think we are all fair game. I am quite certain that there are quite a few journalists who would like to score points at my expense and indeed at Mr Dacre’s expense. The question is whether it is good copy. It is what you were saying before: is it interesting? If it was not interesting enough, if editors thought it was not going to interest the readers, they would not bother to put it in the newspaper, that is all. I did read reports of what Mr Dacre said on the odd media website.

Q673 Rosemary McKenna: The odd media website. 
Mr Hill: Yes; yes.

Q674 Rosemary McKenna: Who decides what is interesting?
Mr Hill: The editors of newspapers and when I say “editors” I mean the people who also carry out editorial executive functions, the people who read the copy and decide whether it is interesting or not. There are thousands of things which we do not put in the newspaper every day, many, many things; there is so much stuff out there.

Q675 Rosemary McKenna: When was the last time you wrote a story about a journalist?
Mr Hill: I cannot remember ever writing one.

Q676 Rosemary McKenna: I do not know whether you remember reading one.
Mr Hill: That is because I cannot remember any interesting ones.

Q677 Rosemary McKenna: So they are all boring. 
Mr Hill: I did listen to what Mr Dacre said and it was interesting to me but I cannot imagine that it was going to be very interesting to my readers because it was about matters to do with the technicalities of running a newspaper and legal matters. It was not very interesting to the general public although I do think it was in the public interest.

Q678 Rosemary McKenna: Well now, there you are. Is it in the public interest? Who decides?
Mr Hill: On that occasion it was in the public interest but it was not interesting to the public.

Q679 Rosemary McKenna: I want to move on to your decision to leave the PCC. Whose decision was it that you should leave? Did you offer to resign?
Mr Hill: I did not offer to resign. I certainly considered resigning from the PCC after the case; I considered it very carefully. I talked to quite a number of people whose advice I listened to. There was a very, very strong majority, apart from perhaps one person, who said that I should not resign because if editors had to resign from the PCC every time they made a mistake, there would not be any editors on the PCC and I do believe that it is right that there should be editors on the PCC because they are there really to offer the benefit of their knowledge of the newspaper business and their advice. They are not in a majority on the PCC and in any case my recollection of my five years on the PCC was that all the editors, myself included, carried out their duties as conscientiously as they possibly could and did not operate in a biased way at all. I did leave the PCC some considerable time after the settlement with the McCanns but it was because after five years it was time for a change and I felt it was time for a change.

Q680 Rosemary McKenna: Does the Express group intend to resume paying fees to the Newspaper Publishers Association and return to the self-regulatory system?
Mr Hill: We have never not been part of the self-regulatory system. We have always been part of this and all the editors in our group have always subscribed to it and continue to subscribe to it. I personally am a big supporter of the PCC and I have never not been. The dispute you are referring to had nothing whatever to do with the PCC.

Q681 Rosemary McKenna: No, it is the Newspaper Publishers Association. 
Mr Hill: My group’s dispute was with the Newspaper Publishers Association and it concerned a levy they tried to impose for newspaper advertising. The board of directors of Express Newspapers decided that in these difficult times it was a ridiculous thing to ask for more than £300,000 for a fairly pointless advertising campaign and the Newspaper Publishers Association have decided that they did not want Express Newspapers to be part of their organisation. Membership of the PCC was part of that wider membership of the NPA and since then the board of directors, or whoever is responsible, has been trying to sort this out. I know in fact that the negotiations are in a very advanced stage at the moment. What I want to say is that during all this time the newspapers and their editors and their staff have continued to subscribe to the PCC and to self-regulation and we have never ever dropped out of that and have no intention of doing so. That remains our position.
Q682 Helen Southworth: May I draw you out a little more on that? In terms of your journalists, how would you describe the code of conduct in relation perhaps to their contract of employment or certainly the expectations you had of them in terms of their professional output?

Mr Hill: We do expect our journalists to follow the code of conduct and everybody is well aware of it. Yes, all our journalists are aware of it.

Q683 Helen Southworth: Is it a matter of contract?

Mr Hill: No, I do not believe it is but I do not think that is necessary. Everybody in the business now is very well aware of the code of conduct and they are very, very careful about it. Over recent years we have made a lot of changes to the way newspapers operate. We are much more careful about the exposure of children to newspaper coverage, very much more careful. All of us are very much more careful about matters of privacy; we are more careful. For instance, we very much changed the way we report suicides and lots of other things on which the code has been quite helpful and I think everybody is very well aware of what they can and cannot do. That is not to say there will not be mistakes because mistakes happen, but we do try to be very careful. A lot of material in newspapers does not come from your own people, it comes from outside, from freelancers and people all over the place. It is often very difficult to check it out. We simply could not operate if we had to have a board of people whose sole job it was to check every single fact out. We would never get the papers out; it would not be practical.

Q684 Helen Southworth: In terms of child protection, could you describe what your expectations would be for one of your journalists who is producing copy for you?

Mr Hill: Can you be a bit more specific? For instance, that really more often applies to the situation of photography. I am always very, very careful and I have rejected many photographs of celebrities where their children were involved and I have either not published those photographs at all or I have obscured the faces of the children. I am always very, very careful to make sure. It is mostly a photographic thing really. Hardly ever is it a matter of the actual words. That is the principal thing. I am always very careful and my picture desk is very careful about it and we are all very aware of this thing.

Q685 Helen Southworth: May I take you back to the code of conduct? Do you think that there are perhaps areas the code of conduct could improve on in terms of child protection, perhaps putting children’s interests first?

Mr Hill: We do put their interests first. I do not know that it could be improved. I think it is pretty good.

Q686 Helen Southworth: So you are quite content that the code of conduct covers all those points?

Mr Hill: I am. From my point of view I am content because I am very, very careful and my journalists are very careful and they know that they have to be.

Q687 Helen Southworth: We have had quite strong evidence from other parties saying they thought it very important that the code of conduct should be part of the contract, that there should be a contractual relationship to enforce the message that this was a definite expectation of the company. Is that something you have seen?

Mr Hill: I do not think it would do any harm. It would be quite possible that we could do that.

Q688 Helen Southworth: Is that something you are going to be looking at?

Mr Hill: I will look at it. If you think that I need to look at it, then yes, I will look at it. I promise you I will look at it and I will get back to you on that matter when I have spoken to my managing editor’s office and seen what they think of it.

Q689 Philip Davies: I would actually like to see an American system of libel law in this country. I do not think it is going to happen, but I would certainly approve it and I certainly believe the freer the press the better the democracy that we live in. To have that you would need a very robust self-regulatory system. Would you conceive that the PCC was undermined somewhat by the fact that it is seen as a creature of the press itself? I do not want to come back always to the McCanns but Gerry McCann did make the point and asked why on earth he would complain to the PCC.

Mr Hill: Why did he not try? I am quite sure we would have listened had he done so.

Q690 Philip Davies: I will explain to you why he did not. He said that he looks at the PCC, he has a complaint about the Daily Express, and who is on the board of the PCC but the editor of the Daily Express. Do you not think that because it is perceived as a creature of the press that undermines people’s confidence in taking a complaint to the PCC?

Mr Hill: No, because the PCC has taken up many matters concerning editors who were members of the PCC many, many, many times. It has never deterred anyone. After all that person is one editor and also, whenever there is a matter which concerns a particular editor, that editor takes no part whatsoever in the deliberations of the PCC on that matter and is not even allowed to be in the room.

Q691 Philip Davies: Indeed, but perception is everything in these things and if that is the perception people have—

Mr Hill: I think it is a false perception.

Q692 Philip Davies: The other perception that people have is that you complain to the PCC, it is neither here nor there, water off a duck’s back, get these things all the time, let us not worry about it. The only thing which really makes a newspaper editor sit up in this day and age is not a complaint
to the PCC; thank goodness they have gone in that direction. It is a letter from Carter-Ruck saying they have a conditional fee arrangement. That is the only thing which makes an editor sit up these days, not a complaint to the PCC.

**Mr Hill:** I do not see it that way myself. In fact the PCC is a far better route for most people, albeit one that does not of course eventually produce a large amount of damages for them. What the PCC has been very, very good at is amicably settling disputes between people and the press. We are not now talking about things being brushed under the carpet or anything like that at all. I think you will find that most complaints are resolved very, very satisfactorily by the PCC. It has been extremely successful in that. After all, is it not better to resolve matters amicably than to go to law and end up with a desperate dispute which makes everybody feel a great deal worse about the other side? The PCC is an effective body and if people are dissatisfied with its decisions, there is also an ombudsman who is tremendously conscientious. I have seen him in action. I can assure you that people on the PCC do behave in a very responsible manner. I am quite sure you would be very welcome to make newspapers behave in a more responsible way. To me it is a far better way of resolving disputes and I honestly believe that if Mr and Mrs McCann had gone to the PCC and the PCC had discussed it, honestly believe that if Mr and Mrs McCann had gone to the PCC and said, “We don’t like the Daily Express coverage, they keep printing these stories which are completely untrue,” you would have stopped?

**Mr Hill:** Yes, I would certainly have thought very, very carefully about it. I really would, most certainly, if it was Mr and Mrs McCann who had gone to the PCC and said, “We don’t like the Daily Express coverage, they keep printing these stories which are completely untrue,” you would have stopped?

**Mr Hill:** Yes, but you cannot pretend that the PCC do behave in a very responsible manner. I am quite sure you would be very welcome to make newspapers behave in a more responsible manner.

**Q693 Chairman:** Are you seriously saying that if Gerry McCann had been to the PCC and said, “We don’t like the Daily Express coverage, they keep printing these stories which are completely untrue,” you would have stopped?

**Mr Hill:** Yes, I would certainly have thought very, very carefully about it. I really would, most certainly, but it never happened.

**Q694 Chairman:** Gerry McCann was certainly making it clear that he did not like the stories you were writing. He must have complained to you.

**Mr Hill:** Yes, but you cannot pretend that the Daily Express was in isolation here. The story was everywhere.

**Q695 Rosemary McKenna:** On the issue of people going to the PCC and getting a matter resolved, would you accept though that what it does not do is take away the original story which may have been based on a tiny modicum of fact but is embellished and the individual concerned does not want to rehearse the whole story by going to court or they want to protect other members of their family from the stories which appeared in newspapers with a tiny bit of fact but hugely embellished. They then go to the PCC. What kind of resolution is it that does not take it off the original publication? That is what most of the resolutions are, are they not? They get the newspaper to say they will not publish any more.

**Mr Hill:** I would have thought if the newspaper had made a mistake most of the resolutions would involve the newspaper either publishing a correction or an apology.

**Q696 Rosemary McKenna:** But sometimes people do not even want that because they do not want the whole story rehearsed.

**Mr Hill:** What more can one do? I do not know.

**Q697 Rosemary McKenna:** Stop writing that kind of story in the first place.

**Mr Hill:** We cannot put the clock back, can we?

**Q698 Rosemary McKenna:** Exactly and someone’s reputation is damaged.

**Mr Hill:** I have worked for many newspapers and I can assure you that newspapers of all sorts—

**Q699 Rosemary McKenna:** But it is another example of the PCC being self-regulating and not being able to make newspapers behave in a more responsible manner.

**Mr Hill:** How would you make newspapers? I cannot make Members of Parliament behave in a responsible manner.

**Q700 Rosemary McKenna:** Yes, but the whole world knows about it, does it not?

**Mr Hill:** I wonder whether it does.

**Q701 Rosemary McKenna:** If you have anything to do with it they certainly will.

**Mr Hill:** There are many things we do not know about but I would like to find out.

**Q702 Paul Farrelly:** I am listening very carefully to you saying that the PCC is the best route, that people should have confidence in its procedures, that you take note of the PCC. At the same time your newspapers are not subscribing to it. Is that not a ludicrous position to be in?

**Mr Hill:** It is only a temporary thing. You have to understand that this dispute is nothing whatever to do with the PCC; it is nothing whatever to do with it. It is a dispute with the Newspaper Publishers Association and we are trying to find a way of not being part of the Newspaper Publishers Association yet still making our contribution towards the running costs of the PCC. We will resolve that matter and we will resume. We have written to the Press Standards Board of Finance (PressBoF) which is the financial arm and we have said that we want to resume these payments as soon as we can. Yes, there is a dispute over some part of it. I cannot settle that myself; I am not the person who deals with that. I have recommended very, very strongly that we resolve this as soon as we possibly can, but I cannot do any more than that. I promise you that it will be resolved.

**Q703 Alan Keen:** When Rosemary McKenna asked you whether you thought the PCC was a good route and if the McCanns had used it that it would have been effective, presumably what the McCanns would
have said to you was, “Mr Hill, you have no proof that we killed our child. We didn’t kill our child”. Then you said “If the PCC had been approached [. . .]” but you did not actually say you would stop doing it you said you would give it a good bit of thought. That is not a lot of comfort for somebody who is accused of killing their own child, is it?

Mr Hill: I was not making these allegations. I repeated the allegations: I was not making them. The allegations were made by the Portuguese police who appeared to be very confident of the rightness of what they were saying but of course it turned out to be nonsense. How was I to know that? It was a reputable police force of a civilised reputable country. I did not know that they were behaving like some tin-pot Ruritanian idiots. How would I know that?

Q704 Alan Keen: I do not read the *Express*. Mr Hill: That is a shame; you ought to.

Q705 Alan Keen: I do not read most newspapers so I cannot recall. You have a vivid recollection. Mr Hill: As a Member of Parliament you ought to read all the newspapers.

Q706 Alan Keen: I am sure you have a vivid recollection of the headlines. Did you make any attempt, when you were trying to sell more newspapers, to mislead the public into thinking the McCanns had killed their child?

Mr Hill: No, of course not.

Q707 Alan Keen: What headlines did you use?

Mr Hill: I cannot remember. I have used lots of headlines. No, I do not think we ever said that the McCanns had killed their child.

Q708 Alan Keen: Did you make any attempt to get people to buy papers by believing that you were saying they had killed their child?

Mr Hill: No; no. People will believe what they think. That is not a lot of comfort for somebody who like to see very straightforward comments, not taken a lot of advertising and it satisfies some people who say they feel the standard of journalism has necessarily true, and it must take some readers away. We know the internet has taken a lot of advertising and it satisfies some people who say they feel the standard of journalism has necessarily true, and it must take some readers away. We know the internet has.

Q709 Alan Keen: On the question of headlines, this is a serious issue which has arisen during this inquiry and you have complained about the pressure of libel threats and freedom of the press. Would you agree that one way in which newspapers do mislead the public is by putting a headline on the front page? I understand it has to be brief and you cannot put 47 words on the front page but do you not agree that newspapers do mislead the public by headlines followed by a first couple of paragraphs?

Mr Hill: It can happen, yes of course.

Q710 Alan Keen: It is not really recognised. Do you think that misleading people in order to sell more newspapers by the headline and the first couple of paragraphs, corrected or some doubt put in right at the end in one little sentence—

Mr Hill: No, no; we do try to qualify the headlines. Often you will find that there is a big headline and a smaller headline which does qualify it because it is what you said in the first place; if you only have a few letters to write your headline you do try to qualify the headlines all the time with sub-headings. We do try, yes of course.

Q711 Alan Keen: What I am asking really and I do not suppose you will agree because you do not want to be attacked by the libel lawyers, but even if it is accepted that you do not do it on purpose, the public are seriously misled by headlines and the introductory part of articles. Do you not think, to be fair to people who have been libelled, that should go into the law to make it even tougher for newspapers?

Mr Hill: Believe me, the libel laws are concerned with the headlines just as much as the text. If you write headlines which are libellous, then you can be sued because of the headline. If the headline says something that the copy below it does not say, you can be equally be sued for libel and quite rightly so. I am not disputing it.

Q712 Alan Keen: That is not what I understand by it. Mr Hill: I believe of course you can be sued for libel because of headlines which you write. Yes, you can be sued for headlines.

Q713 Alan Keen: What I do recall, because I can recall some of the *Express* headlines by seeing them on *What the Papers Say* on TV and you have mentioned the BBC. I am one of the biggest supporters of the BBC and I would have been down to see the chairman straightaway if the BBC headline on the Ten O’clock News said “McCanns killed their own child”.

Mr Hill: I did not write a headline saying the McCanns killed their own child that I can recall.

Q714 Alan Keen: You cannot recall.

Mr Hill: I am sure I did not; I did not write that headline. The BBC repeated all the allegations, of course they did, and a Panorama programme repeated every single one.

Q715 Alan Keen: I am really asking a specific question about the headlines.

Mr Hill: I appreciate that headlines can be a problem. They are difficult to write often, especially when there are not many words and we do try to qualify them; we do try.

Q716 Alan Keen: I am happy that you accept that because that could well be a recommendation that we make that that is looked at more seriously as they can be misleading. Coming on to the state of the press today, we are all sad that the printed press is struggling financially. We know the internet has taken a lot of advertising and it satisfies some people who like to see very straightforward comments, not necessarily true, and it must take some readers away. We have taken evidence from experienced journalists who say they feel the standard of journalism has reduced and they use a very clever word “churnalism” as one of the reasons why. Obviously editors can cut costs tremendously by just repeating
what other newspapers say. Do you think that is also adding to that downward spiral? Is there anything which can be done about it?

Mr Hill: First of all I do not accept it. The word “churnalism” is a rubbish word and does not have any meaning anyway. It is just a gimmicky word. The standards of journalism have massively increased over the years, the standards of education of the people in the business have massively increased, the constraints on them have enormously increased. The newspapers used to be like a frontier many, many years ago. It is nothing like that now and I would strongly dispute that the standards have fallen. I believe that the standards have massively improved. I think the people working for newspapers have far more knowledge; they take far more care and put in far more effort. They look into their stories far more than they used to. I totally dispute the idea that newspaper standards are diminishing; they are not diminishing.

Q717 Alan Keen: You have just rejected the word “churnalism” yet almost all the answers you have given this morning about the McCanns have been that it said it in this paper, it said it on the news, it said it here so all you did was repeat it. That is “churnalism” is it not?

Mr Hill: No, I did not say that. I said that all the newspapers and all the television stations repeated the allegations that were being leaked by the Portuguese police. That is what I said. I did not say they were lifting one from the other. That is what I said.

Q718 Chairman: You became editor of the Daily Express about six years ago.

Mr Hill: Yes, five and a half.

Q719 Chairman: How many journalists were employed by the Express when you became editor?

Mr Hill: A very similar number to the number employed now.

Q720 Chairman: There has not been a decline in the number of journalists.

Mr Hill: Yes, there has been a small reduction in the number of journalists but we have had to make economies because of the economic situation. All newspapers are having to make these economies.

Q721 Chairman: The figures I have seen suggest that there has been a massive decline in numbers.

Mr Hill: What figures have you seen?

Q722 Chairman: I would have to find the articles again but there were several articles written in places like UK Press Gazette and other media publications.

Mr Hill: What happened to UK Press Gazette?

Q723 Chairman: Indeed.

Mr Hill: It is not even there any more. There has not been a massive reduction; there has been a reduction but there has not been a massive reduction.

Q724 Chairman: It was also alleged that a lot of the journalists now working for the Express are just out of university and earning far less than their predecessors. One example was given.

Mr Hill: That again really is a deliberate misinterpretation of the system. I value very, very highly the graduate trainee scheme which we have at the Daily Express. Every year we take on three or four people from university, the most promising people, and we train them up as journalists. How can that possibly be a wrong thing to do. We do not rely on those people by any means. We have an excellent staff of very, very experienced journalists. It has been a matter of enormous pride to me that I have furthered the careers of many, many young people, very promising young people who have gone on to become extremely able journalists and who have gone on to excellent careers in journalism because I am keen on the graduate training scheme. In my opinion it is a laudable thing, it is an excellent thing for these young people to be able to work in the newspaper. Furthermore, I also am always very willing to give work experience to people who show an interest in journalism. Part of my job is to further this business and the way to further this business is to get new people, new blood into it and that is the right way to do it. We do not rely on untrained people; certainly not.

Q725 Chairman: Your support for graduate trainees is admirable. When Richard Desmond became proprietor he said that this was the beginning of a new era for the Daily Express, that you were going to take on the Mail that there would be investment and that at last there was proper competition in the middle market. What has happened since then?

Mr Hill: We are taking on the Daily Mail. At the moment we are spending an enormous amount of money—an enormous amount of money—to get the newspaper into the hands of more people by giving people the opportunity to buy the paper at a reduced rate if they wish and many people have opted for those vouchers and it has been very, very helpful to many of our readers during the recession. Yes, of course. We decided we would go about things in a different way. We decided that we would get rid of all the spurious copies that other newspapers rely on. We do not have bulks. We do not give the newspaper away. We do not put the newspaper on airline seats for nothing. It is a ridiculous thing to do. We do not dump hundreds of thousands of copies abroad because the system allows you to count every copy as a sale whether it is sold or not with those foreign supplies. We do not do any of that. We decided we would stop all of that and we decided that our sales would be completely honest and transparent and I can assure you that is what we do. We do not rely on giving away DVDs with every copy of the newspaper. We want people to buy the newspaper for the newspaper and that has been our policy.

Q726 Chairman: Your circulation has fallen whilst the Daily Mail’s has steadily risen to the extent that it is now outselling you by about three times.
Mr Hill: That is before my time but I think you will find that at the moment that is not the case. I think you will find that the Daily Mail’s circulation, in common with many other newspapers, is falling quite alarmingly, whereas the Daily Express’s circulation is not. In fact the Daily Star’s circulation is increasing because they again have adopted a different policy.

Q727 Paul Farrelly: I think I am right in saying that when you were the editor of the Daily Star its circulation increased over five years by about one third.
Mr Hill: I think at one point it doubled.

Q728 Paul Farrelly: Since the month you took over as editor of the Daily Express, how has its circulation fared?
Mr Hill: I think it is pretty good at the moment.

Q729 Paul Farrelly: What was the monthly circulation when you took over?
Mr Hill: I only work by the day. I honestly do not know. I would have to find out but I think it is not dissimilar at the moment.

Q730 Paul Farrelly: To the current circulation.
Mr Hill: I think it might well be about the same; it might well be.

Q731 Rosemary McKenna: Earlier on you did say that you thought it was right to print stories which were personal stories about people in which the public had an interest. What is the difference between stories in which the public are interested and stories which are in the public interest?
Mr Hill: I have tried to sort of define the stories which I think are in the public interest and those are matters which a public at large or significant groups of the public or the people who set themselves up as arbiters of public morals or of the laws or whatever it might be, people like judges, Members of Parliament and so on and so forth, public servants, people who are accountable to the public, people who are paid by the public. I would say those are matters of public interest. Matters of interest to the public are almost anything you can think of at all. It could be matters of simple gossip. I am quite sure that the Westminster village, as it is called, is a hotbed of gossip—I know it is and you know it is—because the whole of life is about the interaction of people in one way or another. Politics is about the interaction of people and everything. Anything that develops from the interaction of people, in my view could be interesting to the public.

Q732 Rosemary McKenna: Apart from exposing public interest, put that to one side, what about people who are not necessarily hugely in the public eye but you decide are of interest to the public. Would you agree with the suggestion that they ought to have prior notification if you are going to print a story, the newspapers are going to print a story which could be damaging?

Q733 Rosemary McKenna: Yes, but a story which is not going to be time barred, a story which is the same story whether it is three weeks later or one week later and something that could be absolutely untrue but an allegation has been made by a third party and a fabrication of a story.
Mr Hill: In pretty much every case we do give people the opportunity to respond to something which is about to be written about them or we will go to people and say we have this.

Q734 Rosemary McKenna: Are you sure about that?
Mr Hill: Of course I am sure about it; yes. They might have a complete answer to it. There is the odd story—and I think you are referring to the Max Mosley story—

Q735 Rosemary McKenna: No, no, I am not.
Mr Hill: --- where I think it would not be possible to do that because it would have ended up as an injunction and somehow the story would be lost.

Q736 Chairman: It would only end up as an injunction if it was decided that the chances were the story was in breach of the law.
Mrs M. Bullard: That it might be in breach of the law; it might possibly be in breach of the law, yes. I can assure you that injunctions are granted on very flimsy grounds often, not always, but by judges who are not necessarily highly qualified in that area. People are deputed to stand in as locums almost in that respect. Someone can go to them and they do not have real knowledge of what they are dealing with.

Rosemary McKenna: But they do know the law.

Q737 Chairman: Actually the complaint from most of your industry is that the same judge appears to handle every single case that ever comes up and so presumably has a very good knowledge.
Mr Hill: You are talking about the privacy cases; we are not talking about your Saturday night injunction. That can be anyone at all. You are talking about a particular person who is trying, in some people’s opinion, to establish a privacy law all on his own.

Q738 Rosemary McKenna: Would it be safer to protect people?
Mr Hill: It is not practical; it is just not practical to do this.

Q739 Rosemary McKenna: So it is okay to rubbish someone’s reputation whether it is true or not.
Mr Hill: No, it is not because we have the most Draconian libel laws in this country and if you do that and it is not true, you are going to get sued. Not only that, you are going to get your Carter-Ruck on the case instantaneously because they have lookouts looking out for this at all times. We do not operate in a situation of impunity. The newspapers in this country have enormous constraints.

Mrs McKenna: They also have enormous power.

Mr Hill: We have the laws of libel which are the most severe in the world, we have the law of confidence which is now being used extensively in matters, particularly by celebrities, we have the law of privacy which is coming, we have European law and we are pretty much up to our ears in law now. We have the most stringent contempt of court laws which apply to all matters in this country of any country. If you go to the United States, they have what you could call a free press. We do not have a free press in this country by any means; we have a very, very shackled press in this country. Really you should be looking at means of removing those shackles not imposing more of them, which is what seems to me to be the tone of these discussions. How can we make the press freer? How can we have a free press? A free press is the only bastion that there really is in a democratic society; there is nothing else.

Q740 Rosemary McKenna: I misunderstood one of the questions relating to circulation. I thought I had been asked what the Daily Express is down, some more than others.

Mr Hill: I would not have wanted the story. I just would not have wanted that story. It just would not have been the sort of story which would have appealed to me or my readers. It was not the right sort of story. For the market the Daily Express and the Daily Mail are in it seems to me not the right kind of story.

Q744 Paul Farrelly: There is another family on whom you have reported, which is the Rothermeres, with certain suggestions of Nazi sympathies, particularly with the Daily Mail’s coverage in the 1930s.

Mr Hill: Well they did support the British Nazi Party. That is a matter of record.

Q745 Paul Farrelly: What would be your response to the speculation that sometimes knocks around the press with much mirth that there is a truce between proprietors, Mr Desmond and the Rothermeres, which is sometimes broken but now you seem to be abiding by it?

Mr Hill: What kind of truce?

Q746 Paul Farrelly: That the proprietors of newspapers do not report on other proprietors or their families.

Mr Hill: There is not anything to write about them, is there? They are not very interesting to write about, are they?

Q747 Paul Farrelly: So there is nothing in it?

Mr Hill: People do write about Mr Desmond from time to time. I cannot remember a story about Lord Rothermere which was of interest to anyone.

Q748 Paul Farrelly: So there is nothing in this idle speculation about unwritten truces?

Mr Hill: I do not know what they say to each other. I do not even know whether they speak to each other. I have no idea. I am not privy to what Lord Rothermere and Mr Desmond say.

Q749 Paul Farrelly: As an editor you have never been asked by Mr Desmond to go and get a Rothermere story for the paper when they described him as a pornographer?

Mr Hill: Absolutely not.

Q750 Paul Farrelly: There is no truth in that; absolutely not?

Mr Hill: No, of course not; no. Why would he do that? No, certainly not.

Chairman: I think that is all we have for you. Thank you very much.

Supplementary written evidence from the Daily Express

I want to clear up a few points following my appearance before the select committee on Tuesday:

I misunderstood one of the questions relating to circulation. I thought I had been asked what the circulation of the Daily Star was now compared with when I left the paper to join the Daily Express. In fact when I checked the tape recording I realised that the question related to the Daily Express. I attach the actual figures, which show that, discounting bulk sales (you remember I told you that we had decided to remove bulk sales) the circulation of the Daily Express is down 18.57%, period on period, compared with when I started as editor. I attach the relevant figures, together with those for other publications, which show that all are down, some more than others.
ABC Comparison

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<th>July–Dec 2008</th>
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*DX bulk sales Jul–Dec 2003 were 57,542. Jul–Dec 2008 were zero excluding bulks the difference is 168,956 (−18.57%)
** DS bulk sales Jul–Dec 2003 were 90 copies. Jul–Dec 2008 were zero

I also want to make clear that when I said I had consulted a number of people on the question of whether I should resign from the PCC I meant people whose counsel I valued. These were not exclusively members of the PCC. I do not think I implied that I talked only to PPC people but I hope this will correct any misunderstanding.

Finally, on the subject of the code of conduct, I have talked with our managing editor’s office and we shall now send all our editorial staff a supplement to their contracts, requiring them to sign a declaration that they will abide by the code.

April 2009
Tuesday 5 May 2009

Members present
Mr John Whittingdale, in the Chair

Janet Anderson
Philip Davies
Paul Farrelly

Alan Keen
Adam Price
Mr Adrian Sanders

Witnesses: Mr Colin Myler, Editor, News of the World, and Mr Tom Crone, Legal Manager, News Group Newspapers, examined.

Q751 Chairman: Good morning. Can I welcome for the first part of this morning session Tom Crone, the Legal Manager for News Group Newspapers, and Colin Myler, the Editor of the News of the World. The Committee is aware that since we took evidence from Max Mosley and since we issued our invitation to the News of the World, Max Mosley has indeed issued a writ for libel against the News of the World and we are therefore conscious that that may constrain you to some extent in what you can say. However, we hope, nevertheless, that whilst we will be careful in our questions, you might also feel able at least to say something.

Mr Myler: Yes. Mr Chairman, before we begin, is it possible for me to make an opening statement? Bearing in mind that conversations have taken place this morning regarding the legal situation with Mr Mosley, I would like to make an opening statement, if I could.

Mr Myler: It is brief, yes. First of all, I do welcome the opportunity to give evidence before this Committee and thank you for inviting me and Mr Crone. It is an important inquiry into press standards, privacy and libel, which affects us greatly.

It comes at a critical time for this industry. The industry is facing severe commercial challenges and challenges to press freedom. As you are all aware, last year alone many hundreds of jobs were lost, particularly in the provinces. It cuts across all of the industry; the national newspapers have also been affected greatly. With the challenges of the digital revolution also, we have had to cope with the additional difficulty of shrinking advertising markets, which has affected the regions in particular. On top of this, a series of privacy rulings culminating in the judgment by Mr Justice Eady in the case of Mosley v News Group Newspapers has dangerously tipped the balance away from press freedom, in my view. As you will know, due to the libel writ that has been issued against News of the World by Mr Mosley, although we are going to be able to discuss certain issues, I will defer to Mr Crone, if it is okay with you, Mr Chairman, to adjudicate perhaps on the legal side of our responses. Thank you.

Chairman: We understand that.

Q752 Chairman: As long as it is brief, that is fine.

Mr Myler: It is brief, yes. First of all, I do welcome the opportunity to give evidence before this Committee and thank you for inviting me and Mr Crone. It is an important inquiry into press standards, privacy and libel, which affects us greatly.

It comes at a critical time for this industry. The industry is facing severe commercial challenges and challenges to press freedom. As you are all aware, last year alone many hundreds of jobs were lost, particularly in the provinces. It cuts across all of the industry; the national newspapers have also been affected greatly. With the challenges of the digital revolution also, we have had to cope with the additional difficulty of shrinking advertising markets, which has affected the regions in particular. On top of this, a series of privacy rulings culminating in the judgment by Mr Justice Eady in the case of Mosley v News Group Newspapers have dangerously tipped the balance away from press freedom, in my view. As you will know, due to the libel writ that has been issued against News of the World by Mr Mosley, although we are going to be able to discuss certain issues, I will defer to Mr Crone, if it is okay with you, Mr Chairman, to adjudicate perhaps on the legal side of our responses. Thank you.

Chairman: We understand that.

Q753 Philip Davies: I understand the constraints about the libel action but I want to concentrate initially on the privacy issue, which has already been determined. Were you surprised that Max Mosley sued you for invasion of his privacy?

Mr Myler: I think I was, yes. Yes, I think I was.

Q754 Philip Davies: Why? Mr Myler: Because I think that Max Mosley is the head of a worldwide organisation, the Fédération Internationale de l’Automobile (FIA). He is an elected President of an organisation that has 125 million members worldwide. The evidence that we had, I believe, was overwhelming, and for Mr Mosley to then go to court and have a trial I thought was surprising. That, in essence, is the answer to your question. Yes, I was surprised.

Q755 Philip Davies: Was the reason you thought it was a legitimate story for the News of the World to publish the fact that he was a public figure in that sense, for the reasons you have given, or was it because what he was indulging in was of public interest, that somebody should be doing that kind of thing, which is something that the editor of the Daily Mail seemed to be indicating when he gave evidence to us, that it was the activities he was indulging in that was of public concern and interest.

Mr Myler: I do not think you can divorce the two. If you are an elected President of the FIA, ostensibly the richest sport in the world, with, as I say, a membership of 125 million, as a President, surely there are regulations in how you have to conduct your life. Mr Mosley made, I think, quite a case of saying that he had never sought publicity, that he was, indeed, he believed, a private person. I disagree with that fundamentally. He is not just the head of Formula One; he is also the head of the organisation that is in charge of road safety throughout the world, and indeed has done a lot of work in that respect. For a man in his position, as Mr Justice Eady accepted in his judgement, who so recklessly put himself in the hands of five prostitutes, you have to say that you are playing some part in your potential downfall.

Q756 Philip Davies: I think the contrary argument to that is that the activities that he was indulging in bore no relation to his job as head of Formula One motor racing, or anything to do with road safety for that matter, and therefore, what he did behind closed doors was of no concern to anybody else. What he did as the head of Formula One racing clearly would be, and what he did on road safety perhaps, but what his sexual activities were behind closed doors bore no relation to his public duties. What would you say to that?
Mr Myler: I fundamentally disagree, fundamentally disagree. I think that people in those positions have an accountability to respect their organisations, and indeed, as a result of the story appearing in the News of the World there were elements within the Formula One industry that took great exception to what he was doing.

Q757 Philip Davies: How much did it cost to defend the privacy action? Mr Myler: The costs were about £900,000 and, of course, the damages were £60,000, so about £1 million.

Q758 Philip Davies: What were the commercial benefits to the News of the World for publishing that story? Did you see any enhanced sales or did you get any commercial benefit from running the story? Mr Myler: I do not believe we did, and rarely in these situations, in my experience, are there any commercial advantages, despite what people actually think.

Q759 Philip Davies: So what was the motivation in printing this story if there was no commercial benefit? We have heard from every newspaper editor that they, perfectly reasonably, say that of course, they are in the business of selling newspapers. That is what they are paid to do. Why would you take the risk of running a story if you did not see any commercial benefit in running the story? Mr Myler: Because it was a very good story. The man who runs Formula One behaving the way he did, by any standards, is a very good story. You only have to look at the manner in which it was followed up by every media to see that they felt the same.

Q760 Chairman: In actual fact, both the editor of the Daily Express and the editor of the Daily Mail told us that they would not have run it. Mr Myler: No, they said they would not have broken it but they ran it after it was broken, which is typical of broadcasting organisations like the BBC, ITV, and papers like the Guardian.

Q761 Chairman: They ran it because, plainly, the fact that it had appeared in the newspapers and he was contemplating legal action made it a story but the fact is, they said that they would not have broken the story.

Mr Myler: That is why we have a diversity on the newsstands.

Q762 Chairman: They said they would not because they publish family newspapers. Do you consider the News of the World a family newspaper? Mr Myler: Yes, I do.

Q763 Chairman: So you disagree that that was an unsuitable subject story for a family newspaper? Mr Myler: I do not agree that it was an unsuitable story for a family newspaper. No, I do not. I think everybody understands what the News of the World is about. Some people might sneer and say that we are scurrilous and scabrous but we are who we are and I make no apologies for publishing that story, as the editor. None at all.

Q764 Chairman: So it is all right for families to sit around the breakfast table to read stories about masochistic orgies on a Sunday morning? Mr Myler: Yes, it is. I would like your draw your attention, if I may, Mr Chairman, that we have a 3 million circulation and approximately 8 million readers, and 36% of that readership are the so-called ABC1s. These are the readers of broadsheets. In other words, we have more people buying the News of the World than the total of all the broadsheet readers on a Sunday. People are intelligent enough and discretionary enough to decide what they buy, and long may that continue. Everybody has the right as an editor, as a reader, to decide what they publish and what they buy. That is why we have, I believe, the best press in the world.

Q765 Philip Davies: You accepted in court that one of your journalists threatened two of the women in the case with exposure unless they co-operated with the News of the World.

Mr Crone: Can I just say something there, please? We are in the position, as we have already stated, that a libel writ has been issued against us. That in the normal course of events leads to a libel trial. The libel trial will be, we suspect, about certain areas of the Mosley coverage. It will include not only a claim for compensatory damages but it will also include a claim for aggravated damages and exemplary damages. Those issues are really all about behaviour, attitude of the defendant, et cetera, and your question goes to the heart of that. I really do not think we should go there because we are facing a jury trial. This hearing is being transmitted live on the internet. It is clearly going to be picked up and reported on by the newspapers and broadcasters henceforward and we have jury members out there who will be asked to decide, among other things, this exact question.

Q766 Philip Davies: In which case, I will ask a general question. Do you think it is reasonable for a journalist to threaten somebody with exposure unless they co-operate with the said journalist and the said newspaper? Mr Myler: No, I do not, and if a journalist did that, he would be censured.

Q767 Chairman: Just on that, again, a general question: the practice of saying to somebody, “There are two stories I can write. There is this story, which unfortunately will result in your being named and being publicised, or there is this story, in which you will not be named and which will be based essentially on what you are willing to tell us”, is that normal and acceptable practice? Mr Myler: No. Let me say first and foremost that when I became editor of the News of the World, one of the first things that I did was to start seminars. Seminars had been going on between the PCC, under their auspices, and the staff. One of the things
that I introduced into individual contracts was the understanding that, first of all, an individual on the staff of the paper had to absolutely take accountability for his or her behaviour as an ambassador representing the newspaper. It was not enough any more to turn around and say that he or she had behaved badly because the news editor had demanded that they get an exclusive. That was not good enough. Those issues were put into every individual’s contract, and indeed my own, so that they had to understand the Code, they had to buy into the Code itself, and that has happened. If an individual journalist in the course of trying to get a story, any story, misbehaves or oversteps the mark, they are spoken to and dealt with accordingly, depending on the discretion of the departmental head and the seriousness of what happens.

Q768 Chairman: I understand that but the practice of essentially saying to somebody involved in a story that “there are two ways of writing it and it is up to you which way we write”, you do not think that constitutes misbehaviour?

Mr Myler: I think it can be construed as misbehaviour but I think a lot of it depends on exactly what is said. I think that is very important, because two people can have different interpretations of what is meant.

Chairman: Indeed.

Q769 Philip Davies: Some of us are concerned about the introduction of a privacy law by the back door, so to speak, and potentially in light of that particular decision. Has the verdict on the Max Mosley case with regards to privacy changed what you do? Has it had a chilling effect on you, in the sense that you will now shy away from exposing stories that perhaps you otherwise would have done and felt you had a duty to do in the public interest?

Mr Myler: I do not think it has had a chilling effect. It has had a very practical effect in the manner in which, as an editor, you conduct yourself. It is fair to say that I probably now spend an equal time talking to lawyers as to journalists, and that is not a bad thing, quite frankly. The level of proof, the benchmark, to get a story into the News of the World is as high as any newspaper I have worked on for 40 years. It does not mean to say that you shy away. It means that you have to be equally diligent, efficient and careful, and get very good legal advice.

Q770 Mr Sanders: Is anyone entitled to privacy?

Mr Myler: I do not think privacy is an absolute right for anyone, any individual or any organisation. There are issues regarding the PCC Code, like health confidentiality, matters that everybody respects, but I think everything has to be taken on individual cases and individual merits. It is a very broad question.

Q771 Mr Sanders: Given that you would carry a story on somebody that you felt was in the public interest, how would you define “public interest”? Mr Myler: It is not always what the public want to know about, which is how a lot of people come back on the media: what is in the public interest and is it in the interest of the public? Let me answer it in another way, which touches on your previous question, if I may. If you had a child or grandchild in school and your child’s teacher was practising S&M sessions because they liked that kind of behaviour, do you think it is right that you would have a right to know that that is going on? If an elected Member of Parliament or an archbishop is conducting practices that are completely and utterly immoral and against the conduct in which they have been either elected or are representing in a religious sense, do you think that you would have a right to know? I would argue that you do, and newspapers would have an obligation to make that known. Does that answer your question?

Q772 Mr Sanders: You are being the moral guardian here and making that judgement yourself.

Mr Myler: No, I am not being a moral guardian.

Q773 Mr Sanders: What a vicar gets up to behind closed doors is really a matter between him and his God. It is not necessarily a matter for the readership of the News of the World.

Mr Myler: I fundamentally disagree.

Q774 Mr Sanders: I do not think there is anything in the Bible that says S&M is wrong. There are some religions in the world that actually encourage flagellation.

Mr Myler: It is rather interesting, is it not, that the Editor of the News of the World, alongside, I may add, the Editor of the Daily Mail at the time, feels rather incensed that, when it comes to certain cases, Mosley being the obvious example, the moral indignation comes from the columns of the News of the World and the Daily Mail instead of perhaps the moral leadership that should come from a High Court judge, who believes or dismissively says that that kind of conduct is unconventional, where I have to respectfully disagree.

Q775 Mr Sanders: Sorry, that it is unconventional?

Mr Myler: I do not believe that the conduct that Mr Mosley engaged in can be dismissed as unconventional because I believe it was far more serious.

Q776 Mr Sanders: So it is conventional?

Mr Crone: No. Excuse me. You are quite wrong about the vicar and the Bible. The Bible is full of morality: thou shall not commit adultery.

Q777 Mr Sanders: That is not S&M, is it—or is it? I do not know.

Mr Crone: You have not seen the Mosley film. Yes, it is.

Q778 Mr Sanders: You set yourself up as a moral guardian.
Mr Myler: No, we are not.

Q779 Mr Sanders: You can justify any invasion of privacy at all because you think it is right for children to read it over the cornflakes in your family newspaper. The reality is this guy’s privacy was invaded.

Mr Myler: Yes.

Q780 Mr Sanders: You have exposed that and you have done him enormous damage, way beyond what is probably justified.

Mr Myler: I think Mr Mosley did himself damage. I think you are shooting the messenger, with respect, and that is a very easy shot to take at the News of the World.

Q781 Mr Sanders: He would have done himself damage if he had broadcast it to the world.

Mr Myler: I think the Judge himself said of Mr Mosley’s behaviour that if you put your trust in five prostitutes, you are being reckless. Are you justifying Mr Mosley’s behaviour?

Q782 Mr Sanders: That is a matter for Mr Mosley, and I am not actually interested in his behaviour.

Mr Crone: I think it goes well beyond that, with respect. This man is the spokesman and representative globally of an awful lot of people, 125 million people, including every member of the AA and RAC in this country, incidentally; he is their global head. There is, I think, a duty and an obligation on him to behave and to observe professional and private standards which make him a fit and proper person to hold that office and to represent that organisation.

Q783 Mr Sanders: I am sorry. I thought you were claiming that this was sub judice and you could not talk about Mr Mosley.

Mr Crone: I am talking about the generality.

Q784 Mr Sanders: It suits you when it suits you to talk about Max Mosley in public, but when you are asked a difficult question by this Committee on this case, defending yourself, you hide behind sub judice.

Mr Crone: I do not think it is a difficult question. I am talking in generalities and I would really like to finish, if I can. May I? Thank you. If someone in Max Mosley’s position behaves in a way which falls so far below the standards of a fit and proper person, a representative, just as each of you members of this Committee are for your constituents, if you so far breach the duties and obligations of your office and the organisation which you represent or the people which you represent, then I think you are entitled to be exposed by the media, and indeed, by anyone else who wishes to expose you. What Mr Justice Eady found was that Mr Mosley in his behaviour, private behaviour, his behaviour in his private life, went so far as to leave himself exposed and vulnerable to blackmail. This is not blackmail: “Give me £100,000, Mr Mosley.” This is blackmail: “I want the Formula One race in Abu Dhabi next year. I do not want it in Bahrain”, multi-million pound decisions which impact upon large numbers of people. He has genuine power. He is genuinely a very high and serious public figure and he is bound to his constituents and to the sport to behave in a way which does not bring either the organisation or his office into disrepute.

Q785 Adam Price: I have to part company with Adrian on his interpretation of moral theology. When the New Testament talks about “turning the other cheek”, I am not sure it had this in mind. I understand the argument in terms of hypocrisy, that if somebody is a homophobe, yet they are found to be engaging in gay sex, I think maybe there is a case there in terms of illegality as well. That is a different category. Is your contention, from what you have just said, fundamentally that the public interest defence of publication in the Mosley case in terms of the intrusion of privacy was that his behaviour could bring the FIA into disrespect? Is that fundamentally what you are saying?

Mr Myler: Yes. The fact that he is the President of it and he is conducting himself in the way that we exposed, absolutely.

Q786 Adam Price: And that it could open him up to blackmail?

Mr Myler: That is what the Judge actually said. We did not say that.

Q787 Adam Price: Here is the difficulty though, because actually, it was only your act of publication that brought the FIA into disrespect, if you accept that argument. If you had not published, then nobody would ever know.

Mr Crone: No. Listen. What the threat of blackmail means is that someone could quietly come along to you and say, “Right, I know about what you have been doing. I know that you are terrified that it is going to be made public. You are now going to do the following things for me.” That might be “Give me a load of money.” In this instance I suspect it might have been something far more sinister and far more damaging to the wider public interest.

Q788 Adam Price: The only instance of alleged blackmail, of course, in relation to this case is the charge made against your own chief reporter.

Mr Crone: No, absolutely not. You have not read Mr Justice Eady’s judgment.

Mr Myler: The other issue to remember here, because it is very important, is that Mr Mosley himself said that on two occasions—I think it was in the February before the two parties were held—he was told, firstly by Bernie Ecclestone and secondly by Sir John Stevens, the former Metropolitan Police Commissioner, that they believed that he was being watched and that he needed to be careful. On the basis that Mr Mosley introduced this—we were not aware of this—that he was warned by these two people, why then would you within weeks engage in the practices that he did twice—not once but twice—if he had been put on notice by his colleague in Formula One, Mr Ecclestone, and by Sir John Stevens, who of course now runs a private agency,
Quest? Why would you disregard that good advice and conduct those two parties in the way he did, yards from his home in fact? He opened himself up by his conduct to what he did. The News of the World did not drag him kicking and screaming to that flat. The News of the World did not pay those five girls. They did not keep him there, a prisoner, for five hours. We did not do that. He did that himself.

**Q789 Adam Price:** When you took over as Editor, I think you gave an address to the Society of Editors or an interview and you talked about—and I paraphrase—changing the culture of the News of the World and moving away from what you described as “celebrity stings”, essentially drugs and sex stories in relation to prominent figures. Why did you feel you had to make those comments and how has the culture of the News of the World changed?  
**Mr Myler:** You will not be surprised to hear that I was misquoted.

**Q790 Adam Price:** That is the press for you!  
**Mr Myler:** Even editors can be misquoted. We forgive them their sins. What I said was—and I particularly used the instance of Mazher Mahmood, otherwise known as the “fake sheik”. One of the misconceptions about the News of the World is that we are just a scurrilous newspaper that you have to put the Marigolds on before you read it and then wash your hands after you read it, and almost certainly if a neighbour comes in for a coffee, you turn it over so that they do not see that you buy it, even though you buy it inside the Sunday Times or the Observer or the Telegraph. The truth is that Mazher Mahmood is probably one of the most professional newspaper journalists in the world. He has been responsible in 18 years for convicting and jailing 232 criminals. That is unprecedented. He only gets the headlines for donning the fake sheik outfit when he is doing so-called stings with the England football manager or a member of the Royal family. In fact, this is a man who puts himself in great danger, and does so with a professional aplomb that any media organisation would be proud to be associated with. That is one aspect of it. What I said was that perhaps he needs to be involved in less celebrity and more in social infrastructure issues, whether it is immigration, which he has worked very hard on; whether it is the increase in religious radicalism, certainly within the mosques of this country, where they are radicalising young, British-born men and he has had great success with that. He is doing that. The celebrity stings will come and go. I made some reference to the fact that footballers cheat on their wives, pop stars take drugs—tell us something that we do not know. In that respect, there is, as I think the distinguished Editor of the Daily Mail acknowledged, some serious journalism within the pages of the News of the World.

**Q791 Paul Farrelly:** The word “disrepute” was just being bandied around. If hypothetically one of your reporters or executives was found to indulge in private S&M sessions, would that be a sackable offence at the News of the World, for gross moral misconduct, actions liable to bring the paper into disrepute?  
**Mr Myler:** Let me answer it in this way. A few weeks ago we ran a story about a Member of Parliament who was having sex romps in his office on Armistice Day at 11.30 at night. This is, if you do not mind me saying so, very relevant because another gentleman who sat giving evidence to you made a point of saying that there was no reason to run the story the following day, the following weekend; we could have waited. We did wait with this particular gentleman. We waited two weeks in fact. We gave him three opportunities. Three times he denied it and three times he lied. If a member of my staff conducted himself in that way, he would have been fired. If any executive within the organisation had conducted himself in that way, I am sure he would have been fired or he would have had the good grace to resign. In this particular case, let me say, I do not actually believe that the Standards Commissioner, despite receiving complaints, has even talked to the Member of Parliament, corresponded with him, and certainly did not ask us for our evidence. Maybe I am pre-empting something we will talk about later but I think it does highlight the rather flippant nonsense that is levelled at the media industry, certainly in our area, with the PCC, when it comes to transparent jurisdiction.

**Q792 Paul Farrelly:** They are interesting comments but they were not an answer, as you will appreciate.  
**Mr Myler:** I think I did, with respect, Mr Farrelly, give you an answer. I said that if that had happened with a member of my staff or an executive within our organisation, I believe they would have left the company.

**Q793 Paul Farrelly:** On your premises but not off your premises.  
**Mr Myler:** Are you saying that—

**Q794 Paul Farrelly:** I am just asking you a question. I think it is relevant.  
**Mr Myler:** I think it is very difficult for an individual who wants to go and be regarded as judgemental on other people if his own personal life is contradictory to that. I think he has a great difficulty, yes.

**Q795 Paul Farrelly:** Can you just resolve finally one thing for me out of curiosity? The ladies involved have been generally referred to by letters of the alphabet. Is that because the press is being very responsible in not being over-salacious or in fact are they covered by injunctions?  
**Mr Myler:** It was agreed—and Mr Crone can correct me if I am wrong—by both legal sides and the Judge that they would remain anonymous. That was agreed by the legal teams but it was also upheld by the media.

**Q796 Paul Farrelly:** Is that binding or voluntary?  
**Mr Crone:** It is binding. As a result of the hearings, it is binding on the rest of the press.
Mr Myler: There is a legal injunction in place.

Q797 Alan Keen: I was concerned. I am sure masses of my constituents, on the law of averages, must read the News of the World. I was a bit shocked when you said a while ago that you found it hard to find any case where somebody was entitled to privacy. You have mentioned MPs and Max Mosley but how far out does it extend to my constituents? If a neighbour rings you up and says, “The fellow next door is having it off with a woman next door”, it might be of interest to people because we are all interested. Just to put things in perspective, I can still picture a headline on the front page of the News of the World from over 55 years ago which said “Trial marriage”. It was a couple living together before they got married. It was shocking in those days.

Mr Myler: Now it is a reality TV programme!

Q798 Alan Keen: This is a serious inquiry.

Mr Myler: Yes.

Q799 Alan Keen: Surely people must be entitled to some sort of privacy.

Mr Myler: Of course they are. Let me give you an example. I think that there are people out there with the misapprehension that every time [...] I cannot tell you how many phone calls the News of the World gets on its news desk each week but it is hundreds: someone is doing this, someone is doing that, you should investigate this, you should investigate that. A few months ago we had a story about a serving army sergeant who was advertising himself as a male escort on an escort website. Rather stupidly, he filmed himself in full uniform and, of course, he finished up going out with a young lady who was visiting Dudley one night who happened to be a News of the World reporter. Quite honestly, I looked at this story. This guy had been very stupid. It transpired that he had been in the services for over 25 years. When the reporter went to talk to him and revealed who she was and what he had been doing, against all army regulations, I did not run the story. I did not run the story because actually, to go to your point, who cares? Yes, it probably was a story that we could have run quite accurately, legitimately, and lawfully, without breaking any codes or laws, but I chose not to do it because his career would have been ended, his marriage would have ended, and he was being silly. He was arguing that he had to do it because he was not being paid enough. I do not think for one minute that he was not doing it for any other reason.

Q800 Chairman: But there are lots of stories you run which do have those consequences, that marriages end and careers are finished. Essentially, you are setting yourself up to decide whether or not you are going to destroy someone’s life.

Mr Myler: No, it is not about destroying someone’s life, with respect.

Q801 Chairman: Destroying a marriage and destroying a career.

Mr Myler: I disagree fundamentally, Mr Chairman, with respect, because it is very easy to put the News of the World in the stocks and say, “Isn’t it awful that the News of the World does this and the News of the World does that?” All newspaper editors have to make a decision. Everybody in an elected position, in your case, has to make a decision. You hear representations from your constituents but you ultimately have to make a call. Sometimes it is what they want and sometimes it is not. Yes, the consequences of running certain stories in newspapers have a catastrophic effect but it is too easy to shoot the messenger. Yes, I think it does come to something when the News of the World is using its editorials and its column inches to question where the moral compass has gone in some instances that come via the courts, that come from judges. Is that wrong? Do we not have a right on behalf of our readers? They have a choice. If they do not agree with what we do, they will stop buying us. It is simple. If people do not agree with what you do, they stop voting for you. We are accountable, very transparently, every day of the week and every Sunday. There are not many industries or professions where you are accountable and made accountable so quickly.

Q802 Chairman: But you yourself said in that specific instance you decided that this chap had made a mistake and it was too harsh to throw away all the service he had given to this country on the basis of a mistake.

Mr Myler: Yes.

Q803 Chairman: That is therefore a judgement which you, as the Editor, will make on a regular basis, basically as to whether or not to spare somebody, and that is just part of your job, is it?

Mr Myler: I think the way of answering that, Mr Chairman, with respect, is to say that there is a great deal of responsibility on an editor’s shoulders each day, and we do not always get it right, and when we do not get it right, we have to put it right. Sometimes that can be not only very costly but it can also be very embarrassing and it can be very humiliating.

Q804 Chairman: But the alternative argument is that actually, rather than an editor, who is inevitably going to be influenced by questions of newspaper sales, for instance, it might be more appropriate to have a neutral figure who can determine whether or not there really is a public interest, and that neutral figure should be a judge.

Mr Myler: Why? In what way would a judge be able to sit in neutrality to decide whether or not a newspaper story is to be published? Notwithstanding, by the way, that over the years, and indeed, only two years ago a trial had to be halted when a judge asked, “Can somebody tell me what a website is, please?”
Mr Myler: That is not a joke. That happened. They stopped the trial. It was a trial involving three people on internet terrorism.

Q806 Chairman: I am sure there are bad judges just as much as there are bad editors.
Mr Myler: Absolutely. I think it would be a sorry day indeed, quite rightly—and you cannot sack a judge; you can sack an editor—it would be a sorry state of affairs if we got to the point where we had to go into committee by asking judges “By the way, we have this story [. . .]” That is indeed what is happening now, by the way. That is, in a sense, exactly what is happening now.

Q807 Chairman: That is why I raised it, because that is what is happening.
Mr Myler: I think maybe the best way of answering that is not my words but the words of Sir Ken MacDonald, who wrote a very interesting piece in the Times last week, which I am sure you have seen. He said, “Britain is a better place today than it was at a time when the common people were not to be told that their king was sleeping with a divorcee. Of course the public interest is not necessarily the same thing as what the public are interested in but, as Lord Woolf, the former Lord Chief Justice, once sagely observed, if newspapers are routinely prevented from publishing stories that interest the public, fewer people will buy them and that is certainly not in the public interest.”

Q808 Janet Anderson: Mr Myler, I think you said when you were referring to the case of the MP that you gave him three opportunities to comment. Was that before you published the story?
Mr Myler: Yes, and indeed, in the two weeks before the story was eventually published.

Q809 Janet Anderson: But you did not do that with Max Mosley. In fact, you went to great lengths to keep the story out of your first edition.
Mr Myler: Not great lengths but we did not put it in the first edition.

Q810 Janet Anderson: Was that because you were afraid of Mr Mosley seeking an injunction or was it just to protect the story?
Mr Myler: Spoof stories, as they are so called, have been around for decades. There is nothing new in that. Great play is made that we kept the story out to avoid it. If you do a spoof story, ostensibly it is to make sure that your rivals do not have an opportunity of following it and ripping it off and stealing it. We are in an incredibly difficult place because of where privacy law is at the moment, and that is again a judgement call about what you do and I had to make that call.

Q811 Janet Anderson: So why did you warn the MP, as it were, and not Mr Mosley? What was the reason for the different decision in those two cases?
Mr Myler: We just decided that we would give this MP the opportunity of talking about what we had found him to be doing.

Q812 Janet Anderson: Why did you not give that opportunity to Mr Mosley?
Mr Myler: Because we knew that probably Mr Mosley would get an injunction, and I felt very strongly that this was a story that actually should not be stopped because of an injunction.

Q813 Janet Anderson: So it was because of the possibility of an injunction?
Mr Myler: That, and the commercial rivalry. There are two things, not just one.

Q814 Alan Keen: I made a joke in my maiden speech in 1992 about my career taking another downward step when I became elected to Parliament. I just wondered, we understand that you started off with the Catholic Pictorial News, and you came directly from being Editor of the New York Post to the News of the World. We went to see the New York Post not that long ago and they were not too complimentary about the British press. Would you say your career is taking a downward path or an upward path because now you can battle away commercially to save the newspaper world by the stories you write.

Mr Myler: It is a very interesting journey, is it not, from a reporter with the Catholic Pictorial in Liverpool to the editorship of the News of the World? Very, very interesting. It was one of the proudest days of my life when I was asked to be editor of the News of the World. It is a huge institution that I think we should be proud of in this country. It certainly was not a step back.

Q815 Alan Keen: I am not being critical.
Mr Myler: No, no. I am interested to see how the people in New York, bearing in mind it was an Australian and a Brit, in myself, who ran the New York Post, how the Americans view us. I have to say that if you talk to any of my American colleagues and friends over there in journalism, and I was away for five years, and I have to say that when I came back, the landscape on privacy and legislation was recognisable to me from the London that I left, and they are just astonished at what we are having to deal with here. Astonished.

Q816 Mr Sanders: On that point, libel laws are very different in the United States. Do you think we would benefit, if we had an absolute right to freedom of speech and the onus was on the litigant to prove that you had got the story wrong? In that culture and that environment, do you think it would make you check facts as closely as we get the impression the American newspapers check their facts? It is a different culture; you are given more freedom but that also makes you exercise more responsibility.

Mr Myler: If I may, I think Mr Crone is probably best to answer this in terms of where we are, and the legal complications are very interesting. Maybe if I could invite Tom in the first instance to give a response on the law, then I will come in.

Mr Crone: You will know already, I am sure, because of the investigations you have already made, and your visit to America, that the difference between the two laws, the American and British, primarily is the
burden of proof in libel, and indeed, the difference between defamation in this country and every other area of civil law is that the claimant who comes to court saying, “I have been wronged. Give me money.” does not actually have to prove anything. He just stands up and says it is wrong and the burden of proof is automatically, from the first moment in the case, shifted on to the defendant, and that is in front of a jury. I must say, over the last 29 years I have found that to be a very, very onerous burden indeed for newspapers to shift, especially—and this is just human nature and perception—if you happen to be the Sun or the News of the World. They are the two newspapers I represent. I think it is wrong because I think the burden is too great. Frankly, we had a case in court last month where I thought—and so did most people actually watching it, I think—that the burden of proof was pretty well satisfied by the evidence we called. Even on the claimant’s own account, he behaved appalling, but the jury went away and came back the next day and gave him £75,000, and it cost us about £1 million. Very interestingly, someone—and perhaps I should not be saying this—bumped into a jury member in the pub not long afterwards. He declared himself as a jury member and he said, “We did not understand any of it, so we decided there was this big rich newspaper on one side and this little guy on the other, so we decided to give it to the little guy.”

Mr Myler: That is it in a nutshell.

Q817 Paul Farrelly: What was the case?
Mr Myler: I should not say.

Q818 Paul Farrelly: You have given the example. I think you should name the case.
Mr Crone: In that case, it was a former Eastenders actor called Mo George against the Sun newspaper. It was an allegation of beating his girlfriend.
Mr Myler: I cannot put it in any better words than that. It really does need to be addressed.

Q819 Mr Sanders: Do you think you can change the ethics? There is a lot that is written in the newspapers that is written in code or it is hint or innuendo. Actually, if you had that system, a similar system to America, with absolute freedom of expression and of speech enshrined in a constitution, you would get rid of that innuendo and you would actually tell it like you want to tell it, and you would not be hiding behind code and hints and innuendo.
Mr Myler: The problem that you have, and Mr Crone has just said it, is that you can have a week or a two-week trial and the jury comes out at the end of it and it does not understand what it is being asked to adjudicate on. So hinting innuendo is no good. People read newspapers to have questions answered, not to be offered more questions than we can answer.

Mr Myler: That is right, and that is why we have to abide by the law. We have to abide by what the legislation says and if you cannot name a certain person—Mr Farrelly raised the issue of the ladies involved in the Mosley case and why they were known as initials. That was because it was agreed, first of all by the two legal teams and by the Judge that they would remain anonymous.

Q821 Janet Anderson: When it comes to use of the libel law, we took evidence from Professor Greenslade, and he told us there are plenty of examples in which journalists are prime users of the libel law they affect to dislike. Have you or your paper ever issued a libel action to prevent another party publishing information about you?
Mr Myler: I am not aware of one. I will check but I do not believe we have.

Q822 Janet Anderson: Have you ever threatened anyone with libel action?
Mr Crone: No. I have been in this job for 29 years four months and about 28 days and no, never—not that I can recall.

Q823 Janet Anderson: Professor Greenslade did say that the last person to threaten him with a libel suit was the News of the World’s lawyer.
Mr Crone: No, I did not. I pointed out that it was completely wrong and it was libellous. It was actually the coverage of the Mosley case, believe it or not, in which he said I gave evidence, and I did not, and actually, everyone who was following it knew I did not give evidence. Mr Myler gave evidence and the reporter gave evidence but the esteemed Professor thought I did, and he was quite disparaging about the evidence I gave, suggesting it was disingenuous and possibly dishonest. I suggested he correct it. He did not come back to me at all. I therefore wrote to the editor of the newspaper, the Guardian, who you will be hearing from next, I believe. I think I got a reply something like three and a half weeks later, with a mealy-mouthed form of words, and I said, “Forget it. Don’t bother. If you can’t do it properly, don’t bother.” So no, I did not threaten him with libel. Actually, Greenslade came up and met me socially not long after that and apologised.

Q824 Alan Keen: You were talking about the member of the Armed Forces and you did not run the story. You did say that the woman happened to be on the staff of the News of the World. What you meant was that she had gone specially to catch him out. Mr Myler: Not catch him out, no. Why would she be catching him out? He was breaking every rule in the book of army regulations, and he was a family man too. If every time a story appears in the News of the World I and its staff are going to be accused of being the moral guardians of everything that takes place in this country, that is just ridiculous, because we are not.
Q825 Alan Keen: No, I am not objecting to it on those grounds. It is back to the privacy thing again. I was concerned about the words you used earlier on. Then you gave the sergeant as an example. Again, I maybe would not argue with you too strongly that that was wrong, even if someone went in to trick him.

Mr Myler: Excuse me. It is not—

Q826 Alan Keen: If you are trying to get a story through a trick.

Mr Myler: No, it is not to get a story. Here is a man who is a sergeant in the army, who is advertising himself as a male escort on a male escorts site, in full army uniform, and making no other claims than that is what he is; he is a serving army sergeant and if he gets found out, he is going to be in trouble and will probably lose his job. We did not set him up. He set himself up.

Q827 Alan Keen: I have already said that. I was not really arguing against you on that case. I was more concerned about the phrase you used. I am concerned about my constituents: you said that nobody is really entitled to privacy. I was at the South Bank yesterday with my wife watching the lesbian, gay, bisexual and transgender people; it was a special weekend of entertainment provided by that group of people. Is it fair game to reveal someone who is gay who has not come out, for instance?

Mr Myler: No.

Q828 Alan Keen: So my constituents would be safe there? You would not think that was something that should be revealed?

Mr Myler: No, I do not think it is fair game. I think the phrase “fair game” is not the right term to use. Every single case has to be judged on its merits, and I think that, if you look at a very high profile, public case of the last couple of months relating to the 13-year-old boy that allegedly fathered a baby down in Eastbourne, I think it was, that was open house at the time, where a newspaper rightly published a story that here is a boy of 12 or 13 who has fathered a baby, I think it is—again, I have to be careful. We are in a legal minefield because injunctions have now been issued regarding this. Suffice to say that there were other boys involved who, it is believed, possibly could have been the father, and I think I understand that one of them, other than the 13-year-old boy, has been proved to be the father. In other words, it was not the 13-year-old who said he was the father that turned out to be the father. As a result of legal measures that have been taken on behalf of all of those families, principally by Social Services, the identity of the real father has not been revealed, and probably will not be able to be revealed. So privacy, if you like, has been afforded to those people, rightly.

Q829 Alan Keen: First of all, you talk about the moral compass and that openness was necessary. When I was talking about the progression of your career, was I right that the New of the World is really a money-making machine rather than anything else?

Mr Myler: No, it is not. No, no, no. Sorry, it is not a money-making machine. We are a commercial business, like thousands of other businesses around. If we do not make money, we do not have a business. That is a principle that any other business operates under. If I could just remind you—and this is something you did not get because I did not realise it: the News of the World has been around since 1843. On the front first page that it had, its editorial, its mission statement, raged against social injustice and it pledged “to give poorer classes of society a paper that supports their means”. For 25 years between 1942 and 1969 the paper actually ran an advisory service where it employed 40 professors and 100 typists. In real terms today, that cost £5 million. There are not many businesses in this day and age that would set aside that kind of investment as a service to its readers. The News of the World raised a £1.5 million reward for Madeleine McCann in 48 hours. In eight years it has campaigned for 14 different pieces of legislation to be introduced under Sarah’s Law. That is a very heavy commitment, that I would regard as very compelling, and something that should be applauded when it comes to what the News of the World does. So it is not all about whether someone runs off with somebody else’s wife. We have just launched a campaign with the Department for Children, Schools and Families and the Department of Energy and Climate Change to save our readers money by going green. We have just joined with the Forestry Commission to give away a million seedlings to 25,000 schools. Every single school will get seedlings. So we actually do some positive good, I like to think.

Q830 Alan Keen: Could I ask you one last thing? Paul Dacre, when he was here in front of us last week, agreed with me when I said—this was an issue that had been raised by different people during the inquiry—that it is wrong for newspapers to mislead the public with a headline, and then the allegations that attract people to buy the papers are not as true as the headline made out. Although he argued the case to a certain extent, he said he basically agreed with that. One or two of the lawyers we have had in front of us said that is something that should be taken account of in libel law, that if the headline misleads, and the body of the article is different, that should be taken into account where I understand up till now it is not.

Mr Crone: No. The ordinary reasonable reader is expected to read whatever is on a page, in other words the words underneath the headline as well. If he has to turn inside to find the truth that is quite different, but if the front page has both the headline and whatever needs to be put underneath it to balance it and so forth, then that would not constitute libel, not normally.

Q831 Alan Keen: That would not be a libel?

Mr Crone: Not on its own, no.

Q832 Alan Keen: But one or two lawyers have said that they thought that it should be because the headline and the first part of the article misleads. Should a paper be able to cover that up by one sentence at the end?
Mr Crone: It very rarely happens, actually. I think headlines usually reflect the story.

Mr Myler: I think you are talking about some rather egregious excesses in maybe the '70s and '80s. I do not think that happens any more. I think also people who buy newspapers are far more intelligent than people often believe, and they can discern and decide. And they do.

Alan Keen: Well, people are beginning to disagree with that, I have to say.

Q833 Chairman: Can I quickly move on to the PCC? How seriously do you take a judgment of the PCC?

Mr Myler: Very seriously. No editor wants to have an adjudication against them.

Q834 Chairman: How many have you had?

Mr Myler: I think I have had about three, and one was a couple of months ago.

Q835 Chairman: And if the PCC contacts you prior to publication, how many times have you not run a story because of the intervention of the PCC?

Mr Myler: Maybe, with respect, if I could turn it round the other way, the dialogue with the PCC never stops, we talk to them literally up to publication on certain stories, and their advice is invaluable, often incredibly wise, sometimes not quite the way we expected things to go, but we do talk to them all the time and it is invaluable, because it is an open dialogue.

Q836 Chairman: Invaluable but you do not necessarily follow it?

Mr Myler: Certainly personally, if they come up with a reason that I find compelling, I would rarely disagree with them.

Q837 Chairman: But there will be instances where you do not find it compelling?

Mr Myler: Yes. Can I give you another example, a practical one? We had a story of a policeman who had gone through a transgender process. The Force were aware of it because his superior had sent out an e-mail explaining that this was what the individual had been going through, that it was a rather harrowing experience for him and his family, and when he/she was welcomed back into the Force he wanted to send as many people on courses so they could understand how to deal with it. We had a picture of the individual, not dressed as a man but dressed as a woman, and it was only indeed to Mr Crone’s credit at about 3.30 in the afternoon on the Saturday that he said to me: “We may have an issue here”, and I said “What is that issue?” and he said “Well, because there is a significant difference between, say, 500 members of his Force being aware of what is going on and 8 million readers being drawn into it”, and we pixilated the face of the individual, and I can guarantee that a year ago that would not have happened.

Q838 Chairman: That I do not think is to do with the PCC.

Mr Myler: We spoke to the PCC about it. The PCC actually, strangely on that occasion, felt that we did not need to pixilate the face. They felt that because a communication had gone out amongst the Force it was out there.

Q839 Chairman: So you actually decided that it was not responsible, even though the PCC did not think it was irresponsible?

Mr Myler: Yes. We pixilated the face of the individual.

Q840 Chairman: And what happened after the three occasions on which you have had judgments against you from the PCC? What actions followed from the adjudication?

Mr Myler: None in terms of me personally, and in the last case it was my decision not to go to anybody without prior notification, and that is what the PCC ruled against us on. Singularly on that matter.

Q841 Chairman: On the fact that you had not given prior notification?

Mr Myler: Yes, and that was my decision.

Q842 Chairman: And has that altered your practice in terms of prior notification, or do you just disagree with the PCC decision?

Mr Myler: No, it does not carte blanche say that we never warn anybody. Indeed, we did with the MP in the example I gave you.

Q843 Chairman: But the fact you had lost a PCC complaint about prior notification clearly has not meant that in future you always prior notify, because you did not in the case of Mr Mosley?

Mr Myler: No, and the reason I did not go to anybody from the PCC? What actions followed from the adjudication?

Q844 Chairman: But it is arguable that you say OK, you publish an adjudication, and you say I accept that the PCC have ruled against me, but it does not appear to make any difference to the future of behaviour?

Mr Myler: Yes, it does. Any editor that has ruling after ruling or adjudication after adjudication is probably not going to stay in his job very long.

Q845 Chairman: But three is OK?

Mr Myler: Well, three in forty years is something that I think is not a bad batting average. One is too many but three, over that period of time—given the way the industry has changed.

Q846 Adam Price: You yourself previously resigned I think when you were editor of the Sunday Mirror—

Mr Myler: “resigned”?

Q847 Adam Price: Resigned in the passive tense, whatever, but you freely admitted the mistake and you took the responsibility for your decision; your predecessor of the News of the World also was resigned, or resigned, in relation to the Goodman case. Do you think that actually there would not be
so much an issue of suspicion about the press if more editors did the honourable thing and, where they made a judgment call and they had got it wrong, they resigned? I can remember, for example, a recent resignation of an editor of the Daily Mail which, you know, is the greatest infringer against the PCC code of conduct. Do you think people would have more respect for the press if editors took responsibility for their actions?

Mr Myler: I cannot speak for the editor of the Daily Mail but I have to say he is probably one of the most distinguished editors we have had and been lucky to have in our industry for many, many years. I think the simple answer to your question is that you stand and fall by your judgment and if you make a bad call you either go or you are fired, and that is what has happened in my experience. But, again, we live in a world where I think probably the only people who come below journalists in the public’s esteem are your colleagues, and I think that we need a little bit of transparency and honesty here. People who fall on their swords are few and far between. Editors do and of transparency and honesty here. People who fall on your colleagues, and I think that we need a little bit of transparency and honesty here. People who fall on their swords are few and far between. Editors do and have, and some MPs—well, let’s put it this way, Members perhaps have not when they should have done.

Q848 Adam Price: I think that criticism absolutely applies both ways. In terms of the Reynolds and Jameel defence of responsible journalism, do you think it would help free expression and free press if that judgment was placed on a statutory basis? If it was enshrined in law on legislation?

Mr Crone: Yes, I think it probably would actually. The only problem with going statutory on a lot of these things is that it becomes kind of rigid, and it loses the kind of flexibility that you can occasionally get when the judges are in a nice liberalising mood—which is not very often, I have to say! But yes, I think to have it recognised and put into statute would be a good thing. Generally, you see, we are very unhappy with the way privacy law has gone as a result of judgments obviously primarily in this country but led, I suppose, by the judges in Strasbourg, and what that has emanated from a piece of legislation in 1998, the Human Rights Act, which was introduced for all the right reasons, a much wider raft of basic human rights, 18 altogether I think—the right to life, right to liberty, right to freedom of expression and right to privacy, privacy and freedom of expression just happen to be two of them—but I do not think when that came in that many people would have foreseen this massive and rapidly and progressively growing area of normal privacy. In fairness there were those in the media, a few of us, who lobbied hard and predicted that that is exactly what was going to happen. The Junior Minister, the late Lord Williams, who steered it into the House of Lords originally I think, introduced Section 12 of the Human Rights Act specifically to meet that concern. The judges, again inimitably in their own way, have analysed Section 12 into nothing effectively. It is completely ineffectual. Completely. So yes, perhaps there is room for a little bit more statutory intervention, certainly in the area of public interest, where the lines should be drawn. Part of our submission, in fact, is an opinion we have submitted from Anthony White QC in which he points out the absolutely glaring inconsistency and discrepancy between the Data Protection Act civil liability and defences for improper publication of personal data, which is exactly the same as publication of private information, and what Parliament has decreed is that it should be a defence in journalistic publication that the publisher had a reasonable belief that it was acting in the public interest. Now there is no such thing in privacy. If you have gone into the area of privacy and the judge decides you do not have a public interest, it does not matter what you think or thought at the time, and that is absolutely contradictory to the will of Parliament. In the longer term, of course, if public policy undertaken by Parliament is contradicted by what the judges are doing, then that is an attack on democracy effectively.

Q849 Chairman: Mr Myler, Mr Crone, I think we have finished our questions. Can I thank you for your evidence, and can I also thank you particularly for your willingness to answer questions despite Mr Mosley’s impending libel action.

Mr Myler: Thank you.

Written evidence submitted by Guardian News and Media Ltd

PRESS STANDARDS/SELF REGULATION

The DCMS Committee in 2007 recommended that self-regulation be retained for the press, while adding that it must be seen to be effective if calls for statutory regulation—described by the Committee as “a very dangerous interference with the freedom of expression”—were to be resisted.1

The inquiry asks whether the McCanns’ successful action against the Daily Express and others for libel indicates a serious weakness with the self-regulatory regime. This case is highly unusual, and we doubt that it is indicative of a general trend, or general failings in the interaction between the libel laws and self-regulation.

We support a robust and effective system of self-regulation.

Self-regulation—through the PCC or other means—offers a quick, cheap, flexible and effective remedy in most cases.

The PCC’s chief sanction is to require the newspaper to publish in full and with due prominence an adjudication by the PCC upholding a complaint against a particular publication. This is effective in its own right as newspapers do not relish the prospect of what is seen as a form of public humiliation and a failing in standards. Indeed the case against Brighton Argus illustrates this—the newspaper apparently sought to bury its report of a PCC adjudication against it on page 32. The PCC made a second judgment against the paper: and required it to publish both adjudications with sufficient prominence.

Self-regulation includes the responsibility of individual editors for regulating the conduct of staff. At Guardian News & Media standards are set out in an editorial code. The code begins with a statement from C.P. Scott, “a newspaper’s primary office is the gathering of news. At the peril of its soul it must see that its supply is not tainted.” The introduction to our editorial code makes it clear that the most important currency of the Guardian is trust, and that the purpose of the code is to protect and foster trust between Guardian publications (in print and online) and its readers. Compliance with the standards set out in the editorial code, and the PCC Code serves to protect the integrity of the Guardian’s editorial content.

The Readers Editors for Guardian and Observer publications play a vital role in self-regulation as independent ombudsmen, offering a free and quick settlement of complaints. MediaWise Trust said in evidence to the CMS Committee in 2007, “MediaWise has always encouraged publications to appoint their own in-house Readers Editor to deal with complaints, act as an internal auditor reviewing the publication’s journalism, and publish a well sign-posted Corrections Column. As the Guardian has demonstrated, this system can perform a dual function, providing accountability and enhancing media literacy.”

INTERACTION BETWEEN LIBEL LAWS AND PRESS REPORTING

The chilling effect of libel laws has long been recognised by the courts. In particular, the burden of proof is on the Defendant’s shoulders who must prove the truth of any factual allegations. The claimant only needs to show that the allegations are defamatory, that they are identified and are the subject of the libel, and that the defendant is responsible for the publication. The fact that the burden of proof lies with the defendant has encouraged forum shopping and made London the libel capital of the world. The burden of proof should be reviewed.

Senior US Courts have refused to enforce foreign defamation judgments that do not conform with the first constitutional protection of free speech. The question of costs is an integral part of the interaction between libel laws and press reporting. The costs of defending a libel action are often prohibitive, particularly for small publishers. Even at the pre-publication stage, the costs may be excessive. The attached article by Alan Rusbridger, “A chill on the Guardian”, New York Review of Books outlines some of the difficulties and huge expenses involved in obtaining pre-publication advice on issues that involve large corporations, in particular where the investigation concerns complex issues such as off-shore tax structures.

Conditional fee agreements were originally introduced to help claimants who did not have the means to launch a libel action. In practice, they have most often been used by lawyers representing wealthy clients, to enhance their recoverable costs. Lawyers on CFAs are entitled to success fees of up to 100% on a base fee. In addition to success fees, a losing defendant must pay any “notional” after the event (ATE) insurance premium (around £68,000 for £100,000 of cover). The claimant does not have to pay the premium, and has little or no incentive to monitor the costs their lawyers are incurring, including hourly rates. The courts have recognised that CFAs may breach Article 10. There should be cost capping in cases concerning freedom of expression, and the recovery of legal costs should be limited to those costs that are certified as reasonable and proportionate.

It should be possible to reach a prompt and cost-effective settlement, even where proceedings have been issued, when a newspaper admits it has got it wrong. The offer of amends procedure was designed by Parliament to settle cases quickly and with low costs. The publisher admits its error, publishes a correction and apology, and a judge to decide damages if appropriate. The level of damages depends in part on the sufficiency of the correction and apology. However, even this procedure can become lengthy and time-consuming where major corporations resort to highly aggressive and expensive libel actions.

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3 Reynolds v Times Newspapers Ltd 1999, Lord Nicholls (at 192H) “the common law has long recognised the ‘chilling effect’ of the rigorous reputation protection principle.”
4 Following libel judgment in High Court, London against Rachel Ehrenfeld, Senators Lieberman & Specter introduced Free Speech Protection Act of 2008. This Bill would protect American journalists from libel suits brought in foreign courts that do not have the same protections for free speech that are found in the U.S. constitution.
5 Campbell v MGN Ltd 2005, Lord Hoffmann “freedom of expression may be seriously inhibited in defamation actions conducted under CFAs”.
While the Law Lords in Jameel v Wall Street Journal 2006 did not accept the argument that trading companies cannot suffer injury to feeling and should only be able to sue where they can prove special damages, Baroness Hale reminded the court of the McLibel case, where the European Court of Human Rights found it was disproportionate to award damages against McDonalds’ critics, since McDonalds had not established any financial loss. Baroness Hale said:

“it seems, therefore, that while the retention of the rule that a company does not have to show that it has in fact been harmed in any way may be within our margin of appreciation, we should scrutinise its impact with some care to see whether it may have a disproportionately chilling effect upon freedom of speech.”

In other jurisdictions corporations are restricted in libel actions. For example, the Uniform Defamation Laws 2006, Australia, prevent corporations from suing for defamation involving damage to reputation unless they have fewer than ten employees or they are not-for-profit organisations. Corporations can only sue for “injurious falsehood” where they can prove actual economic loss.

Some reform of the British legal system is required. In 1975 the Faulks Committee recommended that changing the law so that any company wishing to sue for libel would have to prove quantifiable damage. It stated:

No action in defamation should lie at the suit of any trading corporation unless such corporation can establish either—(i) that it has suffered special damage, or (ii) that the words were likely to cause it pecuniary damage.

A proposal set out in the attached article is that before any corporation is permitted to sue it should be a requirement that it must first attempt to resolve matters via mediation—whether through an ombudsman or regulatory or self-regulatory bodies.

Contempt

The law is unclear, particularly on internet archives and online publication. In the case of William Beggs, 2001 High Court of Judiciary in Scotland, Lord Osborne made it clear that newspapers publishing online archives containing “accessible” material which was potentially “seriously prejudicial” to the accused were not in contempt of court. The Law Commission’s Scoping Study No. 2, 2002 endorsed the view that “much of the prejudicial effect” of online material could be removed by an appropriate judicial direction to try the case on the evidence. It should be standard practice for judges to give jurors robust instructions at the outset of a trial not to search for material on the internet.

Perhaps of greater concern to news publishers is the difficulty of reporting trials. Many trials—particularly terrorist trials—are closed to contemporaneous reporting in case something is published that might impact on a jury in an alter trial. In “Media law”, Geoffrey Robertson QC and Andrew Nichol QC comment as follows:

“... many judges proceed to ‘balance’ their sense of fair trial against free speech, with their professional instincts naturally favouring the former. This is not in fact the procedure laid down by Article 10 itself (which requires a presumption in favour of free speech which should only be overridden in cases of necessity by narrowly construed exceptions) but it is a process which has, regrettably, been adopted.”

Exemplary Damages for Libel or Breach of Privacy

Damages should be compensatory only. The Neill Committee recommended in 1991 that exemplary damages in defamation should be abolished. In Elton John v MGN 1996 the Court of Appeal established that damages in libel claims are intended to be compensatory and any exception will be rare, and must follow “a pressing social need”. Freedom of expression would be undermined if exemplary damages were awarded in privacy cases, as HJ Eady stated in Mosley v News Group international 2008—exemplary damages for privacy would fail the test of “necessity and proportionality” required to justify a restriction on free speech.

Privacy

We recognise and support the right to privacy under Article 8 ECHR, and this is reflected in the PCC Code and the Guardian’s editorial code:

“In keeping with both the PCC Code and the Human Rights Act we believe in respecting people’s privacy. We should avoid intrusions into people’s privacy unless there is a clear public interest in doing so.”
The right to privacy must be weighed against the right to impart information to the public under Article 10. The courts should narrowly interpret Article 8 to protect the intimacies of personal and family life; the concept of privacy should not be used to protect reputation itself.

While it is suggested by some that judges are over-sensitive to the rights of those claiming privacy, we have yet to see a reasoned judgment in a case where a genuine countervailing public interest argument might be more convincingly pressed than in the privacy cases dealt with so far. The courts should pay special regard to ss12 (4) Human Rights Act 1998:

(4) the court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to:

(a) the extent to which:

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

Summary

In summary, it is vital that newspapers are free to report, and the public are therefore informed of, matters of public interest. News publishers fulfil a vital function in reporting on the activities of organisations and individuals, public figures and governmental bodies. They provide a forum for comment and debate, and the free flow of information and ideas. The libel laws should be reviewed, in particular the burden of proof on the defendant should be eased, and there should be some limitation on defamation actions by corporations, particularly in relation to matters of great public interest. There should be controls on costs in defamation and other actions where its impact threatens to limit freedom of expression. Contempt laws should be clarified and jurors clearly directed not to search for material concerning a trial; there should be no threat of contempt proceedings for publishing material in online archives. News publishers should be encouraged to adopt the ombudsman system of Readers Editors to enable a quick and effective resolution of complaints.

The importance of Article 10 of the ECHR, and section 12 of the Human Rights Act 1998 should be at the forefront when there is any judicial consideration that involves restricting freedom of speech, bearing in mind the words of Lord Steyn:

“Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society.” Secondly, in the famous words of Holmes J. (echoing John Stuart Mill), “the best test of truth is the power of the thought to get itself accepted in the competition of the market.” Abrams v. United States (1919) 250 U.S. 616, 630. per Holmes J. (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. “The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country.”

January 2009

Q850 Chairman: Can I welcome you to the second part of this morning’s session, Alan Rusbridger, Editor of the Guardian, and Mr Hislop, Editor of Private Eye, and can I thank you both for the coverage which your publications have given to proceedings so far in our Committee, in your own different ways!

Q851 Paul Farrelly: Alan, your submission to the Committee included a very extensive article in the New York Review of Books entitled “A chill on the Guardian”. Could you and Ian give us some examples of the chilling effects of libel and, indeed, conditional fee arrangements in action?

Mr Hislop: I brought along something to prove the point. Last week I received this letter from Schillings, a firm who do a great deal of threatening newspapers and other publications in terms of privacy. Now, Schillings have sent me a letter saying they act for a man called Richard Granger. He will be familiar to you. Mr Granger was in charge of the NHS IT project, which is responsible possibly for losing the country maybe £12 billion of public money. That is everything in the present round of cuts times about four. Now, Mr Granger is not involved in a sex scandal; Mr Granger is not involved in a legover case with the News of the World. He is a legitimate target of inquiry for journalists. I have a letter from Schillings here saying, “We understand that your journalist has been approaching various parties to make inquiries”. That is it, a lawyer’s letter straight in. It quotes Reynolds immediately, “We remind you of the recent judgment [. . .] defamatory allegations [. . .] confidentiality”—it is confidential and private, what we are asking about, his business life. He wants to know all the allegations, everything in advance, he wants to know when we are going to publish, and we end up with a threat. That is a “chill” wind.

Q852 Chairman: But are you chilled?
Mr Hislop: I am so chilled I brought it up! I just give it to you as proof positive that the idea that the privacy law is only indulged in by frothy celebrities, it will only be used on silly cases for the red tops, it need not concern anyone involved in proper journalism, is not true. Straight away, as soon as the celebrities make a bridge hit, the rich and powerful who want to use it for their own means come right in behind.

Q853 Chairman: But you must get about thirty letters like that a week?
Mr Hislop: No, this is new. Schillings obviously sends everyone letters all the time, that is his job, but the idea that you have a case which is just my journalist asking questions—bang, in comes the letter. That is a chill wind.

Q854 Paul Farrelly: I will leave it to you to consider whether you wish to submit that as evidence to the Committee.
Mr Hislop: It says on the top, “Private and Confidential”!

Q855 Paul Farrelly: But not “Privileged”?
Mr Hislop: No. I assumed it was more important to tell you about it than observe Mr Schilling’s wishes. I hope that is right.

Q856 Paul Farrelly: Could you for clarity name the partner involved in that? Because we have had someone from Schillings in front of us.
Mr Hislop: Simon Smith.

Q857 Paul Farrelly: Alan, do you have any examples?
Mr Rusbridger: I think you have had lots of examples of costs, and it is the cost of libel actions that is the thing that preoccupies me because, CFAs or no CFAs, it is becoming staggeringly expensive to do the kind of journalism that I guess most members of this Committee would believe in, and I think it is a given in journalism that mistakes are made despite the best attempts to get things right, and the attempts we now have to make in advance to try and prevent mistakes being made can cost tens and tens and tens of thousands of pounds, and if mistakes are made the forms of libel defence that are theoretically available to try and settle cases quickly can still end up costing hundreds of thousands of pounds, so I think all this is a great discouragement to the forms of investigative journalism about things that I think everybody would agree are public interest.

Q858 Paul Farrelly: Your book’s article concerned the Tesco case. Could you just give us some insight into how much that cost the Guardian and what legal costs you were being asked to pay, both for your own and the other side?
Mr Rusbridger: That is a case where we did make two serious mistakes about the nature of the tax avoidance that Tesco were involved in and about the sums involved. That they were tax avoiders was not in doubt largely because Private Eye, who has the sense to employ a former Inland Revenue inspector, got the tax schemes right, so it was a question of what kind of tax avoidance they were involved in and the amount of tax avoidance. When we realised the mistakes we made we used what is theoretically the cheapest and easiest method, which is that you put your hands up and say “We have got it wrong, we will publish an apology”, which we did, “and correct it”, and it then went on for six months with a bill from Tesco eventually for £800,000, without CFAs, and on the tax avoidance schemes which were supposedly so simple that a child of three could understand them, we had a bill for £350,000 for Tesco to explain to themselves what these tax avoidance schemes were, so we were entering an immensely complex area of commercial life which very few people understand. It is almost unwritable now in public if corporations are going to be able to use the law in that way. We decided we were not going to be put off and we would come back and do a very long series on tax avoidance this year, and that cost us about £90,000 to legal in advance to make
sure we could not get hit a second time. So with those kinds of sums, work it out for yourselves. There are very few media organisations that are going to do that kind of journalism in future faced by that kind of penalty.

Q859 Paul Farrelly: So even with the offer of amends procedure, and I remember I was quite staggered actually to read a two-page mea culpa in the Guardian, you were not off the hook? The defences in law were not really being terribly helpful with a claimant who had a point to prove, for whatever reason?

Mr Rusbridger: Well, they fought it extraordinarily aggressively. They retained Carter Ruck who effectively launched four actions against us, against me personally for malicious falsehood, against the paper for malicious falsehood and both for libel, so they were trying to use malicious falsehood which was effectively saying that I had deliberately printed the story knowing it to be untrue, in order to destroy the defence in the offer of amends, and eventually when we got in front of a judge after six months of just a staggering amount of paperwork from Carter Ruck, charging up to £600 an hour for their legal partner, the judge said: “Look, you have to make up your minds, there is no point in having this malicious falsehood; you can get everything you need in libel”, but it certainly was not the quick, instantaneous, cheap method that was argued for by Parliament.

Q860 Paul Farrelly: I want to get on to responsible journalism later in the questions, but in terms of costs you have settled with Tesco for the usual undisclosed amount for your own reasons, where do the cost negotiations stand? How much is Carter Ruck still demanding?

Mr Rusbridger: As far as I know they are still going on. I should say, though, the settlement was confidential, the damages were insignificant, so costs and damages had no relation to each other, and I think that is one area which you might look at. I personally think there is some question about whether corporations should be allowed to sue unless they can prove malicious or economic loss. If they are going to sue and if a paper uses an offer of amends I think there ought to be some form of compulsory arbitration before you get into this huge ramping of costs, and then I think the judge ought to take a view of what the damages are likely to be, and if they are insignificant then there ought be a capping of costs.

Q861 Paul Farrelly: On that particular case, which you were both involved in, did Tesco threaten to sue Private Eye?

Mr Hislop: No, the Guardian had taken the hit. I have to say it was the same journalist who was inquiring into Mr Granger who wrote the excellent piece about Tesco. On the point about cost, and the name Carter Ruck has come up, the last time we were in court in a very long case which we eventually won the judge actually criticised Carter Ruck for creating the amount of work which they had charged for.

Q862 Paul Farrelly: That was the Condliffe case?

Mr Hislop: Yes, and I have to say at the end of that Private Eye had run up costs of nearly a million pounds; the defendant went bust; we had to pay them, so a huge victory for us there and staggering costs. They are absolutely enormous. And this is without the CFAs which I hope will be considered. If someone comes and says: “We are suing you, and not only that, we have a CFA, which means we can just make it up. It will be any figure that comes into our head, double it, double it again, and you pay all of it”, that makes you think twice about running a piece.

Q863 Paul Farrelly: I want to go on to CFAs in a second but, clearly, Mr Condliffe was a charlatan of the highest order but a corporation like Tesco is in a different category. It is our biggest retailer, it made £3 billion profit last year, so for the likes of Tesco to pursue this to the nth degree like that, the motivation is not about money. What do you think the motivation is about?

Mr Hislop: If they were avoiding tax my guess is they are interested in money, don’t you think? It is about money.

Q864 Paul Farrelly: It is a matter of degree. Alan, what do you think Tesco’s motivation was in pursuing this so hard against the Guardian, with no great publicity for them?

Mr Rusbridger: I think to be fair to them they were genuinely offended that we had got it wrong, and I think they take corporate social responsibility seriously. If they had conducted themselves in advance differently, if they had been more open with us and had agreed to meet us before we published the pieces the mistakes would never have happened. That is putting the best possible interpretation on them. I think there is a feeling generally—and I would not accuse Tesco of this—that if you hit newspapers in this way they are simply not going to write about this. There was an Oxford University study where they went round to the tax directors of a lot of FTSE 100 companies who said, “The reason we can get away with tax avoidance is the media never writes about it because it is simply too complicated”, and I think that is a fairly shrewd assessment. It is no coincidence that when we did come back and write about it over two weeks using the expertise, I must say, of Private Eye’s former tax inspector to double-check what we were doing, and about the changes in the Budget and the proposals of the G20 on tax evasion, when you put these subjects into the public domain people are outraged by what is going on, but nobody was writing about it because it was too risky.

Q865 Paul Farrelly: Without jettisoning the libel laws, in terms of process what do you think in the current framework would improve the situation?
For instance, cost-capping orders on CFAs, fee limiting for the likes of Carter Ruck, early rulings on meaning? What would be top of both of your lists?

**Mr Rusbridger:** All those. Early ruling on meaning which could be taken by judges not juries. Cost capping in relation to damages. I agree with everything that has been said previously about the burden of proof. The two cases most notably we have been involved in which there was changed burden of proof are Jonathan Aitken and Tesco. They knew what they had done, what was going on, and it was up to us to prove to the standards of the criminal court, or certainly the civil court, what had been going on, so I think the burden of proof should certainly be switched. I think there should be some form of binding arbitration in the case of corporations before you can get to the immense cost of fighting cases, and I think we should look again at Reynolds and its literal interpretation, that you have to clear every bar of a ten-bar gate in order to prove that you are behaving responsibly as a journalist. I am not saying Reynolds has not been useful but I think it is mainly useful to big newspapers with good legal departments and not much use to people working for provincial newspapers or less well-off newspapers.

**Q866 Paul Farrelly:** Finally, with respect to prior notification we have asked lots of questions on this of various witnesses, and the answer coming back is that it clearly all depends on how likely, apart from the evidence you have amassed, the subject of an inquiry is to go for an injunction and whether he/she is likely to succeed. How realistic is the threat of injunction on both of your publications?

**Mr Hislop:** Now it is immediate, which is why I am worried about prior notification. We are involved in a case at the moment where we attempted to run a story in January and we still have not been able to run it. The journalist involved put it to the person involved, which was an error; there was an immediate injunction; we won the case; they have appealed; we are still in the Appeal Court. Essentially it is censorship by judicial process because it takes so long and it costs so much. I have to say if you go for an injunction in the middle of the night or on a weekend or a Saturday, you get a judge who does not know a great deal about this sort of thing and they give the injunction. In the old days of libel if you said you were going to justify you were allowed to run the piece. Now, if they say privacy—I will prove this to be true—fine, must not say word. Anything to do with privacy now goes straight through. So you find yourself unable to run stories because they have invoked confidentiality or bound it up with privacy and that is a real problem. It means four months later I am sitting on a very good story which I have run once within the lower court—not about sex, nothing to do with red tops, a proper public interest story—which I cannot run, and it would have been in the public domain if I had not tried to act responsibly—it was not me actually; it was the journalist. I should make that clear. Therefore I think you have to be careful with prior notification, and Mr Mosley’s idea that you should be in jail if you do not notify the person involved in the story is just silly.

**Mr Rusbridger:** I agree with that. I think there are big problems with prior notification. We have not been hit on anything to do with the privacy yet but confidence is quite a problem for us. Barclays’ documents that we were sent we put on the web and were hit in the same way as Ian at two o’clock in the morning by a judge who told us to take them down. Now, that was clearly in the public interest, we know, because, if you look at the small print of the Budget, the Budget has closed down most of the loopholes that Barclays were using, so it was clearly in the public interest that those documents should have been published. The other not untypical kind of case is you have a source; you have documents; if you go to the person you are writing about they could well get an injunction on the basis of the documents, and so you play this game in your mind where you say, well, perhaps we should destroy these documents so there are no documents they can get at which might be used to get at the source, but if you destroy the documents and they then sue you in libel you have no documents. So you are weighing up these kinds of games, except they are not games because they cost so much money.

**Mr Hislop:** On that point also, if you go to prior notification, and they get this immediate injunction on content, they have maybe a month to go and lean on whoever they think has given the story at which point your story may then disappear, so the person who told you the story imagines it will be in print and they will be fine, the story does not appear, there is no fuss, and the person who it is about comes and leans on them.

**Q867 Paul Farrelly:** Is it a reality that, if prior notification were to be pursued, a claimant will try and seek any grounds to suppress the story? I think, Alan, you have used the word “lottery”. There is no consistency in the granting of injunctions. You mentioned Barclays, yet in the Mosley case the judge refused to order the newspaper to take a video down from its website.

**Mr Rusbridger:** It is very difficult to second-guess the judges. I am slightly divided on this because I think it is wrong that you have one or two judges creating all the media law in this country. On the other hand, if you have a complete lottery of judges who just happen to be the duty judge at two o’clock in the morning and know nothing about media law, then I am not sure that is much better. But it is unpredictable and I do not think the law should be unpredictable.

**Mr Hislop:** And it was not. For a very long time in terms of libel the principle was “Publish and be damned”, a very old-fashioned principle in this country, so if you said “I will prove this to be true” you were allowed to publish. In privacy or confidentiality now I think essentially the feeling is, “We will not allow you to publish this”, so the burden has gone completely back the other way.
Q868 Philip Davies: As you may know from previous sessions I am very sympathetic to the case you put, particularly in terms of burden of proof, and I am a big fan of the American system. I think it would be much better than the current system we have. I think the freer the press the better the democracy we have. Alan, you said you were sympathetic to the switching of burden of proof but the case that always throws a spoke in the wheels in terms of changing the burden of proof is the case of Madeleine McCann and the way that the McCanns were labelled because, on that shift of burden of proof, therefore, it seems that they would have had to prove that they were not involved in the disappearance of their child, which seems to me a rather difficult thing for them to prove. So how would you answer that particular problem with changing over the burden of proof?

Mr Rusbridger: That is a difficult one. I think the only answer is that, as Tom Crone said earlier, in all other jurisdictions I know of the burden of proof operates the other way, and generally quite well. It is rather to our shame that London has become the libel capital of the world because we have it on the other foot, so I think the McCanns are a bad case on which to make law. In the example I gave of Jonathan Aitken we were trying to prove what he was up to one weekend three or four years previously which was a ridiculous situation for us to be in because he knew what he was doing, he could have produced the documents and receipts, it would have been an easy matter and, of course, the case would never have come to court because he was not telling the truth about it. I think we can all produce particular examples of cases to buttress our own case, but I think the fact that most of the world operates to the other standard of proof is tenable.

Q869 Philip Davies: Ian, I think you described yourself, or were described, as the most sued man in the country or somewhere! How many times have you been sued for libel?

Mr Hislop: Again, I think that is slightly out of date because the libel laws were changed. A lot of amendments were made about 10 years ago, when I was creating a lot of noise and Alan was doing a lot of sensible writing of papers and sending them in, and a number of elements of the libel lottery were changed I think greatly to the good of the whole system, so it is possible to change things and to get them right and I would say I am less sued now for libel. I am not saying there are not quite a few around but not so many as in those ridiculous days. There is much more use now of privacy, which is the bit I hoped we would get on to because I think the cliché is privacy is the new libel. If you want to shut people up privacy is how to go about it now. Libel is too difficult because you have to prove that it is not true.

Q870 Philip Davies: So how many times is it that you have been sued for libel?

Mr Hislop: I do not know.

Q871 Philip Davies: I do not mean this facetiously but you have not been very successful in defending lots of those libel actions.

Mr Hislop: I have won one.

Q872 Chairman: And you did not get any money from that?

Mr Hislop: Thank you for pointing that out!

Q873 Chairman: I am just interested as to why you feel you were so unsuccessful in defending those libel actions.

Mr Hislop: Well, certainly incompetence may have been a feature, and some of them we may have got wrong, that is perfectly possible, but I would point out that we lost I think a good half dozen cases against Robert Maxwell before the last one, in which *Private Eye* accused him of stealing money from his own pension fund—you can see why we get in trouble—and we would have lost that as well.

Q874 Philip Davies: From what you are saying now libel is not the big issue for you?

Mr Hislop: It is a big issue because as soon as you get one now the costs will probably cripple you. I am being facetious; you get fewer libels but each one is much more dangerous because it costs you a couple of hundred grand before you have started, and if it is a CFA you are looking at half a million more. The *Guardian* is being very discrete about its libel costs from *Tesco* but we are talking nearly a million, and these are huge figures to run one story. The idea that you get any readers by spending a million quid on a case about tax—I would guess if we put the word “tax” in *Private Eye* most readers would think “I will buy something else”. There is less libel about but it is much more dangerous; what there is a lot more about is privacy.

Q875 Philip Davies: There has been lots of debate over the years about whether there should be a privacy law or not in this country. Do you feel now that with the interpretation of the Human Rights Act, as it appears to be, that there is in effect a by-the-back-door, *de facto*, privacy law in this country that now applies which is stopping you from publishing stories that you would otherwise publish?

Mr Hislop: Yes. I think privacy law has evolved and been largely determined by the judges, and by a very small number of judges, and I think we are at the stage—which is why it is over to you really—where, if we are going to have a privacy law or not have a privacy law or we are going to tinker with the elements of privacy, Parliament is where this should be happening. I do not think it should be just left to judges interpreting the Human Rights Act because, as the previous witness said, Section 12, the freedom of the press, does not seem to have much weight when put up against Article 8, privacy, and I think that is a real problem, or is certainly becoming a problem for us.
Mr Rusbridger: Can I offer a slightly qualified view on that because we have not been hit by any privacy actions. We have been hit by a lot of confidence actions and a lot of libel actions, but nobody has actually used privacy against us now. I am much more worried about libel than privacy, and I think what is happening is that judges are being required to balance Article 8 against Article 10 and Section 12 and they have not had very good cases yet and I think probably we have to give it a bit more time, because I do not think there has been a good case where someone has tried to gag a newspaper with a really good public interest defence.

Q876 Philip Davies: Does it depend which market you are in as to what is your biggest problem, whether it is libel or privacy? It seems to me that you are in as to what is your biggest problem; it depends which market you are in?

Mr Rusbridger: That is very broadly true.

Q877 Philip Davies: It does not mean one is more important than the other; it depends which market you are in?

Mr Rusbridger: Yes.

Mr Hislop: But libel is much harder and I think privacy is a way of achieving the same effect, so it is beginning to cross over.

Q878 Chairman: How many privacy actions have you lost?

Mr Hislop: Well, we have not lost it yet but we have had a lot of lawyers’ letters.

Q879 Chairman: How many are actually going to court?

Mr Hislop: We have one at the moment, and I have challenged two others in terms of trying to vary the order on privacy cases, so that is three this year I have been involved in the legal process with, which is quite a lot.

Q880 Chairman: How many injunctions have you been subject to on privacy, potentially?

Mr Hislop: Well, a lot of blanket ones come round. Schilling sends them round. You probably get one a fortnight saying: “You won’t write about this story. We have an injunction against everyone.”

Q881 Chairman: And they actually have obtained one?

Mr Hislop: Yes.

Q882 Paul Farrelly: I do not want to lose sight of this area of confidence. They are binding privacy and confidentiality up together and slightly blurring the edges. I think what Alan means is strictly privacy, like the Mosley-type privacy.

Q883 Paul Farrelly: In the Barclays case, and here we are talking about large corporations and where it is confidence not privacy, the documents were already out there but the injunction was still granted to get you to take them down. Then the Guardian went to court and lost the hearing. So it seems to me that the public interest argument or protection for whistle blowers is not really working in practice. Or is that just one judge?

Mr Rusbridger: No, I think confidence is a problem, and the public interest defence does not always work with judges.

Q884 Paul Farrelly: Are you appealing that judgment, or is it going to be too costly?

Mr Rusbridger: No. I was told it would cost £100,000 to appeal, and life is too short. The documents are out; they were put on to a website called Wikileaks, and I am allowed to tell you that because it was mentioned in Parliament, but I think it is a very interesting case where the law has completely failed to catch up with the internet because there was this arcane discussion in the High Court about whether this was private or not and whether they could contain it in a room, whereas everybody was twittering and linking to it because it was already out there, but the court pretended it was not.

Q885 Paul Farrelly: If you will allow me, Chairman, I cannot resist one line of thought on the Condilffe case, your one victory, your pyrrhic victory, as it were, with a capital “P”. When lawyers take cases up pro bono, if they lose one of the concerns for them is whether they could contain it in a room, whereas everybody was twittering and linking to it because it was already out there, but the court pretended it was not.

Q886 Mr Sanders: Is it really the libel law that needs reform or is it establishing precisely what you mean by privacy law? We have always held off from having an informal privacy law and I am not yet persuaded that that is the way to go, but I am certainly persuaded that there are better ways of looking at libel in other countries and perhaps we ought to be looking to amend our law closer to the American system. Do you have a view on that?

Mr Rusbridger: I think we should. I am not sure the American system is perfect because you get into this difficulty of what constitutes a public figure, and I think the history of the so-called Sullivan law has run into difficulties there, but I would rather, obviously, be at the end of the American spectrum because I think Article 10 does not carry quite the same weight as the First Amendment, so you have not got something you can hold up, which should trump most things.
Q887 Mr Sanders: Do you need your own First Amendment?

Mr Rusbridger: Yes. I suppose Article 10 was supposed to be the equivalent of the First Amendment but it has not quite achieved that status. I would rather explore the area of public interest, the serious matter of what you are writing about, rather than get hung up on what is a public figure.

Mr Hislop: I think that is right; your point about the serious matter of what you are writing about, rather than explore the area of public interest, the Amendment but it has not quite achieved that status.

Mr Rusbridger: Yes. I suppose Article 10 was supposed to be the equivalent of the First Amendment?

Mr Hislop: I think that is right; your point that is that it is the same, that the paperazzi jumping inside someone’s bedroom is the same as someone asking questions about where the money has gone. They are not the same, and I think most people understand what the basis of privacy is. Certainly with the McCanns it must be fairly easy to frame a wording that stops you saying: “Well, you murdered your children, you must prove it now that you did not.” We cannot use that as the basis, surely.

Q888 Mr Sanders: No, but in terms of the McCann family being public figures, did they not become public figures by using the media in order to publicise the tragedy of the missing child? It is not as easy as it first looks to try and determine who is and who is not a public figure. How do you apply that test to Private Eye? Obviously I would think most people think politicians—fair game; heads of nationalised industries and big companies—fair game. But who is not fair game? Where is the dividing line?

Mr Hislop: I suppose it is essentially people who affect the way you live your life, so that if you write about this person and what they do, that in some way will affect the way the general public lives. As a basic definition that seems reasonable. That is how I would put it.

Q889 Alan Keen: On the PCC, I understand you do not contribute towards it.

Mr Hislop: No.

Q890 Alan Keen: Is that because you do not agree with it, or think that it is ineffective, or just that you are short of money? Why is it?

Mr Hislop: We do not pay and Private Eye does not belong to the PCC. No. I have always felt Private Eye should be out of that. It means that we just obey or do not obey or we are judged by the law rather than by the PCC. Practically two and a bit pages per issue of Private Eye are criticism of other individuals working in journalism. On the whole, they appear on the board of the PCC adjudicating your complaint, so I would be lying if I said that did not occur to me. So no, I always thought it would be better for the Eye to be out of it.

Q891 Alan Keen: Your view is different, Alan, on the PCC? People have been critical of it and it is important that we get not necessarily a balanced view but a proper view on the PCC. I note that it fulfils a certain role but not the same as Carter Ruck or Schillings. What role should it play? Is it playing the right role?

Mr Rusbridger: Broadly I think it does good. It is good to bind the press together under an agreed code, and I think the Code is a pretty good code. I think editors do respect it; they do not want adjudications against them; I think they do an awful lot of useful mediation work which is from the public view. I think its problem is that it is not a conventional regulator. It describes itself as a regulator but it is not like the GMC and it is not like the Law Society, and it is quite opaque in its appointment processes, and I think it is going to have to clarify this view of itself for two reasons. One is that there is clearly a divergence now between the PCC’s jurisprudence on privacy and the courts’, and I think if the PCC wants to get back in that game as opposed to sitting and looking a bit irrelevant on the sidelines it is going to have to take a view on where it sits in relation to the view of privacy that the courts are going to take. It was interesting, I was on the public platform with the Sir Christopher Meyer about a month ago in which the Mosley case came up and somebody asked him: “What would you have done about Mosley if he had come to the PCC?” and he was unable to say. He said it would have been very finely balanced. I know he treated Mosley as a bit of a figure of fun when he came to give evidence here but actually, if Mosley had gone to the PCC, the PCC would have had essentially the same balancing act as Mr Justice Eady did. So I think the PCC is going to have to clarify its view on privacy and decide whether it is going to leave it to courts or try and get into the action on privacy, which I think would be a good thing because it is cheaper and so on and so forth, and I think the other respect about which the PCC is going to have to think a bit more carefully in the future is this aspect of proactivity. It was remarkably uncurious about the Motorman cases and the Goodman case. There were a lot of people writing; there were a lot of court cases before the Data Protection Commissioner and before the Information Commissioner about the industrial scale—industrial scale—of the use of private detectives, and the PCC really I do not think handled that in a particularly aggressive or inquiring way which I think just makes it look odd to outsiders. If that was the GMC or the Law Society and there was prime facie evidence of mass scale law-breaking, most other regulators would have stepped in. So full marks for mediation and for being free and quick, but I think it is going to have to think about its role going forward.

Q892 Alan Keen: Do you think the editors have too much influence on the action? Is that why the PCC is not proactive?

Mr Rusbridger: Well, they are in a minority. I do not know what the reason is. I think over the last 10 years it has changed its role into being more of a mediator and less of a regulator, and it did so almost without people noticing.
Q893 Alan Keen: Do you think it should be more of a regulator, then?
Mr Rusbridger: Well, the examples I have given you are of cases where, if you think of any other regulator in any other aspect of life, they would behave in a more proactive and inquiring way, and if the PCC is to maintain confidence going forward, which I hope it does because, as I say, I broadly support it, it is going to have to think about these two aspects, what it thinks about privacy and whether it should be more inquisitive and inquiring—inquisitorial—when it becomes aware of bad behaviour up to and including law breaking by an awful lot of journalists.

Q894 Alan Keen: But in changing its role into being much more inquiring, should it not be freer from the newspaper industry itself? Somebody gave a wonderful analogy of a jury. If five of the jury out of twelve were friends of the accused that would be completely unacceptable, but that really is what the PCC is. There is a lot of influence from the industry. It is self-regulation so the industry should be involved in the setting up, but should we recommend that it is taken away from the industry? It could get advice from the industry, but give it more teeth?
Mr Rusbridger: I think what I am talking about are the broad parameters of the way it should see its role rather than the individual adjudications. I have never been on the PCC. One hears anecdotally that it is helpful having editors present who can explain things but I do not know if that is true or not, and I am not sure whether it would be improved or not by not having editors on, but I think I am taking a step back and saying there is a more conceptual role about how the PCC should see itself which is for the industry to decide, and I think it would be good for the industry to take a different view because it would make self-regulation more effective.

Q895 Alan Keen: Would it give a defence to the newspaper industry from lawyers like Carter Ruck and Schillings if we recommended that the PCC was strengthened, so that it could both defend newspapers as well as at times help to regulate? What do you think?
Mr Rusbridger: On this big issue to do with the developing law of privacy, one way that newspapers can try and forestall that is by saying that there is no need to go to the courts because we have an effective means of tackling that, an effective means of redress, and I think at the moment the outside view of the PCC is that it is a bit weak on privacy. There were a lot of cases around turn of the century, cases like Anna Ford and Sarah Cox amongst others, where the PCC took a fairly relaxed view of privacy, and I think they would take a different view today. So I think the PCC has to send a signal saying, “We are serious about privacy, we are not living on a different planet, we acknowledge that the Human Rights Act has Article 8 and that people have a right to privacy, but you do not have to go to courts in order to get redress”, so the question is what kind of redress, what kind of processes would the PCC offer, and I think if they could think constructively about that rather than just criticising the courts that would be a more constructive way of doing things.

Q896 Alan Keen: Ian, you said you would rather the law accepted it, but if you were able to change the PCC in any way, do you think that would be acceptable?
Mr Hislop: If it had that sort of structure and means of redress I would think very seriously about joining again, because that would make sense.

Q897 Paul Farrelly: I want to address the area of responsible journalism, in particular the Reynolds and so-called Jameel defences which have not proven to be the beacon of light that they were held out to be when the judgments were first delivered. First, could I ask you both whether either of you have used Reynolds or Jameel when you have been sued for libel?
Mr Rusbridger: We use Reynolds pretty extensively. There are three or four reporters who have learned to use it and if you asked them they would say they rely very heavily on the legal department, so it would not work if you were on the Leicester Mercury or the East Anglian Daily Times and you did not have that kind of legal department. You have to work extremely thoroughly in the way you phrase questions and it is a long, drawn out, rather arduous way of processing stories, but I do not think it is all bad. I think it has enabled us to print a lot of stories that we could not have published in the past in a different kind of voice, raising questions rather than asserting things, but we have got a lot of information in the public domain using Reynolds. There are certain problems over it, including the single publication rule which is another aspect of libel, that when the courts view every day a new day the material is published again on a internet, and Reynolds becomes quite difficult if you are addressing very old cases of going back and saying who exactly made the phone calls when and was this put, and I think it is there is a problem if it is treated too literally, which some of the judges have done, where you say “This is a ten-bar gate and you have to get over every single bar before we can give you the protection you need”, as I said earlier. I think it would be better if they said, “This is broadly a story that is in the public interest; it would not deter journalists from doing this kind of journalism; we are not going to insist they get over every bar of these gates”, that is indicative of the kind of approach we would encourage.
Mr Hislop: I would agree with that. We have not used the Reynolds defence in any cases. I think it creates a climate where it is easier to do certain types of story, but my two problems would be a broader definition of public interest, because I think it is quite difficult to get that, and prior notification I do not think is open and shut in terms of trying to do quite difficult or interesting stories.
Q898 Paul Farrelly: What was the difficulty in the Tesco case of using Jameel and Reynolds?

Mr Rusbridger: That we did not clear enough of the bars. We were in this sort of courtly dance with Tesco pre-publication; we sent them, I think, 17 questions to which they responded to less than half a dozen from memory, and so we were left with gaps in our knowledge, and effectively we felt at the time they were dead-balling our inquiries and we were on weak grounds in respect of one answer that they gave us that we did not include in full, so that that bar that said you had to fully include the other side’s response that we did not include in full, so that that bar that we would have been weak on, so we could not rely on Reynolds.

Q899 Paul Farrelly: Because you could not rely on the responses that were perhaps not forthcoming?

Mr Rusbridger: Well, I think in fairness to Tesco we should have been more generous in respecting the responses they were giving us. I think we were suspicious because they were not answering so many of the questions that we wanted them to answer and because they refused a face-to-face meeting, so it was just an odd case.

Q900 Paul Farrelly: We heard from counsel to the News of the World and the Sun earlier that he felt on balance that it would be helpful if that sort of defence was given some statutory basis. Do you think that there is any insuperable difficulty in defying public interest to make that a reality? We have defined public interest with various legislation such as freedom of information, whistle-blowing. Would it be helpful?

Mr Hislop: Well, the judges are doing it anyway; why shouldn’t you have a go?

Mr Rusbridger: I think the PCC’s Code, which is reflected obviously through Article 12, is a pretty good public interest code. I heard someone the other day define public interest as information which the more it is repeated the more it gains in value, which is maybe not a legalistic definition but you can try it on cases, or another way of looking at it is that it is information which, if it were denied, would have an effect on how you live your lives. So if it was a picture of a newsreader on a beach and you were denied that picture would that have any improvement on any aspect of the way you live your life. So I think there are informal ways of testing what the public interest is but I think, as Ian said, you kind of know it when you see it.

Q901 Paul Farrelly: And every case is different. Reynolds was different, for example, from Tesco. With Tesco you actually got in the article the actual name of the tax wrong, by your own admission, but the thrust of your article was right and, in fact, the article was accurate because, as you have said, Private Eye managed to turn up proof that they were, indeed, avoiding corporation tax.

Mr Rusbridger: We accused them of murder and, in fact, they were guilty of manslaughter. It was difficult to claim a great moral defence, and we would never dream of doing such a thing because, as Private Eye demonstrated, they did.

Q902 Paul Farrelly: But the point of my question is if any defence was on a statutory basis you would want it to be rather more extended than to narrow it down to the sort of circumstances surrounding Reynolds, for instance.

Mr Rusbridger: Yes, and you would want it to be as broad as possible. I do not want to line up with the News of the World but there have to be circumstances where that is a very grey case and that is why it is so. I think, dangerous to let Mr Mosley impose his anger at what happened to him on changing the law. He won his case; he now wants to change the rules as well. In his evidence I believe he said things like: “Well, if a bishop is having an affair with an actress or a racing driver is and there is some other misconduct, those are equally private”. and you are thinking no, they are not, you stick to your case and argue that. The other cases are not really I think up to him to define, and those may well be in the public interest.

Q903 Chairman: But, on Alan’s definition, in what way does it change the way people live their lives to know Mr Mosley likes having his bottom spanked in private?

Mr Rusbridger: I am saying he can defend that. I am not here to defend the News of the World, but the problem about Justice Eady’s summary, as I am sure you know, is he said “We are a grown up cosmopolitan country, whatever we do behind doors is entirely up to us—unless there are Nazis in it, and then it is in the public interest.” Is it? The judgment makes no sense. Is your right to dance about as a Nazi private? Or is it you are only allowed to dance about as a German officer? It is a silly case and you should not be making law on it. But even in the judgment that you are looking at it does not make any sense. You have to define what is private and what is not.

Mr Rusbridger: I think this is why we should not pin too much on Mosley because lots of people have different views on Mosley. I would reserve my alarm for when judges are presented with privacy cases in which there is a clear public interest, and which they then allow 8 to trump 10. Then I think we are in trouble.

Mr Hislop: Yes, which is why I hope it does not happen in this one.

Q904 Chairman: Just on the judges point, you previously said you were concerned when talking about injunctions about somebody going to a lawyer who has no experience of media law and, therefore, getting a judgment which is precautionary, but one of the big criticisms that has been made, particularly by Paul Dacre, is that the cases are being heard repeatedly time and again by the same person and that judge has displayed a moral judgment and various other things he has been accused of. Is that a matter of concern for you? Do you think it is a problem that Justice Eady appears to have almost a monopoly in this area?

Mr Rusbridger: Yes, I think it is a problem, although I have to say he did find for us in the lower court, which is an example of an extremely fine judgment
so it is not always his fault, but on balance, it would be better if it was not just him and one other judge making all the law, because it does seem to be that his own prejudices, his own views, whatever, coming out and he is handling all the cases, including the libel tourism. It is all the areas, really, and it just seems very unbalanced.

**Mr Rusbridger:** I agree with that. Again, he found for us in *Tesco* so he is not all bad, but I think there is a tendency for the libel judges to be picked from the libel bar; they are quite often people who were doing the claimant cases; and I think it would just be better to have a wider bar of people, some of them with a wider experience of human rights, because I think it is too easy for the newspaper industry to attack Eady; it is almost unfair on Eady. It would be better if there were a wider selection of judges having to perform the same balancing act between 8 and 10, and then you would get a better take on what is happening to the law.

Q905 Paul Farrelly: On the subject of responsible journalism, I wanted to raise a few points that have come up very briefly. Firstly, first publication. It is the case, is it not, that the libel laws have not kept up with the internet and that every day is deemed a new publication as long as you keep it on the internet, so that would be a fairly simple change to make?

**Mr Rusbridger:** Yes, but we are still stuck in the era of the Duke of Brunswick sending his servant down to inspect the *Times* in the library. That would be a relatively simple thing to do that first publication would sort out.

Q906 Paul Farrelly: You raised burden of proof, Alan. Could you give one example, in the *Aitken* case, for example, of a very reasonable step that Jonathan Aitken should have been able to make or have had to have made to defend his case, or to pursue his case, that would have made a big difference to the *Guardian*?

**Mr Rusbridger:** I have heard it argued that the judge could decide where the burden of proof is but if the judge in that case had said: “Come on, Mr Aitken, this is all about a weekend in the Ritz in”—whatever the date was—“1996–97, you could produce the receipts, you know what you were doing”, the case would have been over within 20 minutes because we could have worked out exactly what he was doing. It was pure luck that we managed to get into the basement of a deserted hotel in order to get the receipts that he had not given us and we came quite close to losing that, so that to me is the clinching point.

Q907 Paul Farrelly: Was that the law’s fault or the judge’s that no order was made?

**Mr Rusbridger:** Given that the burden of proof is on the defendant the judge could not order, but maybe it comes to your point. Mr Sanders, if the judge could have had the discretion at the beginning of the case and had said, “Well, in the *McConn* case that would have been impossible for you to prove, that you did not murder, but in the *Aitken* case it seems to all hinge on the facts of one particular weekend, so therefore I order that in this case you come up with these documents.”

Q908 Paul Farrelly: In Australia, of course, Tesco would not be able to sue. What do you think of critics saying: “Don’t go that far because then it will give everyone licence to say what they like?”

**Mr Rusbridger:** I think the law in Australia is that no company that employs more than 12 employees can sue unless two things, one: unless they can prove malicious falsehood, i.e. that you were deliberately spreading information in order to damage the firm and, secondly, to prove economic loss. In Britain, after Derbyshire, public bodies cannot sue, Trade unions cannot sue, and I think you saw the *Donaldson* case is another. It would be a small step to extend that to corporations.

**Mr Hislop:** And that has changed it a lot for *Private Eye*. Ten years ago, when all those official bodies could sue, they did.

Q909 Paul Farrelly: Finally, it seems very odd that in Britain you are free to report the announcements of the lowest district council with qualified privilege but you cannot rely on documents coming from august panels from the United Nations. This is a complaint by non governmental organisations putting evidence in, that you cannot place any reliance on these documents if you have a libel suit against you by a well-known arms dealer, even though they have been named liberally in documents, for instance, from the United Nations, or even the Department of Defence. Either with the statutory defence of responsible journalism or having a look at privilege, have you ever given any thought to how the situation might be improved in that respect?

**Mr Rusbridger:** I think there is a serious problem at the moment. The *Anchicot?* case is a problem of a man convicted in the French courts but the English courts will not rely on the French courts’ judgments; we had a case involving the Malaysian police force where we could not rely on Malaysian Police Force documents. It is happening a lot with the verdicts of Russian courts or Eastern European courts, with Eastern Europeans coming here to sue, but I think it is more broad than simply courts. There is a big inquest going on at the moment as to whether the press reported the imminent collapse of the banking industry and whether we should have been more alert and more aggressive in reporting what was going on inside these investment banks. May I just say, if you want us to perform that function, which clearly we should, then I think you have to give us some form of protection when writing about incredibly complex matters, matters so complex, a bit like tax avoidance, that the people who sat on the boards of those companies did not understand them, and if you are going to want the press to go after these companies then you are going to have to extend some form of privilege to a wider area of documents than simply court documents.

**Mr Hislop:** And in those cases, if the press had gone after the individual banking executives, they would have claimed privacy, particularly about their own
payment, not merely confidentiality. They would have said: “It is entirely my own business how much money I take home from the Royal Bank of Scotland”.

Q910 Janet Anderson: When the Committee was in the States recently we were fortunate enough to meet Ben Bradley, who was the editor of the Washington Post at the time of Watergate, and we have had quite a lot of evidence from a number of witnesses about the relative decline in investigative journalism and the extensive use of briefings and press notices and so on, sometimes described as “churnalism”. Is that something you recognise? Also, our next inquiry is going to be on the future of local newspapers, so could you perhaps tell us how do you see the future of the press generally, bearing in mind what is happening on the internet and so on?

Mr Rusbridger: Well, the financial condition of the press is dire, and is hitting local papers first. We are faced with the prospect, for the first time since the Enlightenment, of communities not having any verifiable source of news, so the threat to the press is very great at the moment, which is why I think you should listen to what is being said. I know you had a lawyer who represents a lot of local papers saying he cannot imagine any local papers ever defending libel actions again, and I think that is very grave. Most local papers just simply do not have the resources to do investigations any more, and the more you get into the spiral decline of cutting costs because the advertising has gone and the circulation is declining, the more you get into what is known now as “churnalism”, where reporters do not leave the office and simply do not have the time to make inquiries.

Q911 Janet Anderson: Is that going to happen to the nationals as well?

Mr Rusbridger: I think it is happening to the nationals. Mr Hislop: Nick Davies’ book is very good, and the section on churnalism is particularly good about taking a story down from the Wire and you write it up and then the Wire reads your paper the next day, someone on another shift, and says, “Oh, that’s a good story” and puts it in again, so there is a desperate cycle of nothingness going on about news. And the Eye slightly benefits because a lot of our stories come from local journalists who cannot get their stories into their own papers because their papers do not want to take any risks at all, and they certainly do not want to cover anything to do with the Council in case they lose the Council advertising, so it is pretty desperate locally. We had a competition for the blandest local news front page and it is basically charity walks. That is it. There is plenty of room for that in local newspapers but not only that, so I think it is dire and they do not want to take on the costs.

Q912 Janet Anderson: I am interested particularly in what you say about local council advertising because there is some evidence in my part of the world that newspapers are quite frightened of publishing stories about local councils for that very reason. Would you agree with that?

Mr Hislop: That is what they say, so I presume it is true!

Janet Anderson: Thank you.

Q913 Mr Sanders: I have a question on the development of the media and where it goes in the future, and blogs. Although blogs in the law should not have different standards they do appear to have different standards, and increasingly newspapers are using stories broken on blogs as if that is the verifiable source and there are then difficulties they get into. Do you have a view of how you can improve the standards, if you like, of blogs?

Mr Rusbridger: My own views on blogs is their stories become useful when they go into what they call dead wood, and it is very interesting that the e-mail smears, which were discovered by a man who runs a blog but not published on his blog, were given to real newspapers to put in so that they took the risk and came up with the defences and the justification to do it, which I thought was a validation of the role of newspapers. A lot of what is written on blogs would never get into any newspapers, and I am hoping the original McBride ideas would not have ever made it into print. They would have made it on to some blogs and then swilled about a bit and then someone would have said: “Oh, guess what’s on the blog” and that might have got in, but given direct to a paper I am guessing Guardian Media would not have put them straight in.

Mr Rusbridger: I agree. It is too easy to smear all blogs because there are some wonderful blogs which are incredibly knowledgeable and, on their subject, much better than newspapers. They are subject to the same laws of libel and I suspect we will see libel cases in which people go after blogs. They have tended not to do so up till now, but clearly there is a responsibility on newspapers if they are going to use material from blogs to subject them to the same kind of checking that we would to anything.

Q914 Mr Sanders: You do not ever envisage Private Eye becoming a blog in the future? You always see a future for it being a dead tree?

Mr Hislop: Yes, and, if you want to find out what is going on, buy it. Do not try and get it free!

Q915 Paul Farrelly: Ian, short of catching someone red-handed on tape, like the News of the World did with Mosley, perhaps wearing a Nazi uniform, handing over to a politician a big wodge of cash in a transparent brown envelope so you can see that it is cash, are there any figures that even Private Eye would not touch now because they just sue?

Mr Hislop: No, I do not think there is anyone we would not have a crack at. Again, this is part of the point of Private Eye and part of the point of most publications. We were sued by Lord Ashcroft and he has quite a lot of money. I do not think there are many deeper pockets than that, so I do not think we should be put off by that.
Q916 Paul Farrelly: You must have golden pockets to be able to afford to do that?
Mr Hislop: We have very generous readers!

Q917 Paul Farrelly: Alan, back to the chilling effect?
Mr Rusbridger: There is nobody we would feel, on principle, intimidated by. The difficulties are that if you are going to remain a serious newspaper you have to do serious reporting of foreign affairs, and I think we see that as one of our main functions. Increasingly two thirds of our readership is abroad and that takes us into territory where we are sometimes writing stories about other countries which they cannot write about in their own countries. We have talked a bit about Russians and Eastern Europeans, and it is quite hard to get some of the evidence there to the standards required. If you are going to be held to the burden of proof that would exist in a court then that will stop you from printing material that I think should be published, even when you win. We have just had a case with this purveyor of vitamin pills, which you heard about from Ben Goldacre, Matthias Rath. We had to risk half a million pounds in order to fight that case and go to South Africa for weeks on end in order to get the evidence in order to take him on, and even though he eventually dropped the case we will still be out of pocket to the tune of about £200,000. So we will not be wondering in the future why newspapers ever got things wrong but will be wondering why newspapers ever attempted to do this, because it is going to become impossible given the financial constraints on newspapers.
Chairman: Thank you both very much.

Written evidence submitted by Private Eye

PRESS STANDARDS PRIVACY AND LIBEL

Following my appearance to give evidence before the Committee on 5 May I am writing, as anticipated during the course of my evidence, to give some further information to the Committee.

Firstly, I enclose a copy of the letter of 29 April 2009 that Private Eye received from Schillings, solicitors, on behalf of its client, Richard Grainger. Mr Grainger was formerly Chief Executive of NHS Connecting for Health, the Department of Health Agency responsible for delivering the National Programme for IT to the NHS which has been the subject of very extensive criticism over its huge levels of spending and its very modest achievements to date.

Secondly, I have looked at what happened in 40 cases since the beginning of 2000 involving libel claims made against Private Eye. For the avoidance of doubt the making of these claims did not necessarily lead to court action being started, as some were settled without any need to institute court action and others were not pursued. One action went to trial—the Condiffe action which was mentioned during my evidence—and resulted in victory for Private Eye when the action was abandoned after some six weeks of trial. One action went to trial and resulted in a hung jury. One action was settled on the eve of trial with a substantial payment of costs in the Eye’s favour, in other words a victory for the Eye. Of the remainder, 26 claims were not pursued and 11 resulted in agreed settlement.

Thirdly, since the beginning of 2008 Private Eye has begun to receive a number of privacy injunctions granted at hearings of which it had no prior notice and designed to prevent the media generally from publishing allegations about individuals, usually well-known celebrities. In these instances, Private Eye has been sent copies of the court order, although it was not a defendant in the proceedings (orders are sometimes made against “persons unknown”).

As I mentioned in my evidence, Private Eye is currently involved in contested proceedings for an interim injunction to prevent publication of information said to be confidential/private. Mr Justice Eady refused to grant an injunction in January 2009; the outcome of the appeal to the Court of Appeal is currently awaited. There are reporting restrictions in place from the court in respect of those proceedings.

In addition, but in contrast to the above type of privacy injunction, Private Eye has for many years now been in regular receipt of injunctions granted by the Family Division of the High Court which are designed to preserve the anonymity of children who for one reason or another have become of interest to the media. Private Eye has never taken issue with this type of injunction.

There is no doubt, however, that the increasing use of the former type of privacy injunction is of great concern. Court orders commonly prevent publication not only of the “private information”, but also the name of the person who has obtained the injunction. In some cases, the order prohibits any disclosure of the fact that proceedings have been brought or an injunction granted. Private Eye receives copies of some (but not, I believe, all) of the orders made by the court.
On this subject, in my evidence to the committee, I may have suggested inadvertently that *Private Eye* receives a privacy injunction of the former type about once every two weeks. This is not the case. What I meant to say was that this is my understanding of the approximate rate at which this type of injunction is being granted by the Courts. I understand that I will have the opportunity to correct my evidence and I will do so in due course.

*May 2009*
Tuesday 19 May 2009

Members present
Mr John Whittingdale, in the Chair

Janet Anderson Mr Mike Hall
Philip Davies Alan Keen
Mr Nigel Evans Rosemary McKenna
Paul Farrelly

Written evidence submitted by the Master of the Rolls

1. The judiciary of England and Wales (the judiciary) welcome this opportunity to assist the Department of Culture, Media and Sport Select Committee (the Committee) in its investigation into Press Standards, Privacy and Libel.

2. The Committee has outlined a number of areas in which it is interested in hearing evidence viz., statistical information regarding the number of defamation cases being heard before the courts, the percentage of time they take up and their cost to the tax payer; the relationship between the judiciary and the media; costs and access to justice in respect of defamation proceedings; contempt of court; and recently announced reviews.

3. I have been asked by the Lord Chief Justice to prepare this written submission and do so as Head of Civil Justice. I am sure that you will appreciate that in preparing this document I have consulted others, and in particular, the Judicial Office for England and Wales and my Legal Secretary, John Sorabji. Having done so I set out my response to the various issues raised below. Before doing so I should point out that it is not possible for the judiciary to provide the statistical information requested. Such details, if they are kept at all, will be kept by Her Majesty’s Court Service (HMCS). Enquiry might therefore be better directed to HMCS or the Ministry of Justice.

Summary

4. What follows is divided into three parts:

(i) The Relationship between the Judiciary and the Media

This section deals with both issues raised by the Committee.

The first section, which is contained in paragraphs 5–11, deals with the judiciary’s media-panel. The media plays a crucial campaigning and scrutinising role in any democratic society. The judiciary is rightly scrutinised by the media. It is not however appropriate for the judiciary to respond to such scrutiny. Since 2005 a number of judges have however been trained to speak on the judiciary’s behalf in a limited number of circumstances. They do not comment on individual judgments, political matters or matters of social policy. Their role is a clarificatory one.

The second section, which is contained in paragraphs 12–39, deals with criticism that the courts have recently developed a privacy law. It discusses the case law that has been engendered by the Human Rights Office for England and Wales and my Legal Secretary, John Sorabji. Having done so I set out my response to the various issues raised below. Before doing so I should point out that it is not possible for the judiciary to provide the statistical information requested. Such details, if they are kept at all, will be kept by Her Majesty’s Court Service (HMCS). Enquiry might therefore be better directed to HMCS or the Ministry of Justice.

(ii) Costs and Access to Justice in Defamation Proceedings

This section is contained in paragraphs 40–51. Litigation cost is an area of concern both generally and specifically in respect of defamation proceedings. There are currently two costs reviews; one being conducted by the Ministry of Justice, the other is being conducted by Sir Rupert Jackson on my behalf. I cannot comment on the Ministry of Justice’s review.

Sir Rupert Jackson’s cost review, which encompasses a wholesale examination of costs, including both Conditional Fee Agreements and defamation costs, is on-going. It has reached the stage where a two-volume Interim Report has been published. That report is evidence-based. A copy is submitted with this evidence. It is anticipated that a Final Report will be published in December 2009. That will contain recommendations for reform. At the present time, while it is clear that there are widely held concerns about costs generally and costs in defamation proceedings specifically, it is premature for me to comment on what those reform proposals might be.
(iii) Contempt of Court

The final section, contained in paragraphs 52–60, focuses on the Contempt of Court Act 1981. It does not deal with common law contempt. The 1981 Act balances the need to protect the right to fair trial with the right to free expression. It does so by protecting the integrity of the jury and by providing a framework within which the self-regulating media, which in respect of criminal trials generally acts in a responsible manner, can properly act as the eyes and ears of the public.

1) THE RELATIONSHIP BETWEEN THE JUDICIARY AND THE MEDIA

5. The judiciary is not, nor should it be, immune from scrutiny or criticism. It is not above the law. Media scrutiny and comment may at times be uncomfortable, but they are an essential, a fundamental, part of our open and democratic society. Without effective media scrutiny of judicial decisions policy debates could not properly arise. The courts apply and develop the law. The media comment on it, draw attention to it and, as for instance Camilla Cavendish of The Times newspaper has done in respect of family courts, campaign for change. This is right and proper. That judicial decisions, the law's development and the social policy that underpins them are the subject of rational criticism and open debate is a sign of a healthy functioning democracy. It is one example of the exercise of free expression, which Lord Bingham rightly described as "an essential condition of an intellectually healthy society"; a society where:

"free communication of information, opinions and argument about the laws which a state should enact (and I should add, its courts develop and apply) and the policies its government at all levels should pursue is an essential condition of truly democratic government. These are the values which article 10 exists to protect, and their importance gives it a central role in the Convention regime, protecting free speech in general and free political speech in particular.”

6. The judiciary has traditionally not responded to adverse media comment. It is inappropriate for it do so. It speaks through judgments. If it were to do otherwise it would run the risk of undermining, or being perceived to have undermined, its independence, its ability to apply the law as between citizen and citizen and citizen and the State impartially, and public confidence in it. It would run the risk of politicising itself, not simply to its own detriment, but to the detriment of society as a whole. In order to ensure that the judiciary and society are not compromised in this way through being drawn into a debate arising out of its judicial decisions Parliament properly imposed a duty on the Lord Chancellor, through section 3 of the Constitutional Reform Act 2005, to uphold the independence of the judiciary and to defend that independence. This is all the more pertinent and important a duty where adverse comment is ill-informed or partial. I return to this.

7. In respect of the judiciary's relationship with the media the Committee raises two questions. First, it raises a question about the impact that the introduction of a small group of media trained judges has had. Secondly, it raises a question about the impact of media criticism on the judiciary. It does so with specific reference to Mr Paul Dacre's criticism of Mr Justice Eady's so-called single-handed development of the law of privacy. I deal with each in turn.

(a) Media-Trained Judges

8. Notwithstanding the Lord Chancellor’s duty the judiciary has since 2005 trained a number of judges to speak publicly for it. The media panel scheme was set up by the Judges' Council. It is overseen by its Communications Sub-Committee, which monitors and evaluates both individual interviews and the success of the scheme generally. The media panel was set up as a means by which the judiciary could clear up media confusion which can simply and easily be rectified and thereby improve public understanding and confidence in the justice system. It does not exist to enter into a debate with the media or to respond to adverse comment by the media. Currently, there are a number of serving judges on the panel who are trained to undertake broadcast media interviews. They are located across England and Wales and represent all the major jurisdictions: criminal; civil; and family justice.

9. The panel is selective in respect of the interviews it gives. Panel judges are not available “on tap” on any and every topic. There are occasions when we feel that an objective opinion voiced by a judge will be helpful eg, where confusion has arisen about bail decisions, sentencing and housing repossession processes. There are also matters on which panel judges cannot comment. They never comment, for example, on individual judgments, sentencing or other judicial decisions. Equally, there are areas on which panel judges decline and will continue to decline giving interviews ie, on matters that are overtly political, raise social policy issues or concern party political argument. Media attention on bail is a good example of where an issue developed and became too political for it to be appropriate for judges to give interviews about it. Once it became political and an announcement was made to review the law on bail it was decided that any interview would draw the judge into a conversation about what changes should be made. As such comment is inappropriate for a member of the judiciary, requests to interview panel judges were then declined. Once the situation changed and ceased to be a matter of political comment, panel judges were able to give a number of interviews.

1 Regina (Animal Defenders International) v Secretary of State for Culture, Media and Sport [2008] 1 AC 1312 at [27].
10. Each interview request received by the Judicial Communications Office (JCO) is considered on its merits. Requests are discussed by the JCO with the relevant Head of Division as well as panel judges. Interview requests can be granted on the understanding that if a judge is asked a particular question, normally ones relating to a specific case, they will not be able to answer that question. Programme-makers tend to approach the JCO at the development stage. In this way it is possible to gain an understanding of the issues they are interested in, while outlining clearly what a panel judge can and cannot discuss or comment on. This aids programme-makers, as they understand the limits placed on the panel judge, while facilitating agreement of panel judges to be interviewed. To date Panel members have given twelve television and radio interviews across a wide spectrum of subjects. These are listed in Annex A.

11. The media-panel’s creation is a new departure for the judiciary. It is still in its infancy. While we are proceeding with care, we hope that it is and will in the future contribute to better public understanding of the justice system and the role the judiciary plays in society.

(b) Criticism of the Judiciary, Privacy and Free Expression

12. The role of the panel of media-trained judges’ role is, as I have said, a limited one. Where there has been adverse comment or criticism of the judiciary or individual judges which would tend to undermine either judicial independence of public confidence in our judicial system, it is, as Parliament intended, for the Lord Chancellor to take action. One area where the judiciary, and particularly an individual judge, have recently been the subject of sustained criticism by the media is privacy and press freedom. Privacy and press freedom are topics which are rightly subject to debate. They have, for instance, recently been the subject of properly informed debate in The Times and the Guardian. The criticism levelled at the judiciary has been repeated before this Committee by a number of witnesses, as indeed have been the counter-arguments to it.2 The criticism made is this: first, the judiciary have introduced into English law a privacy law; and secondly, that privacy law has been introduced single-handedly by Mr Justice Eady. Both elements of the criticism are misrepresentations of the true position; misrepresentations that can simply be set right.

(i) Respect for Privacy

13. English law has not historically incorporated a general law of privacy.3 Parliament has examined on a number of occasions whether it should do so. Lord Mancroft introduced a privacy bill in 1961. It went no further than a second reading. Brian Walden MP introduced another such bill in 1969. It too went no further than a second reading. A number of reports and commissions examined the issue during the 1970s and 1980s but no general privacy law was introduced as a consequence. In 1990 the Court of Appeal affirmed that only Parliament and not the courts could create a general privacy law.4 As Lord Justice Leggatt said in Kaye v Robertson (1991) FSR 62 (Kaye).

“We do not need a [US] First Amendment to preserve the freedom of the press, but the abuse of that freedom can be ensured only by the enforcement of a right to privacy. This right has so long been disregarded here that it can be recognised now only by the legislature. Especially since there is available in the United States a wealth of experience of the enforcement of this right both at common law and also under statute, it is to be hoped that the making good of this signal shortcoming in our law will not be long delayed.”

14. Parliament did not then step in and take action. Many people would say that it still has not done so. They would in one sense be correct. Parliament has not enacted a specific Act of Parliament of the nature of Lord Mancroft’s or Brian Walden MP’s privacy bills. Parliament did however, as is well known, enact the Human Rights Act in 1998 (the 1998 Act) and through it incorporate into English law the European Convention on Human Rights. Article 8(1) of the Convention provides a right to respect for privacy and not a right to privacy; see Lord Walker in M v Secretary of State for Work and Pensions [2006] 2 AC 91 at [62]. It is a general right, subject to such qualifications as are compatible with Article 8(2).

15. In enacting the 1998 Act Parliament introduced a generalised right to respect for privacy not a general privacy law. It did so in the knowledge, as Lord Irvine, the then Lord Chancellor, put it in November 1997, that there was no intention on the government’s part “to introduce legislation in relation to privacy” but that through the 1998 Act it was “expected that the judges would develop the law appropriately having regard to the requirements of the Convention.”5 As Lord Phillips MR (sitting with Clarke and Neuberger LJJ hearing an appeal from Lindsay J) put it in Douglas v Hello! (No. 6): “The enactment of the Human Rights Act 1998 provoked a lively discussion of the impact that it would have on the development of a law protecting privacy. The Government has made it clear that it does not intend to introduce legislation in relation to this area of the law, but anticipates that the judges will develop the law appropriately, having regard to the requirements of the Convention for the

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2 The criticism is, for instance, set out in News International Ltd’s written submissions. The counter-argument has been put by, for instance, the Campaign for Press and Broadcasting Freedom.
3 Kaye v Robertson (1991) FSR 62 at 66, “It is well-known that in English law there is no right to privacy, and accordingly there is no right of action for breach of a person’s privacy.”
4 See cited in Errera, The Twisted Road from Prince Albert to Campbell, and Beyond: Towards a Right of Privacy?, in Andenas & Fairgreave (ed), Tom Bingham and the Transformation of the Law (2009) (OUP) at 385
Protection of Human Rights and Fundamental Freedoms: see the comment of Lord Irvine of Lairg LC in the course of the debate on the Human Rights Bill (Hansard, HL Debates, 24 November 1997, col 773) and the submissions of the United Kingdom in Spencer (Earl) v United Kingdom (1998) 25 EHRR CD 105.”

16. Parliament did not simply take this step. It took it in the full knowledge that it was doing so and that a general right to respect for privacy carried with it the potential to restrict free expression. Lord Bingham, then Lord Chief Justice, warned of this during the Parliamentary debate on the Human Rights Bill, as it then was. He said this:

“Discussion of the new Bill so far would suggest, I think rightly, that one of the most difficult and sensitive areas of judgment will involve reconciliation of the right of privacy guaranteed by Article 8 with the right of free expression guaranteed by Article 10. While the law up to now afforded some protection to privacy (in actions for breach of confidence, trespass, nuisance, the new tort of harassment, defamation, malicious falsehood and under the data protection legislation) this protection has been patchy and inadequate. But it seems very likely that difficult questions will arise on where the right to privacy ends and the right to free expression begins. The media are understandably and properly concerned that the conduct of valuable investigative journalism may be harassed; and it is, or would be, in the public interest for the material to be published. But it is very difficult, and probably unwise, to offer any opinion in advance about where the line is likely to be drawn.”

17. I am not the first to conclude that they were prescient words. They were words, as I have said, which were made as the Bill, which became the 1998 Act, passed through Parliament. Parliament heeded the warning to some extent in that what is section 12 of the 1998 Act became part of the Bill. That requires courts, when considering whether to grant relief which might effect, if granted, the exercise of the Article 10 right, to:

“have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to:

(a) the extent to which:

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.”

18. Except in one respect, Parliament went no further than this in guiding the courts as to how they are to strike the balance between the Article 8 and Article 10 rights. The other means provided by Parliament, by way of guidance to the courts in their development of Convention rights and the balance struck between them, is set out in sections 2 and 6 of the 1998 Act. The former imposes an explicit obligation on courts and tribunals when determining questions arising in connection with any of the Convention rights to take account of, amongst other things, any “judgment, decision, declaration or advisory opinion of the European Court of Human Rights.” The latter renders it unlawful for any public authority, and that includes courts and tribunals, to act in a way that is incompatible with a Convention right. This requirement is subject to the proviso that public authorities can act in a way that is incompatible with a Convention right if they are i) required to do so by primary legislation, or ii) if their actions give effect to primary legislation which cannot be read, or given effect to, in a way that is compatible with those rights.

19. These statutory provisions subject the courts to an express obligation not only to give effect to the right of respect for privacy and the right to free expression. They also require the courts to do so consistently with the jurisprudence developed by the European Court of Human Rights (Strasbourg jurisprudence). Parliament has required the courts to take account of Strasbourg jurisprudence: albeit they are not bound by its decisions, as the House of Lords affirmed in R (Alconbury Developments Ltd and Others) v Secretary of State for the Environment, Transport and the Regions [2003] 2 AC 295 at [76]. Although not binding, such decisions are of the first importance to the court in discharging its constitutional role as a court of justice consistently with the obligation imposed on it under sections 2 and 6 of the 1998 Act.

20. To return to Lord Irvine, whom I cited earlier, Parliament has required the courts to develop the right to respect for privacy consistently with the requirements of the Convention, the Convention as interpreted and understood by Strasbourg jurisprudence. They are required to do so, as the House of Lords put it in R (Ullah) v Special Adjudicator [2004] 2 AC 323 at [20] and in R (Al-Skeini) v Secretary of State for Defence [2008] 1 AC 153 at [105]—[106], by keeping pace with Strasbourg jurisprudence as it evolves over time. They must go no further than that jurisprudence, but equally they cannot do any less than it requires. As Lord Bingham put it in R (Ullah) at [20], section 2 of the 1998 Act imposes an obligation on the courts to ensure that it does not, without strong reason, dilute or weaken the effect of the Strasbourg jurisprudence.

7 [2006] QB 125 at [46].
8 Errera, ibid at 573.
9 Human Rights Act 1998 s2(1).
21. A number of points can therefore be made. First, Parliament introduced, through the 1998 Act and its incorporation of Article 8 of the Convention, a right to respect for privacy. Secondly, it did so in the full knowledge that incorporation carried with it potential problems insofar as the balance between Article 8 and the Article 10 right of free expression was concerned, and that the Strasbourg court had explained that Article 8 carried with it positive obligations to secure respect for privacy as between individuals: see X and Y v the Netherlands (March 26, 1985) Series A no.91, p.11 at [23]; Stjerna v Finland (November 25, 1994) Series A no.299-B, p.61 at [38]; and Verlier v Switzerland (dec.), no.41953/98, ECHR 2001-VII as explained in Von Hannover v Germany [2004] EMLR 21 (Von Hannover) at [57]. Thirdly, it did so expecting and requiring, under section 2(1) of the 1998 Act, the courts to develop the right and, a fortiori, the balance between it and the Article 10 right in light of Strasbourg jurisprudence. Finally, Parliament, by way of section 6 of the 1998 Act, directed the courts to give effect to the Convention rights.

22. Parliament’s policy decision, enacted through the democratic process and following full public debate, has had important consequences for the law’s development and the balance that is struck between the Article 8 and 10 rights.

(ii) Judicial Development

23. The question might, reasonably, be raised as to whether there is a difference between a general right to respect for privacy and a general law of privacy and if there is what is it. There is a difference. The courts have not been developing the general right to respect for privacy, as required by the 1998 Act. They have firmly rejected the introduction, by any body other than Parliament, of a general law of privacy.

24. It is not the case that the High Court is developing a general law of privacy. It is not because the House of Lords, not least though Lord Hoffmann’s decision in Wainwright v Home Office [2004] 2 AC 406, has affirmed the law as set out in Kaye. In that case the House of Lords dismissed appeals from a decision of the Court of Appeal (Lord Woolf LCJ, Mummery and Buxton LJJ), which was itself an appeal from a decision of the Leeds County Court (Judge McGonigal) in a trespass to the person action arising from a strip search conducted at Armley Prison, Leeds in 1996. The House of Lords was invited to hold that in light of the 1998 Act English law now contained a general law of privacy: a tort of invasion of privacy. The judges sitting rejected that invitation. As Lord Hoffmann put it, “I would reject the invitation to declare that since at the latest 1950 there has been a previously unknown tort of invasion of privacy.”\(^{(11)}\) In doing so he explained what had previously been taken as the acceptance by Lord Justice Sedley, in the Court of Appeal in Douglas v Hello! [2001] QB 967 at 104, of a general law of privacy as no more than a call for the well-known and long-established tort of breach of confidence to be renamed the tort of invasion of privacy. That call for a change of name was not a call for an extension of the tort, and through that extension, the creation of a general law of privacy.\(^{(12)}\)

25. Lord Hoffmann arrived at this decision for a number of reasons; reasons which bear on the difference between the Article 8 right to respect for privacy and a general law of privacy. First, he noted that there was a well-established difference between the identification of privacy as a value that underlies a rule of law and may point to the direction the law might take as it developed (Lord Irvine’s point) and privacy’s existence as a principle of law in itself. There was a difference between an underlying value, such as respect for privacy, and a concrete law, such as a general law of privacy.\(^{(13)}\) Secondly, he noted that the Convention, as interpreted by the Strasbourg court, did not require the creation of a general privacy law in order to give proper effect to the Article 8 right to respect for privacy.\(^{(14)}\) In other words the Convention does not justify what it does not necessitate and the courts post-2000 cannot therefore rely on it to do what the Court of Appeal in Kaye said only Parliament could do. The courts can do no less than the Convention requires, but equally they can, in reliance on it, do no more.

26. Lord Hoffmann, and the House of Lords in Wainwright, have not had the last word on the subject. In Campbell v MGN Ltd [2004] 2 AC 457 (Campbell) the House of Lords returned to the question of whether there was, since Article 8’s incorporation into English law, a general law of privacy. That decision is well-known. It arose out of a claim by Naomi Campbell for breach of confidentiality by the Daily Mirror arising from the publication of certain photographs of her. The tort in question was the one which Lord Justice Sedley, as explained by Lord Hoffmann in Wainwright, wanted to rename, and no more than rename, as a tort of invasion of privacy. In Campbell the House of Lords (allowing an appeal from the Court of Appeal (Lord Phillips MR, Chadwick and Keene LJ)) from a decision of Mr Justice Morland), through Lord Nicholls, affirmed once more that there was and is no general law of privacy known to English law.\(^{(15)}\) This was restated by the Court of Appeal (Buxton, Latham and Longmore LJJ) when dismissing an appeal from a decision of Mr Justice Eady in Ash v McKennitt [2007] 3 WLR 194 (Ash). Lord Justice Buxton put it this way:

“Since the content of that law is in some respects a matter of controversy, I set out what I understand the present state of that law to be. I start with some straightforward matters, before going on to issues of more controversy:

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\(^{(11)}\) [2004] 2 AC 406 at [35].
\(^{(12)}\) Ibid. at [29]—[30].
\(^{(13)}\) Ibid at [31].
\(^{(14)}\) Ibid at [32].
(i) There is no English domestic law tort of invasion of privacy. Previous suggestions in a contrary
sense were dismissed by Lord Hoffmann, whose speech was agreed with in full by Lord Hope of
Craighhead and Lord Hutton, in Wainwright v Home Office [2004] 2 AC 406 [28]-[35].

(ii) Accordingly, in developing a right to protect private information, including the implementation
in the English courts of articles 8 and 10 of the European Convention on Human Rights, the
English courts have to proceed through the tort of breach of confidence, into which the
jurisprudence of articles 8 and 10 has to be “shoehorned”: Douglas v Hello! (No3) (sic) [2006]
QB 125[53].

(iii) That feeling of discomfort arises from the action for breach of confidence being employed where
there was no pre-existing relationship of confidence between the parties, but the “confidence”
arose from the defendant having acquired by unlawful or surreptitious means information that he
should have known he was not free to use: as was the case in Douglas, and also in Campbell v
MGN [2004] 2 AC 457. Two further points should however be noted:

(iv) At least the verbal difficulty referred to in (iii) above has been avoided by the rechristening
of the tort as misuse of private information: per Lord Nicholls of Birkenhead in Campbell [2004]
2 AC 457[14]

(v) Of great importance in the present case, as will be explained further below, the complaint here is
of what might be called old-fashioned breach of confidence by way of conduct inconsistent with
a pre-existing relationship, rather than simply of the purloining of private information.”

27. Whatever else can be said, it is clear beyond any doubt that the English courts have not, since the
enactment of the 1998 Act, used Article 8 of the Convention as a vehicle to introduce into English law a
general law of privacy, which would not necessarily require a balance to be struck between the Article 8
right and the Article 10 right, and which would apply generally rather than as present to those circumstances
which are protected by a number of discrete causes of action eg, “trespass, nuisance, defamation and malicious
falsehood; there is the equitable action for breach of confidence and statutory remedies under the Protection
from Harassment Act 1997 and the Data Protection Act 1998.” On the contrary the House of Lords and
the Court of Appeal have spoken with one voice: there is and remains no general law of privacy in English
law. The position remains as it was in Kaye: it is only for Parliament to introduce one if one is to be
introduced at all.

28. While the courts have not introduced a general law of privacy, they have developed individual forms
of privacy protection that have long been known to English law. They have developed these individual torts
consistently with both Article 8 and Article 10 of the Convention and by striking a balance between those
rights and the values they express and protect. They have done so for the reason I set out earlier: Parliament
has required them to do so. This is most clearly explained by Baroness Hale in her judgment in Campbell at
[132]. She said this, affirming what Lord Woolf CJ had held in the Court of Appeal in A v B plc [2003] QB
195 (Woolf CJ, Laws and Dyson LJ allowing an appeal from Mr Justice Jack):

“[132] The 1998 Act does not create any new cause of action between private persons. But if there
is a relevant cause of action applicable, the court as a public authority must act compatibly with both
parties’ Convention rights. In a case such as this, the relevant vehicle will usually be the action for
breach of confidence, as Lord Woolf CJ held in A v B plc [2003] QB 195, 202, para 4:

‘[Articles 8 and 10] have provided new parameters within which the court will decide, in an action
for breach of confidence, whether a person is entitled to have his privacy protected by the court
or whether the restriction of freedom of expression which such protection involves cannot be
justified. The court’s approach to the issues which the applications raise has been modified
because, under section 6 of the 1998 Act, the court, as a public authority, is required not to “act
in a way which is incompatible with a Convention right”. The court is able to achieve this by
absorbing the rights which articles 8 and 10 protect into the long-established action for breach of
confidence. This involves giving a new strength and breadth to the action so that it accommodates
the requirements of these articles.”

29. The same point was made by Lord Phillips MR in Douglas v Hello! (No 6) at [53], when he said:

“We conclude that, in so far as private information is concerned, we are required to adopt, as the
vehicle for performing such duty as falls on the courts in relation to Convention rights, the cause of
action formerly described as breach of confidence. As to the nature of that duty, it seems to us that
sections 2, 3, 6 and 12 of the Human Rights Act 1998 all point in the same direction. The court should,
in so far as it can, develop the action for breach of confidence in such a manner as will give effect to
both article 8 and article 10 rights. In considering the nature of those rights, account should be taken
of the Strasbourg jurisprudence. In particular, when considering what information should be protected
as private pursuant to article 8, it is right to have regard to the decisions of the European Court of
Human Rights. We cannot pretend that we find it satisfactory to be required to shoehorn within the
cause of action of breach of confidence claims for publication of unauthorised photographs of a private
occasion.”

16 [2007] 3 WLR 194 at [8].
17 Wainwright v Home Office [2004] 2 AC 406 at [18].
30. The Court of Appeal in both *Ash* and more recently in *Murray v Big Pictures (UK) Ltd* [2008] 3 WLR 1360 at [27] (Clarke MR, Laws and Thomas LJJ, allowing an appeal from Mr Justice Patten) reiterated the statements by Lord Woolf, Baroness Hale and Lord Phillips.

31. The courts are not just required to take account of both Article 8 and Article 10; they are required to strike a balance between them. That balance has to be struck in such a way that neither Article is afforded precedence over the other. This position was initially set out by the House of Lords in *Campbell* at [17]. It is more recently been summarised by the House of Lords (hearing an appeal from the Court of Appeal (Lord Phillips MR, Latham and Hale LJ) which dismissed an appeal from L. Hedley J) in *Re S (a child)* [2005] 1 AC 593. Lord Steyn in that case summarised the nature of the balancing exercise in this way:

> “The interplay between articles 8 and 10 has been illuminated by the opinions in the House of Lords in *Campbell v MGN Ltd* [2004] 2 WLR 1322. For present purposes the decision of the House on the facts of *Campbell* and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case.”

32. Applying the law, as Mr Justice Eady did in *Ash*, meant that despite section 12 of the 1998 Act, neither Article 8 nor Article 10 was to be given precedence. Mr Justice Eady had no choice in this matter. The doctrine of precedent required this, as acknowledged by Lord Justice Buxton in *Ash* at [46]—[47]. It required its application in that case just as it did when Mr Justice Eady was faced both with Mr Mosley’s application for an injunction, which he refused, in *Mosley v News Group Newspapers Ltd* [2008] EWHC 687 (QB) at [28] and his substantive damages action in *Mosley v News Group Newspapers* [2008] EMLR 20 at [7]—[23].

33. It is noteworthy that in the substantive damages action Mr Justice Eady refused to accept Mr Mosley’s submission that the development of the law since the 1998 Act’s enactment justified an award of exemplary damages. He did so noting the chilling effect such damages would have and that neither the common law nor statute, implicitly including the 1998 Act, justified such an award in an infringement of privacy case. Moreover he held that the extension of exemplary damages to such claims would be neither necessary nor proportionate in cases where Article 8 and Article 10 rights needed to be balanced: see [2008] EMLR 20 at [187]—[197]. This might well be taken as a further example of the court’s no less yet no more approach. Equally, it could be seen as acknowledging that neither Article 8 nor Article should be afforded precedence, as explained in *Campbell* and *Re S (a child)*.

34. It should also be noted that the application of section 12 of the 1998 Act in cases where Article 8 and Article 10 are in issue, is also subject to the interpretation placed on it by the House of Lords in *Campbell*. Baroness Hale in her judgment in that case noted specifically how section 12, because it requires the court to take account of the Press Complaints Commission’s Code of Practice, requires the same balancing act as Baroness Hale in her judgment in that case noted specifically how section 12, because it requires the court to take account of the Press Complaints Commission’s Code of Practice, requires the same balancing act as the conclusion he reached:

> “[159] The judge was also obliged by section 12(4)(b) of the 1998 Act, not only to have particular regard to the importance of the Convention right to freedom of expression, but also to any relevant privacy code. The Press Complaints Commission Code of Practice supports rather than undermines the conclusion he reached:

> ‘3. 2 Privacy’

> ‘(i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual’s private life without consent. (ii) The use of long lens photography to take pictures of people in private places without their consent is unacceptable. Note—Private places are public or private property where there is a reasonable expectation of privacy.’

> ‘The public interest’

> ‘There may be exceptions to the clauses marked 3 where they can be demonstrated to be in the public interest.’

> ‘1. The public interest includes: (i) Detecting or exposing crime or a serious misdemeanour. (ii) Protecting public health and safety. (iii) Preventing the public from being misled by some statement or action of an individual or organisation …’

> This would appear to expect almost exactly the exercise conducted above and to lead to the same conclusion as the judge.”

35. In the circumstances it is apparent that the House of Lords and Court of Appeal in these, six, decisions, only one of which arose from a first instance decision of Mr Justice Eady, have explained a number of things very clearly.

35.1 First, that the 1998 Act, and specifically section 6, requires the English courts to give effect to both Article 8 and Article 10.
35.2 Second, giving effect to the two rights in this way has required the court to absorb the principles enshrined in Articles 8 and 10 into the tort of breach of confidence. As a consequence when courts assess the question whether there has been a breach of the tort they must now consider the balance that is to be struck between them. That balance, as most recently explained by the Court of Appeal in Murray requires a court faced with a question of a breach of confidence to do two things:

"... first [to assess], whether the information is private in the sense that it is in principle protected by article 8 (ie that article 8 is in principle engaged) and, secondly, if so, [then assess] whether in all the circumstances the interest of the owner of the information must yield to the right to freedom of expression conferred on the publisher by article 10."\(^{18}\)

These questions are questions of fact, which require a variety of factors and circumstances to be taken account of and weighed: a point made by Baroness Hale in Campbell at [153] and reiterated in Murray at [41].

35.3 Third, the developments in the law expressed in the four judgments are ones that have been brought about because Parliament has required the courts, as public authorities, to act consistently with the requirements of the Convention.

35.4 Fourth, the courts have not just been required to give effect to Articles 8 and 10 by absorbing them into the tort of breach of confidence; they have been and are required to do so in light of Strasbourg jurisprudence per section 2 of the 1998 Act. The leading relevant Strasbourg decision is Von Hannover. That decision underlines two things. First, it underlines the fundamental and essential role that a free press plays in a democracy to impart matters of public interest. Secondly, it underlines how that role must be balanced by the Article 8 right: see Von Hannover at [58]ff. The balancing exercise to be carried out in respect of the two rights which the English courts are now required to carry out, and which was recognised by Mr Justice Eady at first instance in Ash, is one which recognises a much wider ambit of what is to be treated as private than was previously understood to be the case. It is a balancing act which is guided by the Strasbourg court’s decision in Von Hannover. That is a consequence of which the English courts (Mr Justice Eady at first instance and the Court of Appeal in Ash and later in Murray) had to take account given the obligation imposed on them by section 2 of the 1998 Act.\(^{19}\)

35.5 Fifth, when striking the balance between the Article 8 and Article 10 rights neither is to be accorded pre-eminence or precedence.

CONCLUSIONS

36. Some conclusions can be drawn from this.

36.1 First, it has been said that Mr Justice Eady has developed or is in the process of developing a law of privacy. This is patently not the case. No general law of privacy has been developed. Moreover what developments there have been of pre-existing individual torts which protect aspects of privacy have not arisen as a consequence of a plethora of decisions by Mr Justice Eady. Of the leading decisions in this area, referred to above, apart from the Ash decision, only one has arisen from a decision of Mr Justice Eady.

36.2 Second, each of the significant developments of the legal principle in this area has arisen as a consequence of appeals from first instance decisions to either the Court of Appeal or the House of Lords. The appeal process exists not only for the private purpose of ensuring the right result is reached as between the parties. It exists for the public purpose of ensuring that the law develops properly and is stated authoritatively and correctly. Equally, appellate decisions bind the lower courts, such as the High and County Courts. Mr Justice Eady in Ash therefore had no choice, when considering the balance to be struck between Articles 8 and 10, but to apply the law as stated by the House of Lords in Campbell and Re S (a child) ie, to afford neither Article precedence over the other.

36.3 Third, the principles that the Court of Appeal and House of Lords have articulated in this area, and which have seen developments in respect for privacy, arise from the application of Articles 8 and 10 of the Convention consistently with the Strasbourg jurisprudence in accordance with the 1998 Act.

37. It is more than apparent that the development of the Article 8 right to respect for privacy and its interrelation with the Article 10 right to free expression is one that has caused concern. This is evident not just from media debate, but by the very fact that the Committee is investigating the issue and has obtained a substantial amount of evidence on the subject. It is an issue which is properly the subject of democratic scrutiny and debate.

38. That scrutiny and debate if it is to be of genuine value must be conducted in the light of the facts rather than assertion or by way of attacks on individual judges who are doing no more than applying the law consistently with the terms of the judicial oath. The position is that the law has developed since 2000 through

\(^{18}\) [2008] 3 WLR 1360 at [27].

the appellate decisions of the Court of Appeal and House of Lords. Mr Justice Eady has applied the law as those courts have stated it, and where he has developed it his decisions have been the subject of appellate scrutiny. Any further developments at first instance will equally be subject to possible appellate scrutiny, and where necessary correction, by the Court of Appeal, the House of Lords and, if necessary, also by the Strasbourg court. Moreover, the courts have developed the Article 8 right and the manner in which it is to be balanced against the Article 10 right consistently with Strasbourg jurisprudence on the subject. Parliament requires the courts to do so. In requiring this through the 1998 Act Parliament was fully aware of how the law might develop. It took the step of requiring the courts to apply and develop the law consistently with the Strasbourg jurisprudence knowingly. The development of the law since 2000 is the product of Parliament’s decision to enact the 1998 Act. The courts have since 2000 done no more than they are constitutionally required to do: apply the law and, in this area, apply it consistently with the obligations placed on them by sections 2 and 6 of the 1998 Act.

39. It is a genuine policy question as to whether the law, as it has developed since 2000, is democratically acceptable. It is for Parliament to review and debate that question, as indeed it is through this Committee’s current investigation, mindful of the fact that the United Kingdom is a signatory to the European Convention on Human Rights. The judiciary cannot comment on that policy question. Should Parliament conclude that the law has developed in a way that it did not intend, and it changes the law, the courts will, as they do in all circumstances, apply and develop the law accordingly and consistently with their constitutional role.

COSTS AND ACCESS TO JUSTICE IN RESPECT OF DEFAWMATION PROCEEDINGS

40. Litigation cost is a perennial problem which undermines effective access to justice. It is a problem which has been particularly acute over at least the last twenty years and was, as is well known, one of the bases on which Lord Woolf carried out his fundamental review of civil justice in the mid-1990s. It is a problem that remains acute now. The issues raised by the Committee in respect of defamation costs generally and defamation costs where Conditional Fee Agreements (CFAs) are used are instances of the wider costs issue.

41. There are currently two reviews being conducted into litigation costs. The first is a consultation entitled “Controlling costs in defamation proceedings”. It is a Ministry of Justice consultation. Copies of the consultation are available from the Ministry of Justice, who are best placed to provide any further information.

42. The second review is being conducted by Sir Rupert Jackson on my behalf as Master of the Rolls and Head of Civil Justice. It is a wide-ranging review, which is examining litigation costs generally. Its terms of reference are to:

“Establish how present costs rules operate and how they impact on the behaviour of both parties and lawyers.

Establish the effect case management procedures have on costs and consider whether changes in process and/or procedure could bring about more proportionate costs.

Have regard to previous and current research into costs and funding issues; for example any further Government research into Conditional Fee Agreements—‘No win, No fee’, following the scoping study.

Seek the views of judges, practitioners, Government, court users and other interested parties through both informal consultation and a series of public seminars.

Compare the costs regime for England and Wales with those operating in other jurisdictions.

Prepare a report setting out recommendations with supporting evidence by 31 December 2009.”20

43. The review is being conducting in three stages. The first stage, which ran from January to April 2009, involved the preparation of a working paper. Evidence was obtained during this stage through meetings conducted by Sir Rupert and his team with court users and professionals, through the consideration of written submissions and information received, and through comparative study of overseas jurisdictions. An interim report setting out the position as it is to be published today. A copy of the report is included with these written submissions. The second stage, which will run from May to July 2009, will be consultative. Seminars and road shows will take place in, for instance, Birmingham, Cardiff, Manchester and London. The final stage of the review, to run from September to December 2009, will be taken up with the preparation of a Final Report. That report will set out reform proposals aimed at tackling the costs problems identified. Publication of the Final Report is expected to be sometime in December.

44. It is well-known that there is a good deal of concern about the level of costs incurred by claimants and defendants in defamation proceedings and those that give rise to issues of privacy and press freedom more generally. It is equally well-known that these are supplemented by concerns regarding the use of CFAs with success fees and After the Event Insurance (ATE) policies in such proceedings.

45. The judiciary has noted these concerns, in court judgments, on a number of occasions. When the effect that extending CFAs to defamation proceedings, as Parliament did through section 58 of the Courts and Legal Services Act 1990 (as amended by section 27 of the Access to Justice (1999) and the Conditional Fee Agreements Order 2000 (SI 2000/823), was raised before Mr Justice Eady in *King v Telegraph Group Ltd* [2003] EWHC 1312 (QB) he acknowledged that they were a matter of “genuine concern.” He accepted specifically that the introduction of CFAs into defamation proceedings carried with it the “potential for a chilling effect on investigative journalism and for significant injustice.”21 That potential was, as he also acknowledged, one which could well have an adverse effect on freedom of expression.

46. Mr Justice Eady’s concerns were echoed and acknowledged by Lord Justice Brooke in his judgment when that case went to the Court of Appeal. He said this:

“It is not at all clear whether Parliament ever turned its mind to the consequences of defamation actions being conducted under a CFA without any ATE cover, or to the European Convention on Human Rights article 10 considerations that were of such concern to Eady J and Gray J…”22

The reference to Mr Justice Gray is to his decision in *Pedder v News Group Newspapers Ltd* [2004] EMLR 19. That was a case where an attempt to relitigate libel proceedings was struck out. It was struck out primarily because the claimants were funded via a CFA with no ATE policy. This was held in the circumstances of that case to expose the defendants to too great a costs risk, such that there was a chilling effect on the defendant’s right to freedom of expression.

47. These decisions highlight the problems to which CFAs, with or without ATE policies, in the area of defamation could potentially give rise. The decision to introduce CFAs, with success fees, and ATE policies into defamation was however a policy decision taken by Parliament. It was done in order to increase access to justice in this area just as it was through their introduction generally: a point made by Lord Bingham in *Callery v Gray (Nos 1 and 2).*23 Indeed in that case the potential problems that could arise from the introduction of CFAs were noted by the House of Lords. Lord Justice Brooke in *King* summarised those potential problems as noted by the Lords in *Callery* as follows:

“[89] In their speeches in *Callery v Gray* different members of the House of Lords expressed concern about certain features of the new arrangements, in particular the lack of any financial incentive for claimants to challenge either the size of their lawyers’ fees or the amount of the uplift or the amount of the policy premiums: see Lord Bingham, at para 10, Lord Nicholls of Birkenhead, at paras 14 and 16, and Lord Hope of Craighead, at para 54. Lord Bingham, in particular, said, at para 10, that although the defendant’s appeal in *Callery v Gray* was being dismissed:

“I would not wish to discount either the risk of abuse or the need to check any practices which may undermine the fairness of the new funding regime. This should operate so as to promote access to justice but not so as to confer disproportionate benefits on legal practitioners . . . or impose unfair burdens on defendants . . .”

[90] Lord Hoffmann, for his part, was sceptical, at paras 18 and 31, about the extent to which courts could effectively police the matters that gave rise to such concern in that case.”24

48. Those concerns were, Lord Justice Brooke noted, all the more palpable where freedom of expression was in issue. To try and square the circle, as he put it, and to do so in an area where Parliament has decided that recoverable costs can be of an amount that otherwise might not be viewed as reasonable or proportionate, the Court of Appeal has developed the future costs-capping order.25 This jurisdiction has recently been formalised in the Civil Procedure Rules r. 44.18-44.20.26

49. While the courts have noted the potential problems that might arise from the introduction of CFAs, with success fees and ATE policies, and have gone some way to balance a claimant’s right of effective access to justice with that of a defendant’s right to freedom of expression, they have necessarily done so within the framework provided by Parliament. If there are problems arising from that framework, Parliament will have to consider what steps it needs to take to rectify them and properly balance the right of access to justice and the right to freedom of expression. That is, of course, a matter of policy for Parliament.

50. There is at the present time, it is fair to say, a considerable degree of debate as to the exact nature and extent of the problems that have arisen as a consequence of the introduction of CFAs both generally and specifically in respect of claims that give rise to issues of freedom of expression and/or defamation. The debate has been the subject of evidence to this committee.

51. It is anticipated that Sir Rupert Jackson’s fundamental costs review will examine and analyse those issues. As noted earlier, a copy of his Interim Report is enclosed with this evidence. Costs in defamation proceedings are dealt with in its chapter 37 and schedule 17. That chapter and schedule set out the position as it is today and the evidence that lies behind it. Until Sir Rupert has completed his review and produced

21 [2003] EWHC 1312 (QB) at [14].
22 *King v Telegraph Group Ltd* [2005] 1 WLR 2282 at [90]
24 Ibid at [90]—[90].
25 Ibid at [96]—[103].
26 NB: additional liabilities cannot be made subject to any costs cap.
his Final Report in December it is not possible to say what remedial steps, if any, might need to be taken either through the Civil Procedure Rules or through legislation. Again, if problems are highlighted that require legislative intervention that is a matter for Parliament insofar as it raises issues of policy.

Contempt of Court

52. Open justice is a fundamental principle of any society committed to the rule of law. It is a principle that the English courts have long, and rightly, accepted. It is a principle that can however properly and in the interests of justice be subject to certain restrictions: see, for instance, the House of Lords' decision in Scott v Scott [1913] AC 417. Restriction can properly be placed on it in order to secure an equally important and fundamental principle that all societies committed to the rule of law, and ours is no exception, adhere to: the right to fair trial. In some ways it can be said, and in my view rightly, that open justice secures fair trials and should only be restricted where adherence to it would do the opposite.

53. The importance of these two principles and their interrelation has in recent times been underlined in respect of criminal proceedings by the Court of Appeal (Criminal Division) in the context of contempt of court. The two principles were given recent expression by Sir Igor Judge, President, as he then was, in Re B [2007] EMLR 5 at 18—19. He said this:

"... in this country every defendant who appears before the court to stand his trial, whatever the charge, whoever he or she may be, is entitled to, and must receive, a fair trial. That was, in the memorable epithet of Lord Bingham of Cornhill, a 'birthright'. Although the epithet is relatively recent, the concept is of some antiquity.

An equally precious principle, hallowed by custom and the tradition of the common law, is the freedom of the media to act as the eyes and the ears of the public at large and, among their other responsibilities, to observe and contemporaneously to report the criminal proceedings involving the same defendant whose birthright to a fair trial must be protected. The administration of criminal justice must be open and transparent. The freedom of the press to report the proceedings provides one of the essential safeguards against closed justice."

54. The Contempt of Court Act 1981 (the 1981 Act) strikes the balance between these two principles; both of which form part of the essential foundations of our, and every, open democratic society. It protects press freedom, not least because as Lord Justice Lloyd put it in Attorney-General v Newspaper Publishing Plc [1988] ChD 333 at 382 it brought about "a permanent shift in the balance of the public interest away from the protection of the administration of justice and in favour of freedom of speech". It did so by protecting fair and accurate contemporaneous, good faith, legal reporting (see section 4 of the 1981 Act). Moreover it does so by only prohibiting the publication of material where such publication creates a substantial risk that the course of justice in proceedings will be seriously impeded or prejudiced (see sections 1 and 2 of the 1981 Act).

55. The 1981 Act, specifically sections 1 and 2, also provides proper protection for the fair trial right, which it should be stressed does not simply guarantee due process for those accused of crimes (both innocent and guilty), but just as importantly ensures that justice is done for the victims of crime and for society as a whole. It provides justice for victims through ensuring that the trial process is not compromised and a verdict can properly be delivered. It provides justice for society as a whole by ensuring that the guilty are properly convicted, the innocent acquitted and the rule of law is thereby protected.

56. The 1981 Act protects the fair trial right by prohibiting, at least in the context of jury trials, the publication of adverse comment up until verdict, the publication of discussions that take place in the absence of the jury or the publication of details of excluded evidence. In this way it provides the framework for responsible reporting, while protecting both freedom of expression and fair trials. It prohibits what might be called media campaigns that could undermine fair trials and which jury directions might well be insufficient to counteract. Standard jury directions not to engage in research, whether via the internet or otherwise, are generally obeyed. Jurors well understand the seriousness of the role they play. As Sir Igor Judge, President, put it in Re B (above) at [32], the "integrity of the jury is an essential feature of our trial process. Juries follow the directions which the judge will give them to focus exclusively on the evidence and to ignore anything they may have heard or read out of court." He went on to stress how the court could not "too strongly emphasise that the jury will follow them, not only because they will loyally abide by the directions of law which they will be given by the judge, but also because the directions themselves will appeal directly to their own instinctive and fundamental belief in the need for the trial process to be fair."

57. The view expressed in Re B by Sir Igor, now Lord Judge CJ, is one which as I see it holds true because of the protection offered by the 1981 Act. It does so because the Act ensures that media campaigns, the reporting of prejudicial or excluded material, cannot take place. If such reporting and such campaigns were to become the norm it cannot be said with certainty that jurors would be in the position to abide by judicial directions because of the level and nature of exposure to press reportage. As Lord Justice Kennedy emphasised in upholding an appeal against a contempt conviction in 1997:

"With potential jurors receiving information in so many different ways high profile cases would become impossible to try if jurors could not be relied on to disregard much of the information to which they may have been exposed, but that does not mean that they can be expected to disregard any
information, whenever and however it is received, otherwise there would be no point in withholding from them any relevant information, however prejudicial in content or presentation, hence the need for the law of contempt which we are required to enforce.”

58. The small number of prosecutions under the 1981 Act is testament to the fact that it sets the balance well between freedom of expression and the right to fair trial, properly guides press behaviour and ensures that the jury system that lies at the heart of our criminal justice system is not compromised. It is perhaps equally testament to the fact that generally speaking our press is one that acts where criminal prosecutions are concerned, with probity and responsibility. Generally, it ensures that it does not publish material detailing the background history to, or comment on, cases once criminal charges have been brought, from then until trial or during the trial. Equally, it does not generally publish material or report argument aired in the absence of the jury during trials, or report material or evidence that is ruled to be inadmissible.

Without entering into the policy debate as to whether media self-regulation should remain in place, it seems to me that in England and Wales our self-regulating press, operating consistently with the 1981 Act, acts as the eyes and ears of the public at large in a generally responsible manner in this context. Where it does not it is a matter for the Attorney-General to take steps.

59. Concerns have however been raised as to the effect the growth of the internet has had. Material that UK-based media would not publish due to the 1981 Act might well be placed on the internet by someone or some organisation based abroad. As I understand the law, any such material if published in the UK, via the internet, remains subject to the 1981 Act. There may be practical problems as to enforcement where the publisher is abroad. But any foreign-based publisher might well have a presence in the UK, and enforcement might then be more readily taken. The same can, of course, be said about foreign-based media organisations. They might report matters that an English news organisation could not. Any foreign publication, either in hard-copy or via the internet, if published in the UK would be treated in exactly the same way as any material placed on the internet that was published in the UK: it would be subject to the 1981 Act. It might also, reasonably, be added that a juror is less likely to see any foreign reportage, unless they deliberately went looking for it. Moreover any foreign-based media publication, or internet publication, is unlikely to carry with it, at least at present, the same potential to undermine the right to fair trial that an English media-based campaign or reportage carries with it.

60. This position may well change in the future. If it does, then to such an extent that the fair trial right is placed in jeopardy, it is a matter for Parliament to assess what steps it would need to take to protect it; and to that end I note the comments made in its evidence by the Department of Culture, Media and Sport, that it keeps the law of contempt under review. The options that might be available to Parliament, some of which have been canvassed by the other witnesses to the Committee viz., the approach taken by the State of Victoria, Australia which has rendered it illegal for jurors to conduct their own research or the adoption of the United States’ approach which rests simply on jury directions, are not something on which I can properly comment. They give rise to policy questions that are properly for Parliament.

**Annex A**

**JUDGES’ MEDIA PANEL ACTIVITY**

<table>
<thead>
<tr>
<th>Date</th>
<th>Judge</th>
<th>Broadcaster / programme</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.10.08</td>
<td>HHJ Carhill</td>
<td>Channel 4 News</td>
<td>Litigants in person</td>
</tr>
<tr>
<td>24.3.08</td>
<td>HHJ Cutler</td>
<td>Sky News</td>
<td>Witness Intermediaries Scheme</td>
</tr>
<tr>
<td>15.5.08</td>
<td>HHJ Cutler</td>
<td>Radio 4 Unreliable Evidence</td>
<td>Discussion on Bail</td>
</tr>
<tr>
<td>19.5.08</td>
<td>HHJ Cutler</td>
<td>Channel 4 Dispatches</td>
<td>Interview with Helen Newlove on youth crime and bail</td>
</tr>
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<td>5.8.08</td>
<td>HHJ Tonking</td>
<td>Ram FM (Local Radio)</td>
<td>High Sheriff awards</td>
</tr>
<tr>
<td>19.8.08</td>
<td>HHJ Tonking</td>
<td>Sun FM (Local Radio)</td>
<td>Why juries are dismissed</td>
</tr>
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<td>7.1.09</td>
<td>HHJ Tonking</td>
<td>The Times—The Shift</td>
<td>Day in the life of a judge</td>
</tr>
<tr>
<td>1.3.09</td>
<td>HHJ Rook</td>
<td>BBC Radio 4—Law in Action</td>
<td>Discussion on what role summing up plays in proceedings</td>
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<tr>
<td>22.5.08</td>
<td>District Judge Gold</td>
<td>BBC Panorama</td>
<td>Credit Crunch and how the County Courts deal with repossessions</td>
</tr>
<tr>
<td>1.3.09</td>
<td>District Judge Gold</td>
<td>BBC Radio 4—Law in Action</td>
<td>A day in the life of a District Judge</td>
</tr>
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<td>27.11.08</td>
<td>District Judge Gold</td>
<td>BBC The One Show</td>
<td>The process of small claims</td>
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<td>14.1.09</td>
<td>HHJ Plumstead</td>
<td>Unreliable Evidence</td>
<td>Transparency in the family courts</td>
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<tr>
<td>27.4.09</td>
<td>HHJ Plumstead</td>
<td>Radio Five Live</td>
<td>Transparency in the family courts</td>
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</tbody>
</table>

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27 *Attorney-General v Associated Newspapers Ltd* [1998] EMLR 711 at 721.
**Witnesses:** Sir Anthony Clarke, Master of the Rolls, and Lord Justice Rupert Jackson, Court of Appeal Judge, gave evidence.

**Chairman:** Good morning. This is a further session of the Committee’s inquiry into press standards, privacy and libel, and we are concentrating particularly today on the making and implementation of the law. I would, especially, like to welcome our witnesses this morning, the Master of the Rolls, Sir Anthony Clarke, and Lord Justice Jackson; we are extremely grateful to you for coming. I might just add at this point that none of us on the Committee is a lawyer, so be patient with us on subjects of law.

Q918 Mr Evans: Conditional Fee Agreements, CFAs were introduced to improve access to justice for both defendants and also for the claimants. Do you think it is working?  
Sir Rupert Jackson: Well, undoubtedly, CFAs under the present regime are effective in terms of promoting access to justice for claimants. There is a concern that the balance which has been struck by the present regime is far from satisfactory and, if you would like me to explain in a couple of sentences why, I will. The rationale of the present CFA regime, under which success fees and After the Event insurance (ATE) premiums are recovered from unsuccessful defendants, is as follows: if you take a cohort of cases, a block of cases brought on CFAs with ATE insurance; some cases, indeed most cases, won, as is the way of things, but some lost and, if you look at the overall financial position, once the success fees and the ATE premiums have been paid to claimant solicitors in the won cases and the ATE insurers have paid out costs in the lost cases, the overall effect is that the entire costs of all those cases are borne by the defendants and the claimants bear no costs whatsoever. In other words, litigation of this character has the entirety of the costs placed upon one side only. Now, that is the theory. When you come to the practice, there is evidence that more than the entire costs of the litigation is borne by the defendants. First of all, even if the ATE premiums are calculated with precise accuracy, they must include an extra element to cover the administration costs of the insurers and, on top of that, they must include an element of profit for the ATE insurers. That is all that happens, if the system worked to perfection. There is evidence, however, that ATE premiums are too high because there is no effective market force to control the ATE premiums paid by claimants to the insurers because claimants have no direct interest, they are never going to pay the premiums, win or lose. There are also suggestions in some of the evidence which I have seen that success fees are too high and do more than compensate the claimant lawyers for the cases which they lose. Now, this is a matter of controversy and it is something which I am looking into in my inquiry. There is, however, a growing body of evidence which suggests that the present CFA and ATE regime, which is of course satisfactory for claimants, and one must not lose sight of access to justice, also has the consequence that significantly more than the entire costs of the relevant litigation is cast upon the defendants. As you know, Mr Chairman, I have been tasked with reviewing the costs of civil litigation this year and to make recommendations to promote access to justice at proportionate costs, and this is a matter which I am looking into.

Q919 Mr Evans: The Committee has heard that some claimants, such as the supermodel Naomi Campbell, have used a CFA in order to sue media organisations, even though they could afford to do so themselves without one, so should means-testing be introduced?  
Sir Rupert Jackson: The House of Lords considered this issue in the case of *MGN v Campbell*. The House of Lords came to the conclusion that the legislation passed by this House entitles anyone to make use of the CFA regime. The House of Lords also came to the conclusion that means-testing for the purpose of CFAs was not practicable. As the Master of the Rolls said, it is very important to look at the problems of costs holistically. There are serious issues concerning the costs of defamation proceedings and there are very serious issues concerning the costs of the whole of civil litigation, which is why the Master of the Rolls has taken me out of sitting for a year in order to address them, and I do endorse the point which Sir Anthony Clarke has made that we must deal with this problem in principle and across the board and, if I may respectfully suggest it to Members of this House, not embark on piecemeal reform for one tiny part of the civil litigation terrain which may perhaps have a slightly more vocal presentation than others.

Q920 Mr Evans: So you are not looking, at the moment, at the possibility of having legal aid for cases of defamation?  
Sir Rupert Jackson: Well, legal aid has never been available for defamation, and one of the effects of the reforms introduced by Parliament in 1999 was that legal aid becomes available for an even narrower area of civil litigation. All the indications which I have received are that there is no realistic prospect of legal aid being expanded either to the boundaries which it occupied up to 1999 or, and more expansively, as Mr Evans posits, to include defamation as well. It seems to me that I have got to conduct my present review upon the assumption that legal aid is not going to be made more widely available and, given the present state of the economy, that is probably a safe assumption.
Sir Anthony Clarke: If I could just add a footnote to that in relation to your question, if there are problems with CFAs, they are the problems or the question of whether success fees should be recoverable from the defendant; it is not the CFA itself which is the problem. The problem arises when one asks whether it is just that a percentage of the success fee, which may be 100% of the base costs which include profit costs, should be recoverable from the defendants, and that is a problem which arises starkly in a case like the Campbell case which the House of Lords decided on.

Q921 Chairman: But you will appreciate that this Committee is essentially concentrating on libel and that is the topic of our inquiry, and I just wanted to clarify something. You are suggesting that, by looking at the broader range of all civil litigation, the problems which we have received evidence about in relation to libel cases are actually not, by any means, unique to libel cases, but they are problems that are now occurring right across the range of civil litigation?

Sir Rupert Jackson: Yes.

Q922 Chairman: Therefore, with the particular concern which we have, which is the potential “chilling” effect on journalism, do you hear complaints that there are similar adverse consequences affecting other areas of law?

Sir Rupert Jackson: Yes. I shall make recommendations in my report later this year which, I hope, will address these problems both in relation to defamation or publication proceedings and also in relation to the entirety of civil litigation. Perhaps I may just say a word about the task which I am engaged in. I have been asked to review the rules and principles governing the costs of civil litigation and to make proposals to promote access to justice at proportionate costs. My terms of reference require me to look at the procedural rules where procedures might be changed to prevent such substantial costs being incurred, to compare our regime with regimes overseas, to review academic material, meet interest groups and so forth and to look at the whole of this area from first principles. I am conducting this inquiry in three stages. The first stage is to identify the facts, identify what costs are being incurred in different categories of litigation, identify the positions of different interest groups, review the literature and so forth and to look at overseas regimes. I have completed the first stage, as planned, in the first four months of this year and, Mr Chairman, I believe that you and your colleagues have received copies of my preliminary report. This is not a report which comes to conclusions, it is a report which sets out the evidence, the issues and the competing arguments. I am not a politician, I am a judge and I am conducting my inquiry, as best I can, in a judicial manner, which is, first, to identify the facts and the evidence and then I embark on a consultation period which begins this month. During the consultation period, I hear what everyone has to say about the matters raised in my preliminary report, I am holding public seminars, meetings with many interest groups and so forth, and then I shall make the final report with my recommendations in the autumn. It is very important that I keep an open mind both during phase one when collecting the evidence and during phase two when I hear the arguments, so I am not, Mr Chairman, going to propose any magic solutions today, but I can assure you that I am very much alive to the issues which concern all areas of litigation. In my preliminary report, I deal with the costs of defamation proceedings in chapter 37 and I have an appendix, which is appendix 17, which sets out the costs of claims resolved by settlement or judgment in defamation or publication claims against the media in 2008. This material was very kindly provided to me by the Media Lawyers’ Association and I hope that the members of this Committee will find the data in appendix 17 to be helpful. You can see that CFAs were entered into in about 17% of the cases, you can see set out what the costs of each side were and what the damages are, and I have put some notes at the top of the schedule which explain the details of the figures, so I very much hope that this Committee will find appendix 17 helpful. If it would help the Committee to look at the problems of defamation costs in the wider context, you will be able to look at costs in other areas of litigation in the numerous other appendices to the report and I have set out the issues, as best I can, in the surrounding chapters, although chapter 37 is specifically focused on defamation.

Q923 Chairman: I note that, of the 154 cases in appendix 17, three went to trial.

Sir Rupert Jackson: Yes.

Q924 Chairman: And they were all won by the claimant.

Sir Rupert Jackson: Yes.

Q925 Chairman: One of the things which has been put to us in relation to CFAs is that, I think it was, 98% of the cases which were CFAs were won by the claimant and their solicitors who had the CFAs.

Sir Rupert Jackson: It appears, from the evidence which I have received, that claimants are successful in a very high percentage of defamation cases. The evidence which has been supplied to me does not enable me to give you a precise percentage; it is something I would have been delighted to receive, but none of the parties on either side of this particular divide has furnished me with evidence which enables me to confirm or contradict the 98%. I would be surprised if it is that high, but it is certainly a high percentage.

Q926 Janet Anderson: We have heard some evidence about the level of charges in cases involving CFAs. Do you think the level of charges in these cases is out of control?

Sir Rupert Jackson: Well, first of all, the hourly rate charged by solicitors can be challenged by the losing party on assessment and, if there is a detailed assessment, that will be dealt with by a costs judge in the Supreme Court Costs Office. I say that because
the vast majority of defamation claims are tried in London and, therefore, it will be one of the costs judges here who deals with it. This Committee can have confidence in the judgment of the costs judges in dealing with hourly rates. There is a new committee set up, the Advisory Committee on Civil Costs, chaired by Professor Stephen Nickell, an economist at Oxford, who is currently looking into the guidelines rates and, no doubt, the results of his work will be of assistance to the costs judges who are doing detailed assessments. One firm of claimant solicitors has provided to me, in confidence, details of the hourly rates which they charge, and clearly I cannot furnish that information to the Committee as it is confidential, but the material supplied to me indicates hourly rates distinctly lower than figures which have been bandied around in some of the documents.

Sir Anthony Clarke: I agree with that. I still feel myself that the area of concern is the percentage success fee aspect of the CFAs; that is my impression really across the board. One of the things which is somewhat disappointing is that there is not, so far as I know, any research which anybody has conducted. The Government, for example, has never conducted any research, so far as I am aware, and I am sure Rupert Jackson will tell me if this is wrong, no one has ever conducted any public research into that which, to my mind, is a great pity. That is right?

Sir Rupert Jackson: Yes.

Sir Anthony Clarke: I still feel it is a question to that which is whether it might be somewhat disappointing is that there is not, so far as I know, any research which anybody has conducted. The Government, for example, has never conducted any research, so far as I am aware, and I am sure Rupert Jackson will tell me if this is wrong, no one has ever conducted any public research into that which, to my mind, is a great pity. That is right?

Sir Anthony Clarke: It is correct, yes.

Q927 Janet Anderson: Do you think that, if success fees and ATE insurance became irrecoverable, damages would have to increase to compensate for that?

Sir Anthony Clarke: Well, it is certainly something to be considered.

Sir Rupert Jackson: I am looking at the question of whether success fees and ATE premiums should be recoverable at all in any area of civil litigation, and that, for your reference, is discussed in chapter 47 of my preliminary report. If success fees and ATE premiums become irrecoverable, then one has to look at the position of claimants. So far as the ATE aspect is concerned, one issue which I must consider is whether there should be a restriction on the claimant’s liability for costs because, if the claimant’s liability for costs were substantially curtailed, the need for ATE insurance in respect of adverse costs would go, and I have done some calculations which are set out in the report which show that defendants would be significantly better off if there were one-way cost-shifting and they never got costs at all when they won, so that is one issue. So far as the success fee is concerned, if the success fee is irrecoverable, then it would have to come out of the damages. Now, the deductions from damages raise important policy issues which vary from one part of litigation to another. If you take defamation proceedings, the claimant’s main concern is to have his or her reputation vindicated, and this Committee may think that it would be no great hardship to a claimant in defamation proceedings to lose a significant portion of his or her damages by way of deduction for the success fee because the claimant would still retain some damages and the claimant’s reputation would have been vindicated. When one comes to the area of personal injuries, however, deductions from damages become much more problematic because, very often, a large part of the damages relates to future care, and I do not think anybody would want a deduction from that. I hope the Committee will forgive me if I say that the question of transferring the burden of the success fee from defendant to claimant is one which raises difficult issues in different parts of civil litigation, and these are issues with which I am grappling, but those issues are less worrying in defamation than in other areas. As to whether or not damages should go up, it seems to me that damages for defamation ought not to go up unless personal injury damages go up. The convention has now been established that defamation damages should be kept proportionate to personal injury damages because it is offensive that an individual should receive greater compensation for hurt to his reputation than for injury to his body. Now, there is a related question of whether personal injury damages should go up, as recommended by the Law Commission 10 years ago, but not yet implemented, and there is a related question to that which is whether it might be affordable if the costs of personal litigation can be controlled or brought down. These are issues, all of which I am looking at, which are a long way from defamation, but, if I may respectfully say so, they illustrate the importance of looking at these costs issues holistically and not introducing urgent reform or immediate reform now when a comprehensive review is due later this year.

Q928 Philip Davies: On this, I was interested, Sir Anthony, in your point about the purpose of the success fee which is, in effect, to cover the costs of the ones that you lose. Now, I acknowledge that we have not got the exact figures, but, if the figures are anywhere near to the suggestion that 98% of these cases are being won by the claimant, would that indicate that success fees are not justified?

Sir Anthony Clarke: Well, it would certainly be a factor. I still think that more detailed research is required, but it would certainly be an indicator to that. The other thing to bear in mind, however, in relation to the notion that claimants always win is that one way a defendant can protect himself, whether a defamation or any other, is to make, what we call, a Part 36 offer to settle the proceedings so that, if the claimant does not beat the offer, from the moment of the offer, the claimant will be expected to pay the defendant’s costs, which is quite an important factor, to my mind, in thinking about all this.
Q929 Philip Davies: Because it seems to me, from listening to what you have said, that success fees may be justified if lawyers were taking on 50-50 cases under CFAs, but I get the distinct impression from the evidence that we have heard throughout this inquiry that, in effect, lawyers are only taking on as CFAs those cases which they think are absolute racing certainties and they are, in effect, therefore, getting paid double for the simplest cases to prosecute, which, to a layman like me, seems like an absolute racket. Would you not accept that, if they are being used in the sense that they are only taking on the racing certainties under CFAs, these exorbitant success fees are just simply not justifiable in any shape or form?

Sir Anthony Clarke: On that hypothesis, I can see that there is something to be said for that. The question is whether the hypothesis is correct.

Sir Rupert Jackson: If I may just come in on that point, there is a clear body of evidence which suggests that, overall, success fees may be bringing too great a benefit to the claimant side, but one has to approach this evidence with caution because claimant solicitors have made the point to me that, when a single case is lost, the costs, if that action has gone all the way to trial, for example, may be enormous and they may need the success fees on a substantial number of won cases in order to cover all their outlay on the lost cases. Now, I do not know, without the detailed research which, sadly, does not exist, precisely how many won cases one needs in order to cover one substantial lost case, but I do not think one should adopt too simplistic an approach to this.

Q930 Philip Davies: Do you not acknowledge that it is quite easy to envisage that there is a good number in this firm of lawyers where they take on the easiest cases that they are certain to win under CFAs and then get paid double for the easiest cases, which seems, to me, to be perverse as you should get paid double for the hardest cases, not the easiest cases?

Sir Rupert Jackson: Of course, the easiest cases are the ones that are likely to settle early and, with a staged success fee, it will be nothing like 100%. The most difficult cases are the ones which go further and which attract a success fee of 100%, and it must also be borne in mind that, for every case which claims solicitors take on under CFAs, they will have spent time reviewing a significant number of other cases before deciding that it is not practicable to take them on under a conditional fee agreement because the merits are not strong enough. Therefore, the success fees in the won cases not only have to cover the costs of those relatively few cases which are lost, but also the costs of reviewing a large number of cases which are not taken on and giving advice to the litigants in those other cases. I am not here to make out a case either for claimant solicitors or for media defendants; the arguments on both sides have been presented to me and I have summarised them, as best I can, in the report. I am very much alive to the points which Mr Davies puts to me and these are matters which I shall be addressing, but, I am afraid, I am not prepared to come to a final conclusion of the kind which is being put to me just four and a half months into a 12-month inquiry; that is not how judges work, although it may—

Philip Davies: You do not have to finish your sentence!

Q931 Paul Farrelly: We are going to come on to the issues of costs capping in a moment, but may I ask a couple of questions about your very helpful table. First of all, it would be quite right to say, in terms of the current situation, that there is an economic incentive that might generally lead you to conclude that “nearly always win, double the fee” might be the outcome of the current arrangements, that the economic incentives are there that might lead to that situation?

Sir Rupert Jackson: I am terribly sorry, but I am not sure I have understood your question. Are you saying that there is economic incentive to double the fee?

Q932 Paul Farrelly: You have said that you will not pronounce on the evidence at the moment because you said that is not what judges do, but economists look at incentives and the current situation with CFAs, from an incentive point of view, might reasonably lead you to conclude that the incentive is there which might lead to a situation where lawyers pick and choose and it really is almost the case that it is “nearly always win, double the fee”.

Sir Rupert Jackson: Well, first of all, I agree that there is an economic incentive to pick cases which, the lawyers think, are going to win. If they proceed on any other basis, they would go out of business very quickly if they are dealing with cases on a conditional fee agreement. There is, of course, that incentive there and that incentive is very important for defendants because it means that unmeritorious and frivolous cases are less likely to be pursued. One of the strengths of the conditional fee agreement regime is that a filter is created which, generally, weeds out weak and frivolous cases and that, from an economist’s point of view, is, no doubt, very important. Secondly, you say, the incentive is to double the fee in every case because of the 100% success fee. There, I would question what you say because the success fee only goes up to 100%, to double the fee, in those cases which proceed some distance. In the strong cases which are resolved quickly, there may be no success fee or a low-staged success fee.

Q933 Paul Farrelly: The caveat then to your argument with respect to claimants, clearly, is one of motivation, this kind of chilling effect. If the claimant’s motivation is not pecuniary, the argument that you have advanced, that the situation helps to protect the defendant, would be false, would you not agree?

Sir Rupert Jackson: Well, one has got to look at two different parties within the claimant camp; there is the claimant and there are the claimant solicitors. The claimant’s concern, clearly, is to vindicate his reputation and to recover a sum by way of damages.
The concern of the claimant solicitors is to avoid conducting cases which will be lost and then they will have to bear the costs themselves.

**Q934 Paul Farrelly:** Can I come to your table, which is very, very helpful to the Committee. I just wondered whether you had any similar data, which will mean a lot more work, from previous years so that we can establish whether there is any trend.

**Sir Rupert Jackson:** No, I am afraid I do not have data from previous years. Obviously, it would be helpful if I did have. This report has been prepared in the space of four months and defamation litigation is actually a very small part of the total subject and there are a huge number of appendices dealing with costs in all sorts of areas. I took the view that the contemporaneous evidence is the most helpful, and my appendices give a snapshot of costs being incurred at about the present time.

**Q935 Paul Farrelly:** One of the allegations that has been really made most strongly by the media is that there are two particular firms, Carter-Ruck and Schillings, who are serial offenders, in their terms, to the extent that they now tout for business, encouraging people to bring claims, particularly where the internet is concerned, and there is a need for a modification here. Would it be possible for you to break down just by number of cases, not by sums or anything that could be held to be commercially confidential, the cases where particular firms acted for claimants and the number of cases where firms acted for defendants, just to break it down by legal firm for us?

**Sir Rupert Jackson:** I cannot tell you which solicitors firms acted either for the claimant or for the defendant in any individual case in this schedule.

**Q936 Paul Farrelly:** You do not have that information?

**Sir Rupert Jackson:** I do not have that information.

**Q937 Paul Farrelly:** The third question it would be very helpful if you could answer is: could you break down these cases, not in terms of identity, but by number, where it is foreign nationals who are the claimants or UK nationals? That would be helpful to the Committee when it comes to the issue of forum-shopping.

**Sir Rupert Jackson:** No, I am afraid I do not have that data.

**Q938 Chairman:** Can I just put one other point to you, which is looking at the economic incentives. One other claim which was put to us by the Media Lawyers’ Association was that one of the consequences is that the solicitors for the claimant will deliberately prolong proceedings as much as possible in order that they run up obviously as large costs in all sorts of areas. I took the view that the reason is that the costs-capping process is very, very unsatisfactory for any party of any nature in libel proceedings generally had a very bad reputation for giving rise to all kinds of, what I call, the very worst evil we have to deal with, namely satellite litigation where money is spent on satellite issues which are not really about resolving the merits of the case, and endless technical points, historically, were made in defamation-type cases. My impression is, and I am not a libel lawyer either, although I do sometimes hear appeals in defamation of privacy cases, but my impression is that, since the advent of the Woolf reforms 10 years or so ago, that evil has significantly improved and it is certainly something which judges should, and I think probably do, look out for because it is obviously very, very unsatisfactory for any party of any litigation deliberately to string it out in order to make money.

**Q939 Chairman:** It was an allegation made directly to us by the Media Lawyers’ Association that it happened on a regular basis. I merely leave it at that.

**Sir Anthony Clarke:** Well, I do not know whether the claimant lawyers accepted that and perhaps they did not.

**Q940 Mr Hall:** Could I explore with you the issue of costs capping. The rules were changed in April of this year, yet the judiciary seem to have taken a very cautious approach to this particular attempt to control the costs that a successful person in the case can claim against the losing person in the case. Why has there been a cautious approach to this particular change in the rules?

**Sir Anthony Clarke:** Well, I think Rupert Jackson again is the man to ask because he chaired a working group on the Civil Procedure Rule Committee on this very question.

**Sir Rupert Jackson:** Well, I am not sure one can say whether or not a cautious approach has been taken to costs capping by the judiciary since the new rules came into force because, as Mr Hall rightly points out, the new rules only came into force in April and I doubt, well, there may have been some applications since then, but four weeks is a very short time. Before April of this year, there were no rules governing costs-capping. When costs-capping orders were made by the courts, although there were no specific rules, they were using the general case management powers given to the court by Part 3 of the Civil Procedure Rules, and it is quite right that, over the years, the courts have been very cautious in the exercise of the costs-capping ability under Part 3. The reason is that the costs-capping process is extremely expensive. There is an application with supporting evidence, evidence put in in reply, then there is a hearing, possibly an adjournment for
further material and then possibly another hearing, and then the assumptions upon which the costs cap has been set may be invalidated because litigation may take an unexpected course and then there could be an application to vary the cap. Costs-capping, which is sometimes seen as a panacea for the problems of excessive costs in litigation, can generate its own problems; it can give rise to satellite litigation and yet further costs, and there is a danger that, if costs-capping is undertaken too freely, it will end up actually increasing the costs of litigation rather than reducing the costs. The risks may be particularly high in relation to defamation because, as Mr Justice Eady pointed out in the Tierney case, defamation cases, perhaps more than other civil litigation cases, have a habit of taking unexpected and unforeseen turns. Therefore, the courts have generally adopted a fairly cautious approach to costs-capping, and one of the issues which I addressed in my report is whether a more expansive approach, or a different approach, should be adopted to costs-capping, and you will find this addressed in chapter 45 of my report. It is one of the serious issues in this inquiry. Last year, when the Rule Committee was looking at this matter, the Committee essentially codified the existing approach of the courts, and the reason that the Rule Committee adopted that cautious approach was that the present fundamental review of civil litigation costs was about to get under way and it was thought inappropriate to make any substantial changes to the costs regime before the present review had been completed.

Sir Anthony Clarke: If I could just add a postscript to that, as I am sure you all know, at the end of litigation, if there is a dispute about the amount of costs, then there may be a detailed assessment. Now, the cost of a detailed assessment can itself be very great. If you then focus on the costs-capping process, that itself involves identifying what the costs are likely to be and one way of doing that is to conduct something close to a detailed assessment in advance. Now, if you do that, you are then spending a lot of money assessing costs which have not yet been incurred in circumstances where (a) everybody knows that 95% or more of the cases are going to settle, so there will never be a judgment, and (b) even where there is a judgment, the vast majority of costs issues are resolved as well, so there will never be a detailed assessment, but, if you are going to have a costs-capping exercise in every case, it has to be very carefully monitored. You would have to have, to my mind at least, a very robust approach so that you did not spend too much money on assessing the costs in advance because that would be another example of the kind of satellite litigation which one is trying to avoid, and that is really quite a serious problem and it is not easy to have a robust system. It is all very well for the judge to say, “Right, what shall we say—£10,000”, it is very difficult and the more robust, the more you look at the ceiling and hope for inspiration, the more you adopt that approach, the more likely it is that later one side or the other will say that the costs cap is inappropriate and then there will be endless arguments about whether it is appropriate to reopen the costs cap, so it is not easy. It sounds easy, but it is not easy.

Q941 Mr Hall: Thank you for that, and both of you have anticipated the next question as to why these costs caps are not more regularly used. If I have understood what you are saying, you are basically saying that, on face value, costs-capping is a good idea, but the mechanism for doing it actually adds costs to the case.

Sir Anthony Clarke: Well, there is a real worry about that certainly. In the future, though, I think we are thinking of better ways and maybe, when we have seen Rupert’s report at the end of the process, we will be able to move forward or some sensible way forward will be found. Finally, the Rule Committee in fact refused to introduce a specific costs-capping rule in defamation cases for the reasons we have given, on the footing that it would be better not to do it just for defamation, but to consider the whole matter in the round when we have the whole picture.

Sir Rupert Jackson: If I may add one additional point to this, although costs-capping has the difficulties mentioned by the Master of the Rolls, I am looking at another approach to this problem, which will be a form of costs management by reference to budgets on each side of the case. This is just one of the many matters I am looking at, and it would entail that the solicitors on each side provide their budgets to the court with more detail than the rules currently require and the court manages the case by reference to the budgets on both sides, if and insofar as those budgets are reasonable. Now, this is one of many matters I am looking at, it is discussed in chapter 48 of the report and, since that chapter was written, I have had some intensive meetings developing the proposals in that chapter. Whether this will be a feasible way forward or not, I do not know at the moment, but it may be another approach to achieve what is sought by costs-capping which generates the difficulties mentioned.

Q942 Mr Hall: Is it right to say that, in some cases, you can cap the costs of just one side of the argument, for example, the claimant? Is that correct?

Sir Rupert Jackson: You could cap the costs of one side, but it would be more fair, or it is more likely that the judge, in his discretion, would cap the costs of both sides.

Q943 Mr Hall: On a slightly different note, where we have got cases for defamation or privacy that involve media organisations, what is your view about placing caps on those costs so that we do not have the chilling effect where we see people refusing to publish stories or they end up in fear of litigation?

Sir Rupert Jackson: Well, I think that costs caps in defamation proceedings give rise to the same difficulties as they give rise to in other forms of litigation. The danger of costs-capping in defamation proceedings is that you may end up increasing the costs rather than reducing them. There are times when costs-capping is appropriate and the Civil Procedure Rules, as amended last
month, provide for costs-capping in appropriate cases, both for defamation and all other areas of litigation.

Q944 Paul Farrelly: I want to come on to issues of jurisdiction and forum-shopping in a moment, but your answer there regarding the examination of budgets begs the often-asked question of whether claimants should be subject to means-testing.

Sir Rupert Jackson: I myself see considerable difficulty in devising a set of rules, the effect of which would be that only persons who satisfy a particular means test are entitled to instruct their solicitors and counsel on a conditional fee agreement, and I see very considerable force in the reasoning of the House of Lords. Whilst I am conscious of the problems which CFAs with recoverable success fees and recoverable ATE premiums generate, I am at the moment very doubtful that means-testing would be the way to crack the problem; I think that I have got to look for other solutions.

Q945 Paul Farrelly: I am sorry if you have addressed that already, but I missed it. One alternative approach, which has been suggested by editors of certain newspapers, newspapers which are not involved in cheque-book journalism, shall we say, is that an early judgment on the meaning would be very helpful in defraying costs.

Sir Anthony Clarke: Well, the courts have powers to take individual issues and to decide them separately from the other issues and, as far as I am aware, it is not uncommon to have a preliminary issue on the question of meaning, and indeed I myself was involved, I seem to remember, in an appeal in relation to meaning where the only question was whether the meaning, which the claimant said the words had, was a meaning which was open to that, so yes. It is an important feature of all kinds of litigation, namely to try and identify key issues which can be decided shortly and comparatively cheaply which will then, hopefully, lead on to a settlement of the whole dispute, so the answer is yes.

Q946 Paul Farrelly: Is there anything, in your opinion, that could be done to facilitate that?

Sir Anthony Clarke: Well, I think the rules sufficiently facilitate it already. If a defendant, for example, says that the meaning suggested by the claimant is a meaning that the words complained of could not have, then there is nothing to stop that defendant going to the court and asking the court to direct that that issue be decided as a preliminary question, and these days, I would have thought, judges would be keen to do that.

Q947 Paul Farrelly: Is that normally then subject to appeal and then it potentially runs the risk of costs running away?

Sir Anthony Clarke: Well, there is, of course, a risk of that, but, if the resolution of that question is going to lead to the settlement of the whole dispute and, in effect, cut out any further dispute or costs, then it is desirable.

Q948 Paul Farrelly: Is it used often enough? Do judges—

Sir Anthony Clarke: Well, I would have thought they did. I cannot say that I have in front of me the statistics in relation to how often that happens in defamation cases, but it certainly does happen, I know that, and I can see no reason why a defendant should not apply for such an order; it seems very sensible in all sorts of cases.

Q949 Paul Farrelly: I want to move on to jurisdiction. The issue of jurisdiction now has become very noteworthy in some cases, but it is also more relevant because of the march of the internet. Is it time that our libel laws moved with the times and that we institute the single publication rule, as they have in the United States?

Sir Anthony Clarke: Well, I do not really think that is something for me to comment upon; that is a matter of principle or policy, if you like, and it is a matter for Parliament, but it does not seem to me that, as a judge, it is appropriate for me to comment upon. I might have a personal opinion as to what the answer to that should be, but, wearing my present hat, it seems that it is a matter for you, if I may say so, rather than me.

Q950 Paul Farrelly: But we take advice from eminent and experienced people like yourselves on these questions.

Sir Anthony Clarke: I can quite see that there are arguments in favour of it which have been put very forcefully to you, and then there are arguments on the other side which have been developed in some of the cases. After all, you do not have to leave your material on the internet and, as some judges have said in the past, “Well, if you do that, you’ve only got yourself to blame because you could remove it or qualify it and, if you choose not to, it may be that you do it because you like”, as one judge said, “the ubiquity of the internet”, so there are two sides to the question and I think that a quite significant case could be made for either view.

Q951 Paul Farrelly: That is clearly one issue as to whether someone does not have the commonsense to take something down, once notified, but, if it has been there for 10 or 15 years, it is still actionable, so, in those sorts of instances, as a judge, which of the arguments, for or against single publication, do you find most persuasive?

Sir Anthony Clarke: Well, I do not think I am going to answer that!

Q952 Paul Farrelly: I can see that I am not going to get any further with this! Clearly, it is a matter of great concern to the likes of The Wall Street Journal, Private Eye and some of our major newspapers, but how often do issues of jurisdiction arise in libel cases, in your experience?

Sir Anthony Clarke: Certainly from time to time, but certainly no more than in many other areas. I spent my whole career really, before I went on to the Bench, dealing with commercial litigation where a good proportion of my practice was arguing about
whether or not the particular dispute should be heard in England or in Timbuktu or wherever, so I certainly do not think it is, in the great scheme of things, particularly significant, although I can see that it does cause concern, but the principles are reasonably clear. I think, at present. To my mind, I would have thought they worked perfectly well, but I can see that there is a concern about forum-shopping.

Q953 Paul Farrelly: It comes back to the question that it would be useful to have some data to get this whole issue in perspective. Is there any data at all which we can draw on?

Sir Anthony Clarke: I do not know. It is possible that HMCS, the Court Service, might have data about that. I quite agree, it would be helpful to have data. I personally do not have it, but it may be that the Court Service would.

Q954 Paul Farrelly: Perhaps we can follow that up and, likewise, data such as how many claims for, if you will excuse my Latin, *forum non conveniens* there have been and how many have been successful, that is data which would be useful.

Sir Anthony Clarke: That is really the same point. I would have thought that the people to go to, as it were, would be the Court Service on that.

Q955 Paul Farrelly: We have met with legislators in the United States who have been bringing, or attempting to bring, in the laws both in New York and federally, and one of the concerns is whether the UK courts have become an object of ridicule for admitting the sorts of claims that we have seen where Ukrainians are sued because the left side happens to be accessible here. Is there any threshold at all that you can give us some guidance on as to how the courts approach it or whether our courts are the appropriate jurisdiction?

Sir Anthony Clarke: Well, the general principle, I think, is this: that, if you have a case where you can find the defendant within the jurisdiction so that you can serve the proceedings on the defendant as of right within the jurisdiction, then, on the face of it, you are entitled to proceed with your action, unless the defendant persuades the court that the action should be stayed on the grounds of, what I think is usually called, *‘forum non conveniens’* where you have to persuade the court that the interests of justice make it more just that the case be tried somewhere else. As I say, I have spent many happy hours over the years arguing about just that on one side or the other. The case is a bit different where you cannot find the defendant within the jurisdiction because then you need the permission of the court to serve the proceedings on the defendant outside the jurisdiction, and then the onus of proof is on the claimant to satisfy the English court that the English court is the appropriate place to bring the action. Of course, it could only do it, in any event, if the tort, in this case the libel, was committed within the jurisdiction, so there would have to be publication within the jurisdiction so that it could be said that the tort was committed within the jurisdiction. I think the approach, or my impression, though I cannot say I am an expert in this, is that, if there has been a significant publication within the jurisdiction, then, in the first class of case anyway, the courts have ordinarily taken the view that, if the claimant has found the defendant here, he ought to be entitled to claim about an unlawful publication here, but, if it is a very insignificant part of a worldwide publication, then the courts will say, “No, this case ought to be tried elsewhere”. The only thing is, of course, that the law may be different here. So, for example, the law of the burden of proof may be different in relation to justification. The burden is on the defendant. I think, to justify an alleged libel here, whereas the burden may this year, to the other side in some other jurisdictions. I am not talking about the European Union where of course there are strict rules about jurisdiction.

Q956 Paul Farrelly: Well, that is the nub of the issue, and the two words, “significant” and “insignificant” are also the nub.

Sir Anthony Clarke: Well, these are questions of judgment really and they depend upon the facts of a particular case, which is what judges are for.

Q957 Paul Farrelly: If I just take one particular case, the case which ultimately came before Mr Justice Eady, or two cases, John Alexis Mardas *v* The New York Times and the same claim against Mr Justice Eady, the *International Herald Tribune*, the High Court struck those claims out on 10 June last year. The claimant had permission to appeal in August and then Mr Justice Eady upheld that appeal in December 2008 which led, in January this year, to the large piece of the article, entitled, “English law is ‘Carter-Rucked’”. I do not know whether you are familiar with Mr Justice Eady’s judgment in that case.

Sir Anthony Clarke: I have read it, but I do not think it would be at all appropriate for me to comment upon the facts of a particular case. After all, there might be an appeal and it might come to us judicially.

Q958 Paul Farrelly: It would appear though from this case, from Mr Justice Eady’s comments, that there cannot be any threshold, given the law as it stands. He says, “This cannot depend on a numbers game”.

Sir Anthony Clarke: Well, obviously, one would have to look in detail at his reasoning to see if it was sound, but the losing party could, presumably, attempt to appeal, if they were disappointed.

Q959 Paul Farrelly: Would statutory guidance, and in what form, be helpful?

Sir Anthony Clarke: It would have to be extremely carefully thought out, the statutory guidance. I think one would have to look at the guidance to decide whether it was helpful or not.

Q960 Paul Farrelly: The American publishers have put a collective submission in to us where they suggest certain thresholds. I do not know whether you have had a chance to see that submission.
I have a list of the sorts of topics which have been discussed in recent times, for example, problems relating to litigants in person because we have, perhaps in these days when there is less and less public money to assist litigants, more and more litigants in person and they do, undoubtedly, provide their problems, and how to cope with them is an important factor. Then there have been panels about witness intermediary schemes and witness protection schemes, there have been discussions on bail, then why juries are dismissed, and there has even been one on the day in the life of a judge, though I do not know who would be interested in that, but there we are! Then, there have been panels on, for example, the role of summary proceedings, how the county courts deal with repossessions, the process of small claims and, more recently, transparency in the family courts, which has been a big issue. So those sorts of topics.

Q964 Rosemary McKenna: I noticed, from the list that you have supplied to us, that most of it would seem to be not the print media, but television and radio, certainly in 2008 and 2009. Is there an attempt to improve the reporting of cases in the print media or the judgments in the print media of the judiciary, for example, the judgment that Mr Justice Eady was “creating” a privacy law by the back door, which was widely reported?

Sir Anthony Clarke: Well, one thing we have tried to do, again through the Judicial Communications Office, is we have tried to make courts’ judgments more readily available and more immediately available to the media so that the media have the actual judgments delivered because many of these judgments are handed down in a written form and sometimes we have summaries. We are having summaries more often now, and even press notices to make sure that the information which the media actually have in their hands is accurate because I think many of us over the years have had quite a bit of experience of inaccurate reporting of cases we have been involved in one way or another. It is obviously desirable and it is quite important for us to make sure that our judgments are accurately reported. All the business about whether Mr Justice Eady created a privacy law all by himself would not perhaps have had the publicity it had if people had actually read a lot of these judgments because it is simply not the case.
not really a privacy law, and the like. It was gradually developing, but the whole area was radically altered with the advent of the Human Rights Act which, of course, incorporated the European Convention on Human Rights into our law. Before that, although we were signatories, and had been from the beginning, of the Convention, the United Kingdom although it had signed up to Article 8 on the one hand and Article 10 on the other, it was not until the Human Rights Act was passed that it became part of our law. From that moment onwards, it was the court’s duty, and the role of the judge, to balance the rights in Article 8, respect for privacy, and the rights in Article 10, freedom of expression. As we know, in each of those articles it has, in paragraph 2, a sort of balancing provision, so, for example, in Article 10, freedom of expression, but having regard to the rights of others and the like, and one of those rights is the right to privacy. There has been a lot of jurisprudence now about how to balance the two rights. For example, it has been authoritatively held, I think, by the House of Lords that one does not trump the other, they have got to be balanced, and it is really a matter for the judge in the particular case to carry out the balance. I think, for that simple reason, that it is quite wrong to say that any particular judge has invented the privacy law because actually it derives from the Convention which was enacted by Parliament in the Human Rights Act. Of course, if Parliament wanted to change the law, it could, presumably, in theory at least, do so, though of course the United Kingdom remains a party to the Convention and it would be a very large step perhaps for the United Kingdom to withdraw from the Convention, if indeed it were possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible. The way it has actually worked is that there have now been quite a large number of cases, some possible.
is recognised that freedom of expression is a very important right—as you say, recognised by article 10. I suggest to you that section 12 is not about the balance between article 8 and article 10. There, when you ultimately come to look at it, it is a balance where you have to take account of both articles. I see in a case decided only yesterday or the day before in this area that Strasbourg stressed the importance of article 10.

Q969 Chairman: I am conscious that the Lord Chancellor is waiting. I do not want to delay him for too long.
Sir Anthony Clarke: We certainly would not want to keep the Lord Chancellor waiting.

Q970 Chairman: One of the points made to us by the media is that judges who have an application for an injunction which they receive on a Saturday evening are more likely to grant it on the basis that there is plenty of time: “We can come back to it, perhaps next week, and look again,” whereas not granting it cannot be reversed. The media, therefore, think that they are biased in terms of granting injunctions in favour of them being given. You are saying that section 12 should operate in precisely the other way.
Sir Anthony Clarke: Section 12 should operate to give judges great cause for concern before granting it, even late at night on a Saturday night. It is quite true that, across the board, generally, for those of us who have been on duty late at night on a Saturday night when you have been given some terrible story, in most cases the sensible thing to do is to grant the injunction, to hold the ring until Monday, because, mostly, the balance of convenience or the balance of justice is to say, “Let’s hold the ring now, and then the thing can be thought out and decided on a Monday.” This shows that the courts are very reluctant to do that, because subsection (3) applies in the case you mentioned, and in subsection (2), when an application is made ex parte (as it used to be called) “[ . . . ] no such relief shall be granted unless the court is satisfied (a) that the applicant has taken all practicable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.” You need a very, very good reason indeed before you can persuade a judge who is applying the thing properly to grant you an injunction in the circumstances you mention.

Q971 Paul Farrelly: We have jumped from media panel to the balance between privacy and freedom of information, and that was the subject covered in Paul Dacre’s speech.
Sir Anthony Clarke: Yes.

Q972 Paul Farrelly: Which was an attack on Mr Justice Eady, and your submission is a very cogently argued defence of the judgments that he has made. Mr Justice Eady himself made a speech in the House of Lords two or three months ago.
Sir Anthony Clarke: In the House of Lords?

Q973 Paul Farrelly: It was the Intellectual Property Lawyers’ Association. It was under Chatham House Rules, but the Sunday Times got wind of this. The reporter Stephen Robinson asked Mr Justice Eady for a copy of his speech, and Mr Justice Eady gave him a copy of his speech, and he quoted a little bit from it in a Sunday Times magazine article. We have not had Mr Justice Eady here. I think we have asked his chambers for the speech but I do not know what the response is. I wonder whether you might prevail in your usual way so that we can have a copy of his comments.
Sir Anthony Clarke: It is really a matter for Mr Justice Eady whether he wishes to comment. Indeed, it is a matter for him whether it would be appropriate for him to do so. I will certainly inform him of what you have said.

Q974 Paul Farrelly: It has been given to a journalist.
Sir Anthony Clarke: If he has already given it to somebody else, it may be that he would be quite willing to make it available to the Committee. We will undertake to ask him.
Paul Farrelly: Thank you.
Chairman: Could I thank the two of you very much indeed.

Supplementary written evidence submitted by the Master of the Rolls

1. I submit this supplementary memorandum to the Committee in order to deal with a matter arising from the oral evidence session of 19 May 2009.

2. Paul Farrelly MP, of the Committee, raised a question as to the merits of a reform proposal set out in the written evidence submitted jointly by Advance Publications Inc, the Association of American Publishers, Associated Press, Bloomberg, CBS Television and a number of others. Those proposals are set out at paragraph 18 of their evidence. Seven reform proposals are set out in respect of internet publication, defamation and jurisdiction.

3. These are proposals for the reform of the substantive law and, as such, raise a number of policy issues. Although I have my own views on some of them, it would not be appropriate for me to express them to the Committee in my capacity as a serving member of the judiciary.

May 2009
Further supplementary written evidence from the Master of the Rolls

1. I submit this supplementary memorandum to the Committee in order to further assist the Committee. I set out information received from Her Majesty’s Court Service regarding publication trials and injunction hearings heard since 2008.

### Defamation, Privacy and Malicious Falsehood Trials Heard in the Queen’s Bench Division since January 2008

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<tr>
<td>February 2009</td>
<td>Libel</td>
<td>Ahmed v Shafique</td>
<td>5 days</td>
<td>Sharp J</td>
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<tr>
<td>March 2009</td>
<td>Libel</td>
<td>George v News Group Newspapers Ltd</td>
<td>10 days</td>
<td>Sharp J</td>
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<tr>
<td>April 2009</td>
<td>Malicious Falsehood</td>
<td>Quinton v Peirce</td>
<td>5 days</td>
<td>Eady J</td>
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### Injunctions

Most privacy injunctions are Applications Without Notice or With Notice with no attendance by defendants: so called John Doe injunctions. The very nature of this type of application means that they dealt with over night or at weekends and the court does not, according to HMCS, keep case records in these instances.

However, HMCS has been able to identify some listed matters which show the following:

<table>
<thead>
<tr>
<th>Date</th>
<th>Case title</th>
<th>Judge</th>
<th>Result</th>
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<tbody>
<tr>
<td>9 April 2008</td>
<td>Mosley v News Group Newspapers Ltd</td>
<td>Eady J</td>
<td>Refused</td>
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<tr>
<td>17 July 2008</td>
<td>KKK v Impey</td>
<td>Eady J</td>
<td>Granted ex parte unopposed</td>
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<tr>
<td>January 2009</td>
<td>PQR v Pressdram Ltd</td>
<td>Eady J</td>
<td>Refused ~ Court of Appeal to give judgment 19th May 09</td>
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<tr>
<td>January 2009</td>
<td>WER v REW</td>
<td>Sir Charles Gray</td>
<td>Granted</td>
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<tr>
<td>19 March 2009</td>
<td>Barclays Bank Plc v Guardian News &amp; Media Ltd</td>
<td>Ousley J ~ overnight and Blake J next day</td>
<td>Granted</td>
</tr>
<tr>
<td>Saturday 28 March 2009</td>
<td>Nigel Griffiths MP v News Group Newspapers Ltd</td>
<td>King J</td>
<td>Granted</td>
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June 2009
Chairman: Good morning. For the second part of this morning’s session, I would like to welcome the Lord Chancellor and Secretary of State for Justice, Jack Straw. I will invite Philip Davies to begin.

Q975 Philip Davies: Perhaps we could start where we left off with our eminent judges, with the Human Rights Act. Could you give us your thoughts on the balance between articles 8 and 10? If not a contradiction, there certainly seems to be a great tension between the two.

Mr. Straw: Essentially it is as the Master of the Rolls has described—and he is much more of an expert on how these articles, alongside English common law, have been interpreted over the years. As he was describing, the Convention (and therefore the Act) requires that there is a balance here to be struck between freedom of expression and a right to privacy under articles 8 and 10 respectively. That is a very wide discretion given to the courts. The interesting thing about the Human Rights Act which I think it is always worth bearing in mind is that, although it was not incorporated into British law until the year 2000, 49 years after the Convention came into force, the rights that are written down in the key Convention articles are essentially British rights. This was drafted by British jurists, not least Sir David Maxwell Fyfe (as he then was), who later became Lord Kilmuir, the Lord Chancellor in the 1950s, and they were trying to set in a code what was understood to be the basic civil and human rights which we had taken for granted in the United Kingdom for many centuries—for sure here we have taken for granted, and the courts have then given some articulation to the idea both of a right to privacy and to freedom of expression. Then, as the Master of the Rolls has described—and he has set out quite a number of the leading cases on this, including the (Naomi) Campbell case—there was already developing jurisprudence in respect of the law of confidence, which, crab-like, as the Master of the Rolls was indicating, was developing something along the lines of a law of privacy, and then we got the Human Rights Act, which certainly moved it up a gear. If your next question is, “Do you think there should be statutory changes made?” the answer is that I want to wait to see what your Committee has to say on it. I am not, Chairman, trying to dodge this, but I was thinking about this overnight, and there are some areas where, for sure, it is sensible for Parliament to intervene rather quickly. If you take, for example, the area of the law of negligence, although there are occasional interventions, not least over procedural issues (limitation periods and things like that), the law has developed in a flexible and sensitive way because it has been developed on some very clear principles which have then been interpreted in particular cases. That is my starting point, but obviously I want to see what your report says.

Q976 Philip Davies: Surely the starting point here—is this: when you introduced the Human Rights Act into British law, in terms of the judgments that have been made, have they panned out as the Government intended or have there been some unintended consequences?

Mr. Straw: I am not being forensic about this, but my judgment is, in general, if we went back to what we said and what Parliament said in the 1990s, the interpretation of it has worked out as was thought, and in some areas, it has worked out in a different way. It is impossible in any circumstances to take account of an environment which is going to occur in the future. One of the things which I certainly did not anticipate—which has not affected this area but it has certainly affected the overall environment of the Human Rights Act and its application—has been the fact that 11 months after the Human Rights Act came into force, which was on 2 October 2000, we had 9/11. That meant that we then ended up by fighting two wars and having to introduce a raft of counter-terrorist legislation which tested those articles in a way in which it would have been better, if it had been possible, for them not to have been tested until they had bedded down. That is one example. Perhaps I might add this: it is certainly the case—and I know that Mr. Dacre, when he came before your Committee, Chairman, was indicating this—that the newspaper editors and the journalist organisations were concerned about how article 8 would be interpreted. They were particularly concerned about interlocutory injunctions, stopping the presses. That is why I negotiated the terms of what became section 12 with them. Although, for sure, they have complaints about the level of fees and costs—which I fully understand and in many respects share—and they have concerns about particular decisions in the courts, not least in the Mosley case, section 12, as the Master of the Rolls has spelt out, has worked to their advantage without any question.

Q977 Philip Davies: I think you said in your first answer that the Human Rights Act has given a wide scope to judges. Surely over the last couple of weeks we have seen the importance of having a free press and media to expose wrongdoing in authority. Would you not agree that the time has come for Parliament itself to clarify the importance that it places on freedom of speech? I personally would like to see a greater strengthening of the right of the press to be freer in what it publishes, but whatever side of the argument one takes on that, surely it is time for Parliament to decide which should have priority, freedom of speech or privacy, and set it out clearly, rather than leaving it to judges to interpret the law. Would that not be more sensible?

Mr. Straw: I do not rule out the idea of legislation on this; I just say that it is very complicated. My experience of decisions in respect of human rights over the years is that some of those which caused the greatest initial excitement have ended in a situation where, because of changed circumstances or appeals to the Court of Appeal or the Law Lords, things have calmed down, because those senior courts have produced a better balance. Since I am a respondent to a large number of cases any day in the courts on human rights bases and others, I can think of a number of cases in my area. So I do not rule it out,
but where you are seeking to balance privacy and the right of expression, in the end, if those rights are justiciable, you are going to have to give that balance to a court. After all, yes, we have seen in the last two weeks the value of a free and independent press. I do not think there is anybody in this place who has challenged that, or very few—I mean, there was an argument beforehand, but that has not been challenged—so quite how a law would have helped there I am not sure. In every jurisdiction I can think of which seeks to provide justice, you have, by one means or another, a right of privacy and a freedom to express yourself as you wish, and a recognition too that those are potentially, sometimes, in practice in conflict and therefore it means resolving those conflicts.

Q978 Philip Davies: I am somewhat encouraged that you are considering some kind of legislation to clarify the position one way or the other—you certainly have not ruled it out—but we have had so much case law now that it is becoming increasingly clear where we are. What would have to happen for you to decide either, yes, we definitely will or, no, we definitely will not, that we do not already know?

Mr Straw: Since this is a public session and there are members of the media here, I do not want to over-egg what I am saying through your interpretation, but there is a difference in the scale of things between not ruling something out and considering it. On the scale of things, I am not ruling it out. There are some things I would rule out. I do not rule this out. You and your Committee, Chairman, are devoting a lot of time to this issue, and I want to see what you have to say. That is not passing the parcel: I think that is a sensible way to do this. If you are going to go for change in this area of law, you have to do your very best to make sure it is pretty consensual—not absolutely agreed, but it would be ludicrous to have it so that it becomes an issue of a partisan battle. I would just say in my own defence, as it were, that I recognised in 1998 when we were putting the Human Rights Act together and early 1999 that there were not just concerns in the media but that they needed to be dealt with. There were also issues of the churches and religious organisations. We sought to deal with them. But I am not in favour of altering the articles. That, as the Master of the Rolls said, would involve a huge change in approach by the three parties to do that, but I have never ruled out the equivalence of sections 12 and 13 in the Human Rights Act, which are to do with procedure and alerting the court as to how they should tip the balance and where they should shine the spotlight.

Q979 Chairman: There is no doubt that section 12 was the one area where Parliament attempted to give guidance to the courts. We have just heard from the Master of the Rolls that, indeed, if section 12 is applied when an application for an injunction is made, the judge should give greater weight to the importance of freedom of expression. The Master of the Rolls also conceded that on a Saturday night when the News of the World comes along and says, “Here’s our splash story,” and the subject of it says, “I want an injunction,” the chances are that the judge may well say, “Well, we can think about this over a few days and I will give a temporary injunction to allow us to have greater consideration,” which of course is the last thing the News of the World wants, and therefore the case of the media is that section 12 is not really having the effect intended and that judges do tend to grant injunctions.

Mr Straw: As far as that is concerned, Chairman, I would like to see the evidence. I do not have data. Looking at summaries of the evidence you have already taken, one of the questions raised was data on the number of applications made for interim injunctions out of normal hours, or, indeed, in hours as well, and the numbers granted I would like to see what, the data is on that and, also, before and after the coming into force of the Human Rights Act. I guess that I am probably the only person in this room who has had experience of not only seeking an injunction on a newspaper but being successful in getting it on a Saturday night, and that was in respect of the leak of the Lawrence inquiry report to the Sunday Telegraph in mid February 1999. The argument there was about a breach of copyright, rather than a breach of privacy. In the end the court did grant the injunction on the grounds that there was no public interest in publishing this document on a Saturday when it was going to be published anyway the following Wednesday, but they were not patsy about this at all—I mean, they were pretty thorough. Section 12 says in its first subsection: “(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.” Although, as the Master of the Rolls correctly said, it specifically, as in subsections (2) and (3), relates to interim injunctions, subsection (1) makes it clear that it is drawn more widely and has general application.

Q980 Chairman: On the issue, however, of injunctions, you may have seen from summaries of the evidence we have received that one of the main issues that has been raised with us, particularly by Max Mosley and, indeed, by Schillings Solicitors, was their argument that there should be a right of prior notification, that if a newspaper is going to put you on their front page tomorrow morning, you should be told that it is going to happen. The media have argued in response that the reason they are opposed to that is because if I was told that I was about to be exposed in the newspaper, I would immediately go and seek an injunction. Your argument would be that the hurdle to acquire an injunction is set quite high under section 12, and therefore that should not necessarily be an argument against pre-notification.

Mr Straw: Yes. I also saw that Mr Dacre said: “99 times out of 100 we inform the person about what we are going to say and ask for comments.” As one of those people whose circumstances have been given a slightly wider audience recently by the Daily Telegraph, they certainly afforded me that courtesy. Again, I will look to see what your Committee has to
say on this. I can see there is an argument which goes: “The bar is set high for an interim injunction, therefore what is there to lose if the media are required in any circumstances to inform an individual of anything which is potentially going to breach their rights to privacy or, I assume, be defamatory?” but I have to say, on the scale which I gave to Mr Davies, that I am very sceptical about going down that route. The reason why newspapers go to individuals to ask whether things are true or not is, first, because, funnily enough, they have an interest in telling the truth; they do not want to develop a reputation for telling lies. For example, in the case of the Daily Telegraph in my own circumstances, it was a good idea from their point of view that they did come to me, because one of the suggestions they put to me was fundamentally untrue—which was where our second home was. It was sensible for them to do that. They apologised for that error, it was not published, and that was the end of it. So they have an interest, and they also know that if in subsequent proceedings it turns out that, frankly, they have been pretty casual about checking their facts, that is likely to go to the issue of damages and certainly not find favour in the courts. There could be cases, however, where they are doing this with some villainous behaviour, seriously villainous behaviour, where they are, for example, trying to protect a vulnerable witness. In those circumstances it is right for the media to be at risk on this, but if they, having looked at all this, having had good legal advice, having satisfied themselves that what they are doing is in the public interest and that there is this genuine risk of whoever they are going against using their money or, worse, using other power, then I think they should be entitled to publish and I think this should be their judgment.

Q981 Chairman: Say they were investigating a serious criminal, where there might be a risk to a witness if they were to tip him off, then surely any subsequent action for failure to pre-notify would fail in the courts if the newspaper was able to demonstrate that there was a good reason why they did not give pre-notification.

Mr Straw: Indeed. That is true. For all of us—and it is usually Sunday newspapers—who have had the call on a Saturday afternoon to find out this, that and the other—and I have been in public life now for 40 years, so over the years, from time to time, you get these calls, which may be about political issues or may be about personal family issues, as they were in my case some years ago, and then obviously now on the expenses stuff—funnily enough, it seems to me, whatever else one thinks about the press, there is more of a requirement on them to observe standards of truth. They have the same interest, in many ways, as the person about whom they are reporting, to ensure accuracy. Why on earth would they want to put material in which is obviously inaccurate? It is also the case that sometimes they leave it a bit late, but they do inform the person about whom they are going to write with sufficient time normally—just—for countervailing action to be taken if necessary. Chairman, my sense is that this current practice by the press is not broke, and I think the prescription could be worse than the problem.

Chairman: You will appreciate that this was raised by Max Mosley, who did have his private life exposed to the entire world, who did then go to court and who did win. He obtained a judgment that the articles should not have appeared, but of course it was too late by then: his privacy has been removed. His case to us was that he is not unique; that this is a practice that newspapers quite regularly do; and that a prior notification would offer some defence to people who should have the right to have their privacy protected.

Q982 Rosemary McKenna: Perhaps I could add to that. We have heard evidence from private individuals who say that stories with a grain of truth have almost destroyed their private lives and their families’ private lives, and that there was no prior notification.

Mr Straw: I do not want to go into details that were public 10 years ago, but having experienced this kind of story, families are put under huge pressure in these circumstances. We were told about the story in advance. It is the publication of the story that is the problem. I have no reason whatsoever to disbelieve what Mr Dacre was saying to this Committee, that 99 times out of 100 the media are going to tell the party. Let me just say in the case of Mr Max Mosley, it may be that if they had told him at five o’clock he would have gone out and got an injunction. He might have done. It is possible, because he has the power and the money to do so. Most people do not have that. There is a need to secure a better balance here, if that is what the mischief is that the Committee identifies. My first port of call here would be the Press Complaints Commission Code, with the understanding, which I think is the case—and I am not a defamation lawyer, Mr Farrelly—that if that was breached in a particular case, then that breach of the code, amongst other things, would be capable of being brought to the attention of the judge in defamation or privacy proceedings.

Q983 Paul Farrelly: I hope I am not leaping out of the train of discussion, Chairman, but in relation to prior notification, when we were taking evidence earlier on I gave the example of the case of Robert Maxwell. There are stories where time is an element, particularly in financial investigations, particularly if people are fund raising, where prior notification as a mandatory rule would be very difficult and would stop a lot of serious journalism. In my experience there are two circumstances where there would not be prior notification: the case where you have the subject bang to rights whether it is an intrusion of privacy or not, such as the Max Mosley with the video, or where the newspaper does not care whether they have the facts right because they make a judgment that the person cannot afford to sue. Otherwise, generally, I think newspapers are careful to check their facts. For the Daily Telegraph, I am sure they will have checked what came out on this occasion but I am sure they would have a very strong
public interest defence and any action against them would be undermined via government or any of its agencies—like the German Government have paid somebody from an America bank for stolen data on tax evaders, so I am sure those issues are being weighed. Legal change does not happen in a vacuum. Constitutions do not happen in a vacuum. The reality is that in this country we have a press of a dual nature. We have, in the vernacular, the “tabloid press” and then the more serious press for which privacy is not generally an issue; they do not go in for intrusion of privacy. Have you considered, in the circumstances in which we live in this country, whether there is potentially a trade-off between statutory strengthening privacy so that it is not just judge-made case law, on the one hand, but, on the other hand, a greater protection, a stronger statutory defence for serious investigative journalism in the public interest? Have you considered whether there might be a trade-off here?

Mr Straw: I am open to ideas here, Mr Farrelly. Say you do what you have suggested and you strengthen people’s privacy—and I will come back to why I acknowledge that a case is made for that—and you strengthen the right for serious investigative journalism—so you have hardened up the rights on both sides—you are still going to end up with somebody having to make a judgment about the conflict. If you take investigative journalism, the thing that has been put to me as something that has a chilling effect on investigative journalism is not the court’s interpretation of article 8 versus article 10 but conditional fee arrangements for defamation cases. It is for that reason that I believed and do believe that there was a necessity actively to look at amending the law on CFAs and defamation cases in advance of the very thorough review that Lord Justice Jackson is undertaking. That is why I published the consultative document earlier this year, where the consultation is closed. If I am presented with evidence that there is a particular problem—as unquestionably there is here: I think the argument is overwhelming, a particular problem which needs dealing with, you go ahead and deal with it. That is how I deal with that approach. If you ask me as an individual what I think about the tabloid revelations which intrude into people’s private lives, I say that I am ambiguous about this. I buy—not out of expenses!—tabloids on a Sunday. I am sorry to say, if apologies are needed, that I am sometimes entertained by them. On the other hand, I also sometimes think, “What would it be like to have, say, details of your total private life exposed?” None of us would want to see our public lives gratuitously spilled on the papers—although the papers are getting slightly better about this matter then they were. That is an area where I do feel very sorry for people, and if they are people of humble means, it is not going to be open to them to take any kind of proceedings in normal circumstances. I think that is about trying to get the press better to set a standard there for themselves. I think it is fairly hard to legislate for that.

Q984 Chairman: We are going to move on to the CFAs, but before we do, on the issue Paul raised there is case law which is now often cited (originally the Reynolds defence, and then came Jameel) and that is held up as being available to newspapers who have undertaken responsible journalism and through not their own fault might have made a mistake, and yet the evidence we have received is that it is virtually never used for a variety of reasons. Do you think there might be a case for putting it in statute?

Mr Straw: We would certainly look at that. That was the basis of the 1952 Defamation Act—at least that is my recollection—to encapsulate certain defences into statute law. Yes, if there is a case, one would look at it. In the conversations I have had with media organisations, they have not said to me—and it does not mean they do not believe this, but they have not said it to me, as I recall—that there is a problem with the Reynolds defence. They keep saying to me, especially amongst the regional newspapers or some of the less well-financed national newspapers, that they have a problem about being at risk on costs in respect of CFAs or in respect of, say, contemporary Maxwells, and that is, I think, a real problem.

Q985 Chairman: Is that something you are considering?

Mr Straw: I am not considering it at the moment.

Q986 Paul Farrelly: It is the case that the traditional concerns of newspapers regarding libel and its restrictive nature in this country have given way to the concerns. It is the operation of CFAs, but there is a double effect. What the Chairman is trying to get to is whether, given the evidence that we have received that the responsible journalism defence is not really working in practice and it becomes a trial of the journalist and the journalism, any consideration might be given to putting that on a better standing.

Mr Straw: On that one, I would certainly be very happy to look at it.

Q987 Chairman: It would require you probably to put into a statute a definition of public interest. Is that possible?

Mr Straw: It is possible. We have thought about it in respect of the Freedom of Information Act. Ultimately, if you have a public interest test, you can say that these matters need to be taken into account—certainly, in a discrete area like investigative journalism—but, however detailed you are, you will come to a point of how you apply those general principles to a particular set of circumstances and that is a job for the courts. In the Freedom of Information Act we gave guidance to the tribunal and the courts by the nature of the exemptions—so some things were not exempt, some things were completely exempt. On other things, for example, matters under policy consideration, that is a guidance to the courts and they have to make the judgment.

Q988 Rosemary McKenna: The Committee has received a lot of evidence on the recent phenomenon known as libel tourism, where foreign nationals use
UK courts to sue non-UK companies or individuals for libel. Should the Government issue statutory guidance on jurisdiction in those circumstances? 

**Mr Straw:** As the Committee will know, Chairman, there has to be some connection with this jurisdiction otherwise the court will not hear it. I think it was before your Committee that one of the witnesses was asked for details about the number of cases which arose and the answer was that you would wish the data to be obtained from the court service. If that is not already in hand, I will make sure that it is. There are criticisms of our defamation and privacy jurisdiction. One is that it is very expensive—and until the opposite is proved, that is also my view. The second is about so-called forum shopping. On that I have yet to be convinced that there is a significant problem. I am not ruling it out; I just want to see what the evidence is. Some of us face situations where people have a bee in their bonnet in a particular case, they think they have been unfairly treated, but when you go to it you find that, although they may have some cause for concern in that case, it does not make an argument for a change in the general law.

**Q989 Rosemary McKenna:** We were given evidence that a case was based on a book published in America, brought by a Middle Eastern businessman with Irish citizenship which was heard in the UK courts.

**Mr Straw:** And only 23 copies of that book were published in this country, as I understand.

**Q990 Rosemary McKenna:** But then it is in case law, is it not?

**Mr Straw:** On the face of it, the circumstances of that case were something of a surprise to me. Picking up something the Master of the Rolls said about the media strategy of the courts, I have always found it wise to read the small print of judgments before rushing to comment on them myself. Sometimes you find there is a judgment at court which, even after you have read every word, remains slightly eccentric in your opinion, but usually, whether you agree or disagree with it, you think there is a good argument here.

**Rosemary McKenna:** We are looking forward to reading the evidence of cases.

**Q991 Chairman:** You say you are not persuaded necessarily that there is a problem here. Are you concerned that the US Congress is about to pass law effectively allowing American courts to overturn UK court judgments?

**Mr Straw:** The American Congress, subject to the other states of that realm, is sovereign in these areas. We could do the same here, if we wished, to make judgments unenforceable abroad in this country. I do not have any particular comment on that.

**Q992 Chairman:** Obviously we could, but is it not a matter of concern that this has already been passed in New York and Chicago, I believe, and now in Washington? Congress is essentially saying that they no longer have faith in the UK courts and the judgments they are reaching.

**Mr Straw:** There is a reputational issue about defamation proceedings in England and Wales. I cannot speak for Scotland. Part of that is to do with the costs. Let me say there is a reputational issue in other areas of proceedings which are equally of concern to me. Say in medical negligence, the costs which are payable to the plaintiffs are typically on an upward trajectory and very difficult to control within the existing system, whilst the defendants’ costs can be controlled, not least by a proper client/lawyer relationship and bidding them down. There is that problem. I would simply say, Chairman, on this issue of fraud shopping that I have not seen sufficient evidence myself at the moment to suggest that there is a major problem here, but I await, amongst other things, your Committee’s response on this because you will have the evidence, and you have seen a lot more evidence than I have.

**Q993 Chairman:** I do not think it is about costs.

**Mr Straw:** I understand your point.

**Q994 Chairman:** We talked to lawyers in New York and in Washington, and the concerns they express are very serious. They are essentially saying that the Act became known as the “Libel Terrorism Act” because it was being used, they said, to protect people who were financing terrorism from exposure. The book by Rachel Ehrenfeld was going to reveal the links between a particular Saudi businessman and al-Qaeda and it was his attempt to use the UK courts to suppress that which meant it was quoted in America as being libel terrorism. Surely that must be of some concern to you. That is a view being taken by legislators across America.

**Mr Straw:** Of course it is of concern, but it is also the case that the substantive law in America in some of these areas, because of the First Amendment, is different and their perspective is different. I do not know the details or the evidence against this Saudi businessman. I am all in favour of people against whom there is overwhelming evidence of involvement in terrorism being named. I am not in favour, unless it is a really serious charge, of media organisations effectively convicting people of terrorism. I think the bar has to be pretty high that the media is seeking to do is to make the most substantial allegations of terrorism against somebody. But I say I am open to look at what you have to say.

**Q995 Chairman:** Is the British Government making any representations to the US Government about the measures that are currently under debate in Congress?

**Mr Straw:** I have not myself seen any instructions. I will check on that because it could be that elsewhere in the entirely seamless system of British Government this has happened. It is not within my knowledge or that of my officials.
Q996 Paul Farrelly: On this point of libel tourism, there is one step that the UK could take which would rule out some of the more extreme cases, which is to move on with the times and the internet and move on from the Duke of Brunswick and the institute of single publication. Mr Justice Eady, in one recent judgment allowing jurisdiction here, said that in due course an international agreement might be reached as to the appropriate way of resolving claims arising out of internet publication. But we do not need international treaties; we could institute that into UK law as one sensible step, would you not think?  
Mr Straw: I am about to publish a consultation document on defamation and the internet—we will certainly publish it before the summer recess—which can deal with this issue, and it also deals with issues of liability of the internet service providers—this problem which these days is repeatedly raised by the media of so-called repeat publication by online archives. We are having to consider this ourselves in the context of online access to court data, to convictions—which I am very keen on, because I think that the public have a right to know whether X or Y has not only gone to court but what happened, but of course there is then an issue of proportionality about how long that stays on immediately accessible to a far greater degree than it would be just in the files in the public library.

Q997 Paul Farrelly: Clearly there is a focus on the problem and that is very welcome. There is a second issue to do with jurisdiction. We have received evidence not only from media companies but from very serious non government organisations that the UK libel laws, because of the potential for forum shopping, are having a very restrictive effect on what they can publish. I will give you an example. Here in the UK, of course, any minor council document attracts qualified privilege.

Mr Straw: Council? Local authority?  

Q998 Paul Farrelly: Pronouncements by local councils, individuals, but there are non government organisations that cite the findings of serious panels from the United Nations about the activities of arms dealers, for example. There is one very well-known arms dealer, whom I will not name under privilege here but I have asked you about him in relation to Zimbabwe when you were Foreign Secretary years ago, and action has since been taken by him, but that sort of individual has the facility to suppress some of the legitimate activity of NGOs. There is a clear issue here. Clearly it can be addressed by statutory protections for responsible journalism, responsible publications, but there is not just a reputational issue. From the evidence we have had it is a substantive issue for the work of serious organisations.

Mr Straw: I accept what you say. Again I will await your inquiry. You are going into aspects of the operation of the law of defamation as well as of privacy, frankly, in greater detail than I have done. Funnily enough, I have considerable faith in making Parliament work better. If we end up in a position where your Committee, Chairman, has initiated a series of changes which we then accept and get into legislation, I think that is a good way of handling it. All I need is the evidence. I had the evidence on the CFA thing, so I acted. The evidence is there. That issue, although it does not for a second mean that it is not an issue, has not happened to have been raised with me.

Q999 Philip Davies: Following on from where Paul was, the biggest difference, of course, for America and Britain is that they place much higher weight to freedom of speech, and that is reflected in their libel laws, where the burden of proof is the other way round in America compared to Britain. It is something I would like to see, but, given where the burden of proof is, is it not a surprise to you that, given that the onus in our system is on the defendant to prove that what they have said is true, and the claimant has no burden of proof at all, the legal fees for the defence side tend to be considerably lower than the legal fees on the claimant’s side? Would you not think, given it is the defence side which has to prove everything that they have printed is true, that their fees would be higher?  

Mr Straw: I do not make any comment on the hourly rates or overall fees charged by the lawyers for the defendants, except to say that there is or should be a broad equality of arms between the newspaper organisation and the solicitors’ firm with whom they strike a deal over costs. And they can control it. And I think they do—not least by saying, “If you continue to charge costs of this scale, we will move our work elsewhere.” This is happening now in respect of NHS litigation. The legal firms on the other side are in a very different position. They face none of that kind of natural economic pressure to keep their costs down from their client because the client has agreed a CFA arrangement with them. This document, as you know I basically agree with it. I have no comment to make about the level of fees for defendants, but I think that the level of fees for plaintiffs’ lawyers is too high. That will remain my view unless and until they are able to advance a case to your Committee or to me, based on the public interest, for them to continue to charge rates at this level, with the uplift at this level. I am not yet convinced.

Q1000 Philip Davies: Again that is encouraging. I certainly view, according to the comments you made earlier, that this, probably above all else, is having a chilling effect on journalists, in that they are becoming reluctant to print stories that they probably should be printing in the public interest as a result of it. But when we spoke to our eminent judges earlier, they seemed to indicate that there did not seem to be sufficient evidence upon which to act. We put it to them that a vast proportion—we heard 98%—of CFA cases were victorious. They only failed in 2% of cases, but they said that they did not have any evidence. From my recollection of what they said, they seemed to be encouraging the Government to find the evidence of this kind of thing, so that decisions could be made with all the
facts in front of us. Does the Government plan to commission work to get the evidence of how CFAs are working in practice?

Mr Straw: In defamation cases?

Q1001 Philip Davies: Yes.

Mr Straw: The evidence has been presented jointly by the Society of Editors and the Newspaper Society, who did a long schedule of known CFA cases. I do not think it was completely comprehensive and there has been further discussion between Lord Justice Jackson’s staff, as I understand it, and the media organisations. I think where we will get to is that there will not be a huge argument about the data, there will be debate about what is reasonable. My view is this: first of all, in quite a number of cases, not in every case—which is what the plaintiffs’ solicitors say—the ratio between the awards of damages and costs is very significant, not to say astonishing. In the case which we quote on page 7 of this document, the Daily Telegraph Group, who were awarded damages of £130,000, was significantly less than the claimants’ costs, whose base costs alone, that is before uplift, were £317,000. Just picking up your example of £130,000, was significantly less than the claimants’ costs, whose base costs alone, that is before uplift, were £317,000. Just picking up your point, I am as certain as I am sitting here that the very high risk of costs does have a chilling effect, particularly on the regional and local media. It is for them to give your Committee details if they have not already done so, not for me. In a matter involving one of the Lancashire newspapers—not, let me say, the one that circulates in my constituency—where they offered an apology for what at worst was a simple mistake and an innocent mistake, they face not only having to pay damages but ridiculous costs, because in the end they decided they had to quit because they were going to be at risk of more costs.

That is not the purpose of a CFA arrangement. A CFA arrangement is there to ensure better access to justice; not that if people are inadvertently subject to some mistake which can be corrected they can then go in for a lottery.

Q1002 Philip Davies: Is your main concern about CFAs the success fee, in the sense that the Master of the Rolls said that the success fee was there in order to cover the cost of cases that they lose? But if, as seems to be the case from the evidence that I have heard, they tend to go on CFAs when they think they have a case which is a racing certainty, which they could not possibly lose, so that there is no risk and they are, therefore, in effect, earning up to double for the easiest possible cases to prosecute, that seems to me to be sort of some kind of a racket and an abuse of what was intended. Is that your major concern about the CFAs?

Mr Straw: I would like to refer you to the questions that we ask in the consultation document, which are about, for example, whether you introduce a maximum recoverable hourly rate and whether you have cost capping in every case or just in some. There are also questions about the issue of after the event insurance, including its prior notification to the other side, whether there should be a proportionality test to total cost, not just base costs, and also the scope of CFAs as a whole. We are now just past the closing date and we are currently assessing the responses to these consultations. That is where we are. But those are key questions, it seems to me.

Q1003 Philip Davies: To be topical, do you fear that they may be sticking to the letter of the rules of CFAs but not necessarily to the spirit of the rules?

Mr Straw: I am sorry, who are “they”?

Q1004 Philip Davies: The lawyers who are taking these cases under CFAs, that they think they do not have a possible chance of losing.

Mr Straw: What happens in all sorts of areas in litigation is people seek to push their advantage. They want to win. I used to earn an honest penny by that approach. The blunt truth is that if you are faced with a prospect of winning through some literal or casualistic interpretation or losing on the basis of conceeding the spirit of what is behind that particular provision, your client would expect you to go for the former. That is how it is. What you have to do is to make sure the rules are pretty robust.

Q1005 Paul Farrelly: Clearly I am so biased that I read some of the questions in this excellent document as rhetorical questions, because the answers are so blindingly obvious. Perhaps that was the spirit in which it was intended.

Mr Straw: Not quite. I would not have decided to issue the consultation in advance of and in parallel with Lord Justice Jackson’s review had I not thought that there was a particular mischief that needed to be dealt with. And I wanted to get on with it, so I was satisfied that the media organisations and others made a case. I have yet to see the results.

Q1006 Paul Farrelly: This document is clearly about CFAs and defamation and this is the focus of our inquiry. Just so that we can take evidence on this and do not lose the perspective on the wider application of CFAs, could you say a few words about your concerns about CFAs and their effect in the NHS and medical proceedings, just to give us some perspective?

Mr Straw: Generally, one of those responding gave this answer in earlier evidence. CFAs, on the whole, have worked to improve access to justice in the context in which civil legal aid for these areas was removed. There was never civil legal aid for defamation but there was, for example, in areas of personal injury. You do not want, therefore, to throw the baby out with the bathwater. On the other hand, what concerns do I have? I think there is a particular problem in medical negligence cases of the interaction of the availability of legal aid with CFAs, which is the only area, essentially, of personal injury, in its widest sense, where legal aid is available. We have to be very careful here. It was decided 10 years ago not to exclude medical negligence cases from legal aid when all other PI cases were being excluded, because the number of medical evidence cases was rather fewer and the law was being developed and so on. Nobody wants to see an applicant of low means who has suffered egregiously under the hands of the NHS being denied access to justice. The interaction
of those two is something I am looking at with some care. There is a wider issue about CCFAs which is basically to do with the same issues as raised here, levels of hourly rate and levels of uplift and advance information of ATEs. Lord Justice Jackson is getting to grips with that and I look forward to his report.

Q1007 Paul Farrelly: Just so that we can have a perspective, the operation of CCFAs is a serious issue in defamation.

Mr Straw: Yes.

Q1008 Paul Farrelly: Just as a statement, it is a serious issue within the medical field as well.

Mr Straw: It is not the principle, but it is the practice.

Q1009 Paul Farrelly: It is the effect.

Mr Straw: Yes. There is one other area. Either yesterday or today I told the House that I am going to take legislation to statutorily control contingency fee arrangements. These contingency fee arrangements are currently unregulated. They are the ones which are being used by certain solicitors’ firms in respect of employment tribunals, particularly equal pay arrangements, where local authorities and trade unions have come to an arrangement, say, over equal pay and phasing it in, and then the lawyers acting for individuals have sued local authorities and sued the trade unions as well. These fees, for reasons to do with an anomaly in interpretation of the law, are currently totally unregulated, so I am going to deal with those.

Q1010 Paul Farrelly: Your case with your Lancashire newspaper seems to be one particular case of which you are aware where the offer of amends procedure is clearly not working as it should. Another case we have taken evidence on is Tesco v Guardian. Mr Straw: The advantages from the point of view of the media organisation would be obvious. They would escape liability in all circumstances. But bodies corporate do have reputations and on their reputations depend the livelihoods of, in large corporations, thousands of people and their share price, in which your pension fund or mine might be invested. I am aware, just, of the bare bones of what has happened in Australia, and I think we should always look at parallel examples but I would need a really strong argument in favour to move on that.

Q1011 Paul Farrelly: Coming on to responsible journalism again, there are different ways of cracking the nuts. In the Tesco case, the Jameel defence was not employed because they did not think it would work. They got the tax wrong but the thrust was right. It turned out that the company was aggressively avoiding the tax through additional evidence anyway. In the States, of course, Tesco might be considered a public figure and that sort of lawsuit would not be possible. Australia has gone further than the quarter-way house that we have; it has taken a different step, when it reformulated its libel and defamation laws, of saying that certain bodies with employees of more than 10 cannot sue, although individuals can, and they have to go over certain hurdles. What would be the advantages and disadvantages in your opinion of an Australian law?

Mr Straw: The advantages from the point of view of the media organisation would be obvious. They would escape liability in all circumstances. But bodies corporate do have reputations and on their reputations depend the livelihoods of, in large corporations, thousands of people and their share price, in which your pension fund or mine might be invested. I am aware, just, of the bare bones of what has happened in Australia, and I think we should always look at parallel examples but I would need a really strong argument in favour to move on that.

Q1012 Paul Farrelly: Do you think that public figures should be required to face additional hurdles in defamation cases?

Mr Straw: They are in practice. And privacy as well. I do not complain about this, for the avoidance of doubt, but the level of detail, for example, which is now available about our expenses is not available/ could not be made available in respect of almost anybody else in British society. That is just true. That is something you have to accept. It goes with being an elected representative. If you are a senior minister, you work in a goldfish bowl. Maybe that is just life. My concern has never been about myself so much, although I think that if you, as I seek to do—I do not parade my family but keep them in the background—but if you do parade your family then I think it is tough—you are entitled to some privacy yourself as far as your family life is concerned. I think one’s own family, in any event, is entitled to privacy unless they are adult and they volunteer for public life. As a matter of fact, on that I think the papers are gradually getting better rather than worse, but it is very important that members of family of people in public life, not least MPs, are protected.

Q1013 Alan Keen: Why did you not intervene to defend Mr Justice Eady against Paul Dacre’s when his attack on Mr Justice Eady was generally accepted to be inaccurate anyway?

Mr Straw: My duty, indeed I swear an oath—three oaths altogether—to this effect: to uphold the integrity and independence of the judiciary. If I had judged that that was being significantly challenged in this case, I might have said something but I did not judge it necessary, and it is certainly not my role to provide a running commentary on particular judgments which may or may not be controversial. Indeed, that would then be to do exactly that which I am not supposed to do, which is, as it were, to second-guess what the courts have done. At the moment, if I had said anything about that case—in any event, it could have gone to appeal—I would have been interfering in essentially an argument between a court who happened to find on behalf of the plaintiff and the defendant newspaper (News International) and those who were supporting it. I think it is entirely appropriate in a case like that or
loads of other cases for me not to offer a running commentary. It is different if you take criminal cases. Sometimes you get judges or magistrates being criticised for bail restrictions, for example. If I think it necessary—and I have in the past—I have gone out and said they may, as it transpires, have made the wrong call, but this is an impossible task that we are expecting people to do, to predict the behaviour of people on risk factors which they do their best on. You can never be certain that if you put an offender on bail or a defendant, he is not going to commit a further offence. I judge it on the particular facts.

Q1014 Alan Keen: I can recollect that two lawyers agreed, when we put this question to them earlier on in the inquiry, that the law possibly should be changed, although it would be difficult. This is in the course of newspapers whose aim it is to sell newspapers, so the headline and also the introductory paragraph might indicate one thing to the public and, as long as further down they put that there was nothing wrong, nothing illegal, that means it is fine—and it does not matter how misleading the headlines or the introductory paragraph are. Two lawyers said they thought that the law should be changed so that that could be taken into account. The main thing was that the public were misled on purpose by the newspaper. Paul Dacre said, by the way, that the Daily Mail has never done that to his knowledge.

Mr Straw: If there is argument about whether or not it is defamatory, it would be the article as a whole that would be taken. If in screaming headlines it says, “XYZ is guilty of these crimes” and he is accused of being a terrible person and then you get to the bottom of page 23 and in tiny type it says, “XYZ denied this and we do not have any evidence to prove it,” of course it would be defamatory. As I have said earlier in answer to one or two questions, I look to see what your Committee says, Chairman, but I think it would be pretty difficult to try to come up with some mechanical rule which in advance of a particular case distinguished between what was said in the headline and what was said in the body of the story. How these things are judged in practice is that you look at the story and think, “What would any normal reader—the man on the Clapham omnibus—take away from this?”

Q1015 Alan Keen: It seemed to be accepted that up until now that was okay.

Mr Straw: I am not saying it is okay, but I am saying that of course headlines can be defamatory. I am not a defamation lawyer, but I am quite certain that if a headline was outrageously defamatory, the fact that later down in the story it said words to the effect, “Oh, by the way, we don’t think this is true,” or “It’s only an allegation” would not be much of a defence. You can show that the headline was malicious, apart from anything else, and get exemplary damages. This note says: “The House of Lords indicated in the 1995 case of Charleston that, although the question of whether the text of an article is sufficient to neutralise an otherwise defamatory headline is a matter for the jury, a claim for libel cannot be founded on a headline or photograph in isolation from the related text and the question of whether an article is defamatory has to be answered by reference to the response of the ordinary, reasonable reader of the entire publication.” That, really, is what I said.

Q1016 Alan Keen: I was shocked when I received the expenses detail that the Telegraph are alleged to have bought to find that it included some of my staff’s bank details. Who should care about that? Has any action been taken to make sure that the Telegraph is caring to keep that information?

Mr Straw: Because the Daily Telegraph has the unredacted details, they will have access to a lot of information. As far as I know they have been extremely careful not to publish any of that detail. They have no interest, financial or public interest, in making any of it available. I am told that the Information Commissioner is in touch with the House authorities about this, because clearly there are various obligations under the Data Protection Act—which I am pretty certain the Telegraph would be well aware of.

Chairman: I think we are in danger of straying into an area which would keep us here for another two hours. On that note, I would like to say thank you very much.
Tuesday 2 June 2009

Members present
Mr John Whittingdale, in the Chair
Mr Nigel Evans
Mr Adrian Sanders
Mr Paul Farrelly
Helen Southworth
Mr Mike Hall

Written evidence submitted by Finers Innocent LLP on behalf of their clients

Advance Publications, Inc., directly and through its subsidiaries, publishes in the United States over 25 magazines with nationwide circulation (including the New Yorker, Vanity Fair, and Vogue), daily newspapers in over 25 US cities, and weekly business journals in over 40 cities. It also owns many internet sites and has interests in American cable television systems serving over 2.3 million subscribers.

Association of American Publishers is the national trade association of the US book publishing industry. AAP’s more than 300 members include most of the major commercial publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies. AAP members publish hard cover and paperback books in every field, education materials for the elementary, secondary, post-secondary, and professional markets, scholarly journals, computer software, electronic products and services.

Associated Press
The Associated Press is an international global news service. Every day, more than half the world’s population sees news from AP. AP serves more than 15,000 newspapers, broadcasters, online publishers and other outlets with reports in all media, gathered through its network of 243 bureaus and offices in 97 countries.

Bloomberg
Bloomberg is a global information company employing more than 10,000 people with a focus on business news which is delivered to a subscriber network of terminals in business institutions, as well as via television, radio, print, and the internet.

CBS Television

Fairfax Media has leading on-line businesses in the region including the No.1 news sites SMH.com.au and theage.com.au.

Global Witness US reports expose corrupt exploitation of natural resources and international trade systems, with a particular focus on the link between exploitation of natural resources, and conflict and corruption, as well as human rights and environmental abuses.

Greenpeace International
Human Rights Watch is a charity that performs research and advocacy reporting on human rights abuses in over 70 countries worldwide. Headquartered in New York, it has field offices and branch offices as well as committees of support in many countries. Its reputation for integrity and accuracy of reporting is high, and is safeguarded by rigorous policies of fact-checking and review.

Because Human Rights Watch reports on serious abuses of international law, including the Commission of International Crimes, we are particularly cautious in naming individuals who may bear responsibility for these acts. HRW’s editorial process involves multiple layers of divisional and programmatic review as well as legal review and sometimes specialist libel review. All researchers, advocates and persons who speak publicly on behalf of the organisation are required to undergo annual libel training that stresses the need for care, responsibility and accuracy above the particular legal requirements of any given legal system.

Los Angeles Times’ multi-media editorial department is one of the most formidable in the world—20 foreign, eight national and four state bureaus—and the largest news gathering operation west of the Mississippi. The newspaper is also available on-line at www.latimes.com featuring more than 50,000 content pages and over 40 blogs. Since 1942 LA Times has won more than 38 Pulitzer Prizes of which five are gold medals for public service.

Media Law Resource Center, Inc. (MLRC) is a non-profit professional association for media and media defense lawyers, providing a wide range of information and support on media law and policy issues, including news and analysis of legal developments, litigation resources and practice guides, and national and international media law conferences. MLRC also works with its membership to respond to legislative and policy proposals, and speaks to the press and public on media law and First Amendment issues. MLRC was founded in 1980 by leading American publishers and broadcasters to assist and support the media law bar and to defend and protect free press rights under the First Amendment. Today MLRC is supported by over one hundred media companies, including America’s leading publishers, broadcasters, and cable programmers, media and professional trade associations, and media insurance professionals. The MLRC’s Defense Counsel Section includes more than 225 law firms in the United States, and around the world, that specialize in media defense representation.

NBC Universal Inc

New York Times is an American newspaper published in New York City. It is the largest Metropolitan newspaper in the United States. The newspaper has won 98 Pulitzer Prizes and its parent publishes 18 other newspapers including the Boston Globe.

1. These submissions are presented on behalf of foreign based newspapers and news organisations and internet services, together with overseas publishers and human rights organisations. We all have substantial and increasing concern at the potential of the English law of defamation to affect our work unreasonably, publish defamatory publications, and to destroy the amount of newsworthy information that we may disseminate to people in the UK, and particularly in England and Wales. The committee will be aware of the “libel tourism” and “libel terrorism” bills in the United States, which have been fuelled by a real and justified grievance: we do not think, however, that such laws satisfactorily address a problem that has arisen between two friendly nations. US/UK co-operation in communications is vitally important to both countries: indeed, “freedom of speech” was the first of the four freedoms enumerated by President Roosevelt after America entered the Second World War on the side of the UK and of liberty. We respectfully suggest that the problem caused by libel law—and sometimes, by libel lawyers—could be addressed by the UK government and parliament so that it will no longer threaten to damage US/UK relationships.

2. The claimant-friendliness of English libel law, most notoriously its requirement that the media bears the burden of proving truth, attracts many wealthy foreign forum shoppers in search of favourable verdicts that they would not obtain at home, or in the home countries of publishers whose newspapers and magazines have an international circulation. It will be noted that both the US and Continental Europe (including the EU states) places the burden squarely on the Claimant. The rule which gives them the opportunity to sue a foreign publication with a minute circulation in the United Kingdom dates from 1849, when the Duke of Brunswick despatched his manservant to a newspaper office to obtain a back issue of the paper in order to sue for a libel he had overlooked for 17 years. This single publication was deemed sufficient to constitute the tort of libel and from this anarchistic case springs the absurd but venerated rule that in the UK a single defamatory publication—even if only in a library—is an actionable tort.

3. The primitive Duke of Brunswick rule that every publication is a separate tort has long been abandoned in America where a single publication rule applies to every edition of a newspaper or to the placing of an article on an internet site. However, in a disastrous 3-2 decision, the House of Lords approved the Duke of Brunswick rule in Berezovsky v Forbes Magazine. Boris Berezovsky, the controversial Russian oligarch sued Forbes for damage done to his “English” reputation by allegations that he had made his billions through corruption, gangsterism and murder. Forbes sold only 1900 copies in England but 800,000 in the United States. The trial judge ruled that Russia and the United States were both more appropriate places for trying a libel action than England. However, the House of Lords held that Russia and the United States were both more appropriate places for trying a libel action than England.

4. The result of the Duke of Brunswick rule is that blatant internet forum shoppers can come to London to sue foreign news organisations in relation to allegations that are entirely sourced abroad. The Court of Appeal has permitted American boxing promoter Don King to sue a US attorney for defamation over anti-Semitic allegations made on a Californian website—an unhappy decision which followed the green light that Berezovsky gave to forum shoppers. It is difficult to understand why Americans who fall out with each other in America should be permitted to take up the time of UK courts with their slanging matches, rather than resolve them under their own law. If English courts continue to exercise their exorbitant jurisdiction over

1 Duke of Brunswick v Harmer (1849) 14 QB 185
2 "Not a decision that would be made today" per Lord Justice Sedley Yousef Jameel v Dow Jones & Co Inc [2005] EWCA Civ 75
3 Berezovsky v Forbes 2000 EMLR 643 at 666, per Lord Hoffman.
foreigners responsible for alleged libels on the internet, then those defendants who have no assets in England will simply be advised to stay away from any trial, especially if they are American, since their courts do not enforce English libel judgments which are repugnant to US Constitutional Principles.

5. American courts refuse to enforce awards made under British libel law, on the ground that this law is “antipathetic to the First Amendment”. In America defamation actions succeed when the media can be proved at fault: the claimant must show that the allegations were false and published with a reckless or negligent disregard for the truth. What US courts find repugnant about UK law is that it places the burden of proving truth on the defendant and holds him liable to pay damages for statements he honestly believed to be true and has published without negligence. In every other area of tort law the burden of proof is on the claimant: why should libel be any different? The reason, of course, is that the English common law disfavours free speech. It does so by use of two absurd presumptions: that defamatory (ie critical) statements are always false, and that defamations always do significant damage. These two presumptions—of falsity and damage—are both in terms illogical, but are in law irrebuttable and further proof that English law disfavours free speech.

6. Repressive British laws—especially seditious and criminal libel—were repudiated by the First Amendment to the US Constitution. In New York Times V Sullivan (1964) the US Supreme Court ruled that defamation law could restrain coverage of public events and public figures which was malicious, in the sense of being knowingly false or having a reckless disregard as to truth. A more stringent test applies to reporting facts about persons who are not public figures. There is a widespread belief in the UK that US libel law is powerless. Nothing could be further from the truth. It is certainly di

7. It must also be stressed that most US media organisations readily offer alternative dispute resolution. Many have ombudsmen who will make an independent investigation of any allegation of defamatory reporting and order corrections and apologies—sometimes after a very critical report on journalistic standards. Most internet services will be prepared to hyperlink the offending article to a letter of complaint, so that no-one will read it without being able to read the complainant’s alternative presentation. Newspapers usually offer a right of reply by way of a letter to the editor. English libel lawyers usually and foolishly tell their clients to reject this offer, despite the fact that the letters on the Op-Ed pages are often the second most widely read section (other than the front page). There is a real sense amongst English claimants’ lawyers that they want money for their clients as well as themselves, as if only money will assuage hurt feelings and compensate, in some metaphysical way, for the blot on the family escutcheon. Many billionaire Claimants who go to London to do their suing appear particularly amenable to this line of thought. We gain the impression that many of these claimants are so wealthy that they do not bother about the five or low-six figure sums that they might eventually receive in damages in England. They could obtain vindication (as did Sir Salman Rushdie) by means of a declaration of falsity, where no damages are paid. Rather we are concerned that money claims are used—particularly against Defendants with limited means—in order to inflict some pain and irritation and frustration and expense on the NGO’s, journalists and editors they see as their tormentors. They use libel actions, in other words, not to vindicate their reputation but to harass, embarrass and chill their critics and to develop for themselves a reputation for taking libel action whenever criticised,—a reputation that will deter would-be critics, whose newspapers & NGO's do not have the money to fund expensive libel defences.

8. What normally happens when a foreign newspaper or website is sued in the jurisdiction of England and Wales, either by a UK resident or (increasingly) by a foreigner (ie a libel tourist, who wishes to take advantage of the UK’s plaintiff-friendly libel law), is the receipt of a pompous “letter before action” from a firm of London solicitors. It will demand apologies, damages and (of course) their legal costs. When a factual error is demonstrated, the foreign media organisation will normally publish a correction or arrange for a hyperlink that draws it to the attention of every internet downloader. Otherwise, it will offer an independent inquiry if it has an ombudsman, or at least a letter to the editor. These offers are usually rejected. Then will come a request to appoint solicitors in London as agents to receive service. This would reduce the initial costs in the litigation, but would also place the burden of proof on the media defendant if it makes a forum non conveniens argument. So it is a request that the media will be well advised to turn down.

9. In this event, the claimant will apply to a master or judge in the High Court for an order to serve legal process on the defendants out of the jurisdiction. Regrettably, the grant of such an order has become a mere formality—no enquiry ever seems to be made as to whether it is fair for a foreign media defendant to be hauled into a London court to defend a publication which may have sold very few copies here or which may

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5. See Schapira v Ahronson 1999 EMLR 735
have no relation at all to matters in Britain. The master or judge in the Royal Courts of Justice acts as a mere rubber stamp for the claimants: they pay their money, they make their witness statement and in a formal and quick procedure they are given their order without any thought as to how it will impact on free speech. All they need to show is one single downloading or one single publication within the jurisdiction. In automatically granting such requests for “service out” on foreign media defendants, English law, and English judges, manifest their contempt for free speech. They automatically decide to drag foreign media into the expensive and pettifogging English libel world, without the slightest enquiry into the fairness of so doing.

10. Subsequently, it becomes possible for the media organisation, once it instructs solicitor and counsel (at the cost of about fifty thousand pounds), to come to court to make a forum non conveniens application before a High Court judge. In this argument, that usually lasts a day, it contends that England is an inappropriate jurisdiction for trial of a libel eg where millions of copies have been distributed in the US by a US paper, and very few in the UK. IN the 1990s, there were some very sensible decisions which sent US libel tourists packing: see Wyatt v Forbes6 and Chadha v Dow Jones7. These were American plaintiffs who could show only a tenuous connection with the UK, and were suing Forbes Magazine and the Wall Street Journal which were overwhelmingly published in the US. However, this pre-internet line of authority was severely weakened by the disastrous House of Lords decision, (by three judges to two) in Berezovsky v Forbes8 which permitted the oligarch to sue Forbes Magazine in London over allegations that related to matters that took place only in Russia. This decision upheld the absurd early nineteenth century rule in the Duke of Brunswick’s case, that every single publication is a separate libel, so just a few internet downloads in England gives jurisdiction to try a defamation claim here.) Despite Lord Hoffmann’s powerful and logical dissent, warning against the temptation to make England a global defamation policeman, this case has now made London the libel capital of the world. Interestingly, Berezovsky settled the case in a deal where Forbes apologised for its allegations that he had murdered rivals (it could not prove them) and he dropped his complaint about the numerous corruption allegations, which Forbes said in its pleadings that it could prove. No mention has been made of them ever since: in Britain a powerful and wealthy claimant of any nationality with a track record for bringing libel actions can successfully chill speech about himself.

11. The test for accepting jurisdiction—i.e. rejecting a forum application—is whether there has been a “real and substantial” tort in this country. England’s libel judges, themselves former libel practitioners, naturally think that there has been a real and substantial tort, unless the defendant can prove that there were only a handful of internet downloads, or a few print copies circulated here. The paucity of copies can also be the basis of an abuse of process application, which is unlikely to succeed given the mindset of the present libel judges. One that did, before a sensible master, was Mardas v New York Times, where only 177 copies of the paper had been sold in London (mainly to New York tourists) and the story had been archived on an NYT internet site. The story itself was an obituary of the Maharishi, which had quoted from Paul McCartney’s autobiography (published twenty years before and never sued) as having criticised Mardas for spreading a rumour, in India in 1968, that the guru had sexually harassed a nurse. The story of the Mardas rumour-mongering had been in circulation for many years in many authoritative books but he had never sued over it. The key witnesses—John Lennon and George Harrison and the Maharishi himself—were dead. The Master thought it an unjustifiable waste of court time and the litigants’ money to stage a trial over the matter that could never be conclusively determined. However, Eady J overruled him and held that the sale of 177 copies was enough—the trial should go ahead, irrespective of the massive costs to the defence. He ordered the NYT to pay £65,000 immediately, the cost of winning before the Master one morning and losing before the Judge later at a one day hearing. The rights and wrongs of what happened in the Maharishi’s commune forty years ago are obviously impossible to establish, but the English libel judges are determined that the time of their courts should be taken up with the attempt. Even if the New York Times wins in the long run, it will get back only 65% of its costs.

12. To foreign observers the English libel industry is most unusual. Its legal costs are by far the highest in Europe.9 There are only two main libel chambers—5 Raymond Buildings and 1 Brick Court—whose barristers do most of the defamation work. In recent years it has been from these chambers all the libel judges have been recruited—there are four of them at present, two from each Chambers. It is quite surprising to foreign eyes, who have a different experience, that whoever allocates High Court judges does not think that judges bred in any other disciplines—eg public law, for example, which gives some training in freedom of speech—are qualified in or capable of handling trials for libel. The result is that the only judges available in England for libel trials are steeped in the arcane world of common law libel, which has developed without much respect for rights of freedom of speech. This has a financial consequence for defendants: it means that in order to make the law fairer and more favourable to free speech, defendants cannot expect libel judges to have much sympathy. Their decisions must be appealed—not just to the Court of Appeal but to the House of Lords. The cost of this is exorbitant, and it is little wonder that UK newspapers and media organisations have no stomach for paying it. Forbes took the risk and lost by the narrowest of margins. The Wall Street Journal in Jameel v Dow Jones put up the money and won a major victory in refurbishing the Reynolds public

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6 Unreported December 2nd 1997, Morland J
7 1999 EMLR 724, CA
8 2000 EMLR 643
interest defence. However, Dow Jones only received part of its costs. Nonetheless the case exposed how libel judges from libel chambers had been sabotaging the Reynolds public interest defence since 1998, when it was developed by the House of Lords. Is it not a matter of some embarrassment to UK legislators that freedom of speech in the UK is dependent on the long purse of foreign news organisations?

13. That long purse is no longer available. Several major US papers are now in receivership, and the drying up of the advertising market with consequent loss of journalistic jobs means there is little money available for improving media law in Britain. Leading US newspapers are actively considering abandoning the supply of the 200 odd copies they make available for sale in London—mainly to Americans who want full details of their local news and sport. They do not make profits out of these minimal and casual sales and they can no longer risk losing millions of dollars in a libel action which they would never face under US law. Does the UK really want to be seen as the only country in Europe—indeed in the world—where important US papers cannot be obtained in print form?

14. More important—certainly more damaging for free speech—is the Duke of Brunswick “multiple publication” rule, long abandoned in the US, whereby one internet download in a particular state amounts to publication in that state so as to found jurisdiction. One “hit” in England is enough for a multi-million pound libel action in London. All major foreign newspapers now have internet sites—they archive each publication as a matter of course for the historical record. They are usually prepared to hyperlink to the article any letter or reply that corrects facts or disputes opinions, but they will not obey and they are not obliged to obey orders or injunctions from foreign courts. If claimants want injunctions, they must sue in the US, in the state of predominant publication. The same should apply when they want damages.

15. The consequences of making media organisations liable for putting articles—perfectly lawful by the law of their own domicile—on websites which are occasionally accessed in England should be obvious. The cost of fighting libel actions may lead internet publishers to build “fire walls” against access from the UK, in order to avoid such actions. This would damage British business and its communication and information services, and would draw international attention to the UK’s failure to protect free speech. It would underline the hypocrisy of the British government lecturing other countries on the subject, when the UK itself had become a black hole for internet censorship through its friendliness to foreign libel tourists.

16. What is the best solution to this admitted problem with the internet? Defamation is a means by which the law strikes a balance between the individual’s right to reputation and the public right to communicate and receive information. In the context of global dissemination of information by a technology which has no clear or close comparison with any other, a publication rule should not expose foreign publishers to liability in a jurisdiction like England, which has a different and more repressive law of libel, unless they actually solicit or encourage access by residents in the UK to their internet sites.

17. That would mean a rule which locates the act of publication in the place where the article was substantially prepared for uploading rather than in any place where it is downloaded by computer users—unless the publisher has, by its conduct in that place, instigated the downloading. Every media corporation has a “centre of operation” where journalistic material is edited and prepared for publication and where the publication is read by lawyers and insured against libel action. Usually this will be in the place where the article is written and uploaded on its server as well. The most satisfactory rule would locate the act of internet publication in the place where the article is substantially produced, rather than in any place where it happens to be downloaded by computer users, unless the publisher or author has instigated the downloading (eg by advertising the article) and thus has waived the rule’s protection and provided the state in which the downloading occurred with a clear interest in assuming the power to adjudicate the claim.

18. The above is the kind of rule that one would expect in an international treaty, and Justice Eady is on record in Mardas v NYT as calling for an international treaty on the subject. However, it is unlikely that any treaty could be agreed for some years. There is no reason why Britain could not take the lead in this vexed area and provide a solution that is satisfactory to all except the most aggressive libel tourists. That solution, we urge, would be the following:

(i) Applications for service out of the jurisdiction on foreign media organisations in relation to any tort of defamation shall be notified to the said organisation three weeks in advance of the hearing of the proposed application.

(ii) The master or judge shall only give leave if satisfied by the proposed claimant, and after giving the proposed defendant the opportunity to be heard (without submitting to the jurisdiction), that

(a) In any case relating to publication of print copies, there are at least 750 such copies circulated by the defendant in England and Wales and that that the actual number of copies circulated here exceeds 2% of the total circulation of the publication in the world.

(b) In a case relating to publication on a foreign internet site, that the article in question has been advertised or promoted in England and Wales by or on behalf of the defendant.

(iii) If, at any stage after leave to bring the action has been given, it appears that 2a) or 2b) is not in fact satisfied, the defendant may apply for summary dismissal of the claim.
(iv) The Duke of Brunswick rule should be abolished, and the US single publication rule should be adopted.

(v) In all actions for defamation, the normal rule in tort shall apply, namely that the burden of proof that the imputation was defamatory shall lie on the claimant.

(vi) The presumption of falsity and presumption of damage should both be abolished.

(vii) In any action that proceeds in England or Wales against a foreign publisher or a foreign website, in relation to a publication which is substantially distributed in the state in which the publisher is headquartered, the court shall apply to that publication the defamation law of that particular foreign state.

Written evidence submitted by Global Witness

HIGHLIGHTING THREATS TO INVESTIGATING AND PUBLISHING IN THE PUBLIC INTEREST

1. Global Witness would like to take this opportunity to express our serious concerns with respect to the libel and privacy laws in the UK. Given the vital importance of these issues to our core work, we would also like to request the opportunity to make an oral submission to the Committee to expand on these matters.

2. Global Witness is an NGO that exposes the corrupt exploitation of natural resources and international trade systems. We obtain evidence which we use to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses. Global Witness was co-nominated for the 2003 Nobel Peace Prize for its work on conflict diamonds.

3. We are working predominantly in developing countries, emerging markets and in countries with totalitarian regimes and low levels of transparency (according to the Transparency International index).

4. Privacy and libel laws already seriously curb freedom of expression on issues that are in the public interest including political and corporate corruption, the functioning of organised crime and the funding of conflict. They threaten the very existence of many Non-governmental Organisations (NGOs) that engage in the investigation and reporting of such issues.

5. Global Witness feels that the interaction between the operation and effect of UK libel and privacy laws, and investigative reporting by NGOs, must be considered. Libel law in the UK are already strict and impose considerable challenges when publishing reports which we take enormous care to ensure are accurate. These reports often rely on those with first-hand knowledge but who in-country are exposed to the very real fear of reprisals. There are already numerous cases where information that is in the public interest is “self-censored”.

6. Cases show that the UK legal system is already being used by the rich, powerful and influential to attack publications (aka “libel tourism”), and the UK system is characterised by disproportionately high costs and damages which may be affordable by media empires, but not by non-profit organisations. Standards for freedom of expression have already fallen below those protected in countries such as the United States. Furthermore, penalties provided for contravention of libel law in the UK are already tougher than in other European countries, as demonstrated by the recent study conducted by Oxford University “A Comparative Study of Costs in Defamation Proceedings Across Europe” (December 2008).

7. Global Witness is concerned that the UK libel law already has an unsettling effect on our investigative work which seeks to expose the truth in the public interest. The new trend is for large corporates and wealthy individuals to use the UK libel law to sue and censor the important reporting from NGOs. The impact of even more stringent libel law in the UK will be to silence the truth and endorse the censorship of information. Legitimate inquiry and reporting of “sensitive” information will be stifled; accountability through methods of “naming and shaming” will become more difficult. It is because of this position that we feel obligated to respond to the Culture, Media and Sport Committee’s call for submissions.

8. Given the dramatic changes in which society now consumes information from the NGO sector, Global Witness believes that it is vital for Parliament to understand that there is a need to make changes to UK libel law that favour the public interest. Serious investigations require openness, transparency and freedom of expression; it is essential that the legitimate inquiry and reporting of sensitive issues, such as corruption and state looting, be possible. The issues we deal with are complex, long-term, and often require in-depth analysis, advocacy and follow-up. The public has a right to know how revenues from natural resources, such as oil and gas, are being misappropriated by the state or shady companies, especially when some of these...
states are beneficiaries of UK government overseas aid, as highlighted in Case Study 3 below. People who unjustly benefit from the illicit trade in natural resources must be held accountable in the public eye and legal language is needed to reflect this.

**GLOBAL WITNESS’ CONCERNS RELATING TO REPERCUSSIONS OF THE LIBEL LAW IN THE UK**

Global Witness would like to highlight the following specific concerns:

**Threat to legitimate inquiry and reporting**

9. UK libel law can prevent the publication of NGO reports on governments, corporations and individuals, especially where the information is sensitive and carries a high liability risk.

10. Global Witness often carries out investigations in dangerous places, where local populations either do not have access to information regarding natural resource use, or cannot freely express knowledge of corruption without fear of facing reprisals. However, based on its truth and value of serving the public interest, Global Witness publishes this information. To exemplify the risks described above, in Gabon two anti-corruption activists, two journalists and one civil servant were arrested and charged, on 7 January 2009, for activities related to the dissemination of a document relating to corruption which is freely available on the Internet. Four of these people were imprisoned for a week; at the time of writing we understand that they have been released but the charges against all five remain.

11. Global Witness stands by the content of its reports and briefings, and has never been successfully sued. Nonetheless, the increasing cost of defending our work has proven debilitating and prevents us from carrying out more of our core work. Unfortunately, accurate reporting of information does not prevent hostile libel actions from rich business people and Politically Exposed Persons (PEPs), who can paralyse the activities of and financially break an NGO before the action ever gets to court. Where state looting is concerned a “front person” can be the instrument of the government in trying to pressure an NGO into withdrawing public information. At other times, a very broad brush approach has been used to pressure Global Witness. It is noteworthy that even where we have been awarded court costs in the UK we have not been able to recover them from foreign claimants.

12. The internet often provides the only way information published in the public interest can be made available in certain countries. For example, Global Witness reports are banned in Cambodia, and hard copies have been seized by the police and customs. In one instance, the freelance designer of one of our reports had to flee the country due to threats to his life. In other countries, including Angola, Zimbabwe and Equatorial Guinea, it has not been possible to publish or disseminate hard copies of our reports due to legal and physical threats received from the authorities.

13. However, publishing on the internet means that an organisation or individual is subject to the libel law in any country in which the publication is downloaded. Thus, any information downloadable in the UK exposes the publishers and authors to the possibility of civil action under the UK libel law, even if they are foreign entities reporting on issues with no relevance to the UK and never intend to publish in the UK.

**Serious concerns about conditional fee agreements**

14. Global Witness is extremely concerned about the conditional fee arrangements (CFAs) that have been proposed as part of changes to the libel law in the UK. We are concerned that the risk of even higher litigation costs, or even just the threat of incurring these costs, will make it more difficult to justify defending claims. Analysis suggests that fees charged by claimants’ lawyers will be higher with CFAs because of a lack of monitoring by their clients. Research also supports findings that with CFAs legal fees incurred by the claimant will be higher than those incurred by the defendant. The risk is that we face paying double the claimants’ costs, over which we have no control, in the event that the case is lost. This will make it more difficult for us to play an effective role as a “public watchdog.”

15. Thus Global Witness submits that CFAs create a financial disincentive to us defending a defamation claim. We highlight conclusions reached by Oxford University that CFAs are in contravention of Article 6 (access to justice) and Article 10 (freedom of expression) of the European Court for Human Rights.

16. Furthermore, we feel that large financial gains should not be the point of libel actions, but rather the focus should be on correcting any erroneous information or issuing an apology (if required). We also feel there should be a time-limit for bringing actions, especially for information posted on the internet.

**Public interest and weakened accountability**

17. Historically, Global Witness has published sensitive material on powerful public figures to ensure greater knowledge and accountability, even when this has involved us paying high legal costs. In this sense, we have played an important role in providing a voice for disenfranchised people and exposing corruption and illegal activities to ensure accountability around natural resource use.

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10. See: Study completed by Oxford University, December 2008.
11. Ibid: page 5
**CASE STUDY 1: OIL, OBANG AND A DC BANK**

18. Global Witness was passed confidential information alleging that multinational oil companies were making payments directly into accounts at Riggs Bank, in Washington DC that were benefiting the dictatorial President of oil-rich Equatorial Guinea. Through subsequent investigations by our organisation, we were able to access public mortgage records showing that President Obiang bought two multi-million dollar mansions in the United States with the financing arranged by a senior manager of the same bank. The resulting press interest helped prompt a US congressional subcommittee investigation into the issue which showed how President Obiang was directly accessing and transferring cash from those accounts.

19. As a result of the investigations and publication of information, the oil companies involved are being investigated for possible violations of the US Foreign Corrupt Practices Act (though they have yet to be charged with any offences) and the bank in question has had its federal banking licence revoked for numerous ethics and anti-money laundering violations and was fined US$24 million for its role in the affair.

**CASE STUDY 2: ROSUKRENERGO AND UKRAINIAN GAS**

20. Global Witness gathered detailed information, from a range of public and non-public sources, on the trade in natural gas that connects Central Asia, Russia, Ukraine and the European Union. We were the first to publish this research and, thus, were able to draw attention to the person who plays a pivotal but hitherto undisclosed role in this trade. A week after publication, it emerged that this individual was in fact a major shareholder in a highly controversial private company which dominates this trade.

21. The company, and the questions about its activities, is central to the current dispute between Russia and Ukraine over the natural gas trade. This dispute, which has recently led to parts of the European Union (EU) facing energy shortages in the middle of winter, has become a top political priority for the EU and our work has shed light, for the benefit of policymakers, the media and other interested parties, on a crucial aspect of it.

*Abuse of English courts and UK law through “libel tourism”*

22. Global Witness supports calls to end “libel tourism” which have been vocalised by others in the NGO community. This practice reflects the willingness of UK courts to allow wealthy foreigners, who do not live here, to attack publications that have no connection with Britain. Also, as discussed in paragraph 13 above, there may be no limits to protect those who publish. This is an assault on freedom of expression.

23. Despite our policy of “naming and shaming”, Global Witness is proud of the fact that in spite of numerous threats, no libel claim has been successfully brought against us. This is due to our own internal procedures that ensure the information we publish is accurate and in the public interest.

24. However, this does not prevent individuals and companies from threatening to file legal actions against us. This is extremely costly—both in financial and resource terms—to an NGO such as ours. The UK courts and UK libel law are increasingly being used to try and prevent publications such as ours from entering the public domain. This is a serious threat which Global Witness faces every time it publishes.

*Global Witness’ concerns relating to privacy based legal actions*

25. Global Witness is very concerned about the precedent that recent cases (eg the Max Mosley case) may set in considering the right to privacy over freedom of expression. In response to this, we restate the importance of adequately assessing the true interests at stake, parties involved and severity of the allegations at hand. The balance is at risk of being lost once again. Whilst everyone has the right to privacy, this right should not be taken to the extent that it makes it impossible for NGOs to highlight and expose bad practice, corruption and illegal behaviour: subjects that are in the public interest.

**CASE STUDY 3: CONGO-B, CORRUPTION AND THE UK COURTS**

26. Global Witness obtained documents that had entered the public domain through a court in Hong Kong. We published bank and corporate documents showing that Denis Christel Sassou-Nguesso, the son of President of Congo-Brazzaville, had spent hundreds of thousands of dollars on luxury goods and other items using a credit card being paid out of funds appearing to have come from sales of oil by the government. As well as being son of the country’s president, Denis Christel Sassou-Nguesso was the Director of Cotrade, the marketing arm of the state oil company and as such was the public official in charge of these oil sales.

27. After publication by Global Witness, Sassou-Nguesso and his company, Long Beach Limited, sought a High Court injunction to force Global Witness to remove his company records and credit card statements from its website. Judge Stanley Burnton dismissed this case and found that: “Once there is good reason to doubt the propriety of the financial affairs of a public official, there is a public interest in those affairs being open to public scrutiny.” He said the documents “unless explained, frankly suggest” that Mr. Sassou-Nguesso and his company were “unsavoury and corrupt” and concluded that “the profits of Cotrade’s oil sales should go to the people of the Congo, not to those who rule it or their families.”
28. Global Witness believed that the publication of these documents was in the public interest and also a matter of international concern as shown by the fact that they were referenced in the US Congress, given that the actions appear to contradict solemn commitments the Congolese government made to the international community in an effort to benefit from significant debt relief. The UK judge clearly agreed that publication was in the public interest.

29. Regardless of the UK judge’s ruling in favour of Global Witness’ right to publish this information in that case, and the awarding of costs to us, the practical implication is that we incurred £50,000 in legal costs that have not been recovered as the applicant has not paid them. It is worth noting that these costs accrued over just six working days between 6–13 July 2007, the time that elapsed between the original serving of a court order and the end of the Court hearings themselves. Had Global Witness lost the case we would have incurred costs of around £100,000 which, for a non-profit organisation, could be crippling.

30. Furthermore, the applicant’s solicitors, Schillings, engaged in behaviour they later conceded in court was inappropriate, including unfounded threats of possible prison sentences for Global Witness’ Directors, made via our auditors to whom they tried to serve an Order from a Hong Kong court. The Schillings solicitor concerned, Jenny Campbell Afia, said in her First Witness Statement to the London Court:

“I explained that the document I wished to serve was an order from a Hong Kong Court and that if the Respondent failed to comply with it, it would potentially be in contempt of court and could have its assets sequestered and/or its directors could be fined or imprisoned (I believed this was true at the time although having now reviewed the Hong Kong Order I note that it does not provide for the Respondent’s directors to be fined or imprisoned if the Respondent fails to comply with the terms of the order).” 12

31. Global Witness suggests that these tactics are entirely consistent with a system that seeks to suppress free speech through punitive levels of costs and damages. We do not know whether Schillings always employs such tactics, or whether their threats were indeed the result of a mistake as Jenny Afia claims, but given that Schillings claims on its stationery to be “The leading law firm protecting the reputations of high profile individuals, corporates and brands” it seems a very serious mistake to make and was, of course, received as a seriously intimidatory threat.

32. If privacy laws were changed to insist on contacting the individual or company before publication, the negative effects could be horrendous. To exemplify this, we have provided two examples of incidents where had we contacted those named in the reports prior to publication, the outcome could have been very serious:

CASE STUDY 4: TAYLOR, TIMBER AND UN SANCTIONS

33. Former Liberian president Charles Taylor funded his own regime, personal lifestyle and the brutal wars in Liberia and Sierra Leone with revenues from the diamond and timber industries. In particular he funded Sierra Leone’s Revolutionary United Front (RUF), notorious for the mass amputation of limbs of the civilian population, with these revenues. Working with Liberian counterparts who infiltrated the Liberian timber industry Global Witness obtained critical information documenting this industry in detail, the resultant corruption, state looting and the timber for arms trade. This information was published in order to persuade the United Nations Security Council (UNSC) that they should impose sanctions on Liberian timber, which they did in May 2003. Within two months Taylor fled into exile and is now on trial at the Special Court for Sierra Leone in The Hague charged with war crimes. Global Witness’ reports have been presented as evidence at the trial. If this information had not been made public the UNSC timber sanctions may not have been imposed at all, or certainly not as soon as they were, which would have prolonged the wars with increased loss of life, forced displacement and general destruction. Had we been forced to contact individuals named in our reports prior to publication we would have jeopardised the lives of our sources and driven the corruption even further underground. We would also have run the risk of an injunction in the UK courts with the intent to slow down and/or prevent publication at a high cost to Global Witness.

CASE STUDY 5: CAMBODIA, CORRUPTION AND CONSERVATION

34. We gathered information on the role of Cambodia’s military in widespread illegal logging and extortion in a wildlife sanctuary where international donors (eg UN and EC) and international NGOs were spending large sums on ambitious conservation programmes. Through undercover investigations, open field research and aerial surveys, we assembled an extremely detailed picture of which units and which individual commanders were involved, their activities and how much money was changing hands. It was, at the time, the most in-depth investigation Global Witness had ever done on corruption in Cambodia’s forest sector and arguably one of the most dangerous for the (Cambodian) Global Witness staff involved.

35. We published this as the “Taking a Cut” report in November 2004. The same month, at the annual meeting between the Cambodian government and international donors, the latter insisted that the government accept key recommendations from our report (notably on information disclosure) as

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12 First Witness Statement of Jenny Campbell Afia in the matter of a proposed action in the High Court of Justice, Queens Bench Division: (1) Long Beach Limited (2) Denis Christel Sassou Nguesso, Applicants, and Global Witness Limited, Respondent.
performance benchmarks for the following year. While the Cambodian government stalled on their implementation, these recommendations set the terms of the debate for natural resource management in Cambodia for the next two to three years.

36. At the time that we published the report, Global Witness had an office and five staff based in Phnom Penh. We felt that if we gave advance notice of our intentions to publish to those named in the report, they would attempt to stop the publication and threaten our staff. We believed that, once the report was published and those named came under public scrutiny, it would be more difficult for them to retaliate. As it was, the Cambodian government banned the report, seized copies and launched an investigation into Global Witness’ activities in Cambodia. Eight months after we published the report they banned Global Witness expatriate staff from entering Cambodia and all of our local staff began receiving threats or warnings about their personal security. When the situation did not improve, we decided to close the office.

37. Global Witness believes that ill thought out application of the UK libel and privacy laws could have a seriously negative effect on civil society’s ability to investigate and prosecute a large variety of crimes. We hope that the Committee will carefully consider the implications on uncovering the truth and seeking accountability in pursuit of the public interest.

January 2009

Witnesses: Mr Mark Stephens, Senior Member, Intellectual Property and Media, Finer Stephens Innocent LLP; and Ms Charmian Gooch, Director, Global Witness, gave evidence.

Chairman: Good morning. This is the final session of the Committee’s inquiry into press standards, privacy and libel. I would like to welcome as our witnesses in the first part Mark Stephens, a partner of Finer Stephens Innocent, and Charmian Gooch of Global Witness.

Q1017 Paul Farrelly: This has been a long haul to the final session, but I think the key question to kick off on is: in what way do you think UK libel laws have had a “chilling effect” on the work that you do? Ms Gooch: In terms of Global Witness they have a severe effect on how we are able to gather evidence, particularly overseas from witnesses. We do believe that the sort of constraints in terms of responsible reporting and information-gathering are reasonable, and that as an organisation we will always take it on the chin for the mistakes that we make. I cannot talk on behalf of other organisations, which tells you that a lot of them are working in countries with despotic regimes where there is a military that is often in control in remote areas, it is very dangerous to even speak to individuals or officials who are trying to give information, and it is impossible to identify them; and therefore, in terms of bringing them into court, can be very difficult. I cannot talk on behalf of other NGOs—Mark Stephens can in terms of NGOs that he has represented—but anecdotally I know of numerous instances where organisations have held back from naming and shaming and putting detail into reports because of fears of particularly libel tourism, because of the very high conditional fee arrangements, and because of the very high costs that get awarded in the UK, disproportionate to the rest of Europe, and that is having a chilling impact. In our case, we endeavour not to be chilled by that, but we knowingly take risks as a result, and therefore have put in place very, very detailed and stringent processes internally to try and minimise risk. The costs involved are increased because we do due diligence and involve lawyers, often from the outset well before the report is even written or planned, and that is a big additional cost.

Q1018 Paul Farrelly: Does minimising risk actually come down at the end of the day to leaving out some well-known names which governments, that you seek to influence, know very well? Ms Gooch: Global Witness endeavours to always name names where they need to be named, and has run risks as a result. Very occasionally we will step back from that. For example, there is a dictator that I cannot name—we have very well-founded allegations of a very large bank account full of money that he has looted from resource sales. We cannot yet stand that up; therefore we are holding back from that for the time being. That would be an example. There are other times when we will effectively take the risk because we believe it is in the public interest not to be chilled down and for naming and shaming to take place.

Q1019 Paul Farrelly: You can name anyone you like here if you use privilege responsibly. Ms Gooch: Yes, but it is an ongoing piece of research and investigation. Mr Stephens: If I could help you, Mr Farrelly: one of the things we are seeing through our doors are NGOs coming in who are concerned that they are going to be sued. To give you a scale of the problem: we have now seen a consultation between NGOs, of about seven meetings now, a core group of about 30 organisations, which tells you that a lot of them are really concerned. Only last week there was a major London law firm that put on a training programme for NGOs in libel and privacy and it is becoming increasingly an issue for them, because they cannot get insurance. The risk profile is such that, even if they had the funding to be able to afford it, they could not do so. As a consequence, with threats coming not only against the NGO and the individual authors of reports but also against the trustees and donors of these organisations, what we are seeing is many organisations, who are not taking as bold a stance as Global Witness, inviting the lawyers to take a red pen to take a much more cautious approach to the removal of names; and of course that denudes the public interest of information...
which is essential when making decisions about society and the way in which we, for example, fund certain countries and such like.

**Ms Gooch:** May I just also add to my previous answer. I do not wish to tempt fate but, thus far, we have not yet been successfully sued but one cannot predict the future. We have spent a lot of time fighting off very serious threats. I was involved in one a few years ago where we had six different parties making very serious threats against individual staff, against the Global Witness Charitable Trust, the Global Witness Foundation in the US, Global Witness in four different jurisdictions. That went on for over a year and you can imagine the organisational time, effort, staff time, energy and costs involved. That in effect does have a chilling effect because that is time that we could not spend campaigning.

**Q1020 Chairman:** Would they employ UK-based libel lawyers to pursue?

**Ms Gooch:** It varies. Each situation is different. In that instance they started to do so and then switched to another jurisdiction. In other threats we have had, yes, they do. There was an attempt to injunction some information we had put up on a website about a public official—a public official who is the son of the President of Congo-Brazzaville, his name is Denis Christel Sassou-Nguesso; and Schillings, the UK-based law firm, whom I note have been in to give evidence—

**Q1021 Chairman:** Indeed, their name has cropped up a few times in the course of the Inquiry.

**Ms Gooch:** In fact, I am very interested and little bit concerned to see that the Committee has heard a lot of evidence from claimant lawyers, but remarkably little from defence lawyers. I think Mark Stephens is probably one of the few defence lawyers that you have heard. I would ask that you take that into account when you weigh up the evidence from the claimant lawyers. In the case of Schillings, they pursued an aggressive and inaccurate process against us which led to one of their lawyers being put in prison, which they then later retracted and said that they had been unaware of some of the issues and some of the finer points of company law in Hong Kong, which is somewhat hard to believe for a law firm that prides itself and promotes itself as a leading corporate law firm. In that case that was an issue over privacy; and an issue about “how do you balance public interest and privacy”? Judge Burton found in our favour and found that the use of oil revenue to fund a private lifestyle—hundreds of thousands of dollars of luxury goods—was in fact an issue that did need and did warrant having credit card statements put up on the internet so that people could scrutinise them.

**Mr Stephens:** Yes, they are certainly arms dealers; they tend to be the rich, the powerful; some very large companies who are exploiting natural resources—for example, illegal logging and mining in predominantly Third World and emerging markets. So we see those sorts of people benefiting, as well as people who are receiving corrupt payments and that kind of thing. It is very high level public interest. If you can rate public interest as a graded scale then it would certainly come up the very highest end.

**Q1023 Chairman:** You mentioned privacy law, which is one of the main areas this Committee has been examining. Are you finding that with the extension of privacy law through a series of judgments that people are now seeking to prevent you carrying out your work by threats of privacy law rather than libel action?

**Ms Gooch:** Yes, that injunction was two years ago—that attempt to injunct and get the information taken down—and that was by an individual who was domiciled overseas; had no presence in the UK. I believe had absolutely no intention of ever paying. There was £50,000 of costs; two years on, we have yet to see those costs despite a court order. In a sense, here we have a public official involved in corruption overseas, who was very happy to use the British courts to try and chill down and stop legitimate comment and information; and yet when that same court makes an order of costs against him (this is the son of the President) has absolutely no intention of paying. I would also question very much whether Schillings ever seriously thought that he would pay up.

**Q1024 Chairman:** Did Schillings get paid?

**Ms Gooch:** One would assume so!

**Mr Stephens:** One would assume so.

**Ms Gooch:** One would assume so!

**Mr Stephens:** I would be difficult to believe they would never get paid. In relation to that particular case, it does seem wrong that somebody can come here from abroad and begin proceedings.

**Q1025 Chairman:** Where do you think he should have taken action then?

**Mr Stephens:** Certainly preferably not Congo-Brazzaville. The issue I think is there was ongoing litigation in Hong Kong, for example, which has perfectly decent jurisdiction.

**Q1026 Chairman:** Your organisation is based in London?

**Ms Gooch:** My organisation is.

**Q1027 Chairman:** In a sense, taking action in a London court does not seem so inappropriate.

**Ms Gooch:** What I think should have happened—and a recommendation or an ask I would make to the Committee to consider—is that claimants who have an overseas domicile should be required to put a significant cash deposit down, because otherwise I think the chances of any proper justice being done on this is very slim.
Q1028 Chairman: You would not question the appropriateness of their taking action in the UK court—just that you did not get any money?

Ms Gooch: No. I question the basis on the fact that they attempted to injunct on privacy when in fact this was a public interest issue. Congo-Brazzaville as a country has received millions of pounds of UK money, tax payers' money. Congo-Brazzaville has made promises to the international community, including the UK, about reforms to receive that money and to forgive debt; and this is actually part of a larger concern that we have as an organisation, that millions, in fact billions of pounds of resources—such as oil, diamonds, timber and other resources—the revenue from those are being looted out; they are being handled by banks; and basically banks are facilitating a state looting. For governments that are serious about the claim that they want to make poverty history and have supported the Millennium Development Goals, for them not to tackle this massive abuse, and what in effect is corruption and the facilitation of corruption, is a long-term problem. This information that we put up on the website was connected to that work.

Q1029 Chairman: I entirely understand that, and that presumably is why the UK court decided not to grant an injunction. You seemed to suggest earlier that you did not think it was right that they went to the UK courts; actually I do not see which other courts they would have gone to other than Congo, which obviously from your point of view would have been rather less satisfactory.

Mr Stephens: Chairman, there are two issues arising here: one is in relation to Global Witness, which is an English and American organisation; and there are also issues in relation to cases, for example, with Human Rights Watch, which is an American organisation, which was sued here by a Rwandan wanted for genocide. There is no obvious connection with the courts of this country in those kinds of cases. It does seem to me, as I am sure the Committee is by now acutely aware, the British courts do have this very expansive notion of which cases they will and will not take.

Q1030 Chairman: Can I just explore that a little further then. The cases that have been drawn to our attention are where the definition of “publication” has been stretched to the limit to get into the UK courts—in other words, 20 copies of a book. An organisation like Human Rights Watch presumably their reports are pretty widely circulated in this country; so to that extent the views they are expressing would be widely known here?

Mr Stephens: They would; they are available more widely; but let us just take the print suggestion. One of the proposals that was put forward in the written submissions was that we should treat as de minimis, and therefore not as a publication within the jurisdiction, where there is, say, less than a thousand print publications within a jurisdiction. That has two effects: one is that a thousand is a fairly minimal number in terms of dealing with somebody’s reputation; it is likely to have had a much more significant circulation in another jurisdiction, which would be perhaps more appropriate to sue in; and as a consequence of that we are not cluttering our courts up with small pettifogging claims, rather than the bigger claims which are more appropriately dealt with within the jurisdiction of this court. It was for that reason I felt it was a good idea to try and draw some kind of arbitrary line in the sand, and a thousand seemed to be roughly where the courts were going, saying things below that would be an abuse of process, and numbers of publications above that were clearly a substantial tort within the jurisdiction of this court.

Q1031 Chairman: Have you attempted to challenge the jurisdictional issue when action has been taken?

Mr Stephens: Yes, we have. Whenever that comes up we do that. The problem, of course, is that it is hugely expensive. A challenge to the jurisdiction is a full day in court, usually with barristers; invariably the other side will have a Queen’s Counsel; and that is going to be in the order of £50,000–£80,000 in terms of legal costs to fight with the evidence and everything in advance. That in terms of an organisation, an NGO, is two researchers for a year. When you are faced with the choice between paying lawyers and two researchers to get good reports out and proper public information, it seems to me we should not be paying the lawyers. Perhaps that may not be in my best financial interests in the long-run, but I think in society’s interest it is the right thing to do.

Q1032 Chairman: Did you ever succeed in a jurisdictional issue?

Mr Stephens: Yes, we have. There have been a number of cases where we have managed to throw it out; but what happened was that the law then changed against us. Sir Charles Gray, who is now a High Court judge, came up with the rather clever idea of saying, “Well, we will only sue in relation to the publication in the UK or the person’s reputation in the UK, or within the jurisdiction of the court”; and that sort of artificially circumscribes the tort. If you are then asking the court to say, “Where is the most appropriate place for this case to be tried?”—if it is about an English reputation in relation to an English circulation, it is clearly London, even if that circulation is but 27 copies, for example.

Q1033 Paul Farrelly: The Schillings lawyer who apologised in court, did anyone refer him to the Law Society for a disciplinary proceeding?

Ms Gooch: We did not. Perhaps we should have done, and perhaps we still should.

Q1034 Paul Farrelly: I used to be a practising journalist and the burden of proof is all one way. Have you ever in your experience come across libel lawyers who actually do not bother to go through the proper procedures to check whether their clients are lying or not, and therefore are recklessly making threats?
Mr Stephens: One of the things that concerned me, particularly in the Denis Christel case, given that the allegations were about receipt of corrupt money by skimming the national oil wealth, I was concerned that the lawyers in that particular case were being paid with corrupt money—which as all lawyers know they should have, and may have to my knowledge, reported to National Criminal Intelligence Service (NCIS). That is, I think, a matter of enormous importance. Perhaps one of the ways of stopping people representing these corrupt people is to check the money supply. I have reported people, acting for people over the years, and I have never been told, "Don’t act". All that seems to happen is that the police, if they do anything, are just watching from afar.

Q1035 Paul Farrelly: Is it not usually in law that responsible lawyers will make sure that they do not believe their clients, if it is criminal law, are indeed guilty and criminals and therefore should not represent them?

Mr Stephens: No, we are employed to do the best job we can for whoever comes along. Whether they be guilty or innocent, that is not the point. The point really is that there needs to be in place systems which ensure that organisations which are peculiarly vulnerable, like NGOs, like charities, are not able to be bullied and pushed around in the playground of our libel courts by the rich and the powerful. One of the ways of doing that, I think, is if you are going to sue an NGO then I think you have to show, one, there is no public interest in what you are doing; so if you are using bra-cams and tittle-tattle-type reports, which I cannot see anyone ever would, then in those circumstances you would not have a public interest; but if it is a public interest then it ought to be debated and the information ought to be out there, and they ought not to be allowed to have injunctions to prevent that kind of thing coming out.

Q1036 Chairman: Can I just ask you one question which is slightly away from our remit which was put to me in the last 24 hours. Criminal libel remains on the UK statute, although virtually never used. It was suggested to me that the UK still has it gives the UK statute, although virtually never used. It was to me in the last 24 hours. Criminal libel remains on which is slightly away from our remit which was put to me. I think both of those laws are being used under the media law but they are both occupying quite different spaces within that. There is a lot of very responsible journalism, and I know of a lot of investigative reporters who spend months working on cases; there are less of them than ever before, because the financial state of the media industry is pretty parlous at the moment, and a lot

Q1038 Chairman: Thank you. That exactly bears out what was suggested to me.

Ms Gooch: If I might just add to that. Global Witness has been on the receiving end of this in Cambodia where, over the years, we have detailed the way in which the entire state revenue has been captured by the Prime Minister and his family and cohorts around him. As a result Global Witness named staff cannot enter the country and are subject to threats of criminal defamation.

Q1039 Mr Hall: In your evidence to the Committee you said you have never lost a libel case.

Mr Stephens: That is her—not me!

Q1040 Mr Hall: That is quite an interesting record. We have looked at the concept of the Reynolds defence and the Jannett defence which says if you publish an article that is defamatory and untrue but you have researched it and it is presented professionally and it is in the public interest then you have got a defence in law. Have you ever had to use that defence?

Ms Gooch: First of all, can I just say that it feels like tempting fate to have made that submission. We have been very lucky, we have had a lot of help from a range of very good lawyers in various jurisdictions, and we basically ensure that our published reports are a matter of record and can stand. We have not yet been successfully sued. We have spent a lot of time over the years fighting off cases going into court, getting to very, very close stages of that, and received a range of threats. We basically looked at Reynolds and employ it across the organisation. In a curious way, we have actually strengthened our practices as a result of these threats and attacks. The problem for Global Witness and the problem that all other investigative and campaigning organisations face—whether it is Global Witness looking at an arms trader or a corrupt despotlic president in an oil-rich country like Equatorial Guinea or Congo-Brazzaville, or an organisation based in the UK investigating real serious domestic abuses, for example, in childrens’ homes, maybe in terms of medicines, maybe in terms of farming practices, maybe in terms of a whole range of care of the elderly—there are all sorts of issues where there is an increased threat because of libel and privacy. There is a real difference: with-profit media and not-for-profit campaigning organisations both have to live under the media law but they are both occupying quite different spaces within that. There is a lot of very responsible journalism, and I know of a lot of investigative reporters who spend months and months working on cases; there are less of them than ever before, because the financial state of the media industry is pretty parlous at the moment, and a lot
of investigative units within media organisations are being either cut down or closed down; that means that NGOs are increasingly filling that space. The challenge we have is that this is long-term work; it involves often years of work; it involves attacking and trying to change vested interests. So it is not just the publication of a damning and very good investigative article; it is trying to create a long-term change in behaviour, and that can mean the loss of millions and millions of pounds to a company or an individual. That means, therefore, that these companies and individuals will often respond in a different way to a not-for-profit organisation that has put a report out, than in the way they would respond to the media. I think that is one of the challenges that organisations face. To come back to your point about Reynolds—I have just tried to frame this difference—that is why trying to incorporate Reynolds and an awareness of Reynolds in all the stages of the research, and thinking about a report, briefing document or a press release, every single point of publication is crucial. I would be happy to talk a bit more about that but do not want to take up the Committee’s time.

Mr Stephens: The point I have a concern about is this: in terms of Reynolds I have yet to find an NGO that does not have a good Reynolds defence which would win at trial. I have yet to have to say to somebody, “This journalism, or this reporting, is not responsible”. The problem is the cost of fighting it.

Q1041 Mr Hall: How much is the cost of a Reynolds defence?

Mr Stephens: The cost of a Reynolds defence is somewhere between £100,000 and £200,000, plus of course the risk of losing. You have got an adverse cost risk as well on top of that. That is the sort of sum course the risk of losing. You have got an adverse somewhere between £100,000 and £200,000, plus of

Ms Gooch: Yes. In those cases, those letters will be chased up on. In some cases it may be a warlord in the jungle in which case it is rather hard to get the letters to them; but in other cases we would have to courier letters and do follow-up letters. In our recent report on banks called Undue Diligence again we sent a lot of letters to various banks, and actually some responded by threatening to sue just as a response of getting that enquiry letter. Other banks were unable to respond because banking secrecy laws meant that they could not respond, and therefore we were not able to engage in a dialogue: but wherever we do get responses we will put those and incorporate those into the materials and into the report to give that voice back.

Q1043 Mr Hall: If we were to put the Reynolds defence on a statutory basis would that help non-governmental organisations, or would it not make any difference?

Mr Stephens: I do not think it would make any significant difference. I think putting things on a statutory basis has a tendency to enable judges to erode the effect over a period of time. We have seen the effect of a Reynolds defence in the hands of a judiciary who were hostile to it. Fortunately, following Jameel, that has been opened up again. I think we have to find ourselves in a position where judges can use their good sense in allowing some latitude, particularly to NGOs. Putting it on a statutory basis I think would be unhelpful in this particular case. We are seeing cases where NGOs, for example Index on Censorship, commissioned a piece about libel tourism; and as part of that process a Reynolds letter was sent out to somebody named as a libel tourist; their lawyers, Carter-Ruck, immediately threatened to sue. That is the reaction that NGOs are getting from their attempts to be even more responsible.

Q1044 Mr Hall: You said it was your internal procedures which have got you to the position where, so far, you have defended against libel actions. You have already given us quite a lot of detail about what those internal procedures are. Is there anything else you do in those internal procedures you would like to put on the record?

Ms Gooch: A good question. All our staff are trained in libel and defamation. We have a range of procedures that will depend on the campaign, the subjects being investigated, and the level of risk. Broadly, for example, say we are leaked documents, or we obtain documents, we would always, first of all, consult a lawyer and just look at: what are the issues around these documents; how can they be used? Quite often in our reports we have information that, for various reasons, we cannot put into the report—whether it is to protect the identity of an individual in terms of usually their personal safety; and we will try, through the whole process of research and then through the process of report writing, to continually look at where the risks are and look at making sure we can basically show: how do we know that fact; and how do we cross-reference?
Q1045 Mr Hall: One of the other cornerstones of the Reynolds defence is “in the public interest”. How would you define what is in the public interest?

Ms Gooch: I think that is a huge question! I would say, I think that libel and privacy laws need to better reflect the importance of public interest, whilst not losing the balance of what is proper and private. To a certain extent the courts are deciding what is in the public interest, I am sure. Mark, you will have some comments here in a moment. Increasingly I think public interest is a bit like universal human rights: there is a global public interest—whether it is the fact that we are an interconnected society, and it is not just about what is happening in a small country somewhere where there does not appear to be a UK connection, that we are inter-connected; and often it might be revenue flows; it might be taxpayers’ money; or it might just be plain, simple abuses of human rights but there is a public interest. That is the one I think needs strengthening.

Mr Stephens: I think that public interest is, within the context of Reynolds and Jameel, pretty clear now. We are not seeing deserving cases fail on the public interest test. We are seeing them fail on the tripwires that go through, the indicia towards responsible reporting and that I think is the problem area rather than the public interest. I think everyone is pretty clear that the public interest is not a problem.

Q1046 Paul Farrelly: Our reports are based on evidence. It will be “on the one hand” and other people will say “on the other hand”. Most of the people we have questioned, be it defence lawyers or the media, have said, “Actually, yes, if you put a Reynolds-type defence on the statute it would be helpful”, but you have said it will not be helpful. Could I just pursue this a little bit further with you. Reynolds and Jameel is terribly narrow; it protects you basically if you have pursued matters in good faith but got them wrong. There is a wider defence that might broaden it where you might say you have got certain details wrong, but actually the broad thrust of what you are saying is correct. We had the Tesco v Guardian case pursued by Tesco by a lady called Lucy Neville-Rolfe CMG who has just submitted a note to us, where the Guardian tried to get to the bottom of what tax they were avoiding. Tesco quite clearly were being evasive and refusing to play ball except to say, “We’re going to sue”. Let us not just restrict it to Reynolds and Jameel, but actually in those circumstances an “in good faith” defence on statute would not be helpful to organisations that you represent, to organisations like Global Witness, to serious investigative newspapers who are not interested in tittle-tattle but are interested in pursuing things in the public interest?

Mr Stephens: I can see the argument on both sides, Mr Farrelly, and I think for those that perhaps are less used to discussing policy they might well say, “Ah, yes, that’s a great idea, grab that and put it in your back pocket!”, but I think you have to think and analyse what is likely to happen. What will happen is that the claimant’s lawyers at the libel bar will attempt to erode that defence by chiming at it and eroding it slowly but surely, and that is what I am concerned about. Whereas if it is left in common law where it is at the moment the judiciary have the ability to resist that erosion over a period of time. I see no evidence that Reynolds and Jameel in its current incarnation is going to be a long-term problem. I see that there are much more—

Q1047 Mr Farrelly: I am talking about a wider reincarnation.

Mr Stephens: If you could redefine it in a much broader context then I may be with you. It is difficult to talk in hypotheticals. I perceive there to be much more fundamental problems which would have more dramatic effects, particularly for the NGO community: for example, the presumption of falsity; the irrebuttable presumption of damage. The irrebuttable presumption of damage means that you have got to presume that there is a money damage to somebody if something is written that is defamatory. That seems to me to be wrong. In no other area of tort—if we slip over on a pavement, for example, we have to prove that it was the local authority that was at fault or whoever else. It seems to me in relation to that abolishing the presumption of falsity and abolishing the irrebuttable presumption of damage are fundamental reforms which would have an amazingly profound impact for NGOs. NGOs, as I think Ms Gooch has made absolutely clear, find it very, very difficult to bring witnesses in, for example; often leaked information. So why should you presume everything that they have gone to enormous trouble over, often from sensitive sources, is wrong. I think that is just a major problem and a flaw with our law.

Q1048 Helen Southworth: Can I move us on to a discussion of corporations and their right to sue, and the implications of that from both perspectives—real: from the fact, as we have had witnesses tell us, corporations employ large numbers of people and they have a responsibility to protect their employment; but also the ability that corporations have to take action. Do you have an opinion as to how the current legislation works, and how it could perhaps be better framed?

Mr Stephens: I have a very strong opinion about it for the practical experience, which is that in the Jameel case that went to the House of Lords on the way, it will be remembered that the two claimants were Mohammed Jameel personally and the Abdul Latif Jameel company. The Abdul Latif Jameel company is a second-hand motorcar dealership based in Saudi Arabia and has nothing to do with this country at all; yet what happened was that they each got damages of an equal amount; and what appears to be happening is that for every company that sues an individual sues and that they are given roughly the same amount; so what happens is the damages double-up. Even if you got it wrong about a corporation it does seem to me it is wrong to enable a corporation to sue. It is wrong in principle because damages for libel are about hurt feelings. A corporation is a piece of paper; it is a piece of paper lodged at the Companies Registry; it has no ability
to feel hurt feelings. Individuals within the company do and they should have the right to sue; but we have abolished the right to sue for government, local authorities and for emanations of the state like British Coal used to be, for example; and it seems to me just plain wrong. Let us have an open debate about it. This is wholly inappropriate for a very wealthy company as a result of this toxic dump. It seems to me that it would be responsible for reform. I would strongly urge the Committee to put that forward as one of its recommendations.

Q1049 Helen Southworth: What about the impact on non-governmental organisations?
Ms Gooch: I think it is fairly common knowledge that companies, particularly large companies, frequently employ very aggressive threatening legal tactics to try and chill down and shut NGOs up from valid public interest campaigns and comment. I have a serious problem with that. Clearly if an organisation is responsibly researching and writing reports and it is raising matters of public interest then to be on the receiving end of an aggressive legal campaign is not really the appropriate response.

Q1050 Helen Southworth: Is this something that you see should be managed by a limit on damages, or by removing the right to sue?
Ms Gooch: I would say both. Mark, you might have different views?
Mr Stephens: I would say removing the right to sue is really what it is about. We are seeing at the moment a real problem with a company called Trafigura who have retained lawyers to attack Greenpeace International predominantly, but also media organisations who are reporting about the alleged toxic dumping in Africa of waste. They are doing this in a number of ways. Letters are being sent; they are suing the lawyers, Leigh Day, who are taking claims; I understand that Leigh Day are representing 16 people who died, 100,000 people who needed medical attention, including miscarriages, respiratory problems and organ failure, and there is a class of about 300,000 Ivorians who have suffered as a result of this toxic dump. It seems to me that it is wholly inappropriate for a very wealthy company to try and chill down discussion about toxic dumping through this kind of aggressive behaviour. For example, there are threats to individuals at Greenpeace International; and there are also threats, for example, to the BBC. If the BBC want to get a balanced story and hear from Trafigura, on the one hand, and also someone from Greenpeace International or a scientific expert, the threats to the BBC are being communicated back via the producers who are saying to the people from Greenpeace, “But of course you can’t mention this, this, this and this because otherwise we might get into a defamation wrangle with Trafigura”. That seems to me just plain wrong. Let us have an open debate about it.

Q1051 Helen Southworth: Can you give us some sort of guidance as to what sort of impact that is actually having. You have given us two examples: are those two isolated examples?
Mr Stephens: No, they are not isolated in any way. A lot of malfeasance by the rich and powerful is undertaken through offshore companies, for example, British Virgin Islands jurisdiction, bearer share corporations; we are seeing those being used in litigation. So I think that this is a wider problem. If somebody wishes to sue for libel they should come out from behind the paper-thin veil of a corporation. That is what happens in Australia. They have had no problems whatsoever with the way in which this has moved forward. In fact, it enables people to actually identify a human being. The reality is that defamation is about compensating hurt feelings of an individual. It is not about hurt feelings of a company, because companies do not have feelings.

Q1052 Chairman: But companies employ people. If I, for instance, was to make a claim that a particular manufacturer was including rat in its beef burgers, or, for instance, that a shampoo product actually was carcinogenic when there was no evidence, that might actually cause devastation to that company and put a large number of people out of work. Should that company not have some recourse if it is quite plainly a falsehood?
Mr Stephens: That can get you into the realms of, if you like, a trade libel. It seems to me, if you can show specific damage, specific loss, then perhaps you would think about it. The suggestion you have given—rat in a burger—it does seem to me that somebody at the company would be responsible for rat in a burger or ensuring quality. That individual is the person who is in truth being attacked. By hiding behind the company that is not really what it is about. I think we should actually have the individual up to have an account, because there may be truth or there may not be truth but the important thing is to know who is responsible and to be accountable.

Q1053 Paul Farrelly: I have read about the toxic dumping case but could you spell the name of the company?
Mr Stephens: T-R-A-F-I-G-U-R-A.

Q1054 Paul Farrelly: Could you name the lawyers who are representing them?
Mr Stephens: Carter-Ruck in this country; and there is a Dutch firm called Houtoff who are also representing them.

Q1055 Mr Sanders: Would the introduction of a “public figure” defence, or additional hurdles for a public figure claimant, help protect the work of Global Witness?
Ms Gooch: In terms of better identification of public officials, yes, it would; in that it is in the public interest to be able to question the role of public officials, their involvement in whether it is facilitating corrupt payments or other issues.
Q1056 Mr Sanders: Would the introduction of a mandatory requirement of prior notification cause you any concern?

Ms Gooch: It would be disastrous. It would make it almost impossible to carry out the sort of detailed, long-term research that leads to detailed reports which are in the public interest. For media with a daily print schedule 24-hour notification on an article naming an individual I could see that is something that could be looked at. In terms of a not-for-profit organisation spending, in some cases, two to three years researching a report—in the case of the Cambodia report there were 87 letters to companies and individuals—the thought of trying to contact just the practicality of trying to contact 87 people, individuals and companies 24 hours ahead of publication, apart from leading to a raft of injunctions, it would be physically impossible. Another example I could give was an issue that we felt was very much in the public interest. It pertained to who really owned a crucial gas pipeline from central Europe through the Ukraine and Russia. That gas pipeline has been supplying a major amount of gas into Europe; Europe relies on this gas. It was the one at the centre of disputes between Russia and the Ukraine earlier this year which led to countries being left without gas during the height of the winter. Following two to three years of research we were able to identify and name an individual called Dimitri Firtash that he appeared to be the beneficial owner. He then subsequently about a week later, following the publication of the report, named himself, but that is an unusual example. The practicality of trying to contact individuals and companies ahead of publication I cannot see how we could continue to publish.

Q1057 Chairman: The 87 people you named—

Ms Gooch: It is not unusual.

Q1058 Chairman: Indeed, but the suggestion is not necessarily that you have to tell them 24 hours ahead that the book is going to come out. You have to give them an opportunity at some point to respond to the allegations which you are making about them. Presumably you did that anyway?

Ms Gooch: Through Reynolds there is a long process of putting questions and incorporating responses in a published document, but you are not necessarily identifying when that document is going to be published. As we have seen with the case of putting the credit card statements up of the son of the President of Congo-Brazzaville, immediately an injunction will be slapped on you, and NGOs commonly find this.

Mr Stephens: I think one is concerned that the Mosley tail is going to wag the dog on this one. I understand the justifiable concern that the Committee must have over the events of Max Mosley, but it was a hard case. What we do not want to do is to make bad law. One of the concerns I have for NGOs is that they have very often legitimate private information which is clearly in the public interest and ought to be published. The case of Denis Christel SassouNguesso, which Ms Gooch has referred to, is a prime case in point, which if notified in advance he would have obtained an injunction, which he tried to do in any event afterwards, to stop the publication. If you have spent three years putting an enormous amount of resources, taxpayers' money, donors' money into creating a report and then are prevented at the last moment from actually publishing it when it is enormously in the public interest, or the additional hurdle is put into place which is effectively £100,000/£200,000 worth of costs in terms of “We're going to have to fight this all the way to trial to find out whether we should be able to publish this”, that is a hurdle which is going to mean that a lot of reports do not get published.

Q1059 Chairman: But he failed to get an injunction post-publication, and therefore presumably he would have failed to have got an injunction pre-publication?

Mr Stephens: I am not sure that that follows, because the reason he did not get one post-publication was that it had already been read into the record of Parliament, the Hill and various other places, and it was also considered to be in the public interest. I think the approach of a judge is going to be; once the confidence, the privacy, has gone there is nothing we can do, there is no remedy; so what we need to do is preserve something until trial. What that does not bring into the balance—because it assumes infinite resources on either side which is a judge's luxury—unfortunately, with the situation that NGOs find themselves in, they do not have that luxury; they do not have the money to employ lawyers or to fight. Ultimately that means they will just fold and these people will have information which will be not published.

Q1060 Chairman: It comes back to the question of public interest. In the case of Mosley there was a very big debate about whether or not there was any public interest at all in exposing what he got up to in his private life: but the kind of work you are doing, it seems to me, is so plainly, if you are correct in what you are saying, in the public interest that that information is made known. Therefore you should find it relatively easy to persuade a judge that you should be allowed to proceed?

Mr Stephens: I do not think that is the way that the analysis will go. The analysis will almost certainly go: “Let's hold the ring until a trial”, and the judge will not look at the ability of an NGO to fight. Of course, that means that the proceedings will collapse; the NGO will have an adverse cost consequence against them. If you are thinking of going down this route—and I can understand why the Committee might well be thinking, Chairman, of going down this route—I think there has to be an exception: that you do not have to give prior notification where there is a public interest. I think we all understand that Mosley was not a public interest case, however deluded some of your witnesses may have been when they thought that it was.
Q1061 Chairman: Would you therefore be less concerned if a prior notification recommendation was made with a specific proviso that if it was plainly in the public interest or there were good reasons not to prior notify then you should not have to do so?
Mr Stephens: That caveat I think would cover the legitimate interests of non-governmental organisations.

Q1062 Paul Farrelly: You have mentioned the Mosley tail wagging the dog: for serious newspapers the issue is not privacy it is how confidence is applied. There was a case recently again involving the Guardian where not only was an injunction granted but also it went to court and lost the case; where it was ordered to remove documents from its website that were basically leaked by a whistleblower—there was no allegation that money had changed hands—which alleged that Barclays was not only systematically engaged in encouraging tax avoidance and evasion but also paying huge bonuses in the City culture. If something is in the public domain and is also clearly in the public interest, that the Guardian can not only not prevent an injunction but actually lose the case, does that not mean that all the efforts we have made to protect whistleblowers who might be of use to organisations like Global Witness, does it mean our law is an ass really?
Mr Stephens: Certainly I think it is one of the occasions our law is an ass. I think it is one of the things where we are out of balance and out of kilter. One has to also think, what are organisations going to do to prevent this kind of problem? The answer is, and one of the things that concerns me, unless there is some fairly fundamental reform, I am already seeing this with people entering into discussions with me about the new libel laws in America, but also in relation to their approach to privacy, I can see people moving their publications and their servers to corporations based in the United States behind, if you like, the firewall of Dr Ehrenfeld’s legislation. That, I think, is a very unhealthy situation. We are two friendly nations; we ought to be avoiding this jurisprudential diplomatic incident; and we should be bringing ourselves as close as we possibly can without perhaps adopting one another’s regimes.

Q1063 Mr Evans: How many times have you not been paid costs despite winning a case?
Mr Stephens: In relation to Global Witness on the one occasion; in relation to others mostly they have been done pro bono and so the costs issue does not arise.

Q1064 Mr Evans: Have you ever used a CFA to fund your defence and limit your liability?
Mr Stephens: As far as I am aware there is only one lawyer that has done a defendant’s case on a CFA. No right-thinking lawyer, unless they were doing it for altruistic reasons, would do it on a commercial basis on a CFA—the statistics just do not work in your favour. We know that approximately 90% of cases are won by claimants. Professor Eric Barendt did some research a few years ago so we know that 90% or so cases are won by claimants, either with an apology and/or their lawyers’ fees being paid whether or not it gets to trial. That 10% that is left for the defendants is not enough to warrant taking a sensible risk on it; and that is a real problem that we have because there is a serious imbalance at the moment between claimants and defendants. One of the things we are seeing is, if you like, what the Americans call “greenmailing”; blackmailing, if you like, through the use of high legal fees. The defendant NGO has to kowtow; and I fear that we will see false vindications being given.

Q1065 Chairman: Given the extremely impressive record of defending actions of Global Witness, why would your firm not consider taking a case to Global Witness on a CFA?
Mr Stephens: Partly because the evidence that you have to bring is enormously expensive. You are going to have to go and take evidence in all parts of the world, where Global Witness works in Cambodia, in Africa, all of those sorts of places. It is just going to be ridiculously expensive for a law firm to pay out of pocket for its lawyers to go and proof the witnesses in those jurisdictions. In those circumstances it becomes impossible for us, from a financial perspective, to put the investment in that is necessary.
Ms Gooch: Could I also add, I think there is a serious problem with the level of fees being chalked up by some of these firms. It is very counter to freedom of speech and public interest and that for me would be one reason not to want to be part of a system that actually we are criticising. I think that would be quite hypocritical.

Q1066 Chairman: Yes, but a lot of your evidence this morning has been about the impact on NGOs of legal costs, and your example of two researchers or employing a lawyer to fight an action. If CFAs were available to you, despite your qualms, surely it must be in your interest to take advantage of it?
Ms Gooch: If CFAs in the UK were more in line with CFAs across the rest of Europe that would be a different matter.

Q1067 Paul Farrelly: It is not risk free as a lawyer taking on pro bono work, am I correct in saying, because actually at the end of the day if you are found to have promoted a case you could be found liable for the costs? I put this question to Ian Hislop who said, “We won a case but actually the charlatan who brought it, with the aid of the charlatans who helped him, left us stranded for hundreds of thousands of pounds which we could not recover”. Is there a case perhaps in libel which raises matters of public interest to say actually if lawyers have encouraged a case to be brought because it is a gravy train, or can be, that if their client cannot stand costs then the reverse pro bono should work, and there should be a mechanism for claiming the costs back from the lawyers themselves; and that might make them more careful about the clients they act for?
Mr Stephens: Yes, I think there is the risk that a lawyer could be liable. I think the problem is always one of proof; because once you start entering and trespassing into that area you are trespassing into issues of client confidentiality and it becomes impossible particularly for the other side to know what was going on. So ultimately it is a question of proof and it is a question of regulation. At the moment the incentives are so high to bring proceedings and the chances of losing so low that everybody is quite happy to mint the money; and that is why presumably 16 or so claimant lawyers have been before you and extolled the virtues of our wonderful libel system.

Ms Gooch: I think it also facilitates individuals, many of whom are nothing better than thugs and criminals, coming through the UK to wash their reputation at no risk.

Q1068 Paul Farrelly: You have not been successfully sued—does that mean, when you have got things wrong but in good faith and honestly made a mistake, you have been able to use the offer of amends procedure?

Ms Gooch: Every time somebody says that phrase “you haven’t yet been successfully sued” I do really feel we are tempting fate here! Global Witness, if it gets something wrong, it will change the fact; it will sort the problem out. There has only been once instance and it was not a factual error, it was an issue around translation; otherwise we have not yet had to do that. We do stand by our reports. It is actually a problem for Global Witness, in that the publication rule means that at any point a report is downloaded it is considered published. We would really like to see that amended out of the rule. Even though it has only happened once, that is why presumably 16 or so claimant lawyers must have been brought before you and extolled the virtues of your wonderful libel system.

Q1070 Paul Farrelly: Some big corporations might feel terribly meddlesome sticking their nose in where it does not belong. Some people might cast aspirations about whether certain NGOs are really fronts for one outfit or another. Can you tell me why you go through all this and why you set the organisation up with your partners all those years ago? What is your motivation?

Ms Gooch: The three of us, that is, Simon Taylor, Patrick Alley and myself, saw very clear areas where environmental destruction was funding abuses of human rights and there just did not seem to be anybody working on that crossover point. The impact that we could see on individuals and countries trying to pull themselves out of conflict was just dire. The first campaign that we worked on was in Cambodia where illegal logging was going on and exports into Thailand. Everybody knew it was going on. The American Government knew it was going on. Everybody was being very cosy about it. The impact for people in Cambodia was very much that the war was continuing to be funded, landmines were being re-laid in areas that had been cleared and people who were just trying to reconstruct their lives did not have a chance of doing so. It seems important to get information out about corruption, about resources and about their role in the conflict and stability. Part of what we try to do is to encourage others to do the same.

Q1071 Paul Farrelly: I remember one organisation that used to be litigious who, under a new head, Nicky Oppenheimer, actually grasped the issue of diamonds and used it positively in a sort of Marks & Spencer “We boobed” type of way saying, “Our diamonds are conflict free”. How much more effective do you think we could be if corporations did not have the UK-style libel laws to threaten you and stop the publication of things that are in the public interest?

Ms Gooch: The example you have just given is a very interesting one because that particular company, De Beers, was considered to be very highly litigious. On this issue we targeted them because they had such a major role in the diamond trade at the time. Around 70–80% of all diamonds sold were linked to De Beers, was considered to be very highly litigious. On this issue we targeted them because they had such a major role in the diamond trade at the time. Around 70–80% of all diamonds sold were linked to De Beers. It seemed sensible and practical that if there was a focus on their behaviour and they had to change then they would take the rest of the industry with them. The result of all of that has been a government to government process called the Kimberley Process, which is not yet working properly, there are major problems with it.
Governments involved are not stepping up to the bar enough on problem issues. The problem is that often it is companies but also people who are involved in them, whether it is presidents of countries who are facilitated by companies. I think that the challenge, really, is changing some of the underlying corporate practices and companies are really reluctant to let some of those go.

Chairman: May I thank you both very much for your evidence this morning.

Written evidence submitted jointly by the Department for Culture, Media and Sport and the Ministry of Justice

1. The Committee regularly looks at the issues around press regulation and we welcome that. We believe this is a hugely important area and one that benefits enormously from this type of Parliamentary scrutiny, as it serves to air issues of concern. It also reminds the press of the huge responsibility and privilege that is self-regulation. They need to show how preciously they guard that privilege by taking the responsibility seriously. This regular scrutiny by Parliament is one of the opportunities they have to demonstrate that they are doing so.

2. The Committee has set out a number of areas they wish to investigate. We have set out some points we wish to make in response to these topics, sometimes grouped together where that is more practical.

Why the self-regulatory regime was not used in the McCann case, why the Press Complaints Commission (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case.

Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime.

3. It is vital to note that while the Editors’ Code of Practice offers a layer of protection, it is not the only protection. The Code is complementary to the Law. There are various laws protecting different aspects of privacy and inaccuracy, if the inaccuracy is defamatory; for example, the Data Protection Act 1998, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act 2000. Individuals then have the right and the choice to decide whether they wish to pursue a legal option—in some cases, a criminal one—or the self-regulatory option of submitting a complaint to the PCC. The reasons why aggrieved parties might choose between these routes will depend on personal circumstances; the desire to secure financial compensation might influence the decision to take the legal action, for example.

4. As a general rule, the PCC does not investigate matters if they are sub-judice. This must be right as there is the danger that it could prejudice the outcome of a trial and find itself in contempt of court. However, the PCC must then decide whether to carry out its own inquiry. This decision is made more tricky when matters of privacy are under consideration, as an investigation may lead to a further breach of privacy. And we understand there have been occasions when the PCC has been asked by those involved in a particular story not to investigate. The PCC must consider all the factors on a case by case basis.

5. This is a dynamic area and changing case law does change the playing field for newspapers. For example, the 2004 von Hannover judgment in the European Court of Human Rights, changed the understanding of the circumstances in which one might have a reasonable expectation of privacy. The Court ruled that the public does not have a legitimate interest in knowing where a public figure is (in that instance, Princess Caroline of Monaco) and how she behaves generally in her private life, even if she appears in places that cannot always be described as secluded, and despite the fact that she is well known to the public.

6. But the PCC had also been moving in this direction and developing its own “case law” which concluded that one might sometimes have a reasonable expectation of privacy even in public places.

7. Newspapers have had to make changes in how they work and it is now commonplace to see photographs in which the faces of children have been pixelated so that they cannot be identified, even if those photographs were taken in a public place or at a public event.

8. Newspapers and media organisations are aware of the need to police themselves in this regard and there are examples of times they have done so. News International and Hello magazine, for example, announced that they would not be using paparazzi photographs of Kate Middleton in their publications. These actions effectively “killed” the market for these freelance photographers, and meant that Ms Middleton’s privacy was protected.

9. Generally, we support measures such as the self-regulatory Code of Practice which serve to increase the range of options open to complainants.
The interaction between the operation and effect of UK libel laws and press reporting.

Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one.

10. The Government firmly supports the right to freedom of expression, which is protected by Article 10 of the European Convention on Human Rights (ECHR). Of course, the exercise of this right carries with it duties and responsibilities, and may therefore be subject to restrictions provided by law, for example in the interests of public safety, or for the prevention of crime, or to respect the rights or reputations of others. A balance may need to be struck between the right to freedom of expression and the right to respect for private and family life, home and correspondence, which is protected by Article 8 of the ECHR. Neither right is absolute, and each is subject to restrictions to protect the rights of others.

11. It is important that people have an effective right to redress through the civil law where their reputation has been damaged as the result of the publication of defamatory material, or where there has been an unjustified intrusion into their private life. In each individual case that arises, a balance must be struck between the competing interests of the parties on the basis of the circumstances of the case. These circumstances will of course vary from case to case. The balance of competing rights in individual cases is quintessentially the task of the courts, and Parliament should only intervene if there is clear evidence that the courts are systematically striking the wrong balance. We do not consider that this is the case, and we believe that the current law strikes an appropriate balance between the interests of claimants and defendants.

12. In relation to the law on libel, the law currently provides a range of defences to protect defendants against inappropriate allegations of libel. In the case of primary publishers, the Defamation Act 1952 provides the defences of justification (ie that the material is true); fair comment, which protects statements of opinion or comment on matters of public interest; absolute privilege, which guarantees immunity from liability in certain situations (eg in parliamentary and court proceedings); and qualified privilege, which grants limited protection on public policy grounds to statements in the media provided that certain requirements are met.

13. In the case of secondary publishers, the Defamation Act 1996 also provides that a defendant will not be liable where he or she is not the author, editor or publisher of the statement complained of; took reasonable care in relation to its publication; and did not know, and had no reason to believe, that what he or she did caused or contributed to the publication of a defamatory statement.

14. In relation to privacy, a number of remedies are already available for specific types of breach of the right to privacy, which allow the courts to strike different balances of competing rights in different circumstances. These include the Protection from Harassment Act 1997 (which protects against conduct causing alarm, harassment or distress); the Regulation of Investigatory Powers Act 2000 (which protects against the improper interception of communications or surveillance); the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (which protect against the dissemination and abuse of personal information); and common law remedies including malicious falsehood; nuisance; and breach of confidence.

15. The Government does not consider that any further statutory provisions are appropriate at present in relation to the law of libel or the law on privacy.

What effect the European Convention on Human Rights has had on the courts’ views on the right to privacy as against press freedom.

16. The Government’s views in relation to the role of the courts and the current legal framework are set out above. It is not possible for the Government to comment on the effect the ECHR may have had on the courts’ views in this area as this would be a matter for the judiciary.

The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the internet.

17. This section concerns the law of contempt, principally as set out in the Contempt of Court Act 1981, which provides for “strict liability contempt”. This applies in respect of all publications (including broadcasts) whether off-line or via the internet, which are addressed to the general public, or a section of it, and which create a substantial risk that the course of public justice will be seriously impeded or prejudiced.

18. The 1981 Act also allows for specific discretionary restrictions on reporting the proceedings, under section 4(2) and section 11. In considering whether to impose restrictions of this nature, the Courts have regard to the fact that the general presumption is in favour of open justice and the full and free reporting of public court proceedings. Regard is also had to the qualified right of freedom of expression under article 10 of the ECHR, and the requirement that interference with this right has to be strictly necessary in a democratic society to protect, amongst other things, the rights of individuals and the authority and impartiality of the judiciary.

19. As regards strict liability contempt, there is a delicate and on occasion difficult balance to be struck between allowing full and free reporting of developments in ongoing investigations and proceedings, and the protection of public justice. The Courts have developed a range of factors which are applied to the
particular issues presented by each case and the general test set out in section 2 of the 1981 Act, applied in
the light of these factors, allows the court flexibility in determining where the balance lies on any particular
case.

20. The internet and the ease with which user-generated information can be published on various sites
which is prohibited to the mainstream media has genuinely introduced a new dimension to the application
of the laws on contempt. Although it has long been possible for people to have access to otherwise restricted
sources of information, the internet exacerbates this situation.

21. However, it is important not to overestimate the impact of non-mainstream media. The exposure of
information in the mainstream media remains a means of causing particular prejudice to proceedings,
because so many of us are exposed to it and, in most high-profile cases, concerns are more likely to arise
about the activities of mainstream media organisations.

22. In any event, the current law applies equally to the internet and we do not think the existence of the
internet or other new forms of communication undermines the need for the law or the justification for its
continuance.

23. We keep the law in this area under review. The balance to be struck between freedom of speech,
including the legitimate right of the public to know about developments in high profile cases, on the one
hand, and the protection of justice and the right to a fair trial on the other, requires ongoing assessment to
be made of the effectiveness of the contempt laws. It may be possible to gauge their effectiveness by the fact
that cases in which proceedings have been stayed (that is, stopped) in recent years as a result of prejudicial
publicity are rare, although there are examples where proceedings have been temporarily halted or
otherwise affected.

24. Although we acknowledge the inevitable tensions which this balancing act creates in a free society,
we consider that the contempt laws are an effective tool in protecting court proceedings.

Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory
body, might be exemplary rather than compensatory.

25. The Government is firmly of the view that the availability of exemplary damages in civil proceedings,
including proceedings for libel or invasion of privacy, should not be extended by statute beyond the limited
instances in which they are currently available under the common law (namely in the case of oppressive,
arbitrary or unconstitutional action by a public servant and where the tortfeasor’s conduct was calculated
to make a profit which might well exceed the compensation payable to the claimant), and it does not intend
any further statutory extension of exemplary damages.

26. In general terms the purpose of the civil law on damages is to provide compensation for loss, and not
to punish. The function of exemplary damages is more appropriate to the criminal law, and their availability
in civil proceedings blurs the distinctions between the civil and criminal law.

27. In relation to the law on libel, in the 1990s concerns were widely expressed that the level of libel awards
was disproportionate in comparison to personal injury awards. Following the 1997 judgment in John v
Mirror Group Newspapers Ltd, the judge is allowed to indicate to the jury in libel proceedings the level of
damages he or she feels is appropriate. The judge is also able to draw attention to the conventional
compensatory scales of award in personal injury cases. These provisions have helped to ensure greater
proportionality in the level of awards. Introducing exemplary damages would undermine this position and
would potentially lead to inflation in the level of awards, which would renew concerns in this area.

The impact of Conditional Fee Agreements on press freedom.

28. The Government believes that Conditional Fee Agreements (CFAs) play a role in giving people
access to a remedy to help them clear their name if they have been defamed, and rebuild their reputation;
and deal with gross invasions of privacy. Given the power of the media, it is right that people should have a
remedy when defamed, and because of the high level of costs inherent in bringing a claim it is likely that
those with modest means will continue to rely on CFAs. The existing CFA arrangements in England and
Wales are compatible with the European Convention on Human Rights. However, we recognise that the cost
control mechanisms administered by the courts may not be working as effectively as they could, and are
aware of the difficulties faced by the media as a result of disproportionate costs particularly in
 defamation cases.

29. In line with the Government’s commitment to achieving reasonable and proportionate cost controls
in all cases funded through CFAs, we are considering a number of measures to help address disproportionate
costs in defamation cases. Any changes to the existing arrangements would of course be subject to
consultation with the relevant parties. This should help deal with the concerns around disproportionate
costs in defamation cases.

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CONCLUSION

30. There is always room for improvement in matters requiring judgement and subjective opinion, and we have indicated above where we think change is appropriate. But given the advent of fast-moving technology, it is important that the industry continues to monitor its performance critically. For its part, the Government aims to work alongside the industry to help ensure that it has the tools and the time to do so. Our Digital Britain programme, for example, is about building a plan to secure the UK’s position as a world leader in innovation, investment and quality in the digital and communications industries. It will build on the significant cross-Government work to date and bring together existing expertise to develop a strategic and coherent plan to support the sectors and provide a catalyst for growth. An interim report will be published early in 2009 with the final report late in the spring.

January 2009

Witness: Barbara Follett MP, Minister for Culture, Creative Industries and Tourism, Department for Culture, Media and Sport, gave evidence.

Q1072 Chairman: For the final session this morning can I welcome the Minister for Creative Industries from the Department for Culture, Media and Sport, Barbara Follett. We were speculating as to whether or not the press could fall under the definition of the creative industries, which might have some bearing on our inquiry!

Barbara Follett: I will resist that one, Chairman!

Q1073 Mr Sanders: How does the Government support the freedom of the press whilst ensuring that press standards are maintained?

Barbara Follett: Mainly by not interfering in their regulation in any way at all. The press is bound by the law just as we all are bound by the law. What my Department does is to monitor any new legislation coming in from Europe to make sure that as a government we are not inadvertently placing specific restrictions or demands on the press and other media that do not apply in the wider population. I have been a practising politician now for 50 years. The first half of that time was spent in apartheid South Africa where the press was mostly definitely not free. I know the difference that it makes to have a free press and freedom of expression. I and my Department are very committed to maintaining that freedom.

Q1074 Mr Sanders: Does your Department have contact with the PCC? How do you communicate with them?

Barbara Follett: We do not have formal conduits of contact but we have a great deal of informal contact, particularly when answering letters from people who are dissatisfied, say, with something the PCC has done or with something that has appeared in a local or national newspaper. We quite often refer it back to them. So although there is no formal conduit, there is a great deal of informal contact.

Q1075 Mr Sanders: So if you are getting complaints about the failure of the regulatory system, is self-regulation of the British press working, or has the time come for a statutory regime?

Barbara Follett: Let me answer the second part of that first. At one point I was almost willing to give my life up to make sure that the press was free and it was not governed by lawyers. I believe that the best way of governing anything is for that governing to be internalised, to be something that you do yourself. I think the system of self-regulation works. It has worked better since 1991 when we got in the PCC. Obviously there are times when it could work perhaps more tightly. I really value what this Committee does on an almost annual basis to get us to stand back as a government and as the press and look at where we are and where we are going.

Q1076 Mr Hall: We have heard evidence from Gerry McCann who successfully sued the Express Group for a reported £550,000. In his evidence to the Committee, when he was asked why he did not go through the press complaints procedure, he told us he had been advised both by his lawyers and by the PCC that that would not be the most effective way. Had he gone to the PCC the Express may well have been censored, but that would have been about it.

Barbara Follett: I listened to Mr McCann’s evidence as it was given to this Committee and read it with great interest. What he wanted was the Express to stop doing what it was doing and in that case the best recourse is to the law. We have a whole series of laws in this country which do defend the individual and he used those laws. The Press Complaints Commission is very effective in getting something changed or an apology into the press. Here is one area where I personally feel more attention should be paid to, although I welcome the attention the Press Complaints Committee has given to it over the past four years, which is where the apologies are situated in the newspaper and the size of type that they are situated in. From my own personal experience, the offence can be on page two in large type and the apology basically somewhere around the ads in very small type, and that is something which I would like to see changed. The McCanns went to the law. You have two things available to you in the British system and he chose the second.

Q1077 Mr Hall: He also said in evidence to us that he was deterred from going to the PCC because it is so aligned to the newspaper industry and the editors actually serve on the PCC. Even though the Editor of the Express was in conflict with the PCC, that was one of the reasons given by Gerry McCann for not going down that route. What is your view about the fact that it is so aligned with the newspaper industry that this self-regulation can appear to be less than credible?
Barbara Follett: I come back to the point that I made earlier, which is that if you are going to maintain the freedom that is done by the press they have to recognise the wrong, they have to correct it. I am glad that the Press Complaints Commission has changed the balance of professionals and lay members on the Commission. Previously it was 50:50 and now it is 66:33 and I think that is healthy. I would expect—and I think this does occur—that if a complaint is made against a particular newspaper, in this case the Express, then the editor of that paper, if he/she was on the Commission, would excuse themselves at that point and it would be dealt with by his/her peers.

Q1078 Mr Hall: If the PCC ruled against a particular newspaper, do you think that should then disqualify the editor of the newspaper from serving on the PCC?

Barbara Follett: It would really depend on the case. If it could be proved that that editor had knowingly and willingly flouted the Code—and I think it would be quite difficult to prove that because I believe that most editors ever since 1991 do pay attention to the Code—then I think there might be a case for the Press Complaints Commission looking at doing that.

Q1079 Mr Evans: Minister, you said that sometimes they will splash a story which they may even know to be inaccurate simply to get the circulation and yet the apology that comes several days later is hardly noticed because it is so small. Would you like to see legislation put in place that says that when a newspaper gets it wrong the apology should be of equal prominence, on the same page where the newspaper gets it wrong? I would expect—and I think this does occur—that if a complaint is made against a particular newspaper, in this case the Express, then the editor of that paper, if he/she was on the Commission, would excuse themselves at that point and it would be dealt with by his/her peers.

Barbara Follett: Can I correct something first? What I said is that the apology is generally far smaller and far more remote in relation to the story. I did not say that they knew it to be inaccurate. Saying sorry is something that is done towards the back of the paper in quite small type. I do not know if it is necessary to legislate. What we should do—and I know the Press Complaints Commission have looked at this and have been much more proactive about it in the last four years—is to get them to realise that that is the way to build trust with their audiences and with people. I do not know if you always need a law for that. I am not ruling a law out. When the Secretary of State for Justice gave evidence to this Committee he said he does not rule it out but it is only when the balance goes badly off. We have got a system that is quite complex and quite well balanced and I am proud of that system. It has its successes and it has its failures. What we have to do is to try and get the system to work. It would be a failure if we had to put in a statutory measure.

Q1080 Paul Farrelly: One of the complaints that we have heard is that people generally do not know how appointments to the PCC are made. This has been a long inquiry and I am not sure I am any the wiser. How do you think the PCC could make itself more transparent in the way it appoints people?

Barbara Follett: There is some work to be done here, you are quite right. Over the past eight years or so they have made some attempts. I think under Sir Christopher Meyer they brought in a roadshow, which at first I thought was rather odd, but it does seem to have helped to bring the PCC to people’s attention. They should put more on their websites and more in newsletters. Transparency does not just mean being passively transparent, you have to be actively attempting to inform. So I think there is some room there for improvement and work to be done.

Q1081 Chairman: Can I take advantage of this morning’s session? Part of the issue that we have been looking at is the effect of massive media exposure on people who come from backgrounds where they have never had any real experience of dealing with the media. We looked particularly, for instance, at the relatives of those who committed suicide in Bridgend. I would like to focus on an example that has happened in the last 24 hours and that is Susan Boyle. You will be aware that there is a lot of concern about the way in which suddenly she was thrust into the media spotlight and the effect that it had on her. This is going slightly beyond the remit of our present inquiry but it is directly within your responsibilities as a minister. Do you think that the broadcasters had a duty of care towards her and did they fulfil it?

Barbara Follett: This is a very difficult judgment. It is obviously something that Ofcom will be looking at with ITV. I must confess that knowing I was coming in front of this Committee lead me for the first time to watch Britain’s Got Talent and I got quite hooked.

Q1082 Chairman: You have been missing out! Barbara Follett: I have indeed. I watched the Friday night and the Saturday night episodes. You could see the strain that Miss Boyle was under, but then other contestants were too. It is fair to say that throughout her life she had sought this kind of activity by entering talent competitions and things like that. I am old enough to remember, and possibly one or two others on this Committee are, something called Opportunity Knocks and there they had a clapometer, not phone-ins or anything like that. The difference between Opportunity Knocks and Britain’s Got Talent is the new media. I first heard of Susan Boyle when I was in the United States through YouTube. YouTube had brought her to the attention of the American public and the American networks. What you do just in this room within 24 minutes can get around the world, and that is the difference, your duty of care is greater. There is obviously concern about Miss Boyle and obviously Ofcom will be in conversation with the producers of Britain’s Got Talent about it.
Q1083 Chairman: Is it your understanding that the Broadcasting Code does cover the requirement on companies to protect people they are employing or promoting?

Barbara Follett: Yes, it is particularly clear in the case of children or minors. It is more difficult in the case of an adult because we also protect freedom of choice. Miss Boyle obviously did choose, but she did not choose the effects, she was not aware of the effects. To some extent I think she has been a victim of the changes that your Committee has discussed. All of you will remember Evelyn Waugh’s book *Scoop* and the daily beast, the newspaper. The trouble is that the beast, which is the 24-hour news cycle, has got much, much bigger over the past 20 years. The appetite of that beast is almost insatiable, yet the food is much the same as it was when I first became aware of newspapers in the 1950s. So they are having to possibly chase after that food in a slightly more proactive way than they would before and that can cause problems.

Q1084 Chairman: You have said to us that you watched the Friday and Saturday night episodes. Can I therefore just take advantage of this and ask whether you felt uncomfortable about Holly Steel, the 12-year-old girl on Friday night and the fact that she clearly experienced such intense misery in front of eight million people?

Barbara Follett: Yes, I did, particularly as I have a granddaughter of much the same age who probably would have done much the same thing. Again, Holly and her parents chose to do this. Holly obviously got a great deal of satisfaction out of it. It is a very difficult call. Again, I am sure that Ofcom will be in conversation with the producers of the show about this and about future appearances.

Q1085 Chairman: Is it your understanding that Ofcom is intending to look at taking Holly Steel out—

Barbara Follett: No, it is not my understanding. Given all of the interest, the continuing interest today, that probably will happen.

Q1086 Chairman: Do you think they should?

Barbara Follett: I certainly think they should have informal conversations and then find out exactly what happened.

Q1087 Mr Evans: Just to clarify on Susan Boyle, post her being admitted to the Priory and the coverage of that, you are fairly uncomfortable reading those stories, are you?

Barbara Follett: Yes. You do not want anything that is basically meant to be fun, aspirational and interesting to turn into something that is very difficult for one or two of the contestants. Why I hope that the producers and Ofcom will have a conversation about it is that you just have to look at measures and ways and preparing people. Like me, you are MPs. Nobody really prepares us for the shock of office, and it is a shock and we know that and the shock of sudden exposure is difficult.

Q1088 Mr Evans: Do you think there should be some sort of limits put on what somebody termed “abuse television” regarding some of the remarks that the judges make on some of the contestants or do you think it is fair game, people should know what to expect and the fact that they are going to be humiliated in public is tough?

Barbara Follett: People go into that show knowing what it is about. I think most of us are subject to fairly ritual humiliation within this place and you learn how to deal with it. As it is part of the game and part of the show I find it hard to judge, but I think you would certainly have to prepare your contestants for it and say, “Are you up for this?”.

Q1089 Chairman: Do you not find it at least curious that here we are discussing whether or not Ofcom is going to step in and talk to the broadcasters about their responsibilities to ordinary people who are thrust into the media spotlight and therefore there are no specific rules and statutory requirements, whereas with the press, who are equally culpable, there is no ability for you to have that conversation at all? Indeed, there does not appear to be any particular concern expressed about the actions of the press in this case.

Barbara Follett: There is a concern. I think there is concern from the general public and probably concern at higher levels as well. We have put a barrier between government and press regulation for very good reasons. As I said earlier, I have seen and lived in a society where that barrier does not exist. What you risk when you lift that barrier is interference and occasionally short-term advantage or popularity or restricting something for other means. We have to be intensely careful. We have to monitor all the time what we are doing. I like the fact that there is that barrier.

Q1090 Paul Farrelly: We have got Ofcom and *Britain’s Got Talent*, we have got the FSA and all sorts of committees of the good and the worthy examining the systemic failure of the banking system, yet in the McCann case, which many would say was a systemic failure of the press, no one has been demoted, sacked or disciplined. What sort of regulator does not try and encourage an industry to try and learn from its mistakes and promote better standards? What sort of regulator is the PCC?

Barbara Follett: The PCC cannot impose fines unlike Ofcom and other regulatory bodies, but it is there to get the industry to internalise. You cannot be disciplined if you do not internalise it. Doctors take a Hippocratic Oath. Doctors are prevented from practising for a while. The PCC does not have that ability. I think we interfere with this delicate system at our peril, as I keep saying. We have to make sure through committees like this—and your Committee has been invaluable in holding up this mirror—that people are aware. Public opinion is also something which newspapers have to take into account. In this country at the moment there is a distrust of many newspapers and I think that could be the price that they are paying for perhaps not doing as much fact checking as they did in the past.
I have to declare an ex-interest here. My husband was a journalist. He was trained by Thompson’s. This was the mantra they all had to write down: “Facts are sacred, opinion is free”. When you had Mr Greenslade here he talked about the balance in newspapers being much more towards facts and now much more towards opinion and celebrity. I think that is part of the reason. You go looking for facts in a newspaper. In a newspaper, unlike the electronic media, you are looking for facts that are interpreted within a certain parameter. You will know the political and moral parameters for various newspapers, but you are looking for facts you can trust and when that trust is broken the connection with the public begins to break down.

Q1091 Paul Farrelly: You do not have to interfere by means of statute, you can actually interfere by saying you should call yourself a regulator. In no other sphere of life, after the McCann case, if they were a regulator, would there not have been some inquiry into how we can better proceed in the future to raise standards and yet the Press Complaints Commission did nothing? Leading figures in the ministry as well as other commentators can say, “Come on, get your act together.” It was shameful.

Barbara Follett: That happened in 1990 when the old Press Council was reformed into the Press Complaints Commission and the Editors’ Code came into practice. When you look at that code, it is a very tight code and a very good code. I still think that this system is a good one backed up by the Press Council was reformed into the Press Complaints Commission and the Editors’ Code came into practice. When you look at that code, it is a very tight code and a very good code. I still think that this system is a good one backed up by the barrage of laws that you have got. We have got those laws as well and we can use those laws. So we have got the two working together.

Q1092 Paul Farrelly: Christopher Meyer came before the Committee and said nothing is broke and therefore nothing needs fixing. Would you share that analysis? Take the McCann case, for example.

Barbara Follett: That was repeated by the Secretary of State for Justice as well that nothing is broke. I think nothing’s broke, but there are a couple of cracks and I think it would be wise if they had to look at them and to repair them.

Q1093 Paul Farrelly: What are the two cracks? Barbara Follett: It is going back to the facts are sacred. I know that you have also taken evidence about how the 24-hour news cycle and the cuts in journalism make it more difficult to fact check, but I do think it is essential because it is accuracy and truth on which we should base our trust. That freedom which we prize is the freedom to be truthful.

Q1094 Paul Farrelly: What is the second crack? Barbara Follett: I am not sure that there is a second crack. I think you just get cracks around that where you are not being sufficiently rigorous. You need rigour. I am not sure you need a law to bring in rigour. You need changes of practice and management practice.

Q1095 Mr Evans: Are you worried that investigative journalism and the freedom of the British press are being “chilled” by litigation or the threat of litigation?

Barbara Follett: Not particularly because that is another one of our checks and balances in our very complex system. I think the chilling effect you are referring to is the CFAs. One of the things that did worry me was that only people of quite substantial wealth could actually risk taking court action because it is so expensive.

Q1096 Mr Evans: Can the CFAs get round it then?

Barbara Follett: They help to.

Q1097 Mr Evans: We have heard from some newspapers and magazines that they feel that the threat of the costs are so big sometimes that it is dampening down some of the stories that might otherwise appear.

Barbara Follett: There are ways of saying things. I do not know if they damp down the stories that appear. They probably damp down some of the more excessive points. There are ways of saying things. If an editor—and this is one of the glories of our system—feels that it is in the public interest and what he or she is about to say is accurate and true then surely no court of law can rule against them.

Q1098 Mr Evans: What about prior notification, do you believe that is something that should be made available?

Barbara Follett: Yes. I do think it should be slightly longer than the occasional 30 minutes or perhaps two and a half hours.

Q1099 Mr Evans: You mean being phoned on a Saturday afternoon?

Barbara Follett: Preferably a Saturday afternoon or a Sunday, yes.

Q1100 Chairman: When you say yes, do you mean that you think there should be a requirement for prior notification?

Barbara Follett: I think it is something that good practice should dictate. For example, as MPs of whatever party, if we are going to mention each other in the Chamber, politeness dictates that we say, “John, I am about to stand up and say something.”

Q1101 Chairman: Like the dreaded call from The Daily Telegraph!

Barbara Follett: Yes. The Daily Telegraph gave six hours’ notice to me and perhaps slightly less to others and more to others. I do think prior notification is right because it is about the rigour of checking facts because your facts could be wrong.
Q1102 Chairman: You will be aware that there has been a formal request or campaign to this Committee, particularly from Max Mosley and Schillings and others, that we should look to make it a legal requirement that newspapers do notify someone that they are about to splash them all over the front page. Is that something you have sympathy with?

Barbara Follett: Not to put it into statute but to put it into the Code. I think it would be something worth considering.

Q1103 Paul Farrelly: Jack Straw has issued a very sensible document looking at conditional fee agreements. Has DCMS put a submission in?

Barbara Follett: Which document was this?

Q1104 Paul Farrelly: On CFAs. He said that had been a particular problem.

Barbara Follett: Yes, it has. I know certainly my officials have had a great deal to do in talking to them. He has a consultation which might have just closed or is about to close on this and certainly my officials have been working with his on that.

Q1105 Paul Farrelly: Have you put a submission in on that?

Barbara Follett: I would have to ask my officials.

Q1106 Paul Farrelly: Could you let us know?

Barbara Follett: Yes.

Q1107 Paul Farrelly: Jack said that another area of concern the Department is going to launch a consultation into is single publication to try and make sure that the libel laws here—

Barbara Follett: Libel tourism.

Q1108 Paul Farrelly: —march with the times and the internet. What is your view on that?

Barbara Follett: I welcome the consultation because there is a great deal of anger, particularly in the United States, because the burden of proof rests differently in our system to the United States’ system. They feel quite strongly about this. I am pleased the United States is about to pass a law.

Q1109 Paul Farrelly: When I was a journalist in the days before the internet you got a year of grace. You published and then you waited for a year before the Russian oligarch sued you and then you breathed a sigh of relief on day 366. With the Internet now you do not because every time it appears it is a fresh publication. What is your view on making sure we march with the times and do not, while we are trying to reform parliament, keep with the Duke of Brunswick in making sure that publication is on the day it is published, not every single time it appears on the internet?

Barbara Follett: I am not quite sure what you mean by that. Forgive me.

Q1110 Paul Farrelly: I may have published something 15 years ago. Before the internet people would have a year to sue me. These days what I have published 15 years ago may be lurking online in some archive and then 15 years later someone could dig it up and say, “I’m going to sue you”.

Barbara Follett: I think there has to be a statute of limitations somewhere on this, but I am not, as you can tell, very well informed in this area.

Q1111 Chairman: Finally, Minister, you have already indicated that you see part of the problems in the press in terms of no longer spending so much time on fact checking, et cetera, essentially stemming from the enormous financial difficulties which are now affecting the media. That is the subject of our next inquiry, particularly the effect on local newspapers and radio and television. Do you see that as perhaps the biggest challenge that is now affecting all of these different areas, about the quality of the media, et cetera?

Barbara Follett: The very nature of newspapers, the press, as we know them, is an enormous concern to me and to my Secretary of State who recently held a meeting about the local media because local media is essential. It is the way people know about council meetings, court cases, road closures, those small things which make up local life and they are very much under threat. National newspapers too. I know of some that are losing £50 million a year. That is not sustainable. I do not know where the future lies. I am very interested in you holding an inquiry on that. We are at a crossroads of enormous change.

I have five children. The two elder ones in their forties read newspapers. The other three who are in their thirties do not. As for my grandchildren, they say, “Oh, granny, you can get that on the internet. Why are you bothering to buy it?” Well, because I like holding it! That is not an explanation for them.

I want to retain what is best from our newspapers and at their best they are wonderful. I want to make sure that that local news as well is preserved. The business models, new ways, we need them.

Q1112 Chairman: That is what our next inquiry will seek to try to find out. May I thank you very much.

Barbara Follett: Thank you all.

Supplementary written evidence from the Department for Culture, Media and Sport and the Ministry of Justice

1. We welcome the Committee’s regular scrutiny of issues around press regulation. We believe this is an important area and it also reminds the press of the responsibility and privilege that is self-regulation.

2. The Committee has set out a number of areas that they wish to investigate. We have grouped our responses together where that is more practical.
Why the self-regulatory regime was not used in the McCann case, why the Press Complaints Commission (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case.

Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime.

3. It is vital to note that while the Editors’ Code of Practice offers a layer of protection, it is not the only protection. The Code is complementary to the law. There are various laws protecting different aspects of privacy and accuracy, if the inaccuracy is defamatory; for example, the Data Protection Act 1998, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act 2000. Individuals then have the right and the choice to decide whether they wish to pursue a legal option—in some cases, a criminal one—or the self-regulatory option of submitting a complaint to the PCC. The reasons why aggrieved parties might choose between these routes will depend on personal circumstances. For example, the desire to secure financial compensation might influence the decision to take the legal action.

4. As a general rule, the PCC does not investigate matters if they are sub-judice. This must be right as there is the danger that it could prejudice the outcome of a trial and find itself in contempt of court. However, the PCC must then decide whether to carry out its own inquiry. When matters of privacy are under consideration, an investigation may lead to a further breach of privacy. We understand there have been occasions when the PCC has been asked not to investigate by those involved in a particular story. The PCC must consider all the factors on a case by case basis.

5. Changing case law alters the playing field for newspapers. For example, the 2004 von Hannover judgment in the European Court of Human Rights, held that the public does not have a legitimate interest in knowing where a public figure is (in that instance, Princess Caroline of Monaco) and how they behave generally in their private life, even if they appear in places that cannot always be described as secluded, and despite the fact that they are well known to the public.

6. The PCC had also been moving in this direction and developing its own “case law” which concluded that one might sometimes have a reasonable expectation of privacy even in public places.

7. Newspapers have had to make changes in how they operate. It is now commonplace to see photographs in which the faces of children have been pixelated so that they cannot be identified, even if those photographs were taken in a public place or at a public event.

8. Newspapers and media organisations are aware of the need to police themselves in this regard and have done so on many occasions. News International and Hello magazine, for example, announced that they would not be using paparazzi photographs of Kate Middleton in their publications. These actions effectively “killed” the market for these freelance photographers, and meant that Ms Middleton’s privacy was protected.

9. Generally, we support measures such as the self-regulatory Code of Practice which serve to increase the range of options open to complainants.

The interaction between the operation and effect of UK libel laws and press reporting.

Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one.

10. The exercise of the right to freedom of expression, which is protected by Article 10 of the European Convention on Human Rights (ECHR), carries with it duties and responsibilities. It is not an absolute right, and can be restricted for a number of reasons set down by law, such as public safety, the prevention of crime, or respect for the rights or reputations of others. Often, the right to freedom of expression may need to be balanced against other rights, like the right to respect for private and family life, home and correspondence, which is protected by Article 8 of the ECHR.

11. The balance between these rights is fundamentally a task for the Courts. Even if the Government was to legislate to help clarify the issue, there will always come a point at which the balance has to be drawn and that is properly a decision for the courts. While the Government has not ruled out future legislation on this point, such a law would be very difficult to draft. We are not considering taking legislative action at the moment.

12. It is important that the civil law provides people with an effective tool to challenge damage to their reputation resulting from the publication of defamatory material, or unjustified intrusion into their private life. In each case, a balance must be struck between the competing interests of the parties on the basis of the circumstances of the case. The balance of competing rights in individual cases is very much the task of the courts, and Parliament should only intervene if there is clear evidence that the courts are systematically striking the wrong balance. We do not consider that this is the case, and we believe that the current law strikes an appropriate balance between the interests of claimants and defendants.

13. In relation to the law on libel, the law currently provides a range of defences to protect defendants against inappropriate allegations of libel. In the case of primary publishers, the Defamation Act 1952 provides the defences of justification (ie that the material is true); fair comment, which protects statements of opinion or comment on matters of public interest; absolute privilege, which guarantees immunity from
liability in certain situations (eg in parliamentary and court proceedings); and qualified privilege, which grants limited protection to statements in the media on public policy grounds provided that certain requirements are met.

14. In the case of secondary publishers, the Defamation Act 1996 provides that a defendant will not be liable where he or she is not the author, editor or publisher of the statement complained of; took reasonable care in relation to its publication; and did not know, and had no reason to believe, that what he or she did, caused or contributed to the publication of a defamatory statement.

15. In relation to privacy, a number of remedies are already available for specific types of breach of this right and they allow the courts to strike different balances between competing rights in different circumstances. These include the Protection from Harassment Act 1997 (which protects against conduct causing alarm, harassment or distress); the Regulation of Investigatory Powers Act 2000 (which protects against the improper interception of communications or surveillance); the Data Protection Act 1998 (DPA) (which protects against the abuse of personal information); and common law remedies including malicious falsehood; nuisance; and breach of confidence.

16. We have no plans at present for a general review of the law on libel or privacy. However, we will of course consider very carefully any recommendations that the Select Committee put forward. We intend to publish a consultation paper on specific issues relating to defamation and the internet. The focus of the consultation paper will be on aspects of the law that the Law Commission identified in its 2002 scoping study “Defamation and the Internet” as meriting a review. These include the liability of internet service providers for defamatory material posted on their websites, and the operation of the “multiple publication rule” in relation online archives, under which each time defamatory material is accessed in an online archive, the action constitutes “publication” and it gives rise to a new cause of action. We intend to publish this consultation paper soon.

17. Concerns have been expressed to the Select Committee on the subject of “libel tourism”. The Select Committee requested any available details about the number of cases where issues of jurisdiction have arisen. Unfortunately HM Courts Service does not hold this information. We can also confirm that no representations have been made to the US Government on this issue.

18. The subject of “libel tourism” primarily raises issues relating to the jurisdiction of the courts, and the rules vary according to whether the case is covered by European Community legislation. If the case is covered, Brussels I Regulation applies and has precedence over national law. English courts have no general capacity to refuse jurisdiction or stay proceedings under Brussels I. In defamation cases which involve defendants domiciled in a non-EU jurisdiction, the Brussels I Regulation will not generally apply. This includes the United States, where concerns about “libel tourism” have arisen.

19. In those cases the well-established doctrine of forum non conveniens enables the English courts to decline jurisdiction in cases where they consider that it would be more appropriate for a foreign jurisdiction to determine the proceedings. The doctrine of forum non conveniens represents a wide judicial discretion which is exercised in the interests of justice and on the facts of a particular case. A number of factors will be relevant, including the extent of publication in England compared to elsewhere; whether the claimant is resident and carrying on business in England or otherwise connected; whether there is real or likely damage to reputation in England; and the location of witnesses.

20. The European Commission has recently published a Green Paper seeking views on the operation of the Brussels I Regulation. This raises the possibility that the grounds of jurisdiction available to all claimants should be contained in that Regulation. This would exclude the current national grounds of jurisdiction currently available to claimants in certain libel proceedings. In the event that this proposal is accepted within the Community, it would mean that the forum non conveniens doctrine as it currently stands under English law would no longer be available in libel proceedings. On this basis, jurisdictional issues in relation to other countries such as the US would be governed by the new European Community provisions.

21. The European Commission’s proposals will of course be subject to detailed scrutiny and negotiation before any new provisions are agreed. However, this does mean that any detailed review of the operation of the forum non conveniens doctrine (even if this was considered to be necessary) would not be appropriate at present. The Government will of course ensure, through the Scrutiny Committees in both Houses, that Parliament is kept properly informed of developments in relation to the Commission’s proposals on Brussels I.

What effect the European Convention on Human Rights has had on the courts’ views on the right to privacy as against press freedom.

22. The ECHR—namely Articles 8 and 10—has inevitably had an influence on domestic courts’ approach to privacy and press freedom, particularly since these Articles were incorporated into UK law under the Human Rights Act 1998 (HRA). However, it is important to note that jurisprudence on the law of confidence was already undergoing a period of development and to consider the impact of the ECHR in this context.
23. On the question of the general interrelationship between the decisions of the European Court of Human Rights and the UK court, Lord Hoffman raised some very interesting questions in the Judicial Studies Board Annual Lecture on 19 March 2009, which we are looking at carefully.

The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the internet.

24. This section concerns the law of contempt, principally as set out in the Contempt of Court Act 1981, which provides for “strict liability contempt”. This applies in respect of all publications (including broadcasts) whether off-line or via the internet, which are addressed to the general public, or a section of it, and which create a substantial risk that the course of public justice will be seriously impeded or prejudiced.

25. The 1981 Act also allows for specific discretionary restrictions on reporting the proceedings, under section 4(2) and section 11. In considering whether to impose restrictions of this nature, the Courts have regard to the fact that the general presumption is in favour of open justice and the full and free reporting of public court proceedings. REGARD is also had to the qualified right of freedom of expression under article 10 of the ECHR, and the requirement that interference with this right has to be strictly necessary in a democratic society to protect, amongst other things, the rights of individuals and the authority and impartiality of the judiciary.

26. As regards strict liability contempt, there is a delicate and on occasion difficult balance to be struck between allowing full and free reporting of developments in ongoing investigations and proceedings, and the protection of public justice. The Courts have developed a range of factors which are applied to the particular issues presented by each case and the general test set out in section 2 of the 1981 Act, applied in the light of these factors, allows the court flexibility in determining where the balance lies on any particular occasion.

27. The internet and the ease with which user-generated information can be published on various sites has introduced a new dimension to the application of the laws on contempt. Although it has long been possible for people to have access to otherwise restricted sources of information, the internet exacerbates this situation.

28. However, it is important not to overestimate the impact of the non-mainstream media. The exposure of information in the mainstream media remains a means of causing particular prejudice to proceedings, because so many of us are exposed to it and, in most high-profile cases, concerns are more likely to arise about the activities of mainstream media organisations.

29. In any event, the current law applies equally to the internet and we do not think that the existence of the internet or other new forms of communication undermines the need for the law or the justification for its continuance.

30. We keep the law in this area under review. The balance to be struck between freedom of speech, including the legitimate right of the public to know about developments in high profile cases, on the one hand, and the protection of justice and the right to a fair trial on the other, requires ongoing assessment to be made of the effectiveness of the contempt laws. It may be possible to gauge their effectiveness by the fact that cases in which proceedings have been stayed (that is, stopped) in recent years as a result of prejudicial publicity are rare, although there are examples where proceedings have been temporarily halted or otherwise affected.

31. Although we acknowledge the inevitable tensions which this balancing act creates in a free society, we consider that the contempt laws are an effective tool in protecting court proceedings.

Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, might be exemplary rather than compensatory.

32. The Government is firmly of the view that the availability of exemplary damages in civil proceedings, including proceedings for libel or invasion of privacy, should not be extended by statute beyond the limited instances in which they are currently available under the common law (namely in the case of oppressive, arbitrary or unconstitutional action by a public servant and where the tortfeasor’s conduct was calculated to make a profit which might well exceed the compensation payable to the claimant), and it does not intend any further statutory extension of exemplary damages.

33. In general terms the purpose of the civil law on damages is to provide compensation for loss, and not to punish. The function of exemplary damages is more appropriate to the criminal law, and their availability in civil proceedings blurs the distinctions between the civil and criminal law.

34. In relation to the law on libel, there were concerns that the level of libel awards was disproportionate in comparison to personal injury awards in the 1990s. Following the 1997 judgment in John v Mirror Group Newspapers Ltd, the judge may provide an indication, to the jury in libel proceedings, of the level of damages that he or she feels is appropriate. The judge is also able to draw attention to the conventional compensatory scales of award in personal injury cases. These provisions have helped to ensure greater proportionality in the level of awards. Introducing exemplary damages would undermine this position and would potentially lead to inflation in the level of awards, which would renew concerns in this area.
The impact of Conditional Fee Agreements on press freedom.

35. The Government believes that Conditional Fee Agreements (CFAs) play a role in giving people access to a remedy to help them clear their name if they have been defamed, and rebuild their reputation; or deal with gross invasions of privacy. Given the power of the media, it is right that people should have a remedy when defamed, and because of the high level of costs inherent in bringing a claim, it is likely that those with modest means will continue to rely on CFAs. However, we are aware of the difficulties faced by the media, particularly local and regional media organisations, as a result of the high levels of legal costs in defamation and some other publication-related proceedings, and of the potential for this to have a chilling effect.

36. The Government has consulted on measures designed to place more effective controls on these costs. Copies of the consultation paper have been provided to the Committee and are available on the Ministry of Justice website at www.justice.gsi.gov.uk. The consultation paper sought views on the following measures:

— Limiting the recoverable hourly rates by setting either maximum or fixed recoverable rates;
— Introducing mandatory or mandatory consideration of cost capping orders;
— Linking recoverability of after the event insurance premiums to notification and introducing a period post notification during which if the defendant makes an offer of amends or admits liability, the insurance premium is not recoverable;
— Requiring the courts, when conducting costs assessments, to consider the proportionality of total costs.

37. These proposals would help deal with the threat of excessive hourly rates and base rates; limit the recoverability of after the event insurance premiums in cases which settle early; and enable the court to assess different cost elements together to ensure that the costs are proportionate and reasonable.

38. The consultation period closed on 6 May. The responses are being considered and the Ministry of Justice is seeking to implement measures as soon as possible.

CONCLUSION

39. There is always room for improvement in matters requiring judgement and subjective opinion, and we have indicated above where we think change is appropriate. Given the advent of fast-moving technology, it is important that the industry continues to monitor its performance critically. The Government aims to work alongside the industry to help ensure that it has the tools and the time to do so. For example, our Digital Britain programme is about building a plan to secure the UK’s position as a world leader in innovation, investment and quality in the digital and communications industries. It will build on the significant cross-Government work to date and bring together existing expertise to develop a strategic and coherent plan to support the sectors and provide a catalyst for growth.

July 2009

Tuesday 14 July 2009

Members present
Mr John Whittingdale, in the Chair

Mr Peter Ainsworth  Alan Keen
Janet Anderson  Rosemary McKenna
Philip Davies  Adam Price
Paul Farrelly  Mr Adrian Sanders
Mr Mike Hall  Mr Tom Watson

Written evidence submitted by the Press Complaints Commission

Thank you for your letter of 9 July about the allegations of illegal phone message tapping by News International journalists.

It may be helpful to recall the PCC’s role here. Although we had no complaint from the principals affected by the offences for which Clive Goodman and Glenn Mulcaire were convicted, we wanted to ensure that some wider lessons were learned from the episode. We do not have formal, investigatory powers—which would require a statutory basis that would undermine our main work—so there was no question of launching a broad inquiry to establish whether there had been further breaches of the law.

Instead, we wanted to complement the police inquiry, and to establish how the Mulcaire/Goodman arrangement could have been allowed to develop at the News of the World; whether it reflected a more concerted attempt to bypass the Code; and what steps the editor proposed to take to ensure that there would be no repetition. In addition, we thought it important to check that other newspapers and magazines had adequate safeguards in place to prevent a similar situation arising elsewhere, so we broadened our inquiries to take in all major press outlets.

The result of this work was the publication of a report which shone a light on what had happened at the News of the World, drawing on the evidence of the new editor Colin Myler, and included six specific recommendations to publishers. I attach a copy of the report, which was published in May 2007.1

There is no doubt that some of the recent Guardian allegations are concerning—but the priority for us now is to establish whether any of them relate to activity since the publication of our report in 2007, given that the purpose of that report was to eliminate the practice. We are also testing News International’s 2007 submission to us against the claims made in the Guardian, to see whether there is any truth to the suggestion that we were misled. Obviously this will involve approaching the company at some point. We have already approached the Guardian and the ICO, and Nick Davies has agreed to answer questions after he has given evidence to you. Mick Gorrill, the Assistant Information Commissioner, has responded to me, saying that he will be in touch with us later this week. Please find attached a copy of a statement that we issued on 9 July outlining what steps we are taking.2

I would be very happy to come to the Committee at any point to answer any questions you might have about our role in this matter.

July 2009

1 Ev not printed.
2 Ev not printed.

Witness: Mr Tim Toulmin, Director, Press Complaints Commission, gave evidence.

Chairman: Good morning. Before we start this morning can I welcome two new Members of the Committee, Tom Watson and Peter Ainsworth, each of whom would like to make a short personal statement.

Mr Watson: Thank you, Chairman. Just to declare a couple of interests: one is that I have a column in PA News which is remunerated and in the declaration of interests; the second, for the purposes of this case, is that I am currently in dispute with the Sun newspaper. Whilst I do not think that will affect our inquiry I do think it is important that that is on the record.

Mr Ainsworth: Chairman, I think my declaration is slightly less controversial. I am Chairman of the Conservative Arts and Creative Industries Network, and also Chairman of the Elgar Foundation.

Q1113 Chairman: Thank you. This morning’s session is a further one into the Committee’s Inquiry into press standards, privacy and libel. We have decided to hold it, in particular, in response to the stories which appears in the Guardian last week. When the Committee saw those stories it did raise questions not only in relation to our present Inquiry but, also, in relation to the Inquiry which we held
two years ago into self-regulation of the press. It appeared that there might have been some contradiction between the evidence given to us by Les Hinton two years ago and the stories which subsequently appeared in the Guardian. As a result of that, we asked Les Hinton whether he wished to change the evidence he had given to us. He has responded to me: “I do not wish to alter or add to my comments before your Committee. My answers then were sincere and, I hope, comprehensive.” He went on to say that because he is now based in California and has engagements there he was unable to appear today. The Committee will decide who else it wishes to take evidence from once we have heard this morning’s evidence, and we intend to hold a further session next Tuesday. We will obviously wish to put questions to anybody who we think may have additional information to give as part of this Inquiry. Can I welcome our first witness this morning, Tim Toulmin, the Director of the PCC. Tim, the PCC carried out its own investigation following the conviction of Clive Goodman and Glenn Mulcaire, and also the Motorman operation. Can you tell me your response to the Guardian story last week?

**Mr Toulmin:** Before I do that, Chairman, if I may just put into context exactly what the PCC did two years ago, because there have been one or two inaccurate references to it. It was not an inquiry designed to duplicate the police investigation into what happened at News International; it was very much focused on the evidence that came out of that and how lessons could be learned, both about newspapers, more broadly, and the industry. We brought in the issues to do with the Data Protection Act that the Information Commissioner had been campaigning on for several years, and we conducted the exercise in two ways: we went to the News of the World and asked the new editor Colin Myler to explain to us the circumstances in which the Goodman and Mulcaire operation could be allowed to flourish and what he was going to do to ensure it would not happen again. Then we spoke to the rest of the industry to find out what controls they had in place to ensure that such a thing could not happen there and would not happen there in the future. Our concern, therefore, is very much with the integrity of that report and to ensure that these sorts of practices are not going on, because we have deplored them on a number of occasions. The Guardian newspaper’s allegations last week, which were published with great prominence and repeated throughout the media, initially, of course, gave us cause for concern and, indeed, do give us cause for concern about the situation as it was before our report was published. However, we are going to ask further questions, initially, of the Guardian and, also, of the Information Commissioner, about whether there is any evidence we were misled during our inquiries into that report, and whether there is any evidence that the allegations relate in any way to what has happened subsequent to 2007, because the purpose of our report was to clear up this practice where it went on.

**Q1114 Chairman:** When you carried out your own investigations, did you have access to the Information Commissioner’s information relating to operation Motorman?

**Mr Toulmin:** Obviously, all this was in the public domain but before your inquiry in 2007, if you remember, with Christopher Meyer, there was that very question put, and he said, at that point, that he would not release details of individual journalists because he thought it would breach their privacy because they had no charges against them. So, no, we have not seen any more information, but I wrote to the Information Commissioner’s office last week to say we may have some inquiries of them and they have been in touch, and we will be in conversation later this week. If there is anything pertinent, anything new, that they can tell us, obviously we will want to know about that, but it would be very much, so far as we are concerned, to illustrate somehow that the press have not been paying attention to the recommendations or we were in any way misled when we conducted that inquiry.

**Q1115 Chairman:** As far as you can see from what you have read so far, the Guardian stories relate to events which took place prior to your investigation.

**Mr Toulmin:** That will be one of our questions, but as far as I can tell that is the case and obviously you will be able to put that to Mr Davies after I have given evidence.

**Q1116 Chairman:** Was there anything in the Guardian story which contradicts what you know to date and which came as a surprise to you?

**Mr Toulmin:** Obviously, there were some new facts there; the fact of the Gordon Taylor settlement and the amount of money that was alleged to have been involved in that, but we did, of course, know that Gordon Taylor was one of the people who had had their ‘phone messages hacked because it came out during the Mulcaire trial in 2007, and we also discovered during that trial that Max Clifford, Elle MacPherson and one or two other people had also got their ‘phone messages hacked. So the way that has been repeated in the last week, I think, suggests that that is new information, which it is not, but that is not to say that there is not new information which is concerning. In particular, one of the things that concerns us, because I am not sure it has actually necessarily been clarified, is this reference to 2,000 to 3,000 people and mobile telephones. The way in which it was written in the original piece was very carefully done, and it said that “… officers had found evidence of News Group staff using private investigators who hacked into ‘thousands’ of mobile ‘phones. Another source with direct knowledge of the police findings put the figure at ‘two or three thousand’ mobiles.” That story was based on a source, and we would not expect Mr Davies to tell us who that source was, but what he might be able to tell us is whether that means that the News Group were soliciting information for 2,000 or 3,000 mobile ‘phones which is the way in which in some quarters it has been reported, or whether it means that they used a private investigator who separately had been accessing or had made plans to access the mobiles of
2,000 to 3,000 people, which of course is an entirely different allegation, and one which—the latter one—is less severe, as far as News Group is concerned.

Q1117 Chairman: Do you believe that since you amended the Code and since measures were taken across all newspapers to ensure the journalists were aware that these kinds of practices were unacceptable, have you any evidence to suggest that this has continued?

Mr Toulmin: No, not yet. If there is any out there and anyone wants to bring any evidence before us, of course, we will look at it right away. That is a very pertinent point: we do not have that evidence yet, and of course we can only act when that evidence is brought to our attention.

Q1118 Chairman: The widespread anecdotal reports that this sort of thing has been common practice in newsrooms—do you believe that that is or was the case?

Mr Toulmin: I can only say that over the years I have heard rumours that it was the case, but anecdotally, again, talking to people in the industry, those who accept that it did go on some years ago, say it absolutely does not take place now, and, obviously, if it did, given the amount of scrutiny that this Committee brings to it, and the PCC, the police, people know now that they are able to complain to the courts and to the police and the appalling negative publicity that is associated with it, obviously, people would have to be incredibly reckless to carry on undertaking that sort of activity. It is difficult to know for sure, of course, because a lot of this activity will, inevitably, have been going on secretly.

Q1119 Philip Davies: Despite all the hoo-ha in the Guardian about this, it seems to me from what you are saying, and from what John Yates said at the Metropolitan Police, that as far as you are concerned and as far as the police are concerned, there is no new evidence here; it is a sort of regurgitation of what we already knew. Am I right in thinking that that is your position?

Mr Toulmin: There is a lot of what we already knew. There is a lot of stuff from the Information Commissioner’s report into operation Motorman, and the two reports What Price Privacy and What Price Privacy Now, which this committee has examined in previous years. The information from that, as far as I know, relates to activity that was going on in 2002, which was way before I was Director of the PCC, and it has had a good trot around the columns before and people have looked at it. Then there was the information that came out of Mulcaire and the Goodman trial which, of course, was also published widely at the time, and our own inquiries. However, there is some new information: as I said earlier, the fact that Gordon Taylor had sued the paper and got a settlement and the amount of money. There is a suggestion as well that there was another reporter at the News of the World who was aware of what Mulcaire was doing. I think that is new and that is, obviously, something we will be chasing up with the Guardian.

Q1120 Philip Davies: Is it not the case that the News International line to take on the Goodman affair was that this was somebody who was operating as a maverick, totally independently, nobody knew what he was doing (although, clearly, somebody must have known what he was doing). This was the picture being given. Do the allegations in the Guardian not suggest that rather than this being a maverick, acting independently, there was a more widespread culture within the organisation of the News of the World which must have been evident to more people?

Mr Toulmin: I think that is the way that the allegations have been interpreted by a large number of people, and you can ask the Guardian whether it was their intention to imply that. That is certainly the impression a lot of people have got.

Q1121 Philip Davies: I am asking you if that is your impression.

Mr Toulmin: At this stage it is not, because we have had, 2½ years ago, a comprehensive exchange with Colin Myler who conducted an internal inquiry there. If there is anything in the report and anything that you discover today that suggests that is not true, then, obviously, that would suggest that we have been misled and, of course, we would be right on to it. We will be writing to the paper once we have as much information as we can possibly lay our hands on.

Q1122 Philip Davies: Do you think that some people might think that this is the PCC being ineffectual, closing ranks on the newspaper industry, on the journalism industry, not wanting to have a big hoo-ha because it might undermine the whole concept of self-regulation and the rationale behind the PCC itself?

Mr Toulmin: I think whatever the PCC did—if we introduced hanging and whipping and all sorts of ghastly public humiliations for editors—there will always be people that would say that. So I am quite happy to accept that. However, what people should look at is the fact that all of this, all of our activity, takes place in an entirely transparent way. We did not have to, in the way that we are constituted, conduct this exercise two years ago; we did because we thought that public confidence was likely to be undermined by the events at the News of the World in relation to Goodman and Mulcaire. The newspaper and the company co-operated with us at that time. It is worth bearing in mind that we have actually stretched the boundaries of our remit as far as possible. We are a complaints body; we are not statutory; we are like an ombudsman, really. People want us to be more like a general regulator with statutory powers and so on. That is a separate argument: the fact is we are not that body. Nonetheless, based on the industry’s voluntary compliance with the Code of Practice we went as far as we could at that time in order to shine a light on
Mr Toulmin: We cannot be 100% sure without having some sort of God-given powers of seeing into journalists’ minds and private activity. The point is, if you have any suspicion you can go to the police, you can complain to a lawyer, you can come to the PCC, you can go to a newspaper, you can tell Nick Davies about it and he will probably write a lengthy story about how frightful journalists are. There are many ways of obtaining redress. So much scrutiny has been brought into this area in the last few years that I think we can be far more certain than we were that it really does not go on.

Q1125 Rosemary McKenna: The point is: are we sure? That is the point, is it not? Are we sure that it is historical; that it is not happening today?

Mr Toulmin: We cannot be 100% sure without having some sort of God-given powers of seeing into journalists’ minds and private activity. The point is, if you have any suspicion you can go to the police, you can complain to a lawyer, you can come to the PCC, you can go to a newspaper, you can tell Nick Davies about it and he will probably write a lengthy story about how frightful journalists are. There are many ways of obtaining redress. So much scrutiny has been brought into this area in the last few years that I think we can be far more certain than we were that it really does not go on.

Q1129 Adam Price: The Guardian has said that they know for certain that several News of the World reporters were aware of the ‘phone hacking, which directly contradicts the evidence that was given to this Committee and several statements made subsequently by News of the World executives. The News of the World, in its editorial on Sunday, accused the Guardian of being “deliberately misleading”. Is this not a crisis for the industry; that two members of the PCC are accusing each other of lying?

Mr Toulmin: You mean people who subscribe to the PCC Code?

Q1126 Rosemary McKenna: Or that it has gone deeper underground. That is the other scenario.

Mr Toulmin: All these things are hypothetical. I just do not know. I would be extremely surprised, given everything that has happened—the newspapers are fully aware of the sorts of punishments that are available—should they be caught out doing it again. I just cannot imagine. I do not understand why they would do that.

Q1128 Adam Price: You are in a fairly unique position here, are you not?

Mr Toulmin: A fairly —?

Q1127 Adam Price: You are in a fairly unique position, the PCC, because two of your members, are they not, are effectively accusing each other of lying?

Mr Toulmin: You mean people who subscribe to the PCC Code?

Q1124 Rosemary McKenna: Good morning. Are the PCC not concerned that there is an attitude among journalists that this is widespread? For example, on Sunday morning, on The Andrew Marr Show, in the newspaper review, both Sir Trevor McDonald and Amanda Platell, well-known journalists, actually said: “Why are we surprised?” They both actually said that: “Why are we surprised? We know this kind of behaviour goes on.” Are you not concerned about that?

Mr Toulmin: I think it is very depressing that people think that it is widespread and common and that journalists routinely engage in that sort of activity. Of course it is; there is no doubt about it. From where we are sitting, there is evidence—and we have seen evidence, through the court case and there is further evidence in the Guardian—that this has gone on; anecdotally we heard that it used to be more widespread. However, action has been taken, through the courts, the police inquiry at the News of the World, the PCC’s activity and your Inquiry, since all these things apparently were more common, to ensure that it does not happen again. I think we ought to focus for a large part on where we are now. Of course, it is easy to condemn historical transgressions, and there is absolutely no complacency about that at all, but . . .
Q1130 Mr Sanders: What you seem to be saying is you cannot believe what you read in the newspapers. Mr Toulmin: Those are your words, Mr Sanders, not mine.

Q1131 Adam Price: Private Eye is not a member of the PCC.
Mr Toulmin: No.

Q1132 Adam Price: However, I am sure you are an avid reader of Street of Shame.
Mr Toulmin: I am, of course.

Q1133 Adam Price: Can I remind you of a story which appeared in Private Eye in July 2007, where they alleged that Glenn Mulcaire, subsequent to the court case, had been paid a sum in the region of £200,000 by News of the World, they claimed, to buy his silence, and they also went on to say that Clive Goodman could expect a similar payment. Were you aware of that allegation? It has not been denied by the News of the World, to my knowledge.
Mr Toulmin: Was I aware of that? I cannot quite remember that particular story, I am afraid, but it was not actually pertinent to what we were trying to do with the industry, which, as I said earlier, was building on what we knew already through the court case to make sure that things did not happen again. I do not know whether that is true or not, and that would be a question for the principals concerned.

Q1134 Adam Price: You will put that question to the News of the World?
Mr Toulmin: Well, is it relevant?

Q1135 Adam Price: It is relevant.
Mr Toulmin: Is it relevant to whether or not we were misled? Is that what you are suggesting?

Q1136 Adam Price: It is relevant in the sense that the allegation is that they were trying to buy his silence. Specifically, the News of the World denies, of course, that they are trying to suppress evidence, so it is a perfectly reasonable question to put to them. Is this true? Did they pay Glenn Mulcaire £200,000—or somebody close to him £200,000—subsequent to his conviction?
Mr Toulmin: If there is evidence that in doing so they tried to suppress evidence to us that would have been relevant to what we were trying to achieve, then of course it is pertinent to our inquiry. However, we are not going to chase up every rumour and bit of tit-bit that we read in Private Eye, because we would be even busier than we are at the moment.

Q1137 Adam Price: It is a very specific allegation, it has not been denied; surely, the public interest suggests that we have a right to know whether it is true or not. If it is not true they can deny it and then we are all clear.
Mr Toulmin: It is the sort of nugget that might be quite interesting to know, just to satisfy people’s curiosity, but the question for us is whether it is pertinent or not to the report that we wrote and the inquiries that we made at the time. That is the relevance for us.

Q1138 Adam Price: I think it is extraordinary that you think that it is just an interesting “nugget”. Surely, it goes to the heart of how the News of the World has approached this whole issue. The story that the Guardian wrote was about a pay-off and the sealing of court papers to prevent that information from going into the public domain. This allegation is suggesting something similar. Those allegations start to look like a pattern of offending behaviour. We need to know whether they are true, surely?
Mr Toulmin: I think it is important to recognise that there is a division of responsibility here, and the PCC’s authority is rooted in the Code of Practice, which is, as you know, a voluntary document which journalists and editors sign up to. Our way into this issue is clause 10 of the Code which relates to subterfuge and undercover journalism. Our concern, therefore, is respect for that Code by journalists going forward, and, of course, if there is a complaint then we will look into that. There are all sorts of things that go on at newspapers, no doubt, that people might want to know about, or that otherwise fall under different authorities, such as the police; there are all sorts of laws and rules that apply. However, I do not think it is very fair to expect the PCC to “hoover-up” every last allegation that is made about either an individual journalist or a freelancer, and so on; it has got to be relevant and rooted in the rules that we are set up to apply. If that is the case with this payment, which we will obviously look at, then it will become pertinent, but, on the face of it, it does not necessarily sound like it is. Again, that will be a matter for our Board of Directors to consider next week when we put all the information to them.

Q1139 Paul Farrelly: Just on that point, is payment to criminals a breach of the Code?
Mr Toulmin: In some circumstances it can be, yes.

Q1140 Paul Farrelly: Just following Adam’s point—and this is an allegation I am not aware of—if there was a payment, for whatever reason, to people who had been convicted of a criminal offence, would that not be something that you would investigate under the Code, if the complaint or allegation were made to you?
Mr Toulmin: If a complaint is made that a criminal was paid for a story then, of course, it is relevant—if a complaint is made—that that has happened.

Q1141 Paul Farrelly: This is a narrow view of your remit and, probably, why people might want to have you take a more proactive role in terms of standards. Re-reading your report on News International, there was a preoccupation going through it that, actually, the employment of the private investigators was somehow there to subvert the Code when, in fact, it was to go on fishing expeditions for juicy stories.
Mr Toulmin: Which would subvert the Code.

Q1142 Paul Farrelly: You started off, with the Chairman, on looking at what was new and what was not new. Can you tell me: is the Guardian’s list and breakdown from the Motorman affair and the Information Commissioner that one News of the World reporter made 130 requests, another made 118, and there were three different news executives signing off allegedly illegal searches—is that new?

Mr Toulmin: That detail may be new. Again, that is probably a question for the Guardian people. The fact that News of the World journalists were using private investigators came to light during the Motorman inquiry is not new.

Q1143 Paul Farrelly: No, but is the detail new?

Mr Toulmin: It may be new; I cannot—

Q1144 Paul Farrelly: Do you not think it is rather important that you do satisfy yourself whether it is new or not?

Mr Toulmin: We have been through all this, of course, before, with the previous Select Committee Inquiry and with the Information Commissioner. Again, I think that where it is relevant to any suggestion that we have been misled, of course, we will need to find that out.

Q1145 Paul Farrelly: Actually, we have not been through this detail in previous inquiries—

Mr Toulmin: No, but through the issue of the Information Commissioner’s report.

Q1146 Paul Farrelly: We went through a list of fine and upstanding things that Mr Mulcaire told you he had been doing for his retainer, such as credit status checks, Companies House searches and electoral roll searches. This is a different list. We have not gone through a list of allegedly breaking into the DVLA in this detail, into the police national computer—we have not gone through that in previous inquiries. You do not know whether it is new or not.

Mr Toulmin: Obviously, we were aware of what sort of activity was going on; whether precisely we knew the number of News of the World journalists that were associated with each particular offence is new, I am not sure. You will just have to ask the other people that. The point is, we did know these were the types of allegations that were made at the time, but these are matters for the Information Commissioner to prosecute, surely. This relates to breach of the Data Protection Act, allegedly. He decided, for whatever reason—and you have questioned him about this—not to take any further action.

Q1147 Paul Farrelly: I just want to come back to this because I do not agree with you, Tim, and I think people will gain a very poor impression of the PCC if that is the line you continue to maintain. Would you agree: it is the oldest trick in the spin doctor’s book to say that things are an old story, and it is not just a question of whether these happened before 2007 but, actually, the detail of what went on and whether the PCC and Parliament were misled. Do you agree?

Mr Toulmin: Of course, that is hugely important. If there is any allegation either that we or you were misled it is hugely important.

Q1148 Paul Farrelly: If subsequent information has come to light through people whom you have questioned and we have questioned and the record has not been corrected, would you say that is pertinent?

Mr Toulmin: Absolutely, yes.

Q1149 Paul Farrelly: Clearly, would you also agree that the connection between Mulcaire and Motorman and Whittamore is illegality, without a public interest—or alleged illegality.

Mr Toulmin: Yes. Alleged—that is quite important. The relevant authority for dealing with these sorts of complaints, if it was under the Data Protection Act, of course, would be the Information Commissioner. Similarly, the relevant authority for the allegation about the breach of RIPA is the police, and that is why they ended up being prosecuted and convicted.

Q1150 Paul Farrelly: Could you tell us when you conducted all the training seminars?

Mr Toulmin: They were in 2007.

Q1151 Paul Farrelly: Given the Guardian’s allegations, does it concern you (this goes back to my original point) that there were people attending these seminars, or arranging for their reporters to attend these seminars, who clearly knew about the Taylor affair and knew about, if it is correct, the detail of what was being commissioned from Whittamore or Motorman? Does that concern you?

Mr Toulmin: I think any breach of the Data Protection Act, any breach of the Code, any criminality on behalf of journalists, it all concerns me—of course it does—but the whole point of those seminars—seven 2-hour seminars at the News of the World, which all their staff had to go to—was precisely to ensure that further transgressions would not take place, and that people were fully aware of both what the Code required and, also, the law, and their lawyer was there as well, ensuring that they were fully aware of that. It should go without saying that any allegation that this behaviour has gone on at any point, at any level in the company, and anyone was aware of it, is a matter of great concern. The question for us now is: in their submission to us, 24 years ago, were we misled into believing that it was more of a contained problem than it was? That we have an open mind on, and that is one of the points that we are going to be looking at.

Q1152 Paul Farrelly: Can I just ask you what information you are going to be asking News International? Can I ask you a few points? Will you be asking how Mr Mulcaire was paid for his ‘phone hacking activities in the Taylor and the other two cases; whether it came out of the retainer that they paid to Mr Mulcaire or did it come from a separate slush fund as was alleged to have operated at the time of Goodman? Will you be asking that question?
Mr Toulmin: I can see why you are going down that line, but I think I have to be quite clear that this is an ongoing issue. The Board of the PCC must meet and decide precisely what questions to put to the News of the World. In the meantime, we are gathering material from those people who are making the allegations. Nick Davies has kindly said he will answer our questions after he has spoken to you, and the Information Commissioner is giving us some further information as well. At that point, we will decide, as a body, what questions are right to ask to discover what we want to find out. If you have got a specific list of questions you think we should ask then, of course, we will take account of that.

Q1153 Paul Farrelly: Chairman, with your permission, might I just give you four more? I have suggested one that might be relevant. It is directly relevant to the evidence they gave you about Mr Mulcaire’s retainer.

Mr Toulmin: Absolutely. We want to hear them then.

Q1154 Paul Farrelly: Will you be asking them what submissions they made to the court in the Taylor case, and whether they were accurate or not? I think you might wish to ask for the transcripts of the 30 recordings that are alleged to have been made from Taylor’s phone, and the journalists and executives who were involved. You might also ask who knew about what dealings with Whittamore and for copies of the alleged itemised account department records, and whether those were accompanied by statements that the searches were for the public interest. You might also ask, perhaps, how far up the chain of command the settlement of the Taylor case went, and whether indeed it went to the Board of News International and perhaps ask for board records and minutes. Clearly, the record was not corrected as far as the PCC was concerned because you were not told of the case. Is that correct?

Mr Toulmin: We were not told about.

Q1155 Paul Farrelly: The Taylor settlement.

Mr Toulmin: We were not told about the Taylor settlement, no.

Q1156 Paul Farrelly: I have one final question, if I might, Chairman. With Mr Coulson, we made a criticism in our last report of the PCC, that you did not invite him to give evidence regardless, even though he had resigned. Since then, Tim, on our visit to the PCC you have been brave and independent enough to say that, actually, thinking back, the PCC had missed a trick in that and should have called him. Have you got any plans now to put to your Board a recommendation to call him to ask exactly what was going on on his watch and what he has denied knowledge of and what he has not denied knowledge of?

Mr Toulmin: I am happy to repeat what I said to you at the PCC when you came over, and just for the record that was that although I did not think we needed to call Andy Coulson because I do not think it would have, in fact, added anything to the information we were given by the News of the World, which had conducted its own inquiry, of course, maybe, there is an argument presentationally that it would have been better to have been to have done so, and of course, as I recall, this Committee did not call him either, although you may be about to change that as well. The focus of this is on whether we were misled. If Andy Coulson has any evidence or if there is any evidence that Andy Coulson knows about whether we were misled, he may come in as a relevant party. Again, that sort of decision, clearly, would be a matter for the Board of the Commission to decide when it reviews all this information that it will have at its disposal next week.

Q1157 Mr Hall: You have repeated on a number of occasions this concern that you have that the PCC may well have been misled in the original investigation and that you would take that as a very serious situation to be in. If it turns out that you were misled what powers have the PCC got to do anything about it?

Mr Toulmin: I do not want to correct you but I think it is important to distinguish that there is an allegation, or there is a suggestion, that we have been misled by the Guardian, and the suggestion that it may not have been deliberate. What we are going to do is test what they said to us two years ago with what we know now, and allow them the opportunity to comment on that. We cannot anticipate whether there will be a finding that they misled us or not.

Q1158 Mr Hall: No, but what I am saying is if you were misled what powers have the PCC got to do anything about it?

Mr Toulmin: Of course, that is hypothetical—it will depend on who did the misleading.

Q1159 Mr Hall: It is not a hypothetical question at all; if you have been misled, what powers have the PCC got to do anything about it?

Mr Toulmin: The PCC’s powers, as you know, are vested in us through the industry; it is a self-regulatory, non-statutory body. Our powers are about scrutiny, embarrassment, shining a light on people, making recommendations about what should happen, contracts of employment are written in a way to include compliance with the Code and respect for the PCC. So, of course, it is a disciplinary matter if we find that we have been misled, depending on who it is and so on. I do not want to anticipate what the PCC might say in relation to that before it has had an opportunity to review all of the evidence that is before it, and decide whether it has actually been misled or not.

Q1160 Mr Hall: You know there is a genuine concern that the PCC have got very little power in these things.

Mr Toulmin: People do make these allegations about the PCC. I prefer to ask whether or not the PCC, in terms of what it is trying to do and what it is set up to do—which is a mediator and which is to hand down rulings on specific complaints—is effective or not, and it absolutely is in that regard. I have a large, bulging file of thank-you letters from people that will
attest to that, from all walks of life. Of course, if you are setting the PCC up to be some sort of general legal regulator and comparing it with something that has statutory powers then, of course, it does not have those powers. I do not think we should be ashamed to accept that.

Q1161 Mr Hall: What was News International’s response to your 2007 report?
Mr Toulmin: News International, and _News of the World_, in particular, had already taken steps to completely—

Q1162 Mr Hall: Is it fair to say they ignored your report?
Mr Toulmin: No, it is not fair to say that at all; they changed the way in which contracts operated—

Q1163 Mr Hall: Was that before you reported or afterwards?
Mr Toulmin: _The News of the World_ took that action during the time that we were making our inquiries. After the inquiry they had all these stands, and seminars, and they changed the way in which external freelancers contribute to the paper and the way in which it supervised cash payments, and so on, and the other titles also took steps to implement our recommendations. So they certainly did not ignore us.

Q1164 Mr Hall: You put a great deal of store by the Myler internal investigation. Did the PCC do any external scrutiny of that report, or do they just accept it at face value?
Mr Toulmin: In October 2007, which was sometime after the report, the then Chairman wrote to all the newspapers and magazines that had taken part in the inquiry—so across the entire country—to get their response to it. These recommendations were designed to ensure that the situation improved. As we have talked about, the PCC’s powers are given to us by consent—it cannot force people to do this—but the response we got, and we can certainly update the Committee on that because we have a file back at the office full of these things, did indicate quite a widespread acceptance of what we were saying, which was very encouraging because (to go back to what I was saying earlier) who would want this sort of scandal to arise at their newspaper again? I think anyone would want to put in place steps to ensure that there will be no repetition.

Q1165 Mr Hall: That answers my next question, really, because I was very interested in your assertion that there were so many different ways of redress that you would expect most newspapers, now, to comply to an ethical code of journalism, if you like, but we still have in the Code of Conduct (correct me if I am wrong) that if it is in the public interest almost anything goes as to how you get the information. Is that correct?
Mr Toulmin: Not quite, no. There are some public interest defences to things that would otherwise breach the Code.

Q1166 Mr Hall: Would ‘phone tapping breach the Code?
Mr Toulmin: It certainly would breach the Code, yes—it would be extremely serious.

Q1167 Mr Hall: Even in the public interest?
Mr Toulmin: There would have to be very, very serious and pressing public interest, for instance, to foil a terrorist attack or something, to justify such a high level intrusion. The point I was going to make is that there are different degrees of intrusion; there are very serious intrusions, like ‘phone tapping and eavesdropping on some conversations, and then there are less serious ones, more superficial ones—for instance, looking at people’s Facebook profiles, or something.

Q1168 Mr Hall: Would accessing the police national computer and accessing records at the DVLA, accessing people’s tax records be a serious intrusion?
Mr Toulmin: Very serious indeed, and illegal.

Q1169 Mr Hall: Would there be a justification in the public interest for that?
Mr Toulmin: I do not know. Again, that is hypothetical; it is difficult—

Q1170 Mr Hall: It is not; if somebody accesses your tax records and they claim that they have done that in the public interest, that is not a hypothetical question. Is it right or wrong?
Mr Toulmin: With respect, it is because it would depend on what the justification was, which I do not know. What I am saying is that it is a very serious form of intrusion, and any public interest would have to be incredibly strong and impressive to justify it, and it would be illegal as well.

Q1171 Mr Hall: One last question, and I think I may have misheard you. Right at the start, in answer to the Chairman, you mentioned that there may have been a list of journalists that had been involved in these practices, but their names were not published because of their rights to privacy. Would it not be in the public interest for those names to be published?
Mr Toulmin: You might well argue that, and that is certainly something to take up with the Information Commissioner. I have been in touch with the Information Commissioner and I think his office is thinking about making some more information public during this week.

Q1172 Mr Hall: Have I got this right: we have got a list of journalists who have actually acted improperly and used the defence of public interest to find stories and then they do not want their names releasing because they do not want their right to privacy?
Mr Toulmin: No, no, that is not right, that is not right.

Q1173 Mr Hall: That is not right?
Mr Toulmin: That is not right. What is right, as far as I understand it, is that there is a list of journalists that the Information Commissioner has. However,
they were not charged with any offence, so they were not in any position to defend themselves, in the public interest or otherwise, and they probably do not know that they are on this list. Nonetheless, I think you have been told two years ago that this list does exist and it may be that the Guardian have seen that list as well.

Mr Hall: Thank you.

Q1174 Mr Watson: Tim, good morning. This is my first Committee so go easy on me, will you? I am not a journalist so I am tracking this back at my own pace, but I was struck by the Mulcaire case where the judge said there was clearly a legitimate use of private investigators in certain circumstances. Do you issue guidelines to your members about what is appropriate use of private investigators and what is not?

Mr Toulmin: We certainly issue guidance about the whole issue of subterfuge which may bring in private investigators, and our report, I think, finished in 2007 by saying: “Any allegation that private investigators are being used to use subterfuge we will have to look at and test against the public interest”, just in the same way that any journalist has the Code of Practice and the other guidance that applies to them. So, yes, we do, because, by extension, if they are working for a newspaper they are falling under the terms of the Code.

Q1175 Mr Watson: Do you have any evidence that there has been a growth in the use of private investigators since 2007?

Mr Toulmin: No, no evidence at all.

Q1176 Mr Watson: Is that because there is not a list of legitimate firms that your members use?

Mr Toulmin: The evidence, so far as it exists, is anecdotal, and, again, it would be one for the Information Commissioner, probably, who has been active in this area. Stories that have emerged in the last week suggest that it is much more difficult for inquiry agents to get media work because the press have been brought into line by the various activities that have happened since then.

Q1177 Mr Watson: Do you think it might be helpful if there is a central register drawn up of the firms that big newspaper organisations use?

Mr Toulmin: I think what would certainly be helpful is a list of private inquiry agents who breach the law, because newspapers absolutely ought to know that they are using material from dodgy sources.

Q1178 Mr Watson: Is there a concern—not necessarily from yourself but across the industry—that the use of private investigators is essentially outsourcing the decision over whether an issue is in the public interest or not? Let me throw a hypothetical situation at you, that you do not like: you have got a private investigator trying to track someone down and they can choose to trespass on a property or rummage through somebody’s bin to try and find information. Would it be that they would try and get permission to do that from someone that has hired them or would they be in a position where they would make that decision themselves?

Mr Toulmin: I think what is important to say there is that however they went about it, if that information was used then it will be the responsibility of the person who was using it. So the person who is using it would want to know how it was obtained, because if there was a complaint to us or to the police then it is no defence to say “I didn’t know what this person was up to.”

Q1179 Mr Watson: Is it your experience that the person who hires a private investigator to do that kind of stuff would always check how the information was obtained?

Mr Toulmin: I do not think that I have sufficient experience of that precise relationship to be able to answer you, but I think the use of private inquiry agents generally is much minimised now. So it is probably difficult to establish. One of the things that these inquiries have allowed newspapers to do is to terminate their relationships with a lot of these people.

Q1180 Mr Watson: What slightly concerns me is you say the “use of private inquiry agents”—

Mr Toulmin: Private investigators.

Q1181 Mr Watson: “—is minimised”. However, if you do not know which companies are used and how much is spent on these companies, that would just be anecdotal, would it not?

Mr Toulmin: I think that is one of the problems with this. Again, I would just point out that there is a patchwork of responsibility here. The PCC is responsible for the Code, the Information Commissioner, who has legal powers, is responsible for the Data Protection Act, and has carried out inquiries and raids on private investigators, and would be the best person to ask about that sort of thing, at the moment.

Q1182 Mr Watson: Just one last question: you mentioned something about how contracts were operated post your report. Are Codes of Conduct built into journalists’ contracts of employment now?

Mr Toulmin: Yes.

Q1183 Mr Watson: So all contracts in these companies have now been rewritten?

Mr Toulmin: It is practically universal, and, again, those that did not do it at the time of our last inquiry have gone away and done it. I think, Chairman, I might be right in saying that the Express have done it as a result of this current inquiry. So it is practically universal now.

Q1184 Mr Watson: Would you be able to let us know which organisations have not done it, if there are any?

Mr Toulmin: If there are any they are likely to be small, but I will certainly do that.
Mr Watson: Thank you very much.

Q1185 Alan Keen: The Chairman has indicated the shortage of time so I will try and be brief and just ask one question, basically, but it may take more than one answer to satisfy. Who, in your experience, holds the budgets? Is there a chief accountant that reports to the chief executive who is commercial only?

Mr Toulmin: In the newspapers?

Q1186 Alan Keen: Yes.

Mr Toulmin: It would be internal to the newspaper.

Q1187 Alan Keen: Are there budgets to do with journalism, or acquiring information, which are quite separate from the editor of the newspaper, or does the editor, in your experience, control the total budget within his domain?

Mr Toulmin: One of the things we found out from our inquiry in 2007 at the News of the World was that there was a situation where cash payments (I think we found £12,300 or something to Mulcaire from Clive Goodman) were signed off by, I think, the then managing editor at the News of the World. That is within the newspaper. It is not clear that the editor, who was then Andy Coulson, did know about that at all. In fact, I think the police found there was no evidence of that. I think the managing editor denied that he knew what those cash payments were for—just ’a source for royal stories’, apparently. That is one area where things have been tightened up and it was one of the recommendation points in our report.

Q1188 Alan Keen: Has that system been adopted by most newspapers or even all newspapers; that nothing to do with acquiring information is dealt with outside the budget that would be controlled by the editor who is controlling what is printed?

Mr Toulmin: Obviously, the buck stops with the editor and the editor’s relationship then with his board of management is a separate matter that would cover all budgets. I think what we did was to make clear to these papers that slack use of cash payments may—and did in this case—give rise to this lack of supervision and these legal transgressions and breaches of the Code. So, yes, we would certainly expect that newspapers and magazines would be very tight on that now.

Q1189 Alan Keen: Could you give us examples of different methods, different systems, of ownership of newspapers? Could you give us one or two different examples of where the actual owners have become interested in what is being printed and the details of the finances, the payment for the acquisition of information?

Mr Toulmin: I do not know if it is people who actually own them; that will depend, as you say, because it will be shareholders in some cases, and individuals in others and trusts in other cases—but certainly we brought in management. So we went outside the newspapers when we did this report and we brought it to the attention of the people who are the chief executive/managing directors of these companies to ensure that the whole message filtered down from on high.

Q1190 Mr Ainsworth: Just following on from that, setting aside who signed off what cheques and budget trails and paper chases, and so on and so forth, from your experience of the culture of the way that this industry works (and I am new as well, so be easy on me), I just wondered what you felt about the allegations that have been made, quite widely in the press—Stephen Glover in the Independent, for example, saying that he found it incredible that Mr Coulson did not know what was going on under his watch. What is your view about that? Have you had a complaint from Mr Coulson about it?

Mr Toulmin: No. I think the whole point of the PCC is that the buck stops with the editor. It is up to the editor to foster a culture in his or her newspaper that means that journalists there respect the Code of Practice. That, again, is our concern; it is the Code of Practice which was over and above the law; of course, we would expect editors to make sure their journalists were conversant with the law, too, and obeyed it. People have raised eyebrows that Andy Coulson did not know what was going on, but he would say that having been exposed as not knowing he then resigned because he should have known what was going on. So a lot of people have said that it was surprising.

Q1191 Mr Ainsworth: Are you in the camp that says that if he did not know he should have done? Are you part of that?

Mr Toulmin: I think he clearly should have known that people were involved in conspiring to break the law; of course, we would expect editors to make sure their journalists were conversant with the law, otherwise, we would expect editors to make sure that their journalists were conversant with the law, too, and obeyed it. People have raised eyebrows that Andy Coulson did not know what was going on, but he would say that having been exposed as not knowing he then resigned because he should have known what was going on. So a lot of people have said that it was surprising.

Q1192 Janet Anderson: Can I just follow on from that? Do you find that credible? Clearly, in your job, you have a lot of dealings with editors, you must know about the way they operate. Do you not think a national newspaper editor who was worth his or her salt and up to the job should know absolutely what is going on on their watch?

Mr Toulmin: Of course they should do, in an ideal world, and the Code of Practice should never be breached, and so on. The police were all over this story, and I think there was a statement from the police last week that said that their investigation was not half-hearted and they conducted quite a penetrating inquiry (obviously, they have legal powers that we do not have) and there is no evidence, as far as I know, linking Andy Coulson to those crimes at all. So that would include him knowing about it.

Q1193 Janet Anderson: Surely, if he had been doing his job properly, is it not one of his responsibilities to know what his reporters are up to?
Mr Toulmin: As I said before, the buck stops with the editor and he resigned and everyone accepted it was a serious oversight, to say the very least, that he did not know what was going on.

Q1194 Janet Anderson: Do you believe now that if this kind of thing is still going on editors will know about it, or should know about it?
Mr Toulmin: They certainly should know about it and they should put a stop to it if they are aware of it—of course, they should—because they will be in trouble if they know about it with not just us but with the law, and they may have private prosecutions brought against them, and all sorts of things. So, of course, it is completely unacceptable.

Q1195 Janet Anderson: Just finally, I have a book here Fake Sheikhs and Royal Trappings by Peter Burden, and there is a quote on the front from a former news editor of the News of the World: “That is what we do;” he said “we go out and destroy other people’s lives.” Do you think that is a proper function of a national newspaper?
Mr Toulmin: No, I do not.
Janet Anderson: Thank you.

Q1196 Mr Sanders: You have used the phrase “public interest” a lot this morning. Is public interest a set of standards?
Mr Toulmin: No, I do not think it is. It does vary considerably and it depends on the type of person involved: whether they are a public figure, whether they have misled the public; whether they are, in any way, corrupt; it depends on the extent of the subterfuge used—if there is any evidence, as we are talking about today, and so on. The public interest does vary; it is probably impossible to codify it for all circumstances because, as I say, the individuals, in terms of their public profile, will differ and whether they hold public office, but, also, their own behaviour. If they have done anything deliberately to mislead people, for instance, that would probably give a journalist a greater public interest to intrude into their lives than somebody who had not.

Q1197 Mr Sanders: So who defines what the public interest is?
Mr Toulmin: It is fluid and it gets defined on the back of specific cases. So, over time, you can look back and look at the PCC case law and look at various legal rulings as well. You can look at a broad framework which is set out in the Code which gives examples of the types of things that are included, and these things are changing all the time. It also responds to changing cultural expectations and so on. You cannot really write it into a law; it is the sort of thing that has to respond, I think, as time goes by.

Q1198 Mr Sanders: So when is it defined? At what point does somebody define what the public interest is?
Mr Toulmin: I do not think there is a point at which people do define the public interest; I think there are examples of the public interest, and there are certain circumstances in which it is justifiable to pursue something in the public interest or to use subterfuge in the public interest. There are a very, very large number of very interesting stories and pictures out there of which we are very aware, at the PCC, which do not get published because the editors concerned, having frequently talked to us about it, decide that there is not a sufficient public interest to publish the story or the pictures.

Q1199 Mr Sanders: Presumably, that is material that has been gathered in, possibly, through subterfuge, but then does not see the light of day. In a sense, if you cannot define it and set it in stone, there is a green light then for people to go out and ‘phone tap and blag and engage in subterfuge under the guise that it could be in the public interest.
Mr Toulmin: That would be a fishing expedition which we have been incredibly robust in denouncing, as you might expect. We say you have got to have grounds to engage in subterfuge. You would have to have very, very serious grounds—more than a strong suspicion; you would have to probably have evidence that something was going on to use that type of subterfuge and to justify it in the public interest. These are not things that people routinely do just trawling for a story. I think that, obviously, would be a completely outrageous breach not just of our rules but, also, the law, and I cannot imagine any newspaper would sanction that sort of behaviour any more.

Q1200 Mr Sanders: Somebody would have approved the “fishing” expedition justified by “public interest”.
Mr Toulmin: If there is a public interest then you would expect a senior executive on the newspaper to justify any sort of undercover activity that was that serious, yes, but you could not just do it thinking: “Adrian Sanders is quite an interesting chap; I fancy finding out what’s in his bank account or—

Q1201 Mr Sanders: People are trying all the time: I am extremely interesting! I take your point, but if, at the end of the day, what you are saying is somebody senior has to approve the investigation that is going to take place, then that brings into question, does it not, what we have been asking today in relation to cases where the people at the top have denied knowledge that these things were taking place?
Mr Toulmin: Absolutely, and it does go to the heart of what we were looking at in 2007, you are quite right, because the whole point that the News of the World made, and again this is perhaps the area that has been opened up again as a result of these allegations, is whether or not there was a conspiracy between Mulcaire and Goodman to deceive the News of the World. That was their position, so they were saying, “We didn’t have the
opportunity to sign off on this behaviour and we wouldn’t have done had we known about it”, so that is their position. Now, if there is any evidence that that is untrue, that will have obviously meant that they will have misled us.

Q1202 Mr Sanders: Your suggestion of course in the Private Eye article that Adam read out is that they may have been paid to say that in order to protect the News of the World.

Mr Toulmin: Well, is that what the suggestion is? Again, if that is an allegation—

Q1203 Mr Sanders: It is an interpretation.

Mr Toulmin:—then we will look into it, but I think maybe people are reading something into that; I do not know.

Chairman: I think we need to move on to our next session. Can I thank you very much.

Witnesses: Mr Alan Rusbridger, Editor, and Mr Paul Johnson, Deputy Editor, the Guardian; and Mr Nick Davies, writer and journalist, gave evidence.

Q1204 Chairman: For the second part of this morning’s session, can I welcome Alan Rusbridger, the Editor of the Guardian, Paul Johnson, the Deputy Editor, and Nick Davies, the author of the stories over the last few days. The main story which you reported was the payment by News International to two individuals of something over £1 million in settlement, but the events which you describe in the story and the subsequent follow-up, they all relate to a period considerably earlier, they relate to the Mulcaire/Goodman period and the Operation Motorman. Is that correct?

Mr Rusbridger: That is correct. First of all, I have delayed my holiday to come here today, so I hope you will not mind if I am out of here by about five to one, otherwise I am going to miss my holiday, but I wondered if it would help if we structured this so that I spoke and then Nick spoke; I think it would put some of this in context, if that is agreeable to you.

Q1205 Chairman: Yes, that is fine.

Mr Rusbridger: With your permission, I would just like to make some general comments about the Guardian story, again with a constructive suggestion for a way through, and Nick will then speak about his story and the basis for it. As a few general points about the story that we ran, it was not a campaign to oust anybody, it was not a campaign to reopen a police inquiry or for more prosecutions or to force anybody to resign and we have not called for any of those, and I would like to emphasise that, as a paper, we do believe in effective self-regulation and we do not want a privacy law which stated that. When you come to effective self-regulation, it seems to me that effective self-regulation can only work if the paper groups are truthful and open with the regulator. I can think of one or two groups, for example Associated, who have conceded past patterns of behaviour and put a stop to them, and the question is whether News International have been similarly frank. Therefore, for me, the three key questions are whether self-regulation was effective in this case, whether the PCC had the full and accurate picture at the time they decided against rigorously investigating the Goodman/Mulcaire case themselves, and whether, given the reassurances at the time and as further facts came out, they and perhaps you should have been kept informed of those new facts. The company has engaged in an aggressive attempt to discredit the Guardian story. A press release last Friday was notably evasive about the central disclosure about the £1 million settlement in three hacking cases, hiding behind their own confidentiality, and it has included a series of cleverly drafted denials of allegations that were not actually made by the Guardian. We reject the assertion by the Chief Executive-elect of News International in a letter to you that we misled the public far less deliberately, and I think News International have, with some success, tried to position it as a spat between two newspapers. Why was the secret settlement significant? Because it undermined the assurances given both to you and the PCC about the sole reporter and the sole detective, the so-called ‘rotten apple’ defence. Les Hinton said: “After a full and rigorous inquiry, Clive Goodman was the only person at News of the World who knew what was going on”; Colin Myler told the PCC: “Goodman’s hacking was aberrational, a rogue exception, an exceptionally unhappy event in the 163-year history of News of the World involving one journalist”; Stuart Kuttner, the Managing Director of News of the World on Radio 4: “It happened once at the News of the World”. That is why this case is significant, because the evidence in the Gordon Taylor case, though concealed from the public and from you and from the PCC, showed evidence that this was not a practice restricted to, or known about by, one reporter and one private detective, and in a minute Nick Davies will help you more on that. News International have known about the involvement of other journalists, including at senior level, for at least a year. It is believed the case was settled last September, the initial case involving Gordon Taylor, so that begs the question why they did not tell the PCC, the regulator, or the Committee of the new facts that have come to light. Now, the press release they issued on Friday from a major public company said, “It is untrue that the News of the World executives knowingly sanctioned payments for illegal intercepts”. That is why, I think, this is a significant story and I hope and believe that any newspaper or broadcaster would have published that if presented with that evidence. If not, it does not say much for press plurality in this country. A secondary element was the claim by two sources familiar with the case that the files showed that thousands of individuals may have been targeted
and/or hacked and/or ‘blagged’, and Nick Davies will address that because they are his sources. We do know that there was a sophisticated machine at work 70 hours a week earning one private investigator £100,000 a year plus bonuses and, if it had not been intercepted by the police, it might still be going, so, if the numbers are smaller, it was not due to any virtue on News International’s behalf. Before I hand over to Nick, I want to suggest a way forward. It is common ground that journalists on many newspapers and for many years have been making widespread use of dubious methods. I think it is common ground that, in some circumstances, where there is a high public interest those methods may be justified. I think what is less clear are the rules or ethical framework by which editors might reach these difficult decisions, and they should be difficult decisions and not easy decisions, as they seem to have been in some cases, and this comes back to the question of public interest which you have just been discussing with the Director of the PCC. As a profession, we currently operate by a reasonable definition of the ‘public interest’, but it is notoriously difficult to pin down. The press are not the only people in this world who are considering how you codify or guide behaviour, and I have recently been struck by the thinking of Sir David Omand, the Government’s former Security and Intelligence Co-ordinator, in a recent IPPR pamphlet because there he says that the intelligence services wrestle with this problem about the fact that finding out other people’s secrets is going to involve breaking widespread use of dubious methods. I think it is common ground that, in some circumstances, where there is a high public interest those methods may be justified. I think what is less clear are the rules or ethical framework by which editors might reach these difficult decisions, and they should be difficult decisions and not easy decisions, as they seem to have been in some cases, and this comes back to the question of public interest which you have just been discussing with the Director of the PCC. As a profession, we currently operate by a reasonable definition of the ‘public interest’, but it is notoriously difficult to pin down. The press are not the only people in this world who are considering how you codify or guide behaviour, and I have recently been struck by the thinking of Sir David Omand, the Government’s former Security and Intelligence Co-ordinator, in a recent IPPR pamphlet because there he says that the intelligence services wrestle with this problem about the fact that finding out other people’s secrets is going to involve breaking everyday moral rules. That is what they acknowledge in the intelligence services and I think that maybe some elements of the press have forgotten that. Omand’s suggestions for the five guidelines are: one, there must be sufficient sustainable calls, it needs to be justified by the scale of the potential harm; two, there must be integrity of motive, ie, it must be justified in terms of public good; three, the methods used must be in proportion to the seriousness of the business in hand using minimum intrusion; four, there must be proper authority, it must be authorised at a sufficiently senior level with appropriate oversight; and, five, there must be a reasonable prospect of success, ie, no phasing expeditions. I think that is a good tick-list for editors. I think that what we are talking about is so serious that it should be the last, not the first, resort, it should be highly in the public interest, it needs to take into account the potential harm this intrusion can do, the intrusion should be proportionate, there should be no phasing expeditions and it ought to be overseen. I will pass those guidelines round in a second. I think the public would be greatly reassured if it felt—

Q1206 Chairman: This is a very long opening statement.

Mr Rusbridger: I am within one sentence of finishing and then I am going to hand over. If editors worked to this code, I hope, as a Committee, that you might find some merit in the suggestion and I will put it before the PCC. Now, there have been calls for us to produce more evidence and at this point I shall hand over to Nick Davies.

Q1207 Chairman: Can you make it relatively brief because we have quite a lot of questions.

Mr Davies: I have quite a lot to tell you, but I will do my best. So, you have to understand I am a reporter and, any time a reporter works on a story about a powerful individual or a powerful organisation, human sources get nervous and a gap emerges because these sources will say, “This is what’s happening, but you mustn’t quote me” or, “Here is a document. You can read it, but you mustn’t say you’ve seen it”. That gap is very common between what the reporter knows at first hand and what he or she can disclose in public, and some of this story has been in this gap. Now, something has changed. On Friday evening, News International put out a statement which was deemed by one particularly important source to be “designed to deceive” and, as a result, I have now been authorised to show you things that previously were stuck in that gap, and I am talking about paperwork, so what I want to do is to show you, first of all, copies of an email.

Q1208 Chairman: If you wish to admit evidence, you have to read it into the record.

Mr Davies: Read every single word? I will start and you can guide me. Before we distribute it, I want to explain it before it goes round. There are two important things about this because, first of all, in general terms what I am about to give you are copies of an email written by a News of the World reporter on 29 June 2005 to Glenn Mulcaire, referring to another News of the World journalist. Now, there are two points about this, two hurdles I have to overcome ethically. The first is that what this email contains is a typed-up transcript of 35 messages which Glenn Mulcaire has hacked from the telephones of Gordon Taylor, the Chief Executive of the Professional Footballers’ Association, and Ms Jo Armstrong, his legal adviser, so transcripts of more than 30 messages from two different targets, two different telephones. The whole thrust, the whole reason for the Guardian doing this is a concern about privacy. If I give you the document with all of the verbatim messages in it, I think I am probably recreating the breach of privacy which we are worried about, so I have masked the wording, all the words of the messages themselves, so you can see who is talking to whom, you can see how many there are and, crucially, you can see the role of the News of the World journalists. The second point, which we are going to have to deal with as we go along, is that I have a worry that, if I start spraying round the names of ordinary working reporters on the News of the World, that opens the door to the organisation saying, “Ah, more Clive Goodmans, more rogue reporters we didn’t know about”, and the organisation will blame the lowly individuals rather than accepting whatever responsibility is due to themselves. In this, which I am about to send round, you will see the name of the junior reporter who is sending the email and I would ask you to keep that
confidential and, insofar as we may use this document outside this House, we will not, ie the *Guardian*, disclose that junior reporter’s name. I will pass this round now. This email, to summarise so that you understand, from a reporter on the *News of the World*, using a *News of the World* email address, is sent to Glenn Mulcaire at what, we know, is his email address, shadowmenuk, and at the top you will see that the reporter says, “Hello, this is the transcript for Neville”, and Neville is Neville Thurlbeck, the chief reporter of the *News of the World*. I am happy to name senior people in some contexts.

**Q1209 Mr Sanders:** It is just about MPs’ expenses, is it not?

**Mr Davies:** If you come to page 1, “Hello, this is the transcript for Neville”, and Neville is Neville Thurlbeck, so the transcript has been typed up and it is going to the chief reporter of the *News of the World*. I do not think we should say publicly the name of the reporter, which you can see, who is doing the emailing. At the top, you see ‘shadowmenuk@yahoo.co.uk’, and that is Glenn Mulcaire’s email address. In the detail, where it says “JA to GT” on the first one, that is Jo Armstrong to Gordon Taylor and, if you turn to page 2 and look at number five, “GT to JA”, that is the other way, so they have hacked Armstrong’s phone as well as Taylor’s. Now, perhaps I could just leave that with you and move on to a second document which I want to be able to show you.

**Q1210 Chairman:** With respect, we have quite a lot of questions for you rather than just—

**Mr Davies:** Do you want the evidence or not? It is up to you.

**Q1211 Chairman:** Go on.

**Mr Davies:** I will give it to you as quickly as I can. The second document which I want to give you is a contract that was signed a couple of months before that document, that email, was produced. This is a contract signed by the then Assistant Editor in charge of news with the *News of the World*, a guy called Greg Miskiw, and this contract is dated 4 February 2005, so it is about four months before that email. This is a contract between the *News of the World* and Glenn Mulcaire, offering Mulcaire a bonus of £7,000 if he will deliver the story thereafter about Gordon Taylor. Again, with a view to privacy, I have blacked out the nature of the story which they are after because of Gordon Taylor’s privacy, but what you will notice is that this is a fascinating contract because it is made out to Glenn Mulcaire in a false name. Now, there is no dispute that Glenn Mulcaire used the name Paul Williams, and you may want to ask why the Assistant Editor of the *News of the World*, in relation to this story where we have just seen that email, was making a contract with a man in a false name. That is a sample of some of the paperwork in this case. Now, I need to reconstruct the chronology here and then you will see why it is important. December 2005: a complaint from the Palace to Scotland Yard that there are signs of people’s mobile phones being interfered with in the Royal Household and the police were given the inquiry. August 6 2006: Scotland Yard officers arrest Clive Goodman, our man from the *News of the World*, and Glenn Mulcaire, the private investigator, and seize masses of paperwork, tape recorders and computer records from the homes and/or offices of both men. Now, this timing is terribly important because the two documents which I have just given you are, to the best of my knowledge, material that was in the possession of Glenn Mulcaire that was seized by the police in August 2006. Now, come back to the statement which News International put out on Friday night and I need to read you just one sentence from it which I will find very quickly. The wording of it is: “The police have not considered it necessary to arrest or question any other member of the *News of the World* staff”, ie, other than Clive Goodman. Now, there are two possibilities here, and the police, bear in mind, have had this documentation and whatever else they found since August 2006. Possibility number one: the police have arrested and/or questioned the journalists who are implicated by virtue of this documentation, in which case we need to ask why on earth News International made that statement on Friday night, or News International are right in what they said and Scotland Yard have not arrested or questioned the journalists who are implicated by this paperwork. If News International are correct in saying that these people have not been arrested or questioned, the implications, I am sure you can see, are very, very worrying. I spent yesterday on the phone, asking Scotland Yard for an answer to this question. At the end of the day, they eventually confirmed that they had not arrested any other *News of the World* staff other than Clive Goodman, but they would not tell me whether they had questioned any. They say it is a matter of routine that they never tell you whether or not they have questioned somebody who has not been arrested, but clearly that is terribly important. Now, I also think it is fair to point out, and ask questions about, a statement that was made by Scotland Yard on Thursday afternoon last week, later in the day that our story was published, where the Assistant Commissioner John Yates told the press, Parliament and the public that he had been asked to establish the facts about all this, and he made a statement which referred to Clive Goodman and to Glenn Mulcaire, but, for reasons which I cannot explain, made no reference to the fact that Scotland Yard has had in its possession for well over two years paperwork which implicates other *News of the World* journalists. I do not know why he did not tell us, but again it worries me. Then, if we look at this from the point of view not of the police but of News International, we know, as a matter of fact, that this paperwork was disclosed by Scotland Yard to Gordon Taylor’s legal team in April 2008, more than a year ago, and we know for sure that, as part of the sealing of the deal, there was the payment of more than £1 million to make sure everybody went away, they did not come back to press. Parliament, the public or the PCC to say, “This is what we now have in our possession”. If you go further back to the
period between the police raid and their giving evidence to the PCC and the Select Committee, I cannot tell you whether News International executives were aware of the existence of this paperwork. All I think we could ask about is how likely it is that a newspaper that specialises in investigation was not able to discover that its Assistant Editor of News, its chief reporter and another reporter were openly involved in paying for, and circulating transcripts of, work provided in this way by this private investigator; the question hangs there. If we move on in terms of the Scotland Yard evidence, that was from a sample of what they found in Glenn Mulcaire’s place that they have not told us about, but, in respect of the material taken from Clive Goodman, all I would point out is that there is a very interesting evidential gap. Goodman was charged with successfully hacking into three phones of Palace staff. If you look carefully at what the Assistant Commissioner said on Thursday, he said, first of all, directing his remarks only to what had gone on between Clive Goodman, as an individual, and Glenn Mulcaire, that Goodman had had hundreds of potential targets for phone-hacking, that he was trying to hack, as I understand that, hundreds of phones and he succeeded only in a handful of cases. What he does not say, and I leave it to you to interpret this, is that Goodman succeeded only in three cases, which is what you would think he would say. This throws up the question: did Goodman succeed in hacking into messages of phones of other people who belong to, or are associated with, the Royal Family? We do not know the answer. That is about Goodman. If I can come to the evidence that the Information Commission has, let us just get the sequence of events right. In March 2003, officers from the Information Commission raid the home of a private investigator, not Glenn Mulcaire, a man called Steve Whittamore who lives down in Hampshire, and they seize wheelbarrow-loads of paperwork and start analysing it. We know, from the report that was subsequently published, that this showed more than 300 Fleet Street journalists, well, in fact journalists from various newspapers and magazines, not just Fleet Street, more than 300 of them, asking Whittamore to provide access on more than 13,000 occasions to databases which appeared to be confidential. We know, and the Information Commission published a statistical summary of, how many news organisations had asked for how many of these requests. What is new is that I now have the names of all 31 journalists from News Group who made those requests. News Group is the company which owns the News of the World and The Sun only. There are 27 names that I have from the News of the World.

Q1212 Chairman: You do not have the names of the 305 journalists concerned?

Mr Davies: No, I know about the News Group, so I know the 27 from the News of the World. I know the names of the four from The Sun. I also know the names of every single person who was targeted by those journalists, as reflected in the paperwork seized, and I know every single request that they made, and some of them, I think it is fair to them to point out, are legal where they were asking the guy to get access to the electoral register because ordinary individuals cannot do that on a computer base. Some of them were searches for company directors, but several hundred are clearly requests for information from databases where it would be a breach of the Data Protection Act to get that evidence, unless you had a clear public interest on your side. Now, people keep asking me to name these names and I have not. I do not want to name those names partly because of this concern that I have already expressed, that I do not want the responsibility to fall downwards on the heads of the little people, but also because I am a reporter, not a police officer, but I think it will help us to understand what is going on if I say this much: that there are a number of senior editorial executives whose names clearly show up on that list, making requests which would be illegal if they did not have public interest on their side. I think it is all right to say it, since his name has already come out, that one of the executives that is there is Greg Miskiw who rose to the position of Assistant Editor of News and he is recorded as making 90 requests, and 35 of those are directed at confidential databases where it would be illegal if there were no clear public interest. There are other executives more junior and more senior than him. I want to say, because it is important to make it clear, that Andy Coulson’s name does not show up in that list. His colleagues at an executive level do, but Andy Coulson, it is only fair to him to say, is not there, so I would like to give you, if you will indulge me once more, a few more bits of paperwork. These are copies of invoices from News International, making payments to Steve Whittamore, this private investigator who specialists not in phone-hacking, but in what they call ‘blagging’, getting access to confidential databases. First of all, I need to explain where this comes from. This has not come from some secret source in a dark corner. This material was released under the Freedom of Information Act by the Information Commissioner months ago and it may startle you to discover that the newspapers did not bother reporting it. Now, he has done the blacking out on this occasion. He has blacked out the private investigator’s home address to protect his privacy and he has blacked out the details of the targets, and the reason I am showing this to you is not because it tracks down some specific criminal offence, but because it shows the systematic and open character of what is going on. These payments have not been made with bags of cash under the counter; they are being made by the News International Accounts Department. You might think that, if this were all a secret that nobody knew, they would have some clever euphemism, like “This is a payment for services rendered”! but, as you will see when I hand them round, it is perfectly explicit and it says, “to get an address from a telephone number to get the vehicle registration number converted”, so it is just that, to the extent that in the attack on the Guardian story it is being alleged that this was something that nobody at News
International knew about, I think these documents may help you. Mr Chairman, may I speak for maybe one minute more and then pause?

Q1213 Chairman: Yes.  
Mr Davies: I think there is something quite worrying here for all of us. I think that what begins to be very worrying about all of this is that we are not being told the truth. I am worried, for example, by the fact that on Thursday afternoon the Assistant Commissioner of the Metropolitan Police, whom I take to be an honest man, stood up and made a statement in which he said, “Where there was clear evidence that people had been the subject of tapping, they were all contacted by the police. These people were made aware of the potential compromise to their phones and offered preventative advice”. That is Thursday afternoon that he makes that statement, at about half past five, widely reported. At 7.37 the following evening, Friday, two hours later after most reporters have gone home, in the midst of the confusion caused by the fact that News International had just released its statement at seven o’clock, Scotland Yard quietly put out another statement, which says, “Assistant Commissioner Yates said yesterday that he wanted to ensure that the Met has been diligent and sensible in taking all proper steps to ensure that, where we have evidence that people have been the subject of any form of phone-tapping by Goodman or Mulcaire, they have been informed. The process of contacting people is under way and we expect this to take some time to complete”. Why were we told on Thursday that everybody had been approached and then quietly, in this almost invisible fashion because I do not think any newspaper picked this up for Saturday morning, on Friday evening were we told, “We are now contacting people”? I cannot explain that. Why, in the same way, were we not told on Thursday afternoon that the police have had evidence for more than two years of other News of the World staff being involved? I do not know what the answer is and I cannot attempt to explain it to you. Where News International are concerned, I think the worry is, in a way, even greater. If you look back at the statements that have been made by News International or its representatives since August 2006, I cannot find a single statement about the scale of phone-hacking or News International’s knowledge of involvement in the phone-hacking which has not proved to be misleading, and that includes, I am sad to say, that statement that was put out on Friday evening which is profoundly misleading and, amongst other things, fails to acknowledge what they know about these other journalists from the paperwork I have given to you. If you put that together with the payment for £1 million to suppress three witnesses who had evidence along with whatever settlements have been made with Clive Goodman and Glenn Mulcaire, which I do not claim to know about, I think it is very, very hard to resist the conclusion that News International have been involved in covering up their journalists’ involvement with private investigators who are breaking the law, and it is very worrying that Scotland Yard do not appear to have always said or done as much as they could have done to stop that cover-up.

Q1214 Chairman: Thank you. That raises a lot more questions and we may need to study some of this and perhaps come back to you in due course, but perhaps I can start off. Part of the confusion here is that there are two separate areas of activity.  
Mr Davies: Correct.

Q1215 Chairman: They are Glenn Mulcaire, Clive Goodman and potentially other employees of News International, and then there is Operation Motorman, which relates to News Group but almost every other newspaper group, with the exception, I believe, of the Guardian, although I think The Observer had one or two.  
Mr Davies: Correct.

Q1216 Chairman: Can I, first of all, just look at the transcript you have provided. Can you just tell me again, this email, who is it going to?  
Mr Davies: To the email address which is right at the top, ‘shadowmunk’, which is certainly Glenn Mulcaire’s.

Q1217 Chairman: But Glenn Mulcaire will have supplied it, so why is he sending it back to Glenn Mulcaire when the information came from Glenn Mulcaire?  
Mr Davies: Because what Mulcaire gets hold of is a tape, an audiotape, in which you can actually hear Gordon Taylor’s voice and Jo Armstrong’s voice, and somebody has got to transcribe that. You can see that the transcription is primarily for Neville, Neville Thurlbeck, the chief reporter, who is going to be working on the story, but it is also being sent to Glenn Mulcaire for his records or in case it assists him with further enquiries, and I cannot tell you quite why it is being sent to him, but the tape goes in to the News of the World, it is transcribed for Neville Thurlbeck, the chief reporter, and the results are sent back.

Q1218 Chairman: It seems very odd that the News of the World are sending it back to Glenn Mulcaire.  
Mr Davies: Well, either he cannot type or he has not got a typist. They need a transcript, you see. If you are working on a story, you cannot keep listening to tapes; it would be maddening.

Q1219 Chairman: So this transcript, you believe, was supplied to Neville Thurlbeck?  
Mr Davies: Well, I can tell you that it was certainly directed at him. If I were a Scotland Yard detective, I would certainly have gone to Neville to say, “What do you say about this?”

Q1220 Chairman: Do you have any knowledge as to whether or not that happened? You do not know if Neville Thurlbeck—  
Mr Davies: You must ask Scotland Yard; Scotland Yard know a lot.
Q1221 Chairman: Who else, do you think, at a senior level would have had access to this information?  
Mr Davies: Well, again I am not in a position to answer that question. Scotland Yard clearly should be; they should have followed this up. I do not know whether they went to question the journalist named here. I do not know whether they went to question Stuart Kuttner, the Managing Editor whose job it is to watch the money, to ask him, “Well, what about this 7,000 quid? What was that for? Did you authorise it?” I do not know whether they went to see Andy Coulson and said, “What is your Assistant Editor doing, signing a contract with a man with a false name?” I do not know whether these questions were asked and I cannot help you on that.

Q1222 Chairman: The content, which obviously we have not seen, did a story result from this intercept?  
Mr Davies: No.

Q1223 Chairman: Nothing appeared in the News of the World which traced back to this?  
Mr Davies: As far as I know, no story emerged. The breach of privacy occurred, but I do not think there was a story.

Q1224 Chairman: Clearly, but that suggests that whatever is in this either did not amount to a story or they decided for another reason not to run it.  
Mr Davies: Again, I cannot help you on that.

Q1225 Chairman: That might be Neville Thurlbeck’s position. Having seen the transcript, he might have said, “I’m not going to pursue this”.  
Mr Davies: I just cannot help you. The most important questions, I feel, are the ones I have put to you. As to these other questions—

Q1226 Chairman: Well, the key is: did anybody else know about this? You have suggested Neville Thurlbeck is aware that an illegal activity took place. Have you any evidence to suggest anybody else at a senior level at the News of the World was also aware?  
Mr Davies: No, I have no other evidence. Those questions may have been asked by the police. If not, we need to know why. If they have been asked, perhaps they will share the results with us.

Q1227 Chairman: On the invoices which you supplied, this invoice is dated 1998.  
Mr Davies: I agree, it has got cobwebs on.

Q1228 Chairman: So what we are talking about happened a long time ago, over ten years ago.  
Mr Davies: Yes. Just so that you can understand this, Mulcaire worked on contracts for the News of the World from September 2001 through to his arrest, so there are five years of Mulcaire eventually to uncover. Steve Whittamore worked for years for News Group and other news organisations, so it is very well established over a long period of time, but, I absolutely agree, those particular invoices are ten years old.

Q1229 Chairman: In relation to all the evidence you have, what is the latest evidence you have of illegal activities taking place by journalists?  
Mr Davies: I think this is.

Q1230 Chairman: That is 2005?  
Mr Davies: Of this kind of documentary evidence. There is a separate category where people ring me up and say, “This is happening”, and you could describe that as evidence, witness, human oral evidence, but I have not got documentary evidence to produce.

Q1231 Chairman: I understand, but 2005 is the latest document?  
Mr Davies: Yes.

Q1232 Chairman: In relation to the Motorman documents, you say there is clear evidence that a number of journalists, and you know all their names, the 31, were regularly using this company and you have here the evidence to suggest that the information requests they were making were not legal ones, they were illegal?  
Mr Davies: The requests that they make fell into broadly two categories. One, there are some requests that are clearly lawful, “Can I find out the names of the directors of this company?” and “Can you use the electoral register to find out who lives at this address?” There are others which are clearly unlawful, unless in each case there is public interest to justify it, the Data Protection Act, section 55.

Q1233 Chairman: But, given that this document is available to the Information Commissioner, why then did the Information Commissioner not prosecute other journalists?  
Mr Davies: When I was researching Flat Earth News, which we all talked about when I gave evidence a few months ago, I had a lot of contact with the Information Commission. I can say with confidence that the thing that stopped them, because they prosecuted Steve Whittamore, the private investigator, and three of his colleagues who were involved in the network, gathering information, they came to Blackfriars Crown Court and pleaded guilty, and the judge in the case said, “Well, hang on a moment. Where are the news groups? Where are the journalists?” and the answer to that question is that the Information Commission felt that, if they charged the newspaper groups, they would (a) hire very expensive QCs, which meant that the Information Commissioner’s office would have to do the same, and (b) they would have masses of preliminary hearings with all sorts of complex legal argument and the effect of that would have been to break the Information Commissioner’s office’s legal budget. They simply could not afford to take on Fleet Street, it was too expensive. It was not, as you might think, a political fear, “We’re not going to get into a fight with these powerful newspapers”; it was a budgetary thing. Just to finish this, out of fairness to the office, I think the Information Commissioner’s office has done a good job; they have resolved never to be put in that position again.
Mr Davies: Yes, because those invoices come from the Information Commissioner who gave them away.

Q1235 Chairman: But he only released to you the ones he had from News International?  
Mr Davies: He has not released anything to me personally.

Q1236 Chairman: Or the court has released them, through the court.  
Mr Davies: The Information Commissioner, some months ago, presented the press with a collection of invoices. Some of them dealt with News International, and I have just given you copies, and some of them dealt with other newspaper groups, so the Information Commissioner has previously made invoices public relating to Steve Whittamore’s work for other newspaper groups. This is a story which did not get reported.

Q1237 Chairman: Does that show that other newspaper groups were also requesting information which it was unlawful to obtain?  
Mr Davies: Unquestionably. The Information Commissioner has multiple evidence on multiple news organisations, commissioning Steve Whittamore to provide information which, unless there is a clear public interest defence in each case, would be unlawful.

Q1238 Chairman: Because, you will recall, when this Committee took evidence previously on this matter, we were assured, for instance, by The Daily Mail that yes, they did employ this company and yes, their journalists had put in a number of requests that this was for information which it was quite lawful to obtain.  
Mr Davies: But you are going to have to go back and ask them what they meant. I really do not know.

Q1239 Chairman: But that is not your view?  
Mr Davies: No. I just cannot be in a position to give you a view on that because I have seen the material on News Group, but I have not seen the material on Associated Newspapers.

Q1240 Paul Farrelly: In its editorial, which is pretty strident, on Sunday, the News of the World said, amongst other things, “the Guardian slyly linked separate investigation by the Information Commissioner to allegations of phone-tapping”. If the link, as you say, is alleged criminality with no legitimate public interest defence, how is that sly? Who is being sly here?  
Mr Davies: Well, it is not even a question about slyness. What I am really writing about, the core of that story in the Guardian, is the fact that we have discovered News Group have paid out more than one million quid to suppress legal actions in three cases. Why did they do that? Because the lawyers for the lead case, Gordon Taylor, managed to get hold of two different caches of evidence, one lot from Scotland Yard and one lot from the Information Commission, so, in writing that story, necessarily I have to tell you that it is those two caches of information which led to the News of the World saying here, “Take some money and would you please go quiet”. If I did not tell you about the Information Commission lot, I would only be telling you half of the reason why News Group folded the case.

Q1241 Paul Farrelly: You have answered a lot of the questions I was going to ask you, but can I just tie up a few loose ends in the parameters that you have set, and I understand what you mean about not retelling names of junior journalists. We know about Gordon Taylor and Jo Armstrong, so who was the third person?  
Mr Davies: The third person is a lawyer who specialises in representing footballers. I know that name too; there are too many names I know and I am not sure whether I should tell them. I tried to call him yesterday to say, “What do you think? Can I use your name?”

Q1242 Chairman: Who is Simone?  
Mr Davies: I do not know. You should read the transcript. This is the awful addiction, you see, of breaching people’s privacy!

Q1243 Chairman: But Simone’s telephone has been intercepted as well?  
Mr Davies: No, I think she is speaking to Gordon rather than Gordon speaking to her.

Q1244 Chairman: Right, I understand, so that was an intercept on his phone.  
Mr Davies: It is two.

Q1245 Paul Farrelly: So the third person?  
Mr Davies: The third person is a lawyer who specialises in working for footballers and this raises questions about legal privilege and the hearing of the sorts of conversations that lawyers have with clients, but I do not think I am in a position to tell you who it is.

Q1246 Paul Farrelly: But each of these, Jo Armstrong and the lawyer, are paid £300,000, or thereabouts, each?  
Mr Davies: The total payout in respect of those other two, damages and costs, amounted to some £300,000.

Q1247 Paul Farrelly: Each? In each case?  
Mr Davies: No. You have got the total damages and costs for Gordon Taylor of just over £700,000, as I understand it, and a total of £300,000 in respect of the two others together.
Q1248 Paul Farrelly: Now, you have seen the evidence that we were given in a supplementary note to our last inquiry about the chain of command, the authorisation process for payments which goes to the full Managing Editor at the top of the tree to Stuart Kuttner.

Mr Davies: Yes.

Q1249 Paul Farrelly: Do you know whether this particular payment went through that chain of command?

Mr Davies: I do not know whether that payment went through Stuart Kuttner and I do not know whether the police went to Stuart Kuttner to ask him.

Q1250 Paul Farrelly: But you would expect the police to ask those questions, given that News International are being clear about the chain of command?

Mr Davies: Well, I am not an expert on police procedure, but I think a lot of people might think they should.

Q1251 Paul Farrelly: Do you know, just from your investigations, Nick, how Mulcaire was paid because he had a retainer and then there was a separate pot? Is there any evidence from your investigations that actually some of this illegal activity with no public interest defence was being undertaken as part of his retainer? I ask the question because that is pertinent to what the Press Complaints Commission was told.

Mr Davies: I do not know the detail of what he was being paid by his retainer or what he was being paid in cash. I can tell you for certain that he was putting in regular lists of targets to justify payments that were being made to him, of whatever form, where he would identify the name of the people he had been targeting.

Q1252 Paul Farrelly: But this is a relevant question, you would think, to the Press Complaints Commission?

Mr Davies: What precise question? How he was paid?

Paul Farrelly: Yes, given the evidence that was given to them.

Q1253 Mr Watson: If I can just come in there, Mulcaire set up a company in 2004, according to the evidence, and was paid £104,000. That is on the record of—

Mr Davies: What was the name of his company?

Q1254 Mr Watson: Euro Information, I think, or Euro Intelligence and Information.

Mr Davies: I have not quite got it in my mind, but it is Euro something or other. Then, subsequently, he called himself Nine Consultancy.

Q1255 Mr Watson: That is right.

Mr Davies: I know he was certainly working for them from September 2001. Whether it goes back to 1998, I do not know.

Q1256 Mr Watson: His fellow director, an Alison Mulcaire, who was a director of a number of the other companies, has set up a company from 2005 and I think it is called Eight Consultancy. Have you had any evidence that they might have been paid payments in later years?

Mr Davies: I am aware of contracts with this Euro company as Glenn Mulcaire and the Nine Consultancy, and, as far as I know, they run from September 2001 to the day of his arrest. Beyond that, I am afraid, I cannot help you.

Q1257 Mr Watson: I am just tidying up loose ends, so I am just coming now briefly to Whittamore. There were at least three News International executives, each of whom are unnamed in the detail that you have broken down in the inside piece in the Guardian last week. You have named one of them, that it was Miskiw who was directly commissioning the 90 actions by Whittamore.

Mr Davies: That is correct.

Q1258 Paul Farrelly: Can you name the other two? They are senior executives.

Mr Davies: I think the difficulty is that I am a reporter, not a police officer, and this information is in the hands of the authorities, it has been for a long time, and it really is for them, I think. I have only named Greg Miskiw because he has already cropped up on that contract and he is also an executive, but I would just feel uneasy if I started running around with a blue light on my head.

Q1259 Paul Farrelly: If you wish the Committee to sit in private session, that is possible for us to do.

Mr Davies: I am not sure that that helps. I am telling you in good faith and out of first-hand knowledge that those names are there and that they have these positions.

Mr Rusbridger: Another route for you to get those names would be to get them off the Information Commissioner.

Chairman: Well, we are awaiting a response from the Information Commissioner.

Q1261 Paul Farrelly: If I can approach this in a slightly different way, let us leave another news executive aside because he has no seniority there, but you do say that a very senior executive of the paper is recorded directly commissioning illegal access to records from a mobile phone company. Will News International know the identity of that very senior executive?
Mr Davies: News International know the identity of all these people. I believe, because when this material, this mass of Steve Whittamore material, was disclosed to Gordon Taylor in April 2007, it was also disclosed to News Group’s lawyers. Therefore, what I know they know and what I know the Information Commissioner knows, except that he also knows it of all these other news organisations as well, and really they are better people to deal with than me.

Q1262 Chairman: On that point, we will wait and see what the Information Commissioner supplies us with, but we are able to come back and ask you again if—

Mr Davies: I am happy for you to ask me questions.

Q1263 Paul Farrelly: I just have two more questions. Mr Davies: You used to be a journalist, did you not?

Q1264 Paul Farrelly: Allegedly. The Taylor settlement in the Taylor case and possibly in the other cases, from your research, are you aware of at what level within News International to which it was reported, authorised or signed off?

Mr Davies: It is an interesting question, but I do not know the answer.

Q1265 Paul Farrelly: You are not aware as to whether it went to Board level?

Mr Davies: It is an interesting question, but I do not know the answer.

Q1266 Paul Farrelly: With respect to Mr Yates of the Yard, and you have referred extensively to him, he actually came out and said something which struck me as really remarkable at the time. He said, “No additional evidence has since come to light. I, therefore, consider no further investigation is required” and then I am thinking, “Well, actually isn’t the Gordon Taylor settlement additional evidence?”

Mr Davies: Well, it is not additional evidence because they have had it since August 2006. There are all sorts of unanswered questions around this.

Q1267 Paul Farrelly: That is potentially misleading then.

Mr Davies: Yates came in at the beginning of the day and said that he had been asked to establish the facts. Eight hours later he pops up and says, “I’m going to tell you”, but maybe he did not have time to discover the whole thing, but what I know from the paper work I have seen is that that investigation did not get to the bottom of the barrel. You see, they collect these armloads of material from Mulcaire’s premises and, roughly speaking, the paperwork and the other records identified three different groups of people. There are some people where it is blatantly obvious that Mulcaire has succeeded in hacking their phones, so that is category number one. Category number two is people where it is obvious that he was trying to hack their phones, so supposing he says, “Here’s the name, here’s the mobile phone number and here’s the four-digit PIN code”, but it is not obvious that he actually used that information successfully to hack messages. Then there is a third group where all that paperwork and other records show that these people were targeted by Mulcaire. Now, what happens is that the police, first of all, deal with the allegations involving the Royal Household because that is where it came in and there are specialist officers that deal with that, so they tie that up nicely and then Clive Goodman is charged, and then, “What on earth are we going to do with all this other material? Let’s do the obvious stuff. We’ll go and talk to some of the people where it is blatantly obvious”. I thought they had talked to all of the people where it was blatantly obvious, but, judging by that dodgy statement put out by Scotland Yard on Friday evening, it appears that perhaps they did not, but then how much follow-up have they done on category two and category three? Category three are particularly important because that is where you find the names of John Prescott, Tessa Jowell, Boris Johnson and “thousands of others”.

Q1268 Paul Farrelly: The Sunday Times was pretty forensic, as one of the few papers over the weekend that followed this in any depth, strangely enough.

Mr Davies: Some very interesting things came out.

Q1269 Paul Farrelly: Just to conclude, with respect to the police statement, and I was not aware of the second statement, Andy Hayman subsequently said, and this was printed in The Times and the News of the World, “In retrospect, the speed with which the Met came out and said it would not be reopening its files might have been a mistake”. Is that a view you share?

Mr Davies: Well, it is not for me to tell Scotland Yard what to say. All I can tell you is that the inquiry did not investigate all possible avenues. Then, “What do we do about that? That is for somebody else to decide”.

Q1270 Paul Farrelly: We have been concerned about whether we were, unwittingly or unwittingly, misled by evidence from Mr Hinton, but our predecessor Committee in 2003 conducted an inquiry and, quoting from the Information Commissioner’s report here where he refers to that inquiry, he says, “Amongst those giving evidence was The Sun Editor, Rebekah Wade, who claimed that self-regulation was the guidance of the PCC. It changed the culture of Fleet Street and every single newsroom in the land. When asked whether she or her newspaper ever used private detectives, bugged people, paid the police or others for information they should not legally have, she said that subterfuge was only ever used in the public interest. From your research, would you say that that was an accurate reflection?

Mr Davies: In terms of what—journalists generally, you mean?

Q1271 Paul Farrelly: No, this is the operation of News International prior to 2006 back to 2003 and before.

Mr Davies: I think I have told you that the very detailed evidence from the Information Commissioner shows us all those requests which are illegal, unless there is public interest on their side, and those requests are being made by a private investigator, Steve Whittamore.
Q1272 Paul Farrelly: So that evidence is in itself questionable which was given to our predecessor inquiry?

Mr Davies: I do not know what she knows. You run into these problems about who knows what.

Q1273 Adam Price: The allegation that Glenn Mulcaire had access to voicemails on behalf of other News of the World staff in addition to Clive Goodman, I think, was originally in Peter Burden’s book that Janet Anderson referred to earlier. I think we now know why News International did not sue him for defamation because it appears that this evidence is clearly true that you present to the Committee. I was wondering, did you follow the Glenn Mulcaire and Clive Goodman cases and was Glenn Mulcaire asked specifically if he had worked with other News of the World staff?

Mr Davies: My recollection is that his counsel stood up in court and said, “All Mulcaire’s work was for one news organisation”.

Mr Johnson: His counsel stood up at the end of sentencing him where Mulcaire had admitted that he hacked into the phones of Gordon Taylor, Sky Andrew, Elle Macpherson, Simon Hughes and Max Clifford to say he was putting in 70-hour weeks almost exclusively for News International with the News of the World having the first call on his services.

Q1274 Adam Price: But he was not specifically asked whether he had only worked for Clive Goodman in his criminal case?

Mr Davies: There are different things here. The police did, we know, interview Clive Goodman, and that is the one News of the World staff who, we know, was interviewed. I would be absolutely astonished if they did not ask him who else was involved in this in various ways, but, beyond that, we know nothing, I think.

Q1275 Adam Price: It is a question for them?

Mr Davies: But perhaps this is important, that the case was presented in court by the prosecution and the police on the footing that this was only something which involved Goodman and Mulcaire, and that was the same with press briefings given by the police and the CPS and the same also clearly in what News International said. I do not know whether it is surprising that the police and the CPS did not make any reference at all, however oblique, to the kind of evidence which you have seen which implicates other News of the World journalists.

Q1276 Adam Price: The implication of what you are saying there is that the police and the CPS allowed a misleading impression to be created that this activity only involved a relationship between Clive Goodman and Glenn Mulcaire.

Mr Davies: There appears to be a contradiction between their possession of the documents which I have shown you this morning and whatever other documents they have and the way in which the case was presented. Now, there might be a legal justification for that.

Q1277 Adam Price: Could I ask you about a different issue. Given the far-reaching, to use a cliché, implications of the original story itself, which you have backed up with the evidence that you provided today, are you surprised that, whereas the broadcast media followed this story up very, very keenly, in the other print media, by and large, it did not clear their front pages and in fact some of them were. I think, quite astonishingly rude? You were referred to by Stephen Glover, Mr Davies, as “a misanthropic, apocalyptic sort of fellow, the sort of journalist who can find a scandal in a jar of tadpoles”.

Mr Davies: Is that right? I did not know he had said that.

Q1278 Adam Price: It is a rather colourful turn of phrase, and his charge against you, Mr Rusbridger, is that basically you were green with envy at The Telegraph’s great scoop on MPs’ expenses and this was payback time for the Guardian.

Mr Rushbridger: Well, that ignores the fact that I have known about this story way before The Telegraph did anything on expenses, but Stephen Glover is a wonderful mind-reader. There is a serious point here. I said earlier that self-regulation depends on news groups telling the truth to the regulator. I think that, if large media organisations were exempt from the kind of scrutiny in the press that other large centres of power are subjected to and if the regulator is misled, you have a particular combination of circumstances which does not apply in other industries, so you have to ask how the regulator would know about things (a) if other newspapers decide to ignore them and (b) if the regulator is not told when facts emerge.

Q1279 Adam Price: I have certainly had the story recounted to me of telephone calls being put in to newspaper editors, other than the Guardian, for obvious reasons, basically creating a kind of tacit agreement that the newspaper industry did not really want to go too deep into this story. Did you think it was a credible story?

Mr Rusbridger: Well, no one called me!

Q1280 Philip Davies: You, I think, sat through the evidence from the PCC earlier and I just wondered if you could tell us what you made of what they said. Some people might conclude that they seemed rather complacent about it. What is your view about the PCC evidence that we received?

Mr Davies: Are you asking me or Alan?

Q1281 Philip Davies: Both.

Mr Rusbridger: Well, I think there is an issue for the PCC, that it sees itself as primarily a mediator and, secondly, as a reactive body, so it waits for people to come and bring complaints to it, and I understand
the reasons for it, but I think there is a question which the new Chair, Peta Buscombe, should address which is about how it deals with instances when, for instance, the Information Commission or other bodies come along and say, “Look, there is prima facie evidence within your industry of this going on”. I think the PCC is not presently constructed to do its own kind of investigations of things like that and I think that probably Lady Buscombe should work out whether that is satisfactory.

Q1282 Philip Davies: What I am driving at is that in previous evidence that you gave to us, and I think you repeated it again today, you have sort of said that the Guardian is a big believer in self-regulation and, therefore, the PCC, yet we seem to have a situation where the PCC sort of seem to me to be saying broadly, “Well, there’s nothing new in all of this. We’re fairly relaxed about all of this. It’s just regurgitating what we already knew”, which you seem to be vehemently denying, but in the same breath you are sort of saying, “Well, the PCC is a marvellous organisation”. Is there not a bit of an issue there?

Mr Rusbridger: No, I have always prefaced it with the word “effective”, that I believe in effective self-regulation, and I have made myself very unpopular within the industry because I think that sometimes the PCC has not been effective and I think it is surprising, to say the least, and I heard Tim Toulmin saying that himself, that Andy Coulson was not questioned.

Q1283 Philip Davies: Nick, you said in answer to the Chairman that the last evidence you have got of any wrongdoing was, I think, 2005.

Mr Davies: The stuff I gave you.

Q1284 Philip Davies: Yes, in terms of documentation, but I think you did say at the same time that you do get people who ring you up and tell you that this, that and the other has happened and all the rest of it.

Mr Davies: Yes.

Q1285 Philip Davies: Do you still get people ringing you up, saying that these things are still going on now, even though you have not got the documentation to back it up?

Mr Davies: The News International statement on Friday night changed the picture from my point of view and people who would not previously have got in touch have been in touch, and they come broadly from two camps, one, News Group newspapers and, two, private investigators and their world. Now, these people are coming on to me and saying very interesting things, they are saying them with some passion and in some detail, but it is wrong for me to pass that on to you when I have not had a chance to check it, partly because I have been too busy getting my head round coming here today, so I am not going to go into the detail of what those people are saying because I do not know whether or not it is true, simple as that. Is that all right?

Q1286 Philip Davies: Well, no, not really. I am not asking you to give us the evidence to back it up, I am merely asking you: are you still getting allegations that wrongdoing of the sort that you have exposed is still happening? Even though you cannot corroborate it, are you still getting those allegations?

Mr Davies: I will tell you one thing I know from my personal experience which, I think, goes to answer the nub of your question. Steve Whittamore, the private investigator in Hampshire, was raided in March 2003. In 2005, he appeared at Blackfriars Crown Court, pleaded guilty with three of his associates and they got whatever the judge gave them. In the summer of 2006, when I was researching Flat Earth News, I doorstepped and got across the doorstep of one of the people who was in Whittamore’s network and was interviewing him about all the things that had happened to him, including the conviction of the four at the centre. While I was there, the phone was ringing with national newspaper journalists ringing this guy up to commission more illegal blagging, so that is a concrete example of the fact that that particular network, or at least some members of that network, did not stop operating simply because they had ended up in court with a conviction, and Fleet Street newspapers, knowing that, nevertheless were still using them.

Q1287 Philip Davies: So I will take that as a yes then, that it is still going on. Alan, I think Nick made clear that he did not know who knew what and who had signed off what and all the rest of it and there is no evidence on that front, but perhaps you might be able to help us in terms of what would be the norm on a big newspaper in terms of budget meetings, levels of budget that would need to be signed off by whom. Can you give us your perspective on what would be the norm in terms of the figures involved?

Mr Rusbridger: Well, I can only describe the Guardian and the figures involved in the Guardian would be probably smaller than the figures involved in the News of the World, but a payment of a £7,000 bonus to get a story, not that we have ever done such a thing, I would certainly expect to know about that. A lot of these subsidiary payments would certainly be handled by the Managing Editor. If anybody on the Guardian was earning or being paid £100,000 or above, there is no question that I would know about that and indeed the Board of the company would know about that.

Q1288 Philip Davies: So, if any of these things had been going on certainly in your newspaper, you not only should know, but you would know?

Mr Rusbridger: On the Guardian until recently, and the limits have slightly been raised recently, anybody earning £100,000 or more is not only a matter for the divisional board of GNM, but it has to go for approval to the rencom of the parent board, GMG, so that is the kind of yardstick that we operate by. Please may I go?
Chairman: Certainly. We were not originally expecting you this morning anyway, so it has been a bonus.

Q1289 Rosemary McKenna: May I seek to clarify something which you said earlier. You said, when you were listing the journalists who were involved in the emails, that Andy Coulson’s name did not appear there, but he was the Editor at the time.

Mr Davies: We need to be clear what we are talking about. There are the two separate activities happening in two separate time-frames. The commissioning of Glenn Mulcaire, who is, among other things, a specialist in phone-hacking, is happening from 2001 through until his arrest in 2006. In the beginning of that period, Rebekah Wade is Editor until January 2003 and Andy is the Deputy and, as from January 2003, Andy is in charge, so that is on the phone-hacking. On the Information Commission stuff, Steve Whittamore, with access to confidential databases, is raided in March 2003, so almost all of that is occurring during the period when Rebekah is Editor and Andy is Deputy. Have I answered your question?

Q1290 Rosemary McKenna: Yes, you have, but he was not a named journalist in the list that you said of the journalists who were being emailed. You said you have a list of journalists.

Mr Davies: They are on the information blagging side. The word ‘blagging’ is a good one.

Q1291 Rosemary McKenna: Yes, getting information, and his name is not on that.

Mr Davies: Well, I can take it wider than that. I have never seen a piece of paper that directly links Andy Coulson to any of the activity that we are discussing of either kind. Other executives, yes.

Q1292 Rosemary McKenna: Is it feasible that, as the Deputy Editor and then the Editor, he was completely unaware of what was going on?

Mr Davies: That is a question for somebody else to answer, not me, is it not? I have told you what I can, and other executives are certainly named.

Q1293 Rosemary McKenna: Perhaps I could direct the question to Paul, in a similar situation.

Mr Johnson: We have no intimate knowledge in that sense of the general practice within News International in terms of their money accounting. We have sort of explained to you the processes in the Guardian and we would expect to know of any serious big stories which reporters were coming up with; there is a proper chain of reporting in place.

Q1294 Rosemary McKenna: Would there be a proper chain of your knowing how much money was being paid, the incredible sums of money that were being paid out to the people who were doing the telephone-hacking and who were doing the reporting of all that information back to the journalists?

Mr Johnson: Our Managing Editor’s eyes would be watering at the scale of these payments. They are quite extraordinary compared to what we might do.

Q1295 Rosemary McKenna: So is it possible that somebody in the middle of this in a little bubble who was a deputy editor and then the editor was completely unaware of this?

Mr Johnson: It is possible but you will have to ask them, I am afraid.

Q1296 Mr Ainsworth: Stephen Glover’s ears are going to be burning today because another thing he put in that piece that has already been referred to is “What we have here is an old story reheated and represented by the Guardian and the BBC in a most sensational manner.” It seems to me—and this came up with the previous witness from the PCC—that he seemed unable to say that really very much of what you have written—and you have been a brilliant and articulate witness if I might say so, Mr Davies—is actually new stuff and it is more information about an old case. Would you accept that?

Mr Davies: Is that what you think? You have been Glovered! No, not at all. Everything that is connected with Gordon Taylor and the other two people’s settlements is new. All that material. We had no idea. Nobody outside the Information Commissioner’s Office had ever been able to see the names of all those journalists and the requests they were making and the targets of those requests. We had no idea about the more than £1 million being paid to suppress that, nor did we know, crucially, about those documents, samples of which I have given you today, with what that tells us about what was wrong with the story we had previously been told by News International and the police.

Rosemary McKenna: And nor did the Committee.

Q1297 Mr Ainsworth: Of course I was not on the Committee at the time so perhaps I do not have that sense of frustrated ownership that the Committee has.

Mr Davies: All that is new, is it not?

Q1298 Mr Ainsworth: But the evidence that you have presented is not. It does not date from recently, does it?

Mr Davies: You are using the word “new” in a different sense. New, in the sense that the world did not know it, certainly that story is disclosing very important and lots of new material. New in the sense that it happened last week, no, of course not.

Mr Johnson: There is a point here that those court cases were only finalised last September so it is rather more contemporaneous than might be suggested from dating back to 2004-05.

Mr Davies: In fact the other two cases were only settled this spring.

Q1299 Mr Ainsworth: Alan Rusbridger said earlier that he knew about all this a long time before the Telegraph started writing its stories about MPs’ expenses. What thinking lay behind the timing of the
publication of these stories? Is it the case, as has been alleged, that senior executives of the BBC were telephoned before you actually went to print?

**Mr Davies:** The business about the timing is you put a story together like this in a sort of mosaic way. For example, I referred to a conversation which I had with somebody very senior at Scotland Yard and I said, “I just don’t believe we have heard the whole story, the whole truth about Goodman and Mulcaire,” and he said in the course of that conversation, “There was thousands of people being hacked.” I had that some time ago and I told Alan specifically to be careful of his mobile phone because there are allegation of other journalists and editors being targeted, so he has known about it because of that conversation going way back. I am trying to get into it because you cannot just bang that in the paper, you need some evidence of the kind which I showed you today. Who is supposed to have spoken to the BBC? You see, I do not read The Independent, I do not know what Glover has been going on about.

**Q1300 Mr Ainsworth:** Very few people do.

**Mr Davies:** What is it he is alleging about the BBC?

**Q1301 Mr Ainsworth:** It is a Stephen Glover allegation. He said: “The Corporation had been put on red alert by the newspaper at a senior level well before the story broke.”

**Mr Davies:** I do not know what he is talking about.

**Mr Johnson:** It is the case often when you get a big story that you will alert broadcasters to it in order to increase the momentum and increase the attention. We do it on a regular basis when we do an ICM poll and we release that to Channel 4 News. It is the case often when you get a big story that you will alert broadcasters to it in order to increase the momentum and increase the attention.

**Q1302 Mr Ainsworth:** The implication here is that there is some animus beyond any pure altruism here, and it is to do with the BBC and the Guardian ganging up on the Murdoch press.

**Mr Johnson:** I think ganging up would be too—

**Mr Davies:** I did tip off one person who was a Conservative politician. Is it all right to say this?

**Q1303 Chairman:** You may certainly say it.

**Mr Davies:** I rang a Conservative politician who is the Chairman of this Committee and said about an hour before—

**Q1304 Chairman:** This is one hour before! 

**Mr Davies:** — One hour before it went up on the website, and I said, “Because I gave evidence to you two months ago and because I know this affects you directly because of the evidence that was given to you, I just want you to have a look at our website because this story is going up at half past five.”

**Q1305 Chairman:** Just on that, I had previously received a call earlier than that from Channel 4 who were going to carry the story at seven o’clock and they implied to me that they were also involved in preparing the story. Is that correct?

**Mr Davies:** I think the Guardian press office may well have done.

**Mr Johnson:** I think you will find it is quite normal procedure to alert broadcasters to any big story. I think you will find for about 27 days on the trot The Telegraph were making sure that before their newspapers hit the news the stands the BBC, Nick Robinson, et cetera, had a fair idea. Whether that was the BBC and the Telegraph ganging up on politicians I do not know but that interpretation is clearly open.

**Q1306 Chairman:** But Channel 4 was not involved in preparing the story, you just gave them advance notice of what was going to go to press.

**Mr Johnson:** The preparation was entirely Nick’s.

**Mr Davies:** I did this story all on my own. You do not go telling other journalists what you are working on, for God’s sake.

**Q1307 Adam Price:** Just one small point. Did you say in response to a question by Paul Farrelly that Glenn Mulcaire was producing lists of potential targets for News of the World? Was it for the same individual or was it for his own purposes?

**Mr Davies:** We are in that grey area I talked about at the beginning. I think I can say that I have seen paperwork which appeared to me to be Mulcaire justifying the money they paid him, so he puts in a list every week or every month of what he had been working on and this was basically a list of people’s names and the dates when he had been working, and that is where I know as a 100% certainty that Mulcaire was targeting, ie trying to find information about for example John Prescott, Tessa Jowell, Boris Johnson, Jade Goody, George Michael, those ones I mentioned in the paper.

**Q1308 Adam Price:** So it was like a time sheet for phone hacking.

**Mr Davies:** Something like that.

**Q1309 Adam Price:** An extraordinarily naive thing to do considering you are committing a criminal offence.

**Mr Davies:** I do not know too much about it because it was handwritten. That is all, as I understand it, in Scotland Yard’s possession. They know about all those.

**Q1310 Chairman:** Just on that, clearly any intercepts that had been obtained or hacking that had been obtained relating to the Royal Family is going to be of interest to Clive Goodman but why is Clive Goodman interested in Jade Goody or Simon Hughes? Would that not have been other reporters dealing with those areas?

**Mr Davies:** If you ask when did anybody start working on this story it is on the day of the trial. You stand there and you look at what we are being told, the official version of events, and it does not make sense. Why would the Royal reporter be interested in Simon Hughes, Elle MacPherson, Sky Andrew, Gordon Taylor? It does not make sense.
Q1311 Chairman: So you would have expected Mulcaire to be supplying the intercepts to whichever reporter on News of the World was covering that?
Mr Davies: There was a misunderstanding about this when we were running it in the story and I need to make it clear now. I am 100% sure that Mulcaire was targeting people like John Prescott, i.e. trying to find information about them. It is 100% certain that Mulcaire is in the business of hacking phones. Does that mean that Mulcaire hacked the telephone of the Deputy Prime Minister? The answer is: I have asked and I was told by somebody who should know that they thought he probably had but that is not 100%. There is an evidential gap there which is why you have not got a great big front page story saying “Prescott was hacked” but that very important evidential gap got lost in a kind of Chinese whispers way as the Guardian story got picked up and repeated, and unfortunately John Prescott himself was misinformed about what we were saying. You cannot say that all these people who are named in Mulcaire’s paperwork are the target of illegal activity. You might say that the police perhaps ought to investigate to discover whether they were.

Q1312 Philip Davies: But it does not mean either that he was asked to by somebody at News International. He could have drawn up his own list of people he thought the newspapers might be interested in, presumably?
Mr Davies: But he is submitting the piece of paper—
Paul Farrelly: He is reporting it back.

Q1313 Adam Price: Sorry, who was he submitting them to?
Mr Davies: He submitted the piece of paper back to News International. You are quite right that it is conceivable that a man in that role could say, “I know what I’m going to; I’m going to target so-and-so,” but the paper suggests that he is doing that in the expectation that News International will approve and pay him for it.

Q1314 Chairman: Who did he send the transcripts of Max Clifford to, for instance?
Mr Davies: I do not know.

Q1315 Chairman: It would not be Clive Goodman. Clive Goodman would not be interested in Max Clifford.
Mr Davies: That is a reasonable inference but I do not know. I spoke to Max Clifford yesterday and he does not know. The police did not give him that sort of detail.

Q1316 Chairman: But you would expect, given the range of people who were having their phones hacked into covered politics, entertainment, sport, the Royal Family, each of those will be covered by a separate reporter presumably?
Mr Davies: It is all reasonable speculation but I do not know. There is so much still to come out, so much that is still tucked away in Scotland Yard’s files and with the Information Commissioner on the other material, and in this High Court file.

Q1317 Janet Anderson: Just briefly, Nick, if we could go back to the John Prescott point because if you look at the statement by the Assistant Commissioner of the Met, John Yates, he says: “There has been a lot of media comment today about the then Deputy Prime Minister John Prescott. This investigation has not uncovered any evidence to suggest that John Prescott’s phone had been tapped.” It does not mean they had not tried to tap it.
Mr Davies: I think you could say if they had tried to discover, one thing they would have to done would be to go to the Deputy Prime Minister and say, “Do you have any circumstantial evidence that this could have happened? Was there an occasion when you phoned your mum up and said, ‘I am coming to see you in five minutes’, you have turned up and there was a photographer on the doorstep?” That sort of stuff. Prescott has made it clear that he was never approached to be asked a single question, so as far as we know there was no attempt by Scotland Yard to investigate what it was that Mulcaire had done in relation to Prescott and therefore of course there is no evidence.

Q1318 Janet Anderson: And possibly a lot of other people in that same category where they have not been successful in tapping the phone?
Mr Davies: No, you remember those three categories I was talking about, the blazingly obvious they have been tapped, secondly, it is obvious that he was trying to tap them but we do not know whether he has succeeded and, thirdly, all we know was that he was targeting them in some way. As far as I know, there was no investigation of anybody in that third category. This is a huge job. These are police officers who basically specialise in counter-terrorism and protecting the Royal Family. “Are we really going to have to spend the rest of the year doing this stuff?” Some investigation, if John Yates is right, occurred on that middle category and they ran into problems proving it. So the job has not been finished I think you could say.

Q1319 Mr Hall: Just to follow on this thing about Prescott, there were very clearly newspaper reports about his private life.
Mr Davies: And it coincides with that time.

Q1320 Mr Hall: I always thought it was somebody in Prescott’s office that was selling the story to the press. It may well be now that it was somebody who was listening to his phone instead.
Mr Davies: We do not know but I can definitely tell you that the time-frame when Mulcaire was targeting Prescott coincides with the breaking of that story. It was not the News of the World that broke that story so it may just be that they were following it up. That is more likely I think.
Q1321 Mr Hall: Going back to the categories, politicians, people in entertainment, people in sport, general celebrities were all on this list of attempted hacks to phones.

Mr Davies: Hang on, we must keep different things separate. There is this mighty list of people where they were blagging into confidential databases. Steve Whittamore trying to get bank statements, tax records, health records, social security records. That is a mighty list with many, many names on it, right, and I know all those names. There is a different list of people whose phones they were trying to hack via Glenn Mulcaire or other private investigators. There we now know for sure of ten people who were successfully hacked. That is three members of the Royal Household, the other five people about whom Mulcaire was charged: Gordon Taylor, Sky Andrew, the football agent, Elle MacPherson, Simon Hughes and Max Clifford, and then in addition the two other people who sued alongside Gordon Taylor, Joe Armstrong and the football lawyer, so you have ten definite cases.

Q1322 Chairman: Is Vanessa Feltz not somewhere in this?

Mr Davies: I have no idea how she arrived in the middle of this story. Suddenly she was everywhere and I looked at my notes and — Then you have all sorts of very interesting briefing going on so The Sunday Times ran a story on Sunday in a News International newspaper in which towards the end of the story they suggested strongly that a senior BBC executive was in my first category and had blazingly obviously had his or her phone messages hacked and that it appeared likely that the Metropolitan Police Commissioner Ian Blair was in the second category. I am not telling you that I know that is true. All I am telling you is that a News International newspaper in which towards the end of the story they suggested strongly that a senior BBC executive was in my first category and had blazingly obviously had his or her phone messages hacked and that it appeared likely that the Metropolitan Police Commissioner Ian Blair was in the second category. I am not telling you that I know that is true. All I am telling you is that a News International newspaper in which towards the end of the story they suggested strongly that a senior BBC executive was in my first category and had blazingly obviously had his or her phone messages hacked and that it appeared likely that the Metropolitan Police Commissioner Ian Blair was in the second category.

Mr Johnson: We have actually reported police sources saying that they do not believe Ian Blair was targeted.

Mr Davies: That would be very shocking. I do not know what is going on there. There is more to come.

Q1323 Mr Hall: There was speculation as to why such a variety people were attempted to have their phones hacked and that that information would be passed on to the journalists that were interested in those characters. There is another possibility that they could have been passed on to the deputy editor or the editor and the editor would have farmed out the information to the journalists he thought might cover that story.

Mr Davies: In principle you are right but as far as I know and particularly bearing in mind the transcript I gave you earlier on it is actually happening at a junior level.

Q1324 Mr Watson: Do you think a register of private investigation firms used by newspapers would help create transparency and reassurance that these kinds of things are not going on any more?

Mr Davies: I am particularly useless on solutions. I am not quite sure what we should do. It is not my strong suit. I peer over the wall into the orchard and somebody gives me an apple and I come and show it to you. I can do that.

Mr Johnson: Sometimes on something like that glibly one could say perhaps that would add to the transparency but I am sure that it would not take long to be able to drive a coach and horses through any transparency there. We are much keener on trying to refine what actually could be defined in the public interest and what could not with the Ormond steps and suggestions. It seems to us a much more concrete way forward that other people could buy into.

Q1325 Paul Farrelly: We cannot speculate about other reporters who may or may not have used Glenn Mulcaire but the evidence you have given us here does show prima facie evidence of one conduit which is to the chief reporter.

Mr Davies: Yes, involving that other reporter who we are going to not name.

Q1326 Paul Farrelly: When we looked at this two years ago, the Chairman asked the Executive Chairman of News International at the time, Mr Hinton, the following question: “You carried out a full rigorous internal inquiry and you are absolutely convinced that Clive Goodman was the only person who knew what was going on?” The answer was: “Yes we have and I believe he was the only person.” That is leading us to believe that the News of the World carried out a thorough inquiry and came up with nothing, when we have seen here that it appears that the chief reporter was also in the business of dealing with the sort of information over which Clive Goodman was convicted. What do you think that says about not only the evidence we have received but also the thoroughness of the News International inquiry?

Mr Davies: I think I have touched on this before. First, this is a newspaper that specialises in investigations and you would think that they could find out what some of their own people were doing. I think it is very hard to resist the conclusion that in its public statements about the scope of illegal behaviour they have consistently admitted only what has been forced and dragged into the public domain and is indisputable and everything else has remained behind a wall of misleading statements. I do not know what Les Hinton as an individual knew but I think it is fair to say we have consistently been misled by News International, and that includes the statement that they released on Friday evening and in my own dealings with them. I called the Director of Communications of News Group the week before we published the story. I said, “Can you confirm that you have paid damages to somebody who has sued you for hacking into their mobile phone?” That was a Thursday afternoon and she went off to make enquiries. On Thursday evening I had a phone call from somebody at News International saying, “What have you done? They are all chasing around blaming everybody else for having given you the
story.” Friday morning she called back and left a message on my answer machine to say, “I have spoken to all the managing editors and all the lawyers; nobody knows what you are talking about.” I want to make it clear she, I am sure, is an innocent victim of somebody behind the scenes who is not prepared to tell the truth. There is a consistent and worrying pattern here in News International’s statements, to you, to me, to the public.

Q1327 Mr Sanders: You have hinted very strongly there that you have been misled by News International. When you spoke at some length I almost got the impression here that you were getting close to suggesting that you may have been misled by the police.

Mr Davies: I think the statement that the Assistant Commissioner made last week on Thursday afternoon fails to disclose the facts of the case which is what he said he was going to establish. It makes no reference to any kind of involvement by other News of the World journalists. It says, “We have already told everybody where there was clear evidence of their phone being hacked,” and yet 24 hours later they sneak out this statement saying, “We are now telling people.” I do not understand why John Yates did not tell us all of that upfront on Thursday afternoon.

Q1328 Chairman: I think that is all we have for the time being. Mr Davies: Okay. Thank you for your time.

Supplementary written evidence submitted by Alan Rusbridger, Editor, the Guardian

The PCC Code: Public Interest

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.

3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.

4. The PCC will consider the extent to which material is already in public domain, or will become so.

5. In cases involving children under 16, editors must demonstrate an exceptional public interest to override the normally paramount interest of the child.

Possible Addition to Codebook

When intruding into privacy an editor should consider the following:
   — There must be sufficient sustainable cause—it needs to be justified by the scale of potential harm.
   — There must be integrity of motive—it must be justified in terms of public good.
   — The methods used must be in proportion to the seriousness of the business in hand using minimum intrusion.
   — There must be proper authority—it must be authorised at a sufficiently senior level with appropriate oversight.
   — There must be a reasonable prospect of success—no fishing expeditions.

July 2009

Further written evidence from Alan Rusbridger, the Guardian

This submission is in two separate parts:

Part 1—Secret Injunctions

When Ian Hislop of Private Eye and I testified to this committee on 5 May 2009, I said that we had not yet been hit with the kind of chilling privacy injunction which most concerned him, and which he called “censorship by judicial process”. Unfortunately, I spoke too soon!

The Guardian has now been hit with the same kind of injunction, because we tried to act as responsible journalists. A document we obtained detailed what appeared to be apparent wrongdoing by a big corporation. No sooner had our reporter phoned up to ask questions about its genuineness, than he was hauled into court and forbidden to publish a word about the document’s content on the grounds that it was confidential.
Far worse still was that the judge then accepted the company’s request that the very fact of the existence of the injunction itself be kept secret. The company was to be referred to as “X” in the court papers. The judge was told that we should be muzzled from publishing the fact that the company had obtained an injunction against us, because otherwise we might write a story criticizing the corporation for “muzzling the press”. The committee will see the irony in this kind of reasoning.

The order says: We “must not disclose to any other person . . . the information that the Applicants have obtained an injunction and/or the existence of these proceedings and/or the Applicants’ interest in these proceedings”.

The injunction prevented us from publishing information which we believed was important to make known. We would have to spend a great deal of time and money to overturn what seems like a casual piece of censorship by the courts. Ironically, the document in question has been published in full abroad. We wrote a recent leader about this. The process of casually granting these secrecy orders appears to be spreading. One of the first cases before the new Supreme Court appears to involve an alleged Al Qaida financier who has obtained an order to be known only by initials, although he has been named already by the US Treasury. Likewise with control orders, deploying secret evidence against those subject to them, this spreading virus of anonymity seems very undesirable.

**Part 2—The Activities of Firms such as Carter-Ruck**

Along with others of the European media and the BBC, we have recently been subject to what we regard as a prolonged campaign of legal harassment by Carter-Ruck on behalf of London-based oil traders, Trafigura.

Trafigura arranged the illegal dumping of 500 tons of highly toxic oil waste in the West African country of Cote d’Ivoire. Thousands of the population of Abidjan, the capital, subsequently became ill and, after a bitterly fought law suit, Trafigura has now been forced to pay a degree of compensation to the victims.

Carter-Ruck, like such other firms as Schillings, are trying to carve out for themselves a slice of the lucrative market known as “reputation management”. This is not about the perfectly proper job of helping people or organisations gain legal redress when they have been mistreated by the press. It is a pitch to work with PR firms to pressurize and intimidate journalists in advance on behalf of big business. It exploits the oppressive nature and the frightening expense of British libel laws.

Carter-Ruck’s boasts on their website are appended.¹

After the toxic waste dumping in 2006, Trafigura embarked on what was essentially a cover story. They used Carter-Ruck and PR specialists Bell Pottinger, working in concert to enforce their version on the media.

The cover story was that Trafigura used a tanker for normal “floating storage” of gasoline. They had then, they claimed, discharged the routine tank-washing “slops”, which were harmless, to a disposal company, and had no responsibility whatever for the subsequent disaster.

In fact, Trafigura had deliberately used a primitive chemical process to make cheap contaminated gasoline more saleable, and knew the resultant toxic waste was impossible to dispose of legally in Europe.

The _Guardian_ experienced an intimidatory approach repeatedly in the Trafigura case. Other journalists at BBC Newsnight, the Norwegian state broadcaster NRK and the Dutch newspaper Volkskrant, told us of identical threats. The BBC eventually received a libel writ. NRK were the subject of a formal complaint—eventually rejected—to the Norwegian press ethics body.

A history of Carter-Ruck’s behaviour in respect of the _Guardian_ is appended.²

*September 2009*

**APPENDIX 1**

**EXTRACTS FROM CARTER-RUCK WEBSITE**

Carter-Ruck has unrivalled expertise in advising a wide range of individuals and organisations who find themselves subject to adverse or intrusive media coverage.

Where consulted before publication under its MediaAlert service, Carter-Ruck is often able to persuade a publisher or broadcaster to change its intended story or even to decide not to publish it at all. If this does not prove possible then the option of obtaining an injunction to prevent publication will be considered. The firm has an excellent record over recent years of securing injunctions prohibiting publication, particularly of private information. We are often able to secure injunctions in a matter of hours. We also have considerable experience of working (often alongside PR agencies) for blue chip corporations and other clients facing sustained and hostile media interest.

The best time to act over an intrusive, unfair or inaccurate piece of journalism is before publication... We can, and frequently do, have a significant impact on behalf of our clients on what material, if any, is published.

¹ See Appendix 1.
² See Appendix 2.
How MediaAlert Works

If you, or your clients, are about to be the subject of intrusive, unfair or inaccurate media coverage, contact us.

We will advise on a strategy and we may recommend that we should speak to the staff lawyer at the relevant publisher or broadcaster.

All television broadcasters and most national newspapers have staff lawyers. Our lawyers know most of them well and are experienced in dealing with them. We find them receptive to our approach. It is in their interests that stories should be accurate and potential disputes avoided where possible. We will advise the staff lawyer of your interest and, if appropriate, outline your concerns regarding the proposed story.

The Results

This means a staff lawyer with knowledge of your concerns will consider the proposed article or broadcast for libel, breach of privacy and other legal and regulatory purposes. This vetting process would otherwise probably be done by a freelance night lawyer (who may be relatively young and inexperienced) with no equivalent knowledge.

This may lead to important changes to the story from your point of view and, sometimes, a decision not to publish the story at all.

Often this is all that is required to nip the matter in the bud.

What Happens Next?

We can write to threaten legal action. In appropriate cases we can seek an injunction from the court at very short notice at any time of the day or night. Television and newspaper staff lawyers know these options are in the background. They know our reputation. They know our experience in dealing with pre-publication issues. That’s why they listen to what we say and will take account of it when deciding whether, and in what form, to clear stories for publication or broadcast.

APPENDIX 2

EXTRACT FROM A CHRONOLOGY OF CARTER-RUCK DEALINGS WITH THE GUARDIAN ON BEHALF OF THEIR CLIENT TRAFIGURA

On 27 June 2008, Bell Pottinger sent a threatening message to the Guardian. They had previously sent similar threats and complaints to AP, whose agency dispatch had been published on-line by the Guardian.

The message ended:

“Please note that in view of the gravity of these matters and of the allegations which have been published, I am copying Trafigura’s solicitors, Carter-Ruck, into this email.”

The letter demanded changes to the Guardian’s website to include this information:

“The Probo Koala ... left Amsterdam with the full knowledge and clear approval of the Dutch authorities.” It also stated that the disposal company in Amsterdam had asked for extra fees “without any credible justification” and that “ship’s slops are commonly produced within the oil industry. To label Trafigura’s slops as ‘toxic waste’ in no way accurately reflects their true composition”.

On 16 September 2008, Trafigura posted a statement on their website claiming:

“Trafigura is in no way responsible for the sickness suffered by people in Abidjan … The discharge of slops from cargo vessels is a routine procedure that is undertaken all over the world”.

The company knew this was a misleading and false statement.

On 22 September 2008, the Guardian’s East Africa correspondent, Xan Rice, asked Trafigura some questions, in view of the then impending trial of local Ivorian waste contractors.

Trafigura refused to answer, a refusal coupled with another pointed referral to libel solicitors. Bell Pottinger wrote: “I am copying this email to Carter-Ruck”.

Xan Rice’s article was not published by the Guardian.

The Ivorian trial convicted local individuals for toxic dumping. Trafigura subsequently abandoned some of their lines of defence in the English litigation they originally claimed they had no duty of care, and could not have foreseen what the local dumpers might do. Trafigura now agreed instead, to pay anyone who could prove the toxic waste had made them ill. They continued to deny publicly that such a thing was possible.

Xan Rice again asked some factual questions. On 14 November 2008, Bell Pottinger responded “Please note that I am copying this correspondence to Carter-Ruck and to the Guardian’s legal department”. They added: “Any suggestion, even implicit, that Trafigura ... should have stood trial in Ivory Coast would be completely unfounded and libellous ... We insist that you refer in detail to the contents of the attached summary.”
They claimed to be suing for libel the senior partner of Leigh Day who was bringing the English lawsuit. They added that further Leigh Day statements “are the subject of a complaint in Malicious Falsehood” [sic]. In fact, the libel proceedings against Martyn Day had been stayed, and no malicious falsehood proceedings had been—or were ever—issued.

A closely-typed six-page statement was attached. In it the company claimed to have “independent expert evidence” of the non-toxicity of the waste, but refused to disclose it. Trafigura repeated the false claim that the waste was merely “a mixture of gasoline, water and caustic soda”.

No Guardian article, once again, was published.

On 3 December 2008, less than three weeks later, Trafigura formally admitted to the High Court the true composition of the waste in its document “Likely chemical composition of the slops” [detailed above].

On 5 December 2008, Trafigura formally admitted their waste came from Merox-style chemical processing attempts, and not from routine tank-rinsing.

On 29 April 2009, Carter-Ruck wrote to a Dutch paper: “Trafigura has been obliged to engage my firm to bring complaints against Volkskrant … It is indeed the case that we have on Trafigura’s behalf, written to a number of other media outlets around the world in respect of their coverage of this matter.” Bell Pottinger also confirmed contact with journalists who published or broadcast stories that did not accurately reflect Trafigura’s position, but added: “We completely disagree with your description of Trafigura’s involvement in an ‘aggressive media campaign’.”

On 13 May 2009, Bell Pottinger, in concert with Carter-Ruck, issued a statement to the BBC repeating two assertions known to be false.

They said the Leigh Day statement “is currently the subject of a malicious falsehood complaint made by Trafigura”. They also claimed once more: “The Probo Koala’s slops were a mixture of gasoline, water and caustic soda”.

On 13 May 2009, Carter-Ruck wrote to the Guardian demanding the paper not “publish any reference” to witness-nobbling allegations, although they know these had already been the subject of a public statement by solicitor Martyn Day; the subject of a separate disclosure published by the legal correspondent of the Times; and the subject of a publicly-available court injunction banning further witness contact by Trafigura until trial. Carter-Ruck added that “so much as a reference to these allegations” would be “wholly improper”.

On 15 May 2009, Carter-Ruck issued a press release under its own letterhead, not Trafigura’s, claiming that High Court libel proceedings had been issued against the BBC for “wildly inaccurate and libellous”, “one-sided”, “misleading”, “sensationalist and inaccurate” publications.

On 22 May 2009, Carter Ruck told the Guardian: “It is untrue that the slops caused or could have caused the numerous deaths and serious injuries … Trafigura cannot be expected to tolerate unbalanced and inaccurate reporting of this nature. Accordingly, Trafigura requires the Guardian to … remove these articles from its website forthwith; and … publish a statement by Trafigura”.

The Guardian declined to remove its articles, but agreed to publish the statement. This said: “The fact is that according to independent analyses that Trafigura has seen of the chemical composition of the slops, it is simply not possible that this material could have led to the deaths and widespread injuries alleged. Similarly, it is not possible that hydrogen sulphide was released from the slops as alleged by the Guardian. Trafigura will present these independent analyses in the High Court in Autumn 2009”.

On 17 September 2009, the Guardian published documents on its front page detailing a “massive cover-up” by Trafigura.

On 29 September 2009, Trafigura announced it would pay £30 million to the victims, rather than face a High Court trial.

Supplementary written evidence submitted by Nick Davies, the Guardian

The immediate source of the invoices which I passed to the committee on 14 July was my Guardian colleague Rob Evans. In October 2007, he gave me a collection of some 60 sheets of paper, made up of claims submitted by Steve Whittamore to various media groups and also of invoices recording payments by some of those groups to Whittamore. All of the sheets had been redacted to remove the names and any other details of any individual who was mentioned. The News International invoices which I passed to the committee were among them.

Rob Evans is the Guardian’s specialist in the use of the Freedom of Information Act to obtain internal documents from public bodies, and I understood that he had obtained this redacted paperwork by using the Act.

Since receiving your letter, I have spoken to him and established that what actually happened was that he did not have to use the Act: the ICO press office volunteered to supply him with this collection of redacted paperwork in December 2006 when he was preparing a news story about What Price Privacy Now? He recalls being invited to the ICO for a briefing with the then commissioner, Richard Thomas, and then the
press office bickering the material to him at the Guardian office on the following day. He says there is no suggestion that this was an unauthorised move by the press office: on the contrary, he says, this was what the ICO wanted.

I am sorry if my assumption about the use of the Act caused any confusion. The important point, I think, is that Rob is clear and certain that the ICO was the source of the paperwork.

It is interesting that the ICO now take the view that it could be unlawful to release this paperwork. I know there has been a lot of debate within the ICO about whether to publish more Motorman paperwork and it may be that the supposed legal obstacles are not quite as great as they are sometimes perceived to be.

August 2009

Written evidence from Alan Rusbridger, Editor, the Guardian

When we wrote to you on 28 September 3 our submission had to be in two parts, because we had been silenced by a super-injunction. That injunction has now been lifted, and we are able to tell you that Part 1 of our submission referred to the injunction, imposed on behalf of Trafigura at Carter-Ruck’s request by a vacation duty judge, Maddison J, who was not a media law specialist, on 11 September 2009. It prevented us from disclosing the contents of the Minton Report about Trafigura’s toxic waste. It also prevented us from telling anyone that Trafigura had injuncted us. It also prevented us, as Carter-Ruck subsequently maintained, from reporting proceedings in Parliament.

Alan Rusbridger

October 2009

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3 See Ev 290
Evidence submitted by Nick Davies, the *Guardian*

Hello,

This is the transcript for Neville. I have copied the text in the below email, and also attached the file as a word document.

TRANSCRIPT FOR NEVILLE: WEDNESDAY, JUNE 29, 2005.

1 - (JA TO GT):

2 - (MT TO GT):

http://uk.f260.mail.yahoo.com/ym/ShowLetter?MsgId=5615_5053242_76260_2141... 30/06/2005
THE NEWS OF THE WORLD undertakes not to publish any information/pictures supplied by PAUL WILLIAMS in connection with PFA Chief Executive Gordon Taylor.

The News of the World agrees to pay a minimum sum of £7,000.00 on publication of the story based on information provided by Mr. Williams. This figure will be re-negotiable on the basis of prominence given to the story.

Signed: ................................

Dated: 4th February 2005
Tuesday 21 July 2009

Members present
Mr John Whittingdale, in the Chair

Mr Peter Ainsworth
Janet Anderson
Philip Davies
Paul Farrelly
Mr Mike Hall

Mr Alan Keen
Adam Price
Mr Adrian Sanders
Mr Tom Watson

Witnesses: Mr Tom Crone, Legal Manager, News Group Newspapers, and Mr Colin Myler, Editor, News of the World, gave evidence.

Chairman: Good morning. This is the second session as part of the Committee’s further inquiry into press standards, privacy and libel, concentrating particularly on the stories that appeared in the Guardian nearly two weeks ago. I would like to welcome as our first witnesses this morning Tom Crone the Legal Manager of News Group, and Colin Myler the Editor of the News of the World. Before we start, I would like to make a declaration that I am an elected member of the Board of the Conservative Party which is currently the formal employer of Mr Andy Coulson. I have stood aside that I am an elected member of the Board whilst this inquiry is taking place. I believe Tom Watson would also like to make a statement.

Q1329 Mr Watson: Thank you, Chairman. I am a member of the Unite Union and, having had time to review the evidence of this case which I had not had last Tuesday, I would also like to add that in my dispute with the Sun I am represented by Carter-Ruck on a CFA agreement, which Committee members will know is relevant to the inquiry, but not the evidence-taking today.

Mr Crone: Yesterday evening we delivered a letter from our outside solicitors to you, and I think to be copied to the rest of the Committee, pointing out that Mr Watson is in litigation with us at the moment; and pointing out that under parliamentary rules and also the principles I think of natural justice and Article 6 of the Human Rights Act it seems to us quite improper that Mr Watson is sitting on this panel dealing with News Group Newspapers Ltd with whom he is in litigation. If he remains we will be making a complaint to the Parliamentary Commissioner.

Chairman: I am aware of the letter, as indeed is Mr Watson and the Committee. The advice from Speaker’s Counsel is that it does not interfere with his ability to take part in this inquiry; and Mr Watson has made a formal declaration. Obviously you are able to make any complaint you wish. Do you wish to add anything?

Mr Watson: Only to say, when the allegation was made late last night, Chairman, I took advice from the Clerks who took advice from Speaker’s Counsel. I happen to think that this is News International trying to interfere with the work of this Committee; and I think it is improper.

Q1330 Chairman: Both of those statements are now on the record. Perhaps we should proceed. The major story that appeared in the Guardian some ten days ago was that News International had made a payment to three individuals, principally Gordon Taylor, in settlement of a court action. Is that correct?

Mr Myler: Before we start, Chairman, may I make an opening statement?

Q1331 Chairman: Yes, you may.

Mr Myler: I am glad of the opportunity to appear before you to put our case today. I hope I can help the Committee reach conclusions that will enable us as an industry to put this episode behind us. It seems that there are three issues which need to be addressed by us arising from the allegations made by the Guardian and the evidence given by its representatives to this Committee last week. The first is the Information Commissioner’s report arising from Operation Motorman. His reports are three years old, and the activities they refer to are seven years old. This Committee fully investigated these matters in early 2007 and recorded its findings over five pages of its report entitled Self-Regulation of the Press, which was published on July 11 of that year. Nothing new has emerged since then and there is no connection, and never has been a connection, between those matters and the allegation of accessing telephone voicemails. The second issue is whether we knew of others in the News of the World newsroom to have been involved with Goodman, or separately from him, in accessing confidential information illegally via Mulcaire. This relates to the evidence given to this Committee by Les Hinton, then Executive Chairman of News International on March 6, 2007. By then the nine month long police investigation into the illegal activities of Glenn Mulcaire and Clive Goodman had concluded with their convictions. No evidence or information had emerged to suggest to senior executives at News of the World that others at the News of the World knew of these activities or were complicit in them. Both the prosecution and the judge at the Goodman/ Mulcaire trial accepted that the annual retainer agreement between the News of the World and Glenn Mulcaire, and the work he did under it, did not involve criminality. At no stage did the police arrest or question any member of the News of the World staff besides Mr Goodman. Mr Hinton’s evidence
Mr Crone: “Secret” is not the word I would use. This was an action against us for breach of confidence and privacy. We get quite a lot of those now since the privacy law has expanded somewhat in the last five years. Every single case against us for breach of privacy—unless the information is already out within the public domain—results in a very strict term of confidentiality at the end of the case. When you think about it, there would be absolutely no point in anyone suing us to stop their privacy being revealed if they did not at the end of the case tack on an absolutely strict and binding confidentiality term, and that is what happened in this case.

Q1335 Chairman: Was it at Gordon Taylor’s request?
Mr Crone: Actually I think he mentioned it first.

Q1336 Chairman: He mentioned it first?
Mr Crone: It was raised by him before it was raised by us, but we fell in with it. We always fall in with it, being privacy, because if the litigant goes in front of the judge the judge will order the injunction immediately—so certainly when we have accepted that there was a breach.

Q1337 Chairman: Have there been any other cases relating to Clive Goodman and the telephone hacking?
Mr Crone: No, not so far.

Q1338 Chairman: You have not received any?
Mr Crone: We have had complaints since this arose last week. Three effectively: two complaints and one Information Act request.

Q1339 Chairman: If the position was that, as you have previously said, Clive Goodman was acting entirely alone and that nobody else had knowledge, why did News International agree to settle with such a large sum?
Mr Crone: In the aftermath of Clive Goodman and Mulcaire’s arrest and subsequent conviction various internal investigations were conducted by us. This was against the background of a nine month massively intense police investigation prior to arrest and then a continuing investigation in the five months up until conviction. The police raided Mulcaire’s premises; they raided Goodman’s premises; and they raided the News of the World offices. They seized every available document; they searched all the computers, the files, the emails et cetera. Subsequent to the arrests they came to us, the News Group Newspapers Ltd, and made various requests to us to produce documents which they felt may be relevant. At no stage during their investigation or our investigation did any evidence arise that the problem of accessing by our reporters, or complicity of accessing by our reporters, went beyond the Goodman/Mulcaire situation. The first piece of evidence we saw of that, in terms of the management investigating, was in April 2008 when Mr Taylor’s lawyers produced two documents: the...
first was a February 2005 holding contract and the second was the email that was discussed here last week.

Q1340 Chairman: Those two documents were both supplied to us last week by the *Guardian*; so you were unaware of either of those until 2008?

Mr Crone: Yes. It is possible actually that the first one had been mentioned in the Old Bailey hearing in January 2007—mentioned; but I certainly did not have knowledge beyond that.

Q1341 Chairman: When you did become aware of these two documents what did you do?

Mr Crone: We settled the case. We agreed to settle the case.

Q1342 Chairman: Besides settling the case, what did you do about the fact that there appeared to be two documents which suggested that others beside Clive Goodman were involved?

Mr Crone: I tasked myself, with Mr Myler’s knowledge, with finding out what exactly had happened; what was known; who knew what other documents there might be. My first task on that mission was to contact our IT department and to ask them to conduct a search of the creator of the email files, the junior reporter; and I wanted to find out who else had been sent that email either internally or externally by him. They came back and told me that there was no trace of it having gone anywhere else. I then questioned the junior reporter. He had very little recollection of it, but he did know that about this time he had only just become a reporter; prior to that actually I think he had been a messenger and he was being trained up off the floor. In the early weeks and months of him being trained up as a reporter what he did more than anything else was transcribe tapes of journalists’ interviews—whatever tapes were relevant to the *News of the World*. He does not particularly remember this job in any detail; he does not remember who asked him to do it; and he does not remember any follow-up from it. He saw the email and he accepts that he sent the transcript where the email says he sent it.

Q1343 Chairman: Does your IT department suggest that this email was sent to Glenn Mulcaire and nobody else?

Mr Crone: It was sent to something called “shadowmenuk”, which turns out to be Glenn Mulcaire.

Q1344 Chairman: The email says, “Hello, this is the transcript for Neville”. suggesting that it was either going to be given to Neville by Mr Mulcaire, or copied from the junior reporter. Did Neville Thurlbeck say that he had ever received it?

Mr Crone: I questioned Neville Thurlbeck then and I have spoken to him about the same subject since then. His position is that he has never seen that email, nor had any knowledge of it. He says that he was brought into the relevant editorial project, the story, at the end of the story and his task was to go and knock on the door of one of the story subjects, which was either in Blackburn or Manchester, and put the essence of the story to the person in order to get their comments, which is mostly standard practice in what we do. In order to conduct that task he says he was briefed; and when I spoke to him in the first time he said he was briefed by one of our executives, Greg Miskiw who was then based in Manchester; and he also said it was very much a Greg Miskiw/Glenn Mulcaire project. He subsequently came back to me and said that he had refreshed his memory and in fact it could not have been Greg Miskiw, because Greg Miskiw left the *News of the World* on 30 June 2005, which was the day after that email was created. He had worked out his redundancy package. I think, a week or two weeks before that, and he was no longer on active duty. Neville Thurlbeck told me that his refreshed memory told him that in fact the briefing that he received was from the London news desk.

Q1345 Chairman: So the London news desk was aware of the contents of this?

Mr Crone: Well, no. I went to speak to the relevant person at the London news desk who told me that he had no knowledge of the email and he had never seen it.

Q1346 Chairman: Neville Thurlbeck was sent off to ask about a story which came from a transcript which none of them were aware of?

Mr Crone: I do not know whether the story entirely came from the transcript; but certainly part of it must have come from the transcript, yes.

Q1347 Chairman: Despite this, the transcript, which was sent in an email to Glenn Mulcaire, as far as you are aware never went anywhere beyond Glenn Mulcaire?

Mr Crone: I cannot find any evidence that it did.

Q1348 Chairman: The second piece of paper, the contract between Greg Miskiw and Paul Williams, Paul Williams in this case is Glenn Mulcaire?

Mr Crone: Yes.

Q1349 Chairman: Did you ask Greg Miskiw about what this contract comprised and why Mr Mulcaire was referred to as “Paul Williams”?

Mr Crone: He told me that Glenn Mulcaire had come to him with a view to selling a story as an independent project—that is independent of any work that he did under the general retainer he had with us. His story was based on information he had gained, as I think he is a member of the PFA having been a professional footballer; he had gained it in that context and he was concerned that if his real name was attached to the story he would obviously upset his PFA colleagues et cetera if that ever came out. Therefore he wanted to contract under an alias, and “Paul Williams” was the alias he supplied.

Q1350 Chairman: This story did not require any phone hacking or activity of that kind?
Mr Crone: I am unaware that it did. The contract was in February 2004—the holding contract. It has a very brief description of what the story is. As I understand it, from the end game on that project, which actually was a legal letter that we received in early July 2005, the story went beyond what was written on that original contract. There were other factors, which actually took it very much into the public interest. I was completely satisfied about that.

Q1351 Chairman: As far as you are concerned, the public interest. I was completely satisfied about that. The factors, which actually took it very much into the written on that original contract. There were other early July 2005, the story went beyond what was identified for the purposes of the prosecution’s case; but the police did then say that they were a selection of the ones where the evidence was strongest?

Mr Crone: I am only able to tell you what I have found out since, because at the time I certainly did not know about the original February 2005 contract. I certainly did not know about the email and the transcript. Let me just put this in context: when the door knock took place, which I think was July 2—I was on holiday that week—I came back the following week and one of the legal complaints that was on my desk by about Wednesday, I think, was a complaint from one of the story’s subjects. I went and made enquiries of Neville Thurbeck actually, because I knew that he was the reporter on the story; and I was told that it was based on a source and he had gone up and had a conversation with the person whose door he knocked on; there were stringent denials; the legal letter that was in front of me contained stringent denials. I went and spoke to the Editor, Andy Coulson. I said, “It seems to be based on a source, but if it’s true the source is probably never going to come forward”; and Andy Coulson told me to “Forget it. Tell them that we won’t be running the story”, and that was the end of it. That is the last I heard of that story until the email was produced in April 2008.

Q1352 Chairman: Glenn Mulcaire was being paid £100,000 plus bonuses by the News of the World, we know that he hacked into the voicemails of quite a number of people and the police chose only to prosecute on five out of quite a large number. The information he obtained by hacking into other people besides members of the Royal household and Gordon Taylor, did that end up at the News of the World?

Mr Crone: Not to my knowledge, no. Just one small point of information: you said “quite a large number”; Mr Andy Hayman, who was heading the investigation, wrote an article about all this—he is retired now—and he says it is perhaps “a handful”; that was the phrase he used. I think John Yates said something similar the day before.

Q1353 Chairman: The police prosecuted and he admitted, I think, to eight individuals who have been identified for the purposes of the prosecution’s case; but the police did then say that they were a selection of the ones where the evidence was strongest?

Mr Crone: I am not going to speculate on it. This is not something that has been in my mind until you are asking these questions but my understanding is that if the individual reporter deletes, as opposed to leaves the email on the system, it disappears after 30 days; if he leaves it there it goes automatically into archives after a period and is kept.

Q1354 Chairman: Let us just continue on this theme. Let us agree there were at least a few more whose phone messages were hacked into. As far as you know, no information regarding those other individuals ever reached the News of the World?

Mr Crone: I have seen no evidence of that.

Q1355 Chairman: Was Mr Mulcaire, do you think, working for somebody else when he was doing this?

Mr Crone: I think he was working for other people, yes.

Q1356 Chairman: The fact that he was being paid £100,000 by the News of the World, that sounds like a full-time job?

Mr Crone: It may be, but I believe he was working for other people.

Q1357 Paul Farrelly: The Sunday Times in quite a forensic piece went beyond perhaps a handful and said “fewer than 20”, which is not necessarily inconsistent, but they also named Boris Johnson and an unnamed senior BBC executive?

Mr Crone: I have read that article. I do not know where it came from.

Q1358 Paul Farrelly: You would cast doubt on the accuracy of the Sunday Times article?

Mr Crone: I am not going to speculate on it.

Q1359 Paul Farrelly: Just to cover more loose threads before I come to Mr Myler and the investigations and the basis of your evidence to the PCC: how long does the IT department of News International keep records of emails?

Mr Crone: This is not something that has been in my mind until you are asking these questions but my understanding is that if the individual reporter deletes, as opposed to leaves the email on the system, it disappears after 30 days; if he leaves it there it goes automatically into archives after a period and is kept.

Q1360 Paul Farrelly: How long are the archives kept?

Mr Crone: They go back that far, I believe.

Q1361 Paul Farrelly: Over three years?

Mr Crone: Yes. I am not absolutely certain about that.

Q1362 Paul Farrelly: If your checks are thorough then it is important to be certain. Whether or not you have checked with your IT department, it would not tell you whether a transcript had been printed off. That is the purpose of a transcript actually, to be read in hardcopy usually. Would it?
Q1364 Paul Farrelly: Why then would the junior journalist say this specifically: “This is the transcript for Neville”?
Mr Crone: I have no idea. The junior journalist is currently in Peru, I believe. It may be inconvenient but that is where he is. It has got nothing to do with us sending him there!
Mr Myler: There is a far more simple explanation.

Q1365 Paul Farrelly: Have you asked the junior journalist—and we are not naming him but respecting the wishes—
Mr Crone: No, I asked him at the outset. I asked him in detail.

Q1366 Paul Farrelly:— why he said, “This is the transcript for Neville”?  
Mr Crone: Yes. He said, “I can’t remember”. He said, “Perhaps I gave it to Neville, but I can’t remember”. Then Neville said he did not give it to him.

Q1367 Paul Farrelly: You are basically taking people’s word on trust?
Mr Crone: I can only work on the evidence. I can only work at and pass on the evidence. I cannot speculate; I cannot guess. These are serious matters and I am not going to speculate or guess in front of this Committee. I can tell you what I asked and the information I was given and the evidence I have seen.

Q1368 Paul Farrelly: I am not surprised a junior journalist, who has now had to go to Peru, might—
Mr Crone: He is on a holiday. He is going around the world.

Q1369 Paul Farrelly: He has not been posted there?
Mr Crone: He is 20 years old.1

Q1370 Paul Farrelly: If he was transcribing lots of these things I can quite understand why he might not remember whether it was printed off and whether it was handed; but given that it says, “This is a transcript for Neville”, it invites a conclusion, does it not?
Mr Crone: Sure, but I do not know what he wrote on top of all the other transcripts he did. I just do not know.

Q1371 Paul Farrelly: So you have not seen any more emails from this journalist, despite your investigation?
Mr Crone: No, I have not.
Mr Myler: To be fair, Mr Farrelly, you are accusing a young journalist, who has not been named, of being involved in other issues here. What Mr Crone is saying is there is absolutely no evidence to support that.

Q1372 Paul Farrelly: I am not saying that at all, Mr Myler. I am saying, you have conducted an investigation but you have now just said you do not know what he wrote on covering notes to possibly other transcripts which may have come from Mr Mulcaire?
Mr Crone: I am investigating this email; I am investigating matters relating to Gordon Taylor; why should I look at other emails that have nothing to do with that. Apart from the fact that it actually breaches his own Data Protection Rights et cetera, I cannot go on a general fishing expedition; I have to look for what I know exists.

Q1373 Paul Farrelly: If you want to be thorough and you have become aware that this junior journalist is transcribing conversations which have come from Mr Mulcaire, whom you know has been convicted and has served a jail sentence, you may wish then to look at other transcripts which Mr Mulcaire may have provided to this junior journalist to see what he was writing down and who they were allegedly for; and you are saying you have not done that?
Mr Crone: No I asked about this email.

Q1374 Paul Farrelly: That is not a very thorough investigation, is it?
Mr Myler: Can I just come in here. When I came back in January 2007 I interviewed senior executives on the newspapers, and with the Director of Human Resources—

Q1375 Paul Farrelly: Mr Myler, forgive me. I want to come to this, but Mr Crone’s answers are now begging more questions as we go on. A final question on this point and this is a loose end: you made a point regarding the use of the name Paul Williams in a contract, but related that to the possible use of the name in a story. The two are not connected, are they?
Mr Crone: No, not the name in a story. He just did not want his name associated with the story. If it is on contractual paperwork—his own name, Glenn Mulcaire—he is clearly associating his name with the story.

Q1376 Paul Farrelly: The account you have given us, you have said, “This is what I have been told”, who have you found this out from?
Mr Crone: Greg Miskiw.

Q1377 Paul Farrelly: You have interviewed him since he left?
Mr Crone: I think I said that, yes.

Q1378 Paul Farrelly: It sounds very, very strange indeed; or is this a usual practice?

1 See Ev 469.
Mr Crone: What is “usual practice”?  

Q1379 Paul Farrelly: Using pseudonyms in contractual paperwork which may lead to the payment of large sums of money.  
Mr Crone: No, it is not.

Q1380 Paul Farrelly: It is not unusual.  
Mr Crone: No, it is not usual.

Q1381 Paul Farrelly: It is not usual?  
Mr Crone: It is not usual.

Q1382 Paul Farrelly: Therefore, if it is not usual it might strike you or any reasonable person as strange, would you not agree?  
Mr Crone: It is not usual. It is strange; it is not usual.

Q1383 Paul Farrelly: Mr Myler, I do not want to take up too much time because lots of other people want to come in, but I wanted to explore the basis for the evidence you gave the PCC, I believe, in February 2007 just after you arrived at the News of the World. At that stage what stage had investigations reached at the News of the World to your knowledge, because you gave the evidence to the PCC?  
Mr Myler: What had happened internally?  

Q1384 Paul Farrelly: Yes.  
Mr Myler: I think the first thing to remember is that as soon as Mr Goodman and Mr Mulcaire were arrested News International had an outside firm of solicitors to absolutely oversee the investigation to cooperate with the police, to be a bridgehead, to give whatever facility the police required. It was completely hands-off, if you like, for transparency from the company’s point of view. It was a nine month investigation. At the end of that nine months two people were convicted, tried and went to jail. No other member of the News of the World staff was questioned. It is important, if you would allow me to say so, that John Yates’s statement on 9 July after the first Guardian story appeared says this: “This case has been the subject of the most careful investigation by very experienced detectives. It has also been scrutinised in detail by both the CPS and leading counsel. They have carefully examined all the evidence and prepared the indictments——”

Q1385 Paul Farrelly: We have seen this; we have this in evidence.  
Mr Myler: With respect, can I just finish this one sentence: “No additional evidence has come to light since this case has concluded; I therefore consider that no further investigation is required”.

Q1386 Chairman: Can I just check one point to be absolutely clear. The police had the copy of the email saying “This is for Neville”, but the police never questioned Neville?  

Mr Myler: As I understand it, he was not questioned. As I understand it no other member of the News of the World staff, other than Clive Goodman, was questioned by the police after their nine month investigation.

Q1387 Chairman: Greg Miskiw, whose name was on the contract which the police also had, he was not questioned?  
Mr Myler: I do not believe he was.

Q1388 Paul Farrelly: Who were the solicitors who handled the investigation?  
Mr Crone: Burton Copeland. They are probably the leading firm in this country for white collar fraud.

Q1389 Paul Farrelly: Did that investigation go wider than investigating the circumstances because the court case was coming up of the Mulcaire/Goodman connection? Did it go wider and ask people such as the deputy editor, the managing editor, the news editor, the chief reporter as to whether they had been involved in any way with Mr Mulcaire? Did it go wider?  
Mr Crone: Sorry, this is for me?

Q1390 Paul Farrelly: No, this is to Mr Myler because Mr Myler gave evidence to the PCC.  
Mr Myler: I think Mr Crone is the best person to answer.

Q1391 Paul Farrelly: This is the basis of the evidence you gave to the PCC.  
Mr Myler: Mr Crone was there. This arrest took place, I believe, in August 2006. I think you should allow Mr Crone——

Q1392 Paul Farrelly: To your knowledge, did that investigation go wider?  
Mr Myler: Wider than what?

Q1393 Paul Farrelly: Than simply the relationship between Goodman and Mulcaire. Did the people either interview them or ask them to come forward under the basis of an amnesty if they had done something wrong to reveal themselves? Did it go to the accounts department?  
Mr Myler: I do not know whether or not the police——

Q1394 Paul Farrelly: No, it is not the police. It is the News International investigation when you arrived. I want to know what your knowledge was of how far the remit went?  
Mr Myler: My recollection was that a very thorough investigation took place where there was a review of everything from how cash payments were processed. You have to remember that the Mulcaire contract, which the judge in the Goodman/Mulcaire trial said was absolutely above board and legal, meant that the staff had access to him 24/7. He was conducting enquiries perfectly legally and lawfully that meant journalists could call him for checks on electoral...
rolls or whatever. As I understand it, the inquiry was thorough; and to the executives that were there at the time they were happy with that.

Q1395 Paul Farrelly: Mr Crone, how wide was the inquiry? You understand the questions I am asking? 
Mr Crone: Yes. I got back the Tuesday after the arrests. They were arrested on one Tuesday and I was there the week after. By the time I got back, which must have been August 15, Burton Copeland were in the office virtually every day or in contact with the office every day. My understanding of their remit was that they were brought in to go over everything and find out what had gone on, to liaise with the police—

Q1396 Paul Farrelly: Everything to do with Mulcaire and Goodman?
Mr Crone: Yes, but what you have got to realise is, at the time the only case being looked at was an access of a Royal household—voicemails. The other names did not become known to us or, as far as I know, anyone else apart from the prosecution and the police, and the defence lawyers probably knew slightly earlier; the other names did not come out until November 29, which is five months later. What I think was being enquired into was what had gone on leading to the arrests; what, in the relationship with Mulcaire, did we have to worry about. Burton Copeland came in; they were given absolutely free-range to ask whatever they wanted to ask. They did risk accounts and they have got four lever-arch files of payment records, everything to do with Mulcaire, and there is no evidence of anything going beyond in terms of knowledge into other activities.

Q1397 Paul Farrelly: I want to wrap-up fairly shortly. When the other names came into the frame after November 29, did the remit of the investigation in News International broaden?
Mr Crone: Yes, to some extent but the questions had already been asked. Was anyone involved with Mulcaire, or doing this, that or the other? Burton Copeland had looked at all of the financial records; and there was subsequently an email check done which went to 2,500 emails; and that produced no evidence either.

Q1398 Paul Farrelly: The question: was anyone else involved with Mulcaire? The answer was: no. Nothing else was found?
Mr Crone: No evidence was found.

Q1399 Paul Farrelly: Mr Myler, in evidence to the PCC you said in February 2007, and tell me whether the PCC’s quote is accurate in their report, “This was an exceptionally unhappy event in the 163 year history of *News of the World* involving one journalist”. They quote you as saying that Goodman was a “rogue exception”. That is accurate, is it? But in the court case in January the judge has said, “As to counts 16-20”, which were the counts involving Max Clifford, Simon Hughes, Elle Macpherson, Sky Andrew and Gordon Taylor, who are not Royals, to Mulcaire, “you had not dealt with Goodman but with others at News International”. On the basis of that import, how could you say that this was one rogue exception involving one journalist?

Mr Crone: I was in court actually and I remember him saying that and my immediate reaction—obviously nothing I could voice—was “Why is he saying that?” because the prosecution did not open it, saying there was such a connection.

Q1400 Paul Farrelly: So the judge’s summary is wrong?
Mr Crone: I cannot remember hearing anything in court from the prosecution to justify that.

Q1401 Paul Farrelly: One final question. Clive Goodman, Mr Myler, he pleaded guilty in August 2006 and he was convicted on 26 January 2007. Was he still employed by the *News of the World* when you arrived?
Mr Myler: He has been suspended. His contract allowed him to appeal against his summary dismissal when he was released, and that is what happened.

Q1402 Paul Farrelly: He was summarily dismissed when he was released?
Mr Myler: No, he was summarily dismissed I think on conviction; but his contract allowed him to appeal once he was released from prison and that appeal took place.

Q1403 Paul Farrelly: Why was he not dismissed when he pleaded guilty, Mr Crone?
Mr Myler: I was not there, Mr Farrelly.
Mr Crone: Does it make any difference? I am asking a rhetorical question. He was in the middle of a process; he was independently represented so we were not privy really to how he was going to give his mitigation or whatever else. At the end of the process, it seemed to us—and I was not part of that dismissal process, by the way—it seemed to News International and News Group Newspapers to be the appropriate time to take that step.

Mr Myler: I think that was an HR legal situation.

Q1404 Paul Farrelly: It raises the question of what actually constitutes gross misconduct for News International; that a journalist who pleads guilty was not dismissed at the time?

Mr Myler: I do not think you will find that that is a News International contract. I think you will find that is a contract with almost any employer and employee.

Mr Crone: The fact is he was dismissed and he was dismissed for *this*. Your question suggests we were not going to dismiss him for this but we did dismiss him for this.

Mr Myler: He failed in his appeal process.

Q1405 Philip Davies: Can I just explore a bit further the idea about how many people at News International were involved in what was going on because, coming back to the point that Paul made, the idea that it was one rogue maverick journalist appears now to be a somewhat discredited theory.
Given that the people who have been the victims of this—people like Gordon Taylor, Elle Macpherson—have nothing to do with the Royal Family, as Paul mentioned, surely that in itself would indicate to people that this must be going beyond Clive Goodman who was the Royal Editor; because why on earth would Clive Goodman be interested in the taped conversations of Gordon Taylor and Elle Macpherson?

**Mr Myler:** No evidence, Mr Davies, has been produced internally or externally by the police, by any lawyers, to suggest that what you have said is the truth, is the case. Can I just make the point that Mr Farrelly touched upon. In the course of talking to executives when I arrived to go through obviously what had happened—as I said, I conducted this inquiry with Daniel Cloke our Director of Human Resources—over 2,500 emails were accessed because we were exploring whether or not there was any other evidence to suggest essentially what you are hinting at. No evidence was found; that is up to 2,500 emails.

**Q1406 Philip Davies:** Although there may not have been any evidence that you came across that fingered a particular individual or individuals involved in this, would you at least acknowledge that the circumstantial evidence would suggest that more people than Clive Goodman at News International were involved in this particular practice?

**Mr Myler:** Mr Crane said earlier, how can we speculate on something like this? For an investigative newspaper I do not know of any newspaper—and this is the fourth national newspaper that I have had the privilege of editing—or broadcasting organisation that has been so forensically investigated over the past four years—none.

**Q1407 Philip Davies:** The theory I advanced, would you accept that that would be a perfectly reasonable theory?

**Mr Myler:** No, I am sorry, how much more do the News of the World staff, who have been accused of systematic illegality, have to continue—Where is the evidence?

**Q1408 Philip Davies:** You would say it is perfectly reasonable and perfectly logical that the Royal Editor—the Royal Editor—was involved with somebody in the tapping of phones of people—

**Mr Myler:** No, I do not.

**Q1409 Philip Davies:** — who had nothing to do with—

**Mr Myler:** No, I do not; but I think, Mr Davies, with respect you know full well that is not condoned either by me personally or anybody else on the staff of the News of the World. You know that.

**Q1410 Philip Davies:** I am not saying you condone it; I am just saying you think it is perfectly believable that the person at News International who was behind the tapping of the phones was Clive Goodman, and people who were nothing to do with Royal Family; you think that is perfectly believable?

**Mr Myler:** Mr Goodman has paid the price for the illegal conduct that he engaged in. It seems that Mr Mulcaire was the person who was perhaps engaged in more tapping of phones than other people on the News of the World. I cannot answer for Mr Mulcaire; I have not got an idea what was in his mind. I have never met the man; I do not know the man. He worked for the News of the World as far back as I think the late 90s in fact.

**Q1411 Philip Davies:** We heard in a previous session that an allegation was made, I believe in Private Eye, that Mr Mulcaire had been paid, and I think the figure and this is from memory, was £200,000, in order to remain quiet about what had happened and who might have been involved. Was that report true, that he has been paid by News International to keep quiet about what happened?

**Mr Myler:** I am not aware of any payment that has been made.

**Mr Crane:** I had nothing to do with that area, because if there is any sort of payment or dealings with Mulcaire it is not going to be in my area.

**Q1412 Philip Davies:** Who at News International would have been? If that did take place who at News International would have been involved?

**Mr Crane:** It did not take place, I do know that.

**Q1413 Philip Davies:** It did not take place?

**Mr Crane:** No. I am not saying no payment, but that is an inaccurate report.

**Q1414 Philip Davies:** Has a payment been made.

**Mr Crane:** I am about to tell you. Mr Mulcaire raised legal issues over his status, I think probably after he came out of prison. The employment laws as they stand as I understand it, and I am certainly not an expert in this area, mean that if someone works for you for X hours a week it does not matter whether he is staff, he is freelance, he is on a contract, whatever, he has certain employment rights. Given those employment rights there is a process that has to be followed when that relationship comes to an end. Because of failures, and we can possibly check it out—I do not have the information in detail—I believe that as a result of failures in the process there was a sum of money paid to him. I do not know exactly what it is but it bears no relation to the figure you have given us.

**Q1415 Philip Davies:** Just to clarify this point. I understand you do not know the figure, but you were saying that payment may have been made because of the contractual obligations that News International had to him as an employee of one form or another. The question I was asking was: has he been paid to keep quiet, which is a different issue from any employment?
Mr Myler: looking up electoral rolls?

Mr Myler: I am certainly not aware of it.

Mr Myler: Again, likewise, I am not aware of any payment.

Mr Myler: Not necessarily. Mr Kuttner would.

Mr Myler: I would say so.

Mr Myler: I would expect to. I think so perhaps, yes.

Mr Myler: I think we need to get on record it was a reasonable sum of money for market his rate per hour probably averaged less than £50 which, even then, is felt commercially a very good rate.

Q1421 Philip Davies: You would have thought that paying £100,000 plus bonuses, for what you have just read out—I do not know, I am not involved—I am just asking whether you would as an editor question that; or do you think that would be a reasonable sum?

Mr Myler: I think the element of “plus bonuses” is a separate issue. The contract or the piece of paper that he received under the name of Paul Williams is very common, very common practice in newspapers and indeed broadcasting, I would say.

Mr Crone: Can I just clarify this because we keep hearing about this word “bonus” and that stems, I think, from Nick Davies’s first report. It is clearly referring to that holding contract of February 5, 2005. That is not a bonus; that is a completely separate, independent offering of a story by Mulcaire. In the same way as anyone rings up the News of the World or comes into the News of the World and says, “I’ve got a great story for you”. Let me tell you how this happens though because it is quite important and will lead to understanding that document. They say, “I’ve got a great story for you”, and we say, “What is it?” and they say, “I’m not telling you ‘cause if I tell you you’ll publish it and I won’t get paid”. So we give them that contract, a holding contract, which says we cannot publish anything unless we agree a financial deal first; and the deal on this case will not be less than £7,000. That is what that is; it is not a bonus; it has got no connection whatsoever to the retainer agreement.

Mr Myler: If the story does not work out he is not paid.

Mr Myler: Absolutely not.

Q1416 Philip Davies: Just while we are on the theme, has any payment been subsequently made to Clive Goodman?

Mr Crone: I am trying to think of what it might be.

Mr Crone: I am trying to think of what it might be. No, I do not think so, not really.

Q1424 Philip Davies: What about any other illegal activity?

Mr Crone: Journalists trespass and journalists do other things; but criminal activity, no.
Q1426 Adam Price: Mr Myler, you said you have never met Mr Mulcaire. Have you met Clive Goodman since his conviction at all?
Mr Myler: Only when I conducted the appeal with Goodman since his conviction at all?

Q1427 Adam Price: You mentioned, Mr Crone, that payment was made to Mr Mulcaire. Was there a non-disclosure agreement attached as a condition to that payment?
Mr Crone: I do not know. It was not something I was involved in.

Q1428 Adam Price: Mr Kuttner will probably be aware of it?
Mr Crone: I do not know.

Q1429 Adam Price: The issue of the payment made to Mr Taylor, the sum that has been quoted was nearly seven times the amount paid to Mr Mosley. How do you account for the size of payment made?
Mr Myler: It was actually quite simple: our outside lawyers' advice, who had taken counsel's advice was very strongly that we had to settle, and should settle. That advice was shared internally by our internal lawyers and I agreed. It really was a straightforward advice to that. First of all, it is not comparable. In any negotiation one party wants one thing and another party wants another. That is exactly what happened in the Taylor case: a settlement was reached. The case with Mr Mosley obviously was through the courts and that was an award made by a judge.

Q1430 Adam Price: Some people have said that the fact you agreed to such a large sum suggests that you were concerned about some of the information which would leak out as a result of that case?
Mr Myler: It was actually quite simple: our outside lawyers' advice, who had taken counsel's advice was very strongly that we had to settle, and should settle. That advice was shared internally by our internal lawyers and I agreed. It really was a straightforward as that.

Q1431 Adam Price: Were there other bonus payments you were aware of that were offered to Mr Mulcaire?
Mr Crone: There were no bonus payments to Mr Mulcaire at all, as far as I am aware.

Q1432 Adam Price: Contracts as bonuses.
Mr Crone: Could I invite your attention to the repeated use of “bonus”. Not that I am aware of, no.

Q1433 Adam Price: Mr Crone perhaps can give you the legal contracts as bonuses.
Mr Crone: I am sorry, I was not aware of that.

Q1434 Adam Price: Are you aware now whether that story was based upon the hacking into the ’phone of the Prince?
Mr Crone: No. You mean after the arrests?

Q1435 Adam Price: Did not his byline appear on at least one story in relation to the Royals which could only have come from phone hacking?
Mr Crone: Not that I am aware of. No. I do not think there were any stories actually; that was the whole thing about Mr Goodman’s mitigation—nothing had ever been published. I think there may be one story about Prince William, which was a Goodman story.

Q1436 Adam Price: There was a story in the paper on 9 April 2006 “Chelsy tears a strip off Harry”, which has verbatim a message from Prince William left on Prince Harry’s phone. It could only have come from phone hacking. The by-line is Clive Goodman and Neville Thurlbeck.
Mr Crone: I am sorry, I was not aware of that.

Q1437 Adam Price: You were not aware of that?
Mr Crone: I certainly cannot remember it, put it that way.

Q1438 Adam Price: You did not see the story before it went to press? You have not reviewed the story as part of your investigation? Did you not go through all the Royal stories?
Mr Crone: There are over 100 pages in the News of the World each week; I am there each week; I have been there each week for nearly 25 years; I do not remember. It is a little story about the Royal Family.

Q1439 Adam Price: It was on page 7 and it actually had in big bold red letters “Exclusive”.
Mr Crone: I have absolutely no recollection whatsoever about that story.

Q1440 Adam Price: You have no recollection.
Mr Myler: I remember quite a few big, big scoops, like Jeffrey Archer, going way back, and things like that—David Beckham and so forth. I remember the stories we get sued on, generally; I do not remember page 7 leads, ever.

Q1441 Adam Price: The story says: “Yesterday the repentant Prince, Prince Harry, took an ear-bashing ‘phone call as news broke”. It goes on to repeat the message left, it says, by Prince William. The whole basis of that story is a ‘phone message left on the ‘phone of one of the Royals.
Mr Crone: That is what you are telling me now, but I am sorry I just do not remember.

Q1442 Adam Price: Are you aware now whether that story was based upon the hacking into the ’phone of the Prince?
Mr Crone: No, I am not aware of it. I cannot answer that question. It may well have been one of the issues that Clive Goodman was accused of. I seem to remember in court that his whole mitigation was that nothing came out of this; there was never anything published. Check the court transcript. His counsel was standing up and saying: “He may have been doing these things but it was pretty futile because nothing was ever published”. The point he was trying to make was that you get hold of someone’s information but if you do not ever release
Q1443 Adam Price: The Princes, of course, were not actually the subject of the court case itself, but are you saying that you are not aware at all whether their ‘phones were hacked?

Mr Myler: Are you saying (I obviously read it once) that the information was left on the voicemail of either Prince Harry or Prince William?

Q1444 Adam Price: That is what the story says.

Mr Crone: They were not charged with that; they were charged with accessing three members of the Royal household.

Q1445 Adam Price: They were not charged with that; what I am asking you is whether your reporter actually hacked into the ‘phones of the Princes?

Mr Crone: Well—

Q1446 Adam Price: Themselves; not their staff.

Mr Crone: I would say no and I would say for absolute fact there is no evidence of that whatsoever, and the prosecution did not have anything to do with accessing the Princes’ voicemails; it was to do with accessing household members.

Q1447 Adam Price: You mentioned the contract between Greg Miskiw and Paul Williams. If that was irrelevant to ‘phone hacking, which was I think your suggestion, why was it mentioned by prosecuting counsel during the case?

Mr Crone: I cannot remember exactly; I just remember there was a reference to it.

Q1448 Adam Price: I remember. Actually, what he said was: “It really demonstrated the relationship between the defendant, Glenn Mulcaire, and the newspaper.”

Mr Crone: That is right, because it was on News of the World headed notepaper, yes, the document. So that is probably why it was mentioned; because it was a connection between the News of the World and Glenn Mulcaire beyond the retainer. As I have tried to explain, that was separate and above the retainer; it was something that he came to Greg Miskiw with a piece of story information, and was trying to sell it quite separately. It was not part of his normal relationship with the newspaper. That is what that proves, actually.

Q1449 Adam Price: Can I ask, finally: apart from Clive Goodman and Andy Coulson, has anyone else been reprimanded, disciplined or demoted in any way as a result of this entire affair at News of the World?

Mr Myler: The affair with Mulcaire and Goodman?

Adam Price: ‘Phone hacking.

Paul Farrelly: The Gordon Taylor case was settled at great expense.

Q1450 Adam Price: Has anyone been disciplined or reprimanded in relation to this entire issue of ‘phone hacking from News of the World? Apart from the two—

Mr Myler: No. In relation to Gordon Taylor, Mr Farrelly was saying because of the issue of settlement; the settlement was made based on legal advice at the highest level.

Q1451 Adam Price: There are no disciplinary proceedings against Neville Thurlbeck as a result of this email?

Mr Myler: No. No, there is no evidence. Mr Thurlbeck says he has no recollection of receiving it. There is no IT evidence to support that he did.

Q1452 Adam Price: We often talk about a smoking gun. If there is one in this case this is it, surely? It is amazing, is it not? We hear last night that the police had this email but they did not hand it over to the Crown Prosecution Service; you did not see it until April 2008 and, apparently, you went through 2,500 separates. We are told that the sender of the email does not remember sending it, and the recipient does not remember receiving it. It is, quite frankly, completely implausible.

Mr Crone: Who do you mean by the “recipient”?

Q1453 Adam Price: This is the transcript for Neville, the intended recipient of the transcript.

Mr Crone: The recipient was Mulcaire, very clearly.

Q1454 Adam Price: The intended recipient for the transcript, it says, is Neville. Are you saying that this is a forgery?

Mr Crone: No. I wish it was.

Q1455 Adam Price: You accept this email was actually sent.

Mr Myler: Yes. There is no suggestion that it is a forgery, from what we can establish. We have just had two months of frenzied reporting about MPs’ expenses. Does it follow that because you sit next to an MP who is one of the most guilty parties of huge excesses that you are guilty too? That you are a crook? If you share a Commons office with somebody who breaks the law, is it right that people think that you are party to it? That is, essentially, what is happening with the News of the World over something that happened three years ago. Is that fair? Is that reasonable?

Q1456 Adam Price: With due respect, we are given documentary evidence here, are we not, which names your chief reporter?

Mr Myler: That was not, by the way, redacted, like MPs’ expenses were.

Philip Davies: It was, actually.

Q1457 Adam Price: It was in relation to the junior reporter in terms of publication.
Mr Crone: It was redacted by the Government.
Mr Myler: In the legal process it was not.
Mr Crone: It was.
Mr Myler: Yes, absolutely.

Q1458 Janet Anderson: Mr Crone, as Legal Adviser to the News of the World, and when you are asked to make a judgment about a particular story, I imagine you would want to know the background and source of a controversial story. Is that right?
Mr Crone: Yes. I need to know the evidence in support.

Q1459 Janet Anderson: So when making those judgments have you ever listened to taped telephone conversations or messages left on other people’s telephones?
Mr Crone: I have listened to many, many taped conversations—telephone conversations.

Q1460 Janet Anderson: Telephone conversations?
Mr Crone: I do not think I have ever listened to a voicemail. In fact, I am sure I have never listened to a voicemail—unless the person telling us the story had brought in their voicemail tape and said: “Listen to it”, which happens.

Q1461 Janet Anderson: Did you ever wonder whether any of that was discovered illegally by subterfuge? Did that ever cross your mind? Were you ever suspicious?
Mr Crone: Subterfuge? Subterfuge is not illegal.

Q1462 Janet Anderson: Let us stick to illegal then. Did you ever wonder or worry that any of this was obtained illegally?
Mr Crone: You mean all the different conversations I listened to?

Q1463 Janet Anderson: Yes.
Mr Crone: No, because 99.9% of the time—possibly all the time—the person on one end of the conversation has recorded it, and is allowing us to listen to it in order to prove their story. It is with permission.

Q1464 Janet Anderson: Were you, therefore, shocked when you discovered that Mulcaire had been engaged in these illegal activities—
Mr Crone: Yes, absolutely.

Q1465 Janet Anderson:—and that your newspaper had been paying him for that?
Mr Crone: No, we did not pay him for that. He was not paid for that. I am sorry, in the Clive Goodman context, yes, there were payments.

Q1466 Janet Anderson: As a member of the legal profession, were you not worried about that: that your newspaper had been paying someone who is engaged in illegal activities?

Mr Crone: Let me just put this in absolute clear context: I came back from my holidays on, whenever it was, back in the office on August 15 2006. The Royal reporter for the News of the World was under arrest and facing charges of accessing the Royal household. There was someone called Glenn Mulcaire who, actually, I had never heard of his name.

Q1467 Janet Anderson: So you had never met or spoken to Glenn Mulcaire?
Mr Crone: I have never met or spoken to Glenn Mulcaire and until August 8, when the arrests were made, I had never heard of him. I have never seen or heard of any voicemails being accessed until those arrests were made, and there has never, apart from what came out—the payments that went from Goodman to Mulcaire—I have never come across any payments for that sort of illegal activity or, indeed, any other sort of illegal activity. Criminal illegal activity.

Q1468 Janet Anderson: So when you are looking into a story and you are being asked to make a judgment—because, of course, you have to make sure that the newspaper, if it comes to the worse case scenario, has to defend that story in court—you categorically tell us that you have never listened to any conversations which you think were obtained as a result of 'phone hacking?
Mr Crone: Yes, I can definitely say that.

Q1469 Janet Anderson: You never have?
Mr Crone: I never have.

Janet Anderson: Thank you.

Q1470 Mr Hall: Mr Myler, you gave the PCC an absolute assurance that you had fully investigated the Goodman case and that this was a one-off. If I have understood what you have said to the Committee this morning, you actually did conduct quite as serious an investigation into this affair, but you also relied very heavily on the police investigation. Is that correct?
Mr Myler: Well, both, yes. The police investigation had lasted for nine months and, as we have explained, it was outside solicitors who came in to co-operate with them; in other words, it was complete transparency.

Q1471 Mr Hall: It was not a matter of you just asking other people to do it and you signing your name off, was it?
Mr Myler: No, because it was the police asking any enquiry, any question, that they wished to get; whether it was financial, whether it was emails, whether it was contracts, it was financial records—whatever the police asked for it was Burton Copeland that provided it. Obviously, it would have been very easy for anyone to accuse News International of saying: “You only got what we gave you”.

21 July 2009 Mr Tom Crone and Mr Colin Myler
Q1472 Mr Hall: In your opening statement to the Committee you mentioned that on your arrival at this newspaper you imposed very strict protocols on cash payments to any sources that the newspaper uses, and that you have reduced expenditure by between 81% and 89%. Did I understand that correctly?
Mr Myler: The cash payments.

Q1473 Mr Hall: Cash payments.
Mr Myler: Between 82% and 89%?

Q1474 Mr Hall: Yes. Could you put a figure on that for us?
Mr Myler: Gosh. Mr Kuttner might have a better idea. The point is that those cash payments have been reduced and that, I think, is the most important part of it—considerably so. The constraints and restrictions before anything like that happens are far tighter.

Q1475 Mr Hall: If Mr Kuttner cannot give us the answer would you be prepared to put that in writing to the Committee?
Mr Myler: Yes. It is not the greatest “Crown Jewel” commercial secret, so I am sure we can look at that.

Q1476 Mr Hall: I am quite intrigued about the fact that you said that you did a thorough trace through 2,500 emails. It occurred to me that there is a very good saying: “Don’t put anything in an email that you don’t want to see on the front page of the News of the World!” Were you not surprised that you did not find anything?
Mr Myler: The investigation, actually, was done by one of our internal lawyers and our IT department, and they are not affiliated to one title; they work across the company and they are just told to do the search. As I said, it was overseen by our Director of Human Resources, who I think is as impartial, if you like, as most people can be in that situation.

Q1477 Mr Hall: Did you take the same approach to financial payments? Clearly, if you wanted to know whether this was a more widespread practice within your newspaper, the money would actually show you whether it was or it was not—not emails. How much you actually spent.
Mr Myler: In relation to what?

Q1478 Mr Hall: Cash payments into sources for stories that appear in your newspaper and stories that sometimes do not even appear.
Mr Myler: After the Goodman/Mulcaire affair, I think it is safe to say that everything was pretty transparent.

Q1479 Mr Hall: This is before, is it not? This is clearly before.
Mr Myler: I think before, there were stringent restrictions and very clear guidelines about how payments should be made at any level—whether or not just cash, but on anything.

Q1480 Mr Hall: You have gone through the whole of those cash payments and payments in other ways and you are absolutely clear in your evidence to the Committee that that investigation into the cash payments made by the newspaper also confirmed that this is an isolated incident restricted to Goodman and Mulcaire?
Mr Myler: Which period are you talking about?

Q1481 Mr Hall: The period before we actually had the prosecution. Up until then this is a practice that is taking place. I do not know if Mulcaire was the only source for the newspaper to go to—
Mr Myler: He would not have been the only source, but, again, let us be clear: there was nothing wrong with the Mulcaire contract. Lawyers, banks—one of the most respected legal firms in the land—used people like Glenn Mulcaire to gather information. There was nothing wrong with that contract.

Q1482 Mr Hall: You are quite confident that that contract would now still apply—the terms of that contract with Mulcaire would meet your strict protocol?
Mr Myler: Yes, if it did, it would, yes, but it would have to. But it did then.

Q1483 Mr Hall: You are saying in evidence to the Committee that there were no payments made to anybody within the organisation or outside the organisation that would pay for illegal activities like ‘phone tapping and listening to people’s voicemails.
Mr Myler: Absolutely not.

Q1484 Mr Hall: Your examination of the financial evidence shows that to be correct?
Mr Myler: I have not come across any evidence that would support payments being made for illegality—at any level.

Q1485 Mr Hall: You have looked for that specifically, have you?
Mr Myler: I have put in place absolutely stringent rules about how we conduct our business.

Q1486 Mr Hall: This is for now; I am talking about before—
Mr Myler: How far back do we have to go, Mr Hall?

Q1487 Mr Hall: Just to the time when this story emerged would be helpful.
Mr Myler: All I can say is this: I have never worked or been associated with a newspaper that has been so forensically examined both internally, by outside solicitors, by the police, by the Crown Prosecution Service and by the Director of Public Prosecutions. If it comes down to this Committee and others not being satisfied by those inquiries, I really do not know what more I can say.

Q1488 Mr Hall: Just one final question: the News of the World used Mulcaire. They had him on a retainer, I understand, of £100,000 and he was paid additional money for specific stories that he would like to sell to the newspaper.
**Mr Myler:** If they worked.

**Q1489 Mr Hall:** Did the News of the World employ any other organisations on the same kind of work?  
**Mr Myler:** I do not think so.  
**Mr Crone:** I am not aware if they did, but Mr Kuttner may be able to help you.  
**Mr Myler:** I think it was felt that given the contract that Mr Mulcaire was on and he was working 24/7, I think it was felt that he could cover most of the—

**Q1490 Mr Hall:** Would he be the first point of contact for reporters that wanted to either fact-check a story or follow up a lead?  
**Mr Myler:** I do not know how it operated then, but I think depending on the level of experience of a journalist, if you are just in Fleet Street and you are trying to find your way round the block maybe you would have called in other, older more experienced people, perhaps not as much, but that is normally the rule of thumb.

**Q1491 Mr Hall:** Would a journalist have to ask the editor’s permission to go to Mulcaire?  
**Mr Myler:** I do not believe so, no.

**Q1492 Alan Keen:** Just a few quick questions. I am trying to get a picture of the management structure. Could you explain, Mr Crone, for instance, are you part of the management or do you sit there waiting till somebody asks your advice?  
**Mr Crone:** I am in the legal department, so that sits there outside the editorial process. This is the editorial legal department. My job is to look after the legal interests of the paper which consists of pre-publication checking to avoid problems and then post-publication, clearing up all the problems that you did not avoid in the first place. So it is a mutually perpetuating role. The editor is the head of editorial, the deputy editor is the number two and the managing editor would be in charge, I think, of budgets and, also, I think, primarily, on staff matters—so internal disciplinary matters and that sort of thing would probably go across his desk and HR’s desk. Other than that, you have the departments within the newspaper which consist broadly of news, sport and features. Mr Myler can probably answer this better than I can, but that is it.

**Q1493 Alan Keen:** So it is the managing editor who really sets the budget.  
**Mr Crone:** No, the budget would be set by News International, the holding company.

**Q1494 Alan Keen:** Do you have any contact formally or informally with the structure above the News of the World, for instance? If you see something which you feel is not right from a legal, moral point of view, have you any formal reporting upwards?  
**Mr Crone:** I could, yes. I would report, primarily, for News of the World matters, to the editor of the News of the World, but if there are important issues that I think the executive chairman needs to know about then I would email or ring or speak to the executive chairman.

**Q1495 Alan Keen:** The other way round: he would ask you on a regular basis his—  
**Mr Crone:** No, not regular, because those issues do not arise very often. So, no, he would not come to me very often—or she.

**Q1496 Alan Keen:** What was your background before you came to journalism?  
**Mr Crone:** I practised at the Bar from 1975-1980. I worked at the Mirror Group from 1980-1985 and I have worked here since.

**Q1497 Alan Keen:** When you came into the newspaper world, were you surprised by the looseness? All my experience before I came here was in management in the engineering industry, where if somebody said: “Make the cheque out not to me as normal but to Fred Smith this time”, that would be the end of that relationship for even more. Were you shocked at some of the looseness?  
**Mr Crone:** No, because I do not have a lot to do with payments, to be perfectly honest. I do remember when I first worked at the Mirror Group thinking: “They are paying the most incredible sums of money to put across two pages and I am being paid a bit less to work for a year”, and I just thought the finances were just amazing.

**Q1498 Alan Keen:** Could I ask Mr Myler: you said you made quite firm changes to the management of the people who worked for you, and you cut out the cash payments to almost 90%. What other changes did you make as far as the authorisation for cheques and for other payments other than cash? Did you have the final say?  
**Mr Myler:** Yes.

**Q1499 Alan Keen:** Before you made these changes, how did it work before you came? Why did you feel you had to make the changes?  
**Mr Myler:** I think we have to remember that there was a system in place before. It was not like the Wild West; it was not a matter of somebody coming up and giving cash all the time. I just felt that we could strengthen up where we were before, which is what we did. Equally, I felt that personal contracts, particularly relating to the PCC Code, could and were strengthened, which meant that if you are a reporter and you are going out knocking on somebody’s door, to turn around and say: “The news editor was putting me under pressure to get the story so I could do want I wanted and then blame the news editor for doing that” was no longer acceptable; it was about personal accountability. As a result of that, that clause relating to employment and breaking the PCC Code was strengthened, which meant that if you broke it you could be fired.

**Q1500 Alan Keen:** I was not exactly sure: did Glenn Mulcaire want to use the name Paul Williams just in the publication of a story or did he want paying as Paul Williams?
Mr Myler: I do not know.

Mr Crone: I have looked at the payment records and no, he had two different companies, I think. In the early days it was one company and it was subsequently a company called Nine Consultancy Limited.

Q1501 Mr Watson: Mr Crone, on the Taylor case, your advice was to settle in April 2008, I think you said?

Mr Crone: I agreed with the outside advice that was given, yes.

Q1502 Mr Watson: So you took it to the Board in June 2008?

Mr Crone: No, I did not take it to the Board; I reported to Mr Myler as editor, and at one stage we both reported it upwards together.

Q1503 Mr Watson: A £700,000 payment would be a decision taken at Board level. Is that right?

Mr Crone: I am not aware of that.

Q1504 Mr Watson: So the News International Board did not agree the payment in any way?

Mr Myler: What do you mean by the “Board”?

Q1505 Mr Watson: Your managing Board; the directors of the company.

Mr Myler: Why would they need to be involved?

Q1506 Mr Watson: Because it is a huge amount of money and they have got a responsibility to the proprietor and shareholder, I assume?

Mr Myler: Yes. As I have said, Mr Watson, the sum of money that Mr Taylor first set out to receive was significantly higher than the sum he did receive.

Q1507 Mr Watson: I am sorry, I thought that was the easy question. So the Board did not know about the payment—

Mr Crone: I do not know. I am sorry, I do not know. All I do is report to the next stage up.

Q1508 Mr Watson: So you could let us know afterwards; you could write to us and let us know whether the Board took the decision?

Mr Crone: I could ask the question and give you the answer, yes.

Q1509 Mr Watson: Would that be minuted? Could you let us have the Minute?

Mr Crone: If it was raised at the Board I assume it is minuted.

Q1510 Mr Watson: Could you tell us how it would appear in the accounts?

Mr Crone: No, I do not know the answer to that. It would appear against—I probably do know the answer to that. It would appear against the legal department budget.

Q1511 Mr Watson: When did you tell Rupert Murdoch?

Mr Crone: I did not tell Rupert Murdoch.

Mr Myler: The sequence of events, Mr Watson, is very simple, and this is very clear: Mr Crone advised me, as the editor, what the legal advice was and it was to settle. Myself and Mr Crone then went to see James Murdoch and told him where we were with the situation. Mr Crone then continued with our outside lawyers the negotiation with Mr Taylor. Eventually a settlement was agreed. That was it.

Q1512 Mr Watson: So James Murdoch took the ultimate decision?

Mr Myler: James Murdoch was advised of the situation and agreed with our legal advice that we should settle.

Mr Crone: What you have to understand about litigation, which I do not think you do, is that if you are in it then you are in it until it is over. You can stay in it and have a full trial and pay £3 million or you can get out at a certain stage and pay £600,000.

Q1513 Mr Watson: I am just trying to find out who took the decision to make the payment.

Mr Myler: It was an agreed, collective decision. It is how newspapers work. Indeed, Mr Watson, I think you probably know that it is good, sensible, practical business practice across most industries. Are you telling me that you have never come across an agreed payment between two companies or an individual that falls out over something that is done? Is that what you are saying?

Q1514 Mr Watson: No, I am just trying to find out—

Mr Crone: Mr Watson, because you are on a Conditional Fee Arrangement in your litigation against us—

Q1515 Mr Watson: I do not want to get into that.

Mr Crone:—you have no knowledge of how litigation finances work?

Q1516 Mr Watson: All I am trying to find out is who took the decision to settle—

Mr Myler: Very simple, and I think we have given you the simple answer.

Q1517 Mr Watson: Could I ask about the payments to Mulcaire, just for clarity? You said that he had been working for the paper since the late-1990s.

Mr Myler: I believe that the association may have gone back that far. I think his first contract was, I believe—and, again, perhaps Mr Kuttner—

Mr Crone: The first one I have seen is 2001.

Q1518 Mr Watson: You have seen 2001. Would you be able to let us know if it goes back before that?

Mr Crone: Yes, sure.

Q1519 Mr Watson: I think the only thing in the public domain is that he was paid £100,000 in 2003 to Nine Consultancy, Is that right?

Mr Crone: I do not know.

Q1520 Mr Watson: It could be that he was paid that amount in the years before that.
Mr Crone: It was an annual contract, and the last annual contract was a touch over—it was about £104,000 a year.

Q1521 Mr Watson: That contract ended when he was convicted?
Mr Crone: Yes.

Q1522 Mr Watson: Then you said there was an employment disagreement. He, presumably, thought that because he had worked for you for more than a year he had employment rights and, therefore, you needed to afford him the same employment just as you gave Clive Goodman. Is that what you understand?
Mr Crone: No, I was not privy; I was not part of that process, but my understanding of the employment law (as I say, I am only repeating what I have been told) is that freelancers or contractors, if they do more than a certain number of hours a week for you, then they have rights.

Q1523 Mr Watson: So when he came out of jail, was his company paid or was he paid directly?
Mr Crone: I do not know.

Q1524 Mr Watson: You could let us know that afterwards. Is that right?
Mr Crone: Yes. I hope someone is writing down what I need to let you know.

Q1525 Mr Watson: And the amount?
Mr Crone: I do not know.

Q1526 Mr Watson: You could confirm that afterwards as well?
Mr Crone: I am sure.

Q1527 Mr Watson: Mr Myler, I was going to say to you that people whose judgment I respect tell me that you are a very decent man and that if there was wrongdoing in the company when you took over you would have cleaned it up. My final question to you, on which I am trying to get light in this Inquiry, is how a newspaper decides what is in the public interest. The judge in the case said that in certain circumstances illegal activity is allowed in the public interest. Am I right to say that under your leadership that public interest test would be taken by you, having sought legal advice, and would not be taken further down the food chain?
Mr Myler: I think it is safe to say, Mr Watson, that in 40 years in this business I spend, probably, equal amounts of time and, depending on the story, more time with lawyers than I do with journalists.
Mr Watson: Thank you.

Q1528 Mr Sanders: I think the Committee is very grateful for the way you have explained certain things and how things work, but I am still a bit confused about this junior journalist who transcribed a tape of phone recordings. Is that common, for a junior journalist to act as transcribers, rather than to use secretaries?

Mr Myler: I was a junior journalist once, and I was given many tasks, and one of the things would be to transcribe a tape; yes.

Q1529 Mr Sanders: That is you. What I am saying is, why was this junior journalist asked to transcribe this tape? From the fact that he cannot remember transcribing this tape it suggests that he transcribed many tapes. So why would you have a junior journalist transcribing lots of tapes?
Mr Crone: I would think that on the News of the World floor there are four secretaries—five—all of whom have their own jobs, all very busy. A junior reporter might not have anything to do for days on end, so it seems a useful use of facilities to give it to him or her.

Q1530 Mr Sanders: This does not quite gel—horses for courses.
Mr Crone: It is not a difficult task; you do not need a great deal of skill for it, to transcribe a tape. That is what he was doing; he was doing an awful lot of it.

Mr Myler: For example, there will be reporters back in the office now taking a note of this meeting, transcribing it over the television feed. It depends who is around; it depends who is in the office. It might be a secretary who is doing it; it might be a reporter; it might be a junior reporter.

Q1531 Paul Farrelly: Just in terms of the payment, let us get this quite correct: Clive Goodman was dismissed when he was convicted summarily and he lost his appeal. So, therefore, after he was summarily dismissed on conviction neither he nor anyone associated with him was made any further payments by News International or any companies or individuals or agents acting on behalf of News International, or associated with the company. Is that correct?
Mr Crone: I am not aware of that.
Mr Myler: I am not aware either.

Q1532 Paul Farrelly: So Clive Goodman was the Royal editor and, as far as you are aware, no further payments were made to Clive Goodman, who was convicted on one charge of conspiracy and pleaded guilty to it. Yet Mr Mulcaire, who was arrested at the same time—
Mr Crone: I am sorry. I think I misunderstood your question. Are you asking whether, at the end of whatever employment issues were raised, Mr Goodman received a payment?

Q1533 Paul Farrelly: I am asking: there were no further payments to Mr Goodman after he was summarily dismissed? Or anyone associated with him by anyone associated with News International?
Mr Myler: I am not aware of any payment.

Q1534 Paul Farrelly: The answer was clear. I am moving on to Mr Mulcaire now. Mr Mulcaire was convicted on six counts: one of conspiracy and five of the actual deed; he is a convicted criminal, he has breached the press code of conduct all over the place and any other, no doubt, what would be called gross
misconduct in any organisation; yet, at the end of the day, you consider that he still has claims against the company in terms of some sort of employment rights and a payment is made to him.

**Mr Crone:** That explains my confusion. I am sorry, that does explain my confusion. You are assuming that no payment was made to Clive Goodman.

Q1535 Paul Farrelly: I asked whether or not—

**Mr Crone:** If I could finish, then we will both understand each other, I hope. Your question seems to be premised on the facts, and that is my understanding, that at the end of his employment appeal and everything else process there was no payment. I do not know whether that is right—it may not be right, in fact.

Q1536 Paul Farrelly: You said “No”—

**Mr Crone:** That is because I misunderstood the question, which is why I—

Q1537 Paul Farrelly: Would you clarify that to us?

**Mr Crone:** I am not absolutely certain, but I have a feeling there may have been a payment of some sort.

**Mr Myler:** With?

**Mr Crone:** Clive Goodman.

**Mr Myler:** I would have to check.

Q1538 Paul Farrelly: Can you clarify that afterwards? Clive Goodman was summarily dismissed and yet, having been convicted on six counts, your company felt that—

**Mr Crone:** Are you talking about Mulcaire?

Q1539 Paul Farrelly: Yes, Mr Mulcaire still had some claims in terms of some unspecified employment rights and you made him a payment.

**Mr Crone:** Yes, apparently he did. I do not know employment law, but apparently (as I have now said for the third time) the law means that if you do so many hours a week there are certain rights. Alongside those rights you have rights of process as to how you are dismissed. If you do not get the process right—

Q1540 Paul Farrelly: Having pleaded guilty and having been convicted?

**Mr Crone:** Ask an employment lawyer. You are asking the wrong person. You do not get the process right, as I understand it, you are going to have to pay a bit of money.

Q1541 Paul Farrelly: Would you let us know the grounds on which—

**Mr Crone:** This is the law that you guys have passed and we are stuck with it.

Q1542 Paul Farrelly: As well as the amount, would you let us know the grounds on which your employment lawyers advised you that he still had a claim against you?

**Mr Myler:** Mr Farrelly, I was just going to say, in all seriousness, the human resources laws today with employment are incredibly complicated, and indeed, I think, allow people to do rather extraordinary things and still come back on an employer and say: “But you still haven’t got a right to fire me.” There are extraordinary examples out there of people receiving payment where, under most people in the street’s view, would be unreasonable, but you are dealing with law.

Q1543 Paul Farrelly: If we have the details then we will find out more about this extraordinary case, will we not, so that we can better try and grapple with it.

**Mr Myler,** can I ask you this final question: the PCC issued a report based on your evidence that said that Mr Mulcaire had a second clandestine relationship with the paper?

**Mr Myler:** I am sorry?

Q1544 Paul Farrelly: The PCC said in its report, based on your evidence, that Mr Mulcaire had a second, clandestine relationship with the paper through Clive Goodman. We have seen, through the documents that the *Guardian* produced to us last week and which became evident to you in April 2008, that there were at least two further relationships with the newspaper. Have you taken any steps with the PCC to correct the record?

**Mr Myler:** I think, as Mr Crone will explain, the Taylor settlement bound us and binds us on a matter of confidentiality. We are between a rock and a hard place. So the Court has bound us by a legal obligation. You have heard from Mr Crone and me about what happened, and no further evidence emerging. That is where we are.

Q1545 Paul Farrelly: The answer is, quite clearly, you did not take any steps to correct the record?

**Mr Myler:** With the PCC?

Q1546 Paul Farrelly: With the PCC.

**Mr Myler:** No, no.

Q1547 Paul Farrelly: Mr Crone, can I ask you—this is the final question, Chairman—Mr Hinton came to us and gave similar evidence that Mr Myler gave to the PCC. As the Legal Adviser for News International, did it ever occur to you to come back to the Committee in the light of what you discovered in the Taylor case, again, to correct the record?

**Mr Crone:** I do not see how I could have without breaching the obligation of confidentiality to Mr Taylor that had been agreed. I do not see how I could have.

Q1548 Adam Price: One very specific question: in the appeal that you heard, Mr Myler, with Clive Goodman, did he produce or did he mention that he had in his possession any email messages from Andrew Coulson that were material to this case?

**Mr Myler:** Not that I can recall, no.

Q1549 Chairman: Thank you both.

**Mr Myler:** Thank you.
Supplementary written evidence submitted by Colin Myler, Editor, News of the World

Responses to Further Questions of 27 July 2009

1. By what percentage has Colin Myler reduced the cash expenditure for stories at News of the World? (Q1475)

I believe the figure I gave in evidence was between 82–89%. A comparison between News of the World cash payments for the financial year July 2004 to June 2005 and the financial year July 2007 to June 2008 shows a reduction of 89%. I arrived in January 2007.

2. Did the board of News International know about, and authorise, the settlement payments to Gordon Taylor? (Q1507)

No.

3. Mr Crone said that the earliest contract for Glen Mulcaire he had seen was dated 2001. Did Glen Mulcaire have any association with News International papers prior to 2001? (Q1517)

The earliest payment we can find on our records for Glen Mulcaire or his company Nine Consultancy is September 2001. We think he may have had another company prior to this period and are still searching for information and/or payments relating to it.

4. Did News International make any payments to Glen Mulcaire after his conviction? If so, how much was the payment? (Q1522 & Q1579)

In June 2007, claim(s) made by Glen Mulcaire against News Group Newspapers Limited in employment tribunal proceedings were settled. The nature of the claim(s), the circumstances giving rise to it/them and the terms of the settlement (including the amount of any payment(s)) are subject to mutual and legally binding confidentiality obligations. These are standard in compromise agreements entered into under section 203 of the Employment Rights Act 1996.

5. Did News International make any payments to Clive Goodman after his conviction? If so, how much was the payment and on what grounds was it made? (Q1536)

In July 2007, employment-related claim(s) made by Clive Goodman against News Group Newspapers Limited were settled. The nature of the claim(s), the circumstances giving rise to it/them and the terms of the settlement (including the amount of any payments) are subject to mutual and legally binding confidentiality obligations. These are standard in compromise agreements entered into under section 203 of the Employment Rights Act 1996.

6. If payments were made after the conviction of Goodman and Mulcaire who, at News International, would have known about them? (Q1579)

All employment-related claims at News International are managed by News International’s Director of Legal Affairs, in conjunction with a human resources executive, in this case News International’s Director of Human Resources. News International’s then Executive Chairman, Les Hinton, was aware of the claims and the terms of their settlement. I and Tom Crone were broadly aware of the claims and the fact that they were settled, but not of the terms of the settlement.

If we find earlier Mulcaire-related payments we will send you a correction to Q3 above.

We have now answered all the outstanding questions from the Committee on Tuesday 21 July and trust that this now brings to a close our involvement in your Committee’s proceedings.

August 2009

Witnesses: Mr Andy Coulson, former Editor, and Mr Stuart Kuttner, Managing Editor, News of the World, gave evidence.

Chairman: For the second part of this morning’s session, can I welcome the Managing Editor of the News of the World, Stuart Kuttner, and the former Editor, Andy Coulson. To begin, having shown remarkable restraint so far, Peter Ainsworth.

Q1550 Mr Ainsworth: Good morning. Do you want to say something first?

Mr Coulson: Would you mind? I know that time is of the essence, but I wondered if I might take a couple of minutes just to make a few comments that might save some time in the long term. Good morning. I was, as you know, Editor of the News of the World for four years from January 2003 until January 2007. During that time I never condoned the use of phone hacking and nor do I have any recollection of incidences where phone hacking took place. My instructions to the staff were clear: we did not use subterfuge of any kind unless there was a clear public interest in doing so; they were to work within the PCC Code at all times. I arranged for the staff to attend seminars with the PCC and the in-house
lawyer, where they were given regular refreshers. I gave the reporters freedom as professional journalists to make their own judgments and I also gave them plenty of resource. We spent money in the pursuit of stories at the News of the World, more money than most newspapers, and I make no secret of the fact. In an average week the News of the World would publish around 100 news and feature stories; the amount of stories being actively worked on with resource being spent on them would be two to three times that amount. As Editor, my duties, other than obviously editing the paper itself, included overseeing the marketing of the paper and overseeing the advertising layout, campaigns, any events and whatever else the week inevitably threw up. So I would invariably concentrate on only a handful of those 100 stories and focused mainly on the first 13 to 15 pages, the under-spread sport, the leaders and other comment pages; I was not able to micromanage every story, and nor did I attempt to. In relation to the Clive Goodman/Glenn Mulcaire case, I would like to make the following points: I never met, emailed or spoke to Glenn Mulcaire; I knew the name of what I was later to discover was his company, Nine Consultancy, because the newspaper paid around £100,000, as you know, a year for legitimate investigation services. The judge in the court case accepted that this was a perfectly legal arrangement, as I believe did the prosecution. I am sure the contract sounds expensive, but the fact is at the News of the World, where I would regularly spend five figures on a single story or a picture, this payment did not stand out. The extra payments paid to Glenn Mulcaire by Clive Goodman were unknown to me and were concealed from the Managing Editor. I should add that, as I made clear in my statement, I have no knowledge of a News International settlement with Gordon Taylor or in my statement, I have no knowledge of a News International settlement with Gordon Taylor or any other settlement. I am sure that there is an awful lot more I could have done to ensure compliance with the PCC Code, to ensure that mistakes were handled and that compliance was enforced. Mr Coulson: I have to accept, looking back on my editorship, as I think I touched on in my opening remarks, that mistakes were made. I have to accept that the system could have been better—I think it is self-evident that the system could have been better—but I would argue the point that no efforts were made to properly control reporters’ activities and to properly control the finances. Q1552 Mr Ainsworth: Can we speculate a little as to if the system had been better, in your words, you would probably have known about the whole Mulcaire issue? Mr Coulson: I probably would have known? Q1553 Mr Ainsworth: About what was going on with Mulcaire. Mr Coulson: No, I do not think I can— Q1554 Mr Ainsworth: Even if the system had been as it is now you still would not have known? Mr Coulson: Sure, I understand. I do not think I can say that with certainty, no, because what we had with the Clive Goodman case was a reporter who deceived the managing editor’s office and, in turn, deceived me. I have thought long and hard about this (I did when I left): what could I have done to have stopped this from happening? But if a rogue reporter decides to behave in that fashion I am not sure that there is an awful lot more I could have done. Q1555 Mr Ainsworth: So your immediate response on hearing this was, presumably, surprise? Mr Coulson: Yes, and anger. Q1556 Mr Ainsworth: Can we turn to the money? You touched on this in your opening remarks. It may just be that what we are looking at here is a difference in scale as well as, perhaps, a difference in culture between yourselves and the Guardian. (When I say “yourselves” I mean the News of the World as it was and the Guardian.) Mr Coulson: There are many differences between us. Q1557 Mr Ainsworth: There are, indeed, many differences. We heard from Alan Rusbridger that he would expect to have been told that the Guardian had paid £100,000, and I know that Mr Myler objects to the use of the word “bonus” payment, but there were also additional payments made which, again, Alan Rusbridger said he would expect to be told about in his situation. Is the reason that you were not told about this simply to do with the
difference in scale of operations between the 
Guardian and the News of the World, or is it some 
other procedural thing?

Mr Coulson: The budget that I was given at the News of the World far exceeds that, I am sure, with all due respect to the Guardian, of the Guardian newspaper, I suspect. As I said in my opening remarks, I would regularly pay vast sums of money for a single story or a single picture, so the idea that I would micromanage the budget, I am afraid—it just was not the case. Can I add this as well, because I am sure that you will be asking more specific questions about the budgeting process, both of me and of Mr Kuttner: I accept that the system was not perfect and I take ultimate responsibility for it. If I could give you some examples of things that I wish I had done that could have prevented the Mulcaire case, I would give them to you today. I am not able to do that, but as a general point, obviously, looking back, I wish that I had done more.

Q1558 Mr Ainsworth: What would you like to have done?

Mr Coulson: It is difficult to say. I cannot give you a specific set of measures. To give you an example, once we knew that Clive Goodman had been arrested, obviously, we wanted to find out pretty quickly what had happened. So we instigated an internal inquiry; I brought in an independent set of solicitors with the primary purpose, I have to say, of bringing in of the independent lawyers, right from the start, was, in my long experience, one of the most traumatic and unhappy events that I have known in newspapers.

Q1559 Mr Ainsworth: Although you have just said that even if the new systems that Mr Myler put in place had been in place when you were there you still would not have known—

Mr Coulson: I cannot be sure. I am trying to be—

Q1560 Mr Ainsworth: It is not a question of you—

Mr Coulson: I am trying to be as upfront with you as I possibly can on this point. I have thought long and hard about this since I left the News of the World; I cannot put a specific thing: “I wish I had done that and if I had done that which would not have happened”. I have to accept, do I not, where did it all end?

Q1561 Mr Ainsworth: Is it really the case that you are saying not only did you not know, which is clearly the established position, but that you could not have known?

Mr Coulson: In relation to Clive’s payments to Glenn Mulcaire, no, I would not have known about those and could not have known.

Q1562 Mr Ainsworth: You could not have known?

Mr Coulson: I do not think so. I did not sign off on individual cash payments.

Mr Ainsworth: Thank you.
payments that a big newspaper makes and came to light, as you know, as a result of a very substantial police investigation. When they did, we took a number of actions to do what we could to prevent anything of that nature occurring again.

Q1567 Alan Keen: I understand that as a percentage it is small. Obviously, if you are paying £50,000 to somebody as an informant or to tell a sex story that has occurred in their life, that is a lot of money and that is not a difficult decision to make; it is very straightforward, you are paying somebody £20,000, £25,000 or £100,000 even, but where you are paying somebody for getting information, that should have been looked at, should it not much more carefully?

Mr Kuttner: It was, Mr Keen; these things were looked at, and are looked at. Where you have long-serving, experienced and trusted journalists coming forward—and, I have to say, relatively occasionally in the sense that, with perhaps one exception, there was no large pattern—with information and saying: “Look, in order to get this information from someone who is in a sensitive position, I need to make this payment in cash”; where that journalist is someone who is in a sensitive position, I need to micromanage every story. I certainly did not micromanage every piece of tittle-tattle as you correctly put it.

Q1572 Alan Keen: When we talked to Paul Dacre a few weeks ago I think he said that the Mail Group stopped using agents soon after the turn of the century, but you obviously continue to use them right up until, well—has it stopped now? While you were Editor you used agents like Mr Mulcaire. Did you not think about stopping that practice? Did you know that the Mail Group had stopped it?

Mr Coulson: No, I did not know that. My understanding is that investigation agencies of this type are used by pretty much every media company. I stand to be corrected, I have been out of newspapers for a while, as you know, and maybe things have changed, but my understanding is that these kind of agencies are used by all types of media organisations, print and broadcast.

Chairman: Philip Davies?

Q1573 Philip Davies: Mr Kuttner, could I start with you, if I might—

Mr Kuttner: Forgive me, Mr Davies, no discourtesy but since you are about to address me I would like to raise a matter with the Chairman in respect of yourself. Ten or 11 days ago—and you clearly know what is coming—

Q1574 Philip Davies: I do know what is coming, yes. Mr Kuttner: Your position on the veracity of my conduct and my evidence was clearly prejudged and in very prejudicial terms, you are quoted—and forgive me if the Guardian got it wrong—when you say: “Stuart Kuttner has resigned. As someone who does not believe in coincidence, it is far-fetched to say that his resignation had nothing to do with it.”

In those circumstances—and perhaps I should, with respect Chairman, have raised this when I first sat in this chair, I am concerned that Mr Davies is in effect acting as judge and jury and has already made up his mind as to the reliability of anything I say and in those circumstances I would ask that he withdraws and takes no further part in these proceedings. I am glad you find it a laughing matter.

Q1575 Chairman: I am sure Mr Davies will answer for himself.

Mr Kuttner: I am glad he finds it a laughing matter, sir, because I do not.

Chairman: However, this is not a court and Members of Parliament are entitled to express views and it does not in any way disbar them from asking questions in a select committee hearing.
Q1576 Philip Davies: Mr Kuttner, as somebody who in previous sessions, if you have been following our inquiry closely, has been arguing in most of them that I believe the press should have more freedom in order to express their views, it seems quite extraordinary that you should take the view that because I expressed an opinion with which you were not happy that I should be barred from any proceedings, but we will let that pass. This is an open session and everybody in the world can see what questions I ask and everybody in the world can see what answers you give, and I trust the public who watch it and listen to it to come to their own conclusions, as I am sure as a journalist you would too. I do not really see where your problem lies but perhaps you could clear up this particular issue of your resignation because you announced your resignation either the day before the story in the Guardian broke or the day of it. Given that you think that that was not linked in any way could you explain to us why you announced your resignation at that time.

Mr Kuttner: I hear what you say and thank you for your comments. I think that your use of the word “think” is very revealing. I do not think that my resignation is not linked to this matter; I know it is not linked to this matter and, moreover, there are legal documents in existence with News International’s counsel and my own lawyers that make that position perfectly clear. I only regret that you clearly have a position in your mind which bears no relationship to reality whatsoever. I do not wish to personalise it, this is not about me, but since you said what you have said and just said what you have said just now it is a very simple situation.

Discussions after a very long career in journalism about a retirement, a stepping aside, a stepping down, call it what you will, had gone on for months about a retirement, a stepping aside, a stepping...
Q1584 Philip Davies: But you will find out who has?
Mr Coulson: I said that I can make enquiries.

Q1585 Philip Davies: Mr Coulson, perhaps we might get somewhere with you because we are clearly getting nowhere with Mr Kuttner. Am I right in thinking from your opening statement that you said that you were aware of the £100,000 a year payment to Mr Mulcaire’s company but you just had no idea about the activities that he was indulging in?
Mr Coulson: The £100,000 was for a legitimate contract. I think the Committee has discussed that before as to what Mr Mulcaire did for that £100,000. Separately, the cash arrangements with Clive Goodman I knew nothing about.

Q1586 Philip Davies: That is fine. I think you behaved honourably in the sense that you resigned, which is perhaps a lesson that many politicians could learn when things go wrong on their watch.
Mr Coulson: It is not for me to say.

Q1587 Philip Davies: You said again today that you were not and could not be aware of the activities of a rogue reporter.
Mr Coulson: Yes.

Q1588 Philip Davies: Would you now accept given what has subsequently been in the Guardian and the evidence that they have produced that the likelihood is that Mr Goodman was not actually a rogue maverick reporter at the News of the World and there was actually more of a systemic culture at the News of the World about these activities?
Mr Coulson: No, I would not accept that.

Q1589 Philip Davies: So you think that it is perfectly reasonable to presume that because phone tapping was taking place of people like Gordon Taylor and Elle Macpherson, who had nothing at all in any way as far as I can see to do with the Royal Family, and that Clive Goodman was the Royal Editor, that that must have been down to Clive Goodman’s activities?
Mr Coulson: As far as I am aware there is no evidence linking the non-Royal phone hacking allegations that were made against Glenn Mulcaire to any member of the News of the World staff.

Q1590 Philip Davies: So you do not think the suspicion arises even?
Mr Coulson: There is no evidence.

Q1591 Philip Davies: What about the emails that were sent by other reporters on the News of the World that we heard about earlier?
Mr Coulson: I will try and be as helpful as I possibly can be today but I will say this about the documentation that the Guardian produced: I have never seen any of it before. As I said in my opening statement, I have no recollection of a Gordon Taylor story. I heard Mr Crane’s evidence earlier that mentioned that it may have come up in a conversation. I have absolutely no recollection. I am not suggesting that Tom is wrong about that, by the way, but I have no recollection of it. Dozens of stories come through the News of the World in a given week. Some weeks more than dozens. I can tell you that I never asked for a Gordon Taylor story, I never commissioned a Gordon Taylor story. I never read a Gordon Taylor story, to the best of my recollection, and, as you will know, we did not publish a Gordon Taylor story. I would add this: Gordon Taylor, with all respect to him, is not exactly a household name, so he may have appeared in the sports pages of the News of the World from time to time but I certainly would not have been interested in a story about him or about him at the front end of the newspaper.

Q1592 Philip Davies: So you do not think therefore that the chances are that perhaps somebody who works on the sports pages might have also been involved in this activity?
Mr Coulson: You are now hypothesising about the allegations stretching through every aspect of the News of the World. Forgive me but where is the evidence that even the other people involved in the Mulcaire charges were linked to the News of the World? Where is the evidence for it?

Q1593 Chairman: We do have the copy of the contract which was signed by the Assistant Editor of the News of the World to employ Paul Williams (in other words Glenn Mulcaire) to find a story about Gordon Taylor, so clearly it was not just Clive Goodman.
Mr Coulson: The first time I saw that document was when the Guardian produced it. I have no knowledge of it whatsoever.

Q1594 Chairman: So whilst Greg Miskiw would have signed that contract he had not talked to you about it?
Mr Coulson: No, Greg Miskiw was based in Manchester. He did not talk to me about it in any way.

Q1595 Janet Anderson: Mr Kuttner, you are the Managing Editor. I wonder if you could perhaps give us a job description. What does being Managing Editor involve and can you set out for us what exactly is the chain of command for authorising payments? When would you have been involved in making payments and when would you not?
Mr Kuttner: Okay, a two-part question, can I try and condense the answer to the first part. I will not say a jack-of-all-trades but a managing editor on a newspaper can do all sorts of things. In my particular case, as I said at the outset, I have made contributions to the paper in terms of articles. Occasionally I would negotiate with publishers for the rights to books. I would help with the writing of the editorial column, the leader column. I would deal with disciplinary matters involving staff. I guess it is a separate matter but I sat and I do still as a trustee of the pension fund. I was actively involved in the creation of the newspaper’s annual...
budget and the division of that budget between different departments such as news and features and sport and pictures and so forth. I liaised closely with the heads of those departments as to their weekly and monthly spending patterns and to some substantial extent I or a colleague (though more often myself) would sign off or approve, or in some cases disapprove, journalists’ expenses claims or challenge them, and finally, although I may have left something out of that litany, I would approve payments, by far the bulk of them being payments by cheque or by bank transfer or what are called retainer payments, regular payments to columnists, and occasionally (occasionally in the sense of not a great quantity) oversee cash payments.

Q1596 Janet Anderson: You said earlier that you were not aware of a continuing contract with Goodman and Mulcaire.

Mr Coulson: Forgive me, which contract are you speaking of?

Q1597 Janet Anderson: Well, you said you were not aware of details of any payments subsequent to their conviction?

Mr Kuttner: Of the payments in relation to the annual contract?

Q1598 Janet Anderson: Yes?

Mr Kuttner: I was aware of that. If I gave that impression I am surprised because I was perfectly well aware of that.

Q1599 Janet Anderson: Could you explain for us the chain of command when it comes to authorising payments by the News of the World from the bottom to the top.

Mr Kuttner: Okay, let us take a for instance. A news reporter gets to hear of a possible story and in that case there may be a demand from an informant or from a freelance agency for a payment. That journalist will speak to the department head, who could be the features editor or the deputy features editor, and agree a sum payable on publication of the story, and then in due course, either on a screen or in paper, the documentation for that story would come to me. I would check it against what had been reported previously, so if a features editor had said to me, “Look story X will cost £3,000 for example,” and along comes a payment for £3,000, that is fine. If along comes a payment for £4,000 that is not fine, and that is batted back.

Q1600 Janet Anderson: So you would generally be aware of all the payments that were made. Can you describe circumstances in which you might not be aware?

Mr Kuttner: In which I might not be aware? If I dealt with them personally I would be aware of them.

Q1601 Janet Anderson: But in what kind of situation would you not deal with them personally?

Mr Kuttner: Only if for example I was away and my deputy dealt with them.

Q1602 Janet Anderson: So otherwise everything would pass across your desk?

Mr Kuttner: Much of it would pass across my desk, yes.

Q1603 Janet Anderson: Mr Coulson, I think you said in your opening statement that you would never condone or tolerate subterfuge unless it was in the public interest. Do you believe that phone hacking is ever in the public interest?

Mr Coulson: No, I do not and I do not, as I said, have any recollection of there being any instances, public interest or otherwise, where it was used. I would also add this: the Clive Goodman case it is blatantly clear from the stories that were published that there would not be a hope of a public interest defence. This was, as I think Mr Keen pointed out earlier, largely tittle-tattle so the idea that there could be a public interest defence applied to those activities is nonsense.

Q1604 Janet Anderson: So you state categorically that you had no knowledge of these activities when you were at the News of the World but you have a very long and distinguished career spanning 20 years as reporter for The Sun, and you worked for Piers Morgan on the Bizarre show-business column and then the Daily Mail and then back to Deputy Editor of the News of the World. Are you telling us in the whole of that time you never, ever had a suspicion of any kind of illegal activities such as phone hacking, such as hacking into people’s voicemails and so on?

Mr Coulson: There have been rumours about that kind of activity, I suppose, and media commentators have written about it. It has been in the ether of the newspaper world for some time but, no, I have never had any involvement in it at all.

Q1605 Janet Anderson: There was of course the instance of The Sunday Times, I believe, planting a trainee reporter in the Cabinet Office to steal Government documents, so that kind of thing does go on.

Mr Coulson: Talk to John Witherow, with respect.

Q1606 Janet Anderson: But in your experience you have never been involved with anything like that?

Mr Coulson: No.

Q1607 Mr Farrelly: Mr Coulson, in the story that appeared in the Guardian you issued the following statement: “I took full responsibility at the time for what happened on my watch but without my knowledge and resigned.” That is a very big catch-all. What were you denying knowledge of when you made that comment to the Guardian?

Mr Coulson: I was denying knowledge of what was being largely alleged in the Guardian. Can I hazard a guess as to what might lie behind your question,
why did I not give a more fulsome reaction to it in the way that perhaps I have with my statement this morning?

Q1608 Mr Farrelly: No, that is not behind it but if you want to—
Mr Coulson: Fine, then I will not bother.

Q1609 Mr Farrelly: If you want to expand, please do.
Mr Coulson: I was merely going to point out that this was not exactly a high point of my career. I do not particularly enjoy talking about it, I do not particularly enjoy seeing stories in the newspapers about it, although I think I have probably lost that battle, and so I have not talked much about it since I left the News of the World, largely for those reasons.

Q1610 Mr Farrelly: Can you just remind me when did you become Deputy Editor of the News of the World?
Mr Coulson: In 2000.

Q1611 Mr Farrelly: Let us just go to Operation Motorman then and payments to Stephen Whittamore. Were you aware of any relationship between the News of the World and Stephen Whittamore?
Mr Coulson: This is a long time ago so I am not going to pretend that I have an encyclopaedic knowledge of what went on at the time but I will do my best. The Motorman inquiry, as you know, was industry wide. The reaction to it, I think, was industry wide. As for the involvement of individual News of the World journalists, I knew very little about that. I knew only what was published. I cannot remember the exact date but in 2006 I think I was correct in saying the What price privacy now? report, or possibly it was the second report, detailed a number of reporters. It also published a league table and I think the News of the World was fifth in that league table and The Observer, from memory, was ninth.

Q1612 Mr Farrelly: We know this.
Mr Coulson: Forgive me for repeating it.

Q1613 Mr Farrelly: Just for a moment, had you come across that name Stephen Whittamore before?
Mr Coulson: My recollection of our reaction to Motorman was to tighten procedures internally and was to look at the PCC Code more forensically. I think I am right in saying that the code changed as a result of the Motorman inquiry and we reacted accordingly. As I said in my opening statement, we worked hard, I have to now accept perhaps not hard enough, to ensure that our reporters knew what the PCC Code was and what it meant and what it meant in terms of their day to day job.

Q1614 Mr Farrelly: Had you heard the name Stephen Whittamore before the story?

Mr Coulson: No.

Q1615 Mr Farrelly: You had never heard it?
Mr Coulson: No.

Q1616 Mr Farrelly: If while you were Deputy Editor, Editor or a senior journalist on the News of the World had anyone used an enquiry agent such as Stephen Whittamore would you have insisted before the fact that their use of such an enquiry agent, if it involved anything potentially illegal would be accompanied by a public interest defence?
Mr Coulson: I think every reporter knew that they had to work within the PCC Code. The PCC Code is very clear about the public interest defence. On that basis I felt that it was covered.

Q1617 Mr Farrelly: So you would not have specifically insisted?
Mr Coulson: No.

Q1618 Mr Farrelly: Or specifically known whether anybody had access—
Mr Coulson: I do not recall ever doing so. I do not recall any conversations specifically about Whittamore. I really do not think that I knew the name until it came out in the proceedings.

Q1619 Mr Farrelly: It is just that your denial was very broad and anything that may have gone on that was illegal, which is why I am asking. Mr Kuttner, we had a third set of documents from the the Guardian. Have you seen this?
Mr Kuttner: I do not believe I have, sir.

Q1620 Mr Farrelly: Can I pass it to you. Do you recognise that sort of invoicing?
Mr Kuttner: I beg your pardon?

Q1621 Mr Farrelly: Do you recognise that form of invoicing as the managing editor?
Mr Kuttner: It looks and in fact it clearly is what is called a self billing tax invoice.

Q1622 Mr Farrelly: It is a self billing tax invoice?
Mr Kuttner: It is marked something and clearly it would have said, if it were all there, something and then “contributor” and I think possibly “self-billing tax invoice”. I am not sure who it relates to though.

Q1623 Mr Farrelly: The first two entries are “address from telephone number” but can I just turn you to the final page. The sixth item down relates to a payment of £70.50 for the obtaining of an ex-directory telephone number.
Mr Kuttner: Please bear with me a moment. I can see £70.50, yes.

Q1624 Mr Farrelly: Would you as a managing editor authorise that sort of payment to an enquiry agent?
Mr Kuttner: I think the answer to that is it depends on how the enquiry agent obtained the information.
Q1625 Mr Farrelly: Presumably the request that has gone out—and I have been an investigative journalist although I have never had to do this, I have done it longhand as fortunately we have been in a position in papers I have been on to pay for this information, but this sort of request would go out for the obtaining of an ex-directory telephone number. It would be a specific request of an enquiry agent and the means by which the enquiry agent gets it will inevitably have to have as the source the telephone company.

Mr Kuttner: I beg your pardon?

Q1626 Mr Farrelly: The means by which the enquiry agent gets the information will have to go at some stage back to the telephone company. Have you authorised as a managing editor payments like this?

Mr Kuttner: I have authorised many, many, many payments where to my knowledge the work has been done in a proper and lawful fashion. I see no evidence here that anything has been done unlawfully.

Q1627 Mr Farrelly: That is not my question. You would always as a matter of course as Managing Editor ask the question whether this was in the public interest?

Mr Kuttner: Whether a specific payment?

Q1628 Mr Farrelly: With the enquiry for the obtaining of an ex-directory telephone number to which payment of £70 in this but there could be other cases where more or less had been made whether that information was sought with a public interest defence? Would you ask that question before authorising payment?

Mr Kuttner: On an individual item-by-item basis?

Q1629 Mr Farrelly: Yes?

Mr Kuttner: I think that is unlikely.

Q1630 Mr Farrelly: Because our predecessor inquiry received evidence that any such questions would have had a public interest defence, and that was from the then Editor of the News of the World before your tenure. Mr Coulson.

Mr Kuttner: But the authorisation of the payment does not necessarily mean that anyone has behaved unlawfully or that the kind of questions you just instanced have not already been asked.

Q1631 Mr Farrelly: Mr Coulson, you have denied also when the Guardian story came out knowing about the Taylor settlement. That is understandable. Can I ask you when you first learned of the Taylor litigation?

Mr Coulson: When I read about it in the Guardian I think.

Q1632 Mr Farrelly: You had not been informed even though this went back to April 2008?

Mr Coulson: I was not involved in any way.

Q1633 Mr Farrelly: That Gordon Taylor was suing the News of the World?

Mr Coulson: I was not involved in any way.

Q1634 Mr Farrelly: Nobody from News International communicated this to you?

Mr Coulson: No. My only knowledge of Gordon Taylor at all was in relation to the court case. Obviously he was one of those named in the Mulcaire case.

Q1635 Mr Farrelly: Right, so neither by way of gossip nor chatting to old friends at the News of the World?

Mr Coulson: I do not recall any of it at all.

Q1636 Mr Farrelly: Or being asked for advice?

Mr Coulson: Advice?

Q1637 Mr Farrelly: Or being summoned by Gordon Taylor? Nobody from April 2008 informed you that there was any litigation in progress?

Mr Coulson: To the very best of my recollection, no.

Q1638 Mr Farrelly: So it was news to you when the Guardian printed that story?

Mr Coulson: Yes.

Q1639 Mr Farrelly: I find that remarkable but we have to take your answers at face value. When Clive Goodman pleaded guilty as the Editor of the News of the World why did you not sack him?

Mr Coulson: Well, I thought that an HR decision on Clive should be made once the proceedings came to a full end. For the same reason, I resigned two weeks before I actually left and kept it from the staff. I made that decision two weeks before Clive’s sentencing because I felt that the legal issues had to reach their absolute conclusion.

Q1640 Mr Farrelly: We have heard that there was a continuing relationship and payments were also made subsequently to Glenn Mulcaire. Why did you not make sure that that arrangement was terminated when Glenn Mulcaire pleaded guilty?

Mr Coulson: For the same reason I think. There was a very serious legal situation on-going. With Clive I think maybe looking back on it I was pondering whether or not it would affect his mitigation in some way. I do not know. I just felt the proper thing to do was to let the legal matters come to an end. I decided two weeks prior to that that I would resign and then subsequent to that obviously I was not involved.

Q1641 Mr Farrelly: You are a very senior adviser to the leader of the Opposition and presumably if not now then in the future if the leader of the Conservative Party becomes the Prime Minister you will have to deal with spokesmen at the Palace, for example. Do you think it is sustainable to have a relationship with the Palace when you were the Editor while journalists on your watch hacked into the phones of the private and personal secretaries to
the Princes and future King of England and also of your counterpart, then Paddy Harverson, at the Palace and yet when you learned of this you did not immediately sack either the reporter or the person who had hacked into the phones?

**Mr Coulson:** No, but I resigned.

**Q1642 Mr Farrelly:** Do you think it is sustainable for you to have a relationship of trust in the future?

**Mr Coulson:** In relation to Paddy Harverson, with the greatest of respect, ask Paddy Harverson. I have no problem with it. I have seen Paddy socially since this case. I apologised fully several times, quite properly, to the Royal Family and to all those who were affected by Clive’s actions. In relation to this job now I have done my best to work in as upright and as proper a fashion as I possibly can. Ultimately though I guess it is for others to judge.

**Q1643 Mr Farrelly:** Do you think in your heart of hearts that you can have a proper relationship of trust with the Palace given the circumstances of what went on?

**Mr Coulson:** As I say, there is no problem my end.

**Q1644 Mr Farrelly:** Mr Kuttner, just a few final loose ends. Did you authorise the arrangements entered into by Greg Miskiw with Paul Williams, which was an alias for Glenn Mulcaire?

**Mr Kuttner:** No, Mr Farrelly.

**Q1645 Mr Farrelly:** That was done without your knowledge, was it?

**Mr Kuttner:** Correct.

**Q1646 Mr Farrelly:** As Managing Editor would you have been expected to have been informed that such a relationship was entered into?

**Mr Kuttner:** That Greg Miskiw had entered into a holding contract for a potential story? Not necessarily, no.

**Q1647 Mr Farrelly:** For £9,000.

**Mr Kuttner:** I think the figure is £7,000 but the answer to your question is no. The point at which I would have expected, and indeed I believe would have become aware, is if the story was working out and if we were likely to put it in the paper. I think I would then have been told—in fact more than think, I know that I would have been told, “Look we have such-and-such a story involving a gentleman and it is intended to publish it in the paper, and the financial impact in terms of the cost will be X,” but it clearly never reached that stage.

**Q1648 Mr Farrelly:** Clearly but what level of payment then would you expect to be consulted on before it was paid and to authorise before it was paid?

**Mr Kuttner:** To be consulted on?

**Q1649 Mr Farrelly:** To be informed?

**Mr Kuttner:** To be informed in advance?

**Q1650 Mr Farrelly:** Yes.

**Mr Kuttner:** Anything in or about the order of £1,000 plus.

**Q1651 Mr Farrelly:** And authorisation?

**Mr Kuttner:** Well that would follow. Do you mean authorisation in terms of making the payment or authorisation in agreeing?

**Q1652 Mr Farrelly:** Authorisations on making the payment.

**Mr Kuttner:** Making the payment? That would follow once the story had been published and something was generated to create that payment in the system, and then, having been made aware of it in advance, I would check it, as I think I said earlier, against whatever I had been alerted to and if it was a very substantial payment, whatever the Editor had been alerted to, and I would authorise the payment.

**Q1653 Mr Farrelly:** So you are telling me you would normally be expected to be informed about payments of around £1,000—

**Mr Kuttner:** Plus.

**Q1654 Mr Farrelly:** And yet for the entering into of a contractual agreement that would trigger a payment of £7,000 you are saying that you would not necessarily expect to be informed?

**Mr Kuttner:** Not at that stage since it was not a firm contractual arrangement in the sense that, as I understand it, it was an agreement to pay X for a story if and when that story was confirmed and published.

**Q1655 Mr Farrelly:** It seems a pretty straightforward contractual agreement to me. It says “The News of the World agrees to pay a minimum sum of £7,000 on publication of a story based on information provided by Mr Williams.”

**Mr Kuttner:** Contingent upon publication.

**Q1656 Mr Farrelly:** So under your control as Managing Editor you are asking us to believe that they were so lax that you would allow people to enter into contractual agreements to pay someone seven times the minimum at which you would expect to be informed?

**Mr Kuttner:** No, I think that is a misunderstanding of the position.

**Q1657 Mr Farrelly:** Well, can you enlighten me?

**Mr Kuttner:** If we were about to make a firm commitment to pay for a story, once the story was confirmed, once it was prepared for publication, I would then be advised “Look, we have such-and-such a story, it will cost whatever it will cost and I have been made aware of it,” and I might indeed say at that point, “This sounds a lot of money for this story”, or “Are we going to put this story on the
front page or do it as a double page spread?” and the editor, depending on the amount, is involved to a degree in that debate.

Q1658 Mr Farrelly: Before that stage the paper would not be worth what it is written on really?  
Mr Kuttner: I do not accept that at all.

Q1659 Mr Farrelly: That seems to be the implication.  
Mr Kuttner: I do not accept that. Whatever that says is what it represents.

Q1660 Mr Farrelly: How many agreements like this are you aware of where agreements have been made to make payments while you have been Managing Editor to pay people in a false name?  
Mr Kuttner: I think the answer is I am not aware of them.

Q1661 Mr Farrelly: This is unique?  
Mr Kuttner: I did not say that. I am not saying that it is unique but I am not aware of—

Q1662 Mr Farrelly: Any further instances?  
Mr Kuttner: No.

Q1663 Mr Farrelly: Can I just ask you about Clive Goodman. You say you were deceived. How was Clive Goodman able to pay £12,300 to Glenn Mulcaire? Was it actually in readies or did it go through the accounts department in a masked way?  
Mr Kuttner: I think the answer to the first part is it was in cash, it was a cash payment. The answer to the second part is that it was all accounted for in the documentation and that is the material that either directly on their own account to the investigating police team, or through Burton Copeland, the solicitor who was looking into these things at News International, was all disclosed.

Q1664 Mr Farrelly: And over what period was the £12,300?  
Mr Kuttner: I would have to refresh my memory. I think it covered quite an extensive period but I would need to do a document search for that. But I think it was over quite a long time.

Q1665 Mr Farrelly: It would be very interesting because £12,300 in cash, it is a question of—  
Mr Kuttner: That imagery is misleading. I do not know what £12,000 looks like, unfortunately, but it was spread over quite a time period. I could look into that and I am not unhappy to do so.

Q1666 Mr Farrelly: I would be very grateful. When you found out that this had been received, did you report this to the Inland Revenue? Did you report the income Mr Mulcaire had received to the Inland Revenue?  
Mr Kuttner: All payments made by News International, by the News of the World, and I think I can speak for the other newspapers in its group, all the payments, to the best of my knowledge, whether they be by cheque, whether they be by bank transfer or whether they be in cash are returned to HMRC when the company makes its tax returns.

Q1667 Mr Farrelly: Including this amount?  
Mr Kuttner: Including which amount?

Q1668 Mr Farrelly: The £12,300?  
Mr Kuttner: I have no reason to doubt that whatsoever.

Q1669 Mr Farrelly: Could you confirm that?  
Mr Kuttner: I can certainly enquire.  
Mr Farrelly: Thank you.

Q1670 Adam Price: Mr Coulson, Piers Morgan described Clive Goodman at the time of his conviction I think as “the convenient fall guy for an investigative practice that everyone knows was going on for years”. Do you agree with that?  
Mr Coulson: I think you would have to talk to Piers. I think that Clive was a rogue case on the News of the World. I am not going to speak for the entire newspaper industry. I can only speak for the newspaper that I edited for a period and I am absolutely sure that Clive’s case was a very unfortunate rogue case.

Q1671 Adam Price: So essentially you disagree with Piers Morgan’s description that he was the fall guy for a practice that was common within the industry?  
Mr Coulson: With the greatest of respect, ask Piers; he is not backwards in coming forwards!

Q1672 Adam Price: We may consider broadening our inquiry. Let us see where we go.  
Mr Coulson: Sure.

Q1673 Adam Price: Nevertheless, Piers Morgan is I believe a feted, celebrated former Editor of the News of the World.  
Mr Coulson: He would certainly like that description!

Q1674 Adam Price: When he makes a statement like that this practice was going on for years what did he mean by saying that?  
Mr Coulson: Please do not think me unhelpful but ask Piers. I think I am here to answer questions about my time as Editor of the News of the World. I have given you my view. I really do not want to be unhelpful but I have to say that I was not expecting to be asked questions about Piers Morgan.

Q1675 Adam Price: I think it is reasonable for me to put to you what a former Editor has said about the news culture at the News of the World.  
Mr Coulson: Sure, I understand.

Q1676 Adam Price: If we take both your statement and his statement at face value the conclusion we are forced to form really is that these practices were
going on previously and under you, apart from Goodman, they suddenly stopped.

**Mr Coulson:** I think I was asked earlier as to whether or not this was a wider industry problem. Of course it has been in the ether, as I say, in the industry but I can only really talk today about my experience and what I had direct involvement in and I have answered that question.

**Q1677 Adam Price:** Just to be clear, under your tenure as Editor and Deputy Editor, as far as you were aware at the time, the *News of the World* did not pay people to obtain information illegally?

**Mr Coulson:** Yes, that is right.

**Q1678 Adam Price:** We heard reference a moment ago to the evidence in relation to Stephen Whittamore that Nick Davies produced. He also told us that Greg Miskiw used the agency in question on 90 separate occasions I believe from which the Information Commissioner concluded that the information accessed was definitely illegal. This put him in the top ten of the 305 journalists identified by the Information Commissioner as part of Operation Motorman, at number nine in fact. Are you surprised that an associate editor under your editorship was actually responsible for this level of illegal activity?

**Mr Coulson:** Again, I really do not want to be unhelpful, Mr Price, but I only learned of Greg Miskiw’s name in relation to Motorman I think probably about the same time as you did. I have no evidence and I have not seen any evidence as to whether or not this is correct or incorrect, what the cases that are listed against Greg’s name are, and whether or not this is a fair or an unfair accusation. I do not know. I know as much as you do, and you may even know more, in relation to what has been published in relation to Motorman.

**Q1679 Adam Price:** If that evidence were forthcoming, and we are trying to get the evidence from the Information Commissioner in full, would you be surprised if that were proven to be correct?

**Mr Coulson:** It is a hypothetical question. I do not know. If you put the evidence in front of me and asked me the question, I would try and give a direct answer. It is hypothetical as to whether I would be surprised.

**Q1680 Adam Price:** If we get the evidence you would be prepared to sit before the Committee again and respond to that?

**Mr Coulson:** Let us see whether or not you get the evidence. I would be happy to listen to whatever request the Chairman has of me.

**Q1681 Adam Price:** There were a further 200 attempts, from my reading of the evidence, by Mr Miskiw that the Information Commissioner graded as probably illicit. Looking at the round figures we have seen a price list for blagging under a previous Information Commissioner report. We must be talking about over £10,000 here over a three-year period. Mr Kuttner, would you have been aware of this level of use by a single journalist of a particular agency?

**Mr Kuttner:** This level of use by a single journalist of a particular agency?

**Q1682 Adam Price:** Yes, the cumulative amount.

**Mr Kuttner:** Of which agency are we speaking at the moment?

**Q1683 Adam Price:** Stephen Whittamore?

**Mr Kuttner:** Right, I think I probably would be aware that journalist X or journalist Y was perhaps on behalf of himself or herself and other colleagues making enquiries of an agent, yes.

**Q1684 Adam Price:** Did you not think to ask Mr Miskiw whether the information being formally requested was legal?

**Mr Kuttner:** Well, I think that presupposes that I would have some reason to be suspicious and I did not.

**Q1685 Adam Price:** Before this information came to light you have never come across cases in the past where journalists on the *News of the World* have tried to obtain information illegally or from sources that tried to obtain illegal information? It has never occurred to you before that this could happen?

**Mr Kuttner:** No, it has not and I have to say to you that bearing in mind the requirements of their contracts before the clauses were strengthened, bearing in mind the number of times that various editors have asked that we be sure that people follow the PCC Code, as I think I said earlier, the events of the day that the police came and Clive Goodman was arrested are seared into my brain. It was a traumatic event and I cannot state too strongly how alarming that was, and “surprising” is not even an adequate term.

**Q1686 Adam Price:** In 2002 it emerged as a result of covert police surveillance that a *News of the World* journalist had been paying thousands of pounds to a detective agency, Southern Investigations, for information obtained illegally from corrupt police officers. Were you aware of those payments, Mr Kuttner?

**Mr Kuttner:** Am not specifically aware of those, no. I would need some prompting. How long ago did you say that was?

**Q1687 Adam Price:** Well, the events stem from 1998 but it emerged in 2002.

**Mr Kuttner:** So 11 years ago and seven years ago, I would need some prompting and I will try and help you if you could provide it.

**Q1688 Adam Price:** You yourself I think, Mr Coulson, when you appeared last time before the Committee six years ago, along with Rebekah Wade, did admit that the *News of the World* did pay police officers for information. Is that correct?
Mr Coulson: Did I? I do not think I did.

Q1689 Adam Price: That amounts to misconduct in public office.
Mr Coulson: I am not being facetious here but if I did I would like to be told and have the quote read to me because I do not think I did. I think what I said is that the only circumstances under which—and please correct me if I am wrong here—a payment to a policeman could be condoned was if there was a legitimate public interest. I think that is what I said but it was a long time ago and you will have to remind me.

Q1690 Adam Price: That still amounts to misconduct in public office. You are essentially corrupting a police officer.
Mr Coulson: I was making the point, as I recollect, that there is no excuse for illegality unless there is a clear public interest.

Q1691 Adam Price: Corrupting a serving police officer is always illegal. There is no justification for it.
Mr Coulson: I am not disputing that but I did not say, as I think you said at the start—and again my apologies if I am wrong about this—that I had knowledge of any policeman being paid, because I do not.

Q1692 Adam Price: So as far as you were aware the News of the World while you were Editor or Deputy Editor never paid a serving police officer for information?
Mr Coulson: Not to my knowledge.

Q1693 Adam Price: No journalist on the News of the World?
Mr Coulson: No.

Q1694 Adam Price: Going back to the payments to Glenn Mulcaire through Clive Goodman that he received as Alexander, the code name or whatever that was used. These were weekly instalments, were they, Mr Kuttner?
Mr Kuttner: I am not sure at this distance whether there was a strict pattern but I do think they were on the whole weekly, yes. That is my recollection.

Q1695 Adam Price: Presumably at some point you would have asked for some evidence that these were useful stories and they were actually appearing in the paper?
Mr Kuttner: Yes I did from time to time.

Q1696 Adam Price: So some of the stories that emerged through Alexander (that we now know as Glenn Mulcaire operating under subterfuge) did appear in the paper?
Mr Kuttner: I believe that is right.

Q1697 Adam Price: Could we have a list of the stories that appeared in the paper through this route that came in through Alexander, aka Glenn Mulcaire, paid for by the £12,400 additional payment?

Mr Kuttner: All I can say, sir, is that I will do my best to see if it is possible to research that.

Q1698 Adam Price: Okay. You said as well, Mr Kuttner, that you would make enquiries as to who would know who has made the payments to Clive Goodman and Glenn Mulcaire. When you have made those enquiries presumably you would be happy to report back to the Committee?
Mr Kuttner: What I have undertaken to do is to make enquiries as to who handled the arrangements or agreements with Glenn Mulcaire or Clive Goodman.

Q1699 Adam Price: Do you know at this stage whether there were any conditions attached to those payments, particularly a non-disclosure or confidentiality agreement?
Mr Kuttner: No, I do not know.

Q1700 Adam Price: Finally, Mr Coulson, I think you were quoted in the Press Gazette, that august publication, as saying that if a journalist comes to you with a great story, one of the first questions you ask is, “How did you get it?” Did you ever ask that question of Clive Goodman?
Mr Coulson: I do not recall specific circumstances where I did. I think in that interview I was laying out a broad idea of how things worked on the News of the World. Certainly from time to time I would ask how stories came about. I was generally though more concerned about how a story could be stood up and how a story could be in a fit state to be published.

Q1701 Adam Price: Everyone who knows you says that you were a hands-on editor, that you would probe stories relentlessly at editorial conversation, you would roam the news floor, you were a constant presence. If your Royal reporter or chief reporter was presenting a story you would not always ask about the provenance of these stories?
Mr Coulson: Not always, no, and, as I said in my opening statement, I did not micromanage every story, nor did I micromanage every reporter. It is possible in all walks of life—and perhaps Mr Watson will back me up on this—to work very close to someone who is doing something that they should not be doing, perhaps sending emails or whatnot, and not have full knowledge of what it is they are up to and being completely oblivious to what it is they are up to.

Q1702 Adam Price: I think Mr Watson will probably want to come in. I referred to a particular story in the earlier session involving the two Princes and I was surprised that Mr Crone feigned ignorance of this particular story because Neville Thurlbeck was actually cross-examined in relation to this exact story by counsel for Max Mosley at the Mosley case?
Mr Coulson: You will have to forgive me, which story are you referring to?
Q1703 Adam Price: We have a copy of the News of the World somewhere: “Chelsy tears a strip off Harry”. It is a story which is essentially based around a phone message left by Prince William imitating Chelsy, Prince Harry’s girlfriend, on Prince Harry’s phone. Either the story was untrue or it was based on the phone hacking of the Prince’s phone. It also appeared on the front in an inset. Are you saying that as an editor, a page 7 story about the Princes, about a message left on their phone, and you as an editor of a national newspaper, with an inset on the front, would not have checked the provenance of that story?

Mr Coulson: Not necessarily, no, and I do not remember the story. I will have a look at it now.

Q1704 Adam Price: Are you aware now whether the Prince’s phone was hacked?

Mr Coulson: No, I am not aware either way.

Q1705 Adam Price: Should you not find out?

Mr Coulson: Well I suggest—I do not remember the story, I am sorry.

Q1706 Adam Price: Is that not astonishing? You are an Editor of a national newspaper and here is a story which is based around a verbatim account of a phone message left by one Prince on the other Prince’s phone. You put an inset on the front, you brand it as exclusive, it is high up the paper and you are telling me that as Editor you do not even remember the story and you did not ask Clive Goodman or Neville Thurlbeck, who we now know of course it would appear received a transcript in relation to other phone hacking, that you did not know and you did not ask at the time?

Mr Coulson: Mr Price, I am sorry, but I can only tell you what I remember and I do not remember this story at all. I am trying to remind myself of what the week may have been like by looking at the rest of the paper. It seems that we had a buy-up with an Eastenders star, we were in the middle of a DVD promotion, there is a very good story about David Cameron on page 2, I am afraid I simply do not remember this story so I can only therefore conclude that I played no part in it. I can only tell you what I know. I do not know what edition it is and I would like to know what edition this is. I am sorry. I can only tell you what I remember and I do not remember the story at all.

Q1707 Tom Watson: I think last time we met I was your guest at the News International reception at the Labour Party Conference. It is good to see you again.

Mr Coulson: Very good, nice to see you.

Q1708 Tom Watson: Do you think Clive Goodman deserved a jail sentence?

Mr Coulson: I think Clive paid a price for his crimes.

Q1709 Tom Watson: So you think he deserved it?

Mr Coulson: I think that Clive paid a price for his crimes and I would not argue with what happened in any way, shape or form.

Q1710 Tom Watson: But that price of four months in jail was deserved?

Mr Coulson: That was a judgment for the judge, was it not?

Q1711 Tom Watson: What is your judgment?

Mr Coulson: I am not arguing with the judgment at all.

Q1712 Tom Watson: What is your judgment?

Mr Coulson: On what?

Q1713 Tom Watson: On the four-month sentence?

Mr Coulson: Not in any way since Clive’s conviction have I disputed the judgment and I do not think I would now.

Q1714 Tom Watson: Have you seen him since he went to jail?

Mr Coulson: No.

Q1715 Tom Watson: Or talked to him?

Mr Coulson: No.

Q1716 Tom Watson: Would you have considered him a friend before he was arrested for what he did?

Mr Coulson: I knew Clive a bit. We had a mutual friend many years ago but, no, Clive and I were not especially close.

Q1717 Tom Watson: Do you think Mulcaire deserved his prison sentence?

Mr Coulson: I feel the same way as I did about Clive’s sentence.

Q1718 Tom Watson: It must have been a terrible day when they were arrested. When you conducted your inquiry did you ask detailed questions about what Mulcaire did and did not do for the company?

Mr Coulson: At what stage, sorry?

Q1719 Tom Watson: When you found out about the arrests. Presumably you commissioned an inquiry?

Mr Coulson: Yes. Obviously we wanted to know internally very quickly what the hell had gone on. Then I brought in Burton Copeland, an independent firm of solicitors to carry out an investigation. We opened up the files as much as we could. There was nothing that they asked for that they were not given.

Q1720 Tom Watson: And did it surprise you that Mulcaire had worked for the company since the late 1990s when you were Deputy Editor and Rebekah Wade was Editor?

Mr Coulson: No, I do not remember when I first learned about Nine Consultancy. Remember that I did not know the name Glenn Mulcaire. All I knew was Nine Consultancy. I cannot recall precisely when I first learned of it. I imagine that I saw it probably on an annual budget round. It would have been listed along with a whole range of other things.

Q1721 Tom Watson: He had a number of companies before Nine Consultancy that failed to file accounts at Companies House—four or five I think before
Nine Consultancy—so I am assuming that if he was working for News International in the late 1990s you would have made payments to all the other companies. Does that ring any bells with you?

**Mr Coulson:** No and I do not have any recollection of the other companies either. I know what I have read. I do not have any reason to doubt it but I never had any involvement in that way with Nine Consultancy or any other Mulcaire company.

**Q1722 Tom Watson:** So as Editor as soon as you hear that an employee and a contractor had been arrested you tried to scope out the relationship and the depth of their involvement in this. Even after your enquiries you were not aware of the other companies that Mulcaire was a director of and you cannot remember when he first started working for the company?

**Mr Coulson:** I am afraid not, no.

**Q1723 Tom Watson:** Right, on the actual case, is it your belief that the Princes’ phones were bugged or blagged or hacked?

**Mr Coulson:** No, I only know what I have read, the same as you guys. As I understand it, there were members of the Household who had their phone messages intercepted.

**Q1724 Tom Watson:** Did you ask Goodman or Mulcaire or any staff members whether they thought that the Princes’ phones were hacked or not?

**Mr Coulson:** I never had an e-mail exchange let alone a conversation with Glenn Mulcaire.

**Q1725 Tom Watson:** What about the staff members on the paper during your enquiries?

**Mr Coulson:** We carried out an investigation obviously. Remember that the investigation was until November, from memory, centred only around the Royal Household, so, yes, we would have asked questions about that but as to the involvement of other celebrities and well-known people that was not known about until much later in the legal process.

**Q1726 Tom Watson:** When you found out that Greg Miskiw had encouraged Mulcaire to set up the Nine Consultancy, what did you think?

**Mr Coulson:** Sorry, could you ask that again.

**Q1727 Tom Watson:** When had Greg Miskiw encouraged Mulcaire to form a consultancy, Nine Consultancy?

**Mr Coulson:** Did he encourage them to form a consultancy?

**Q1728 Tom Watson:** According to the reports that we have both read.

**Mr Coulson:** I did not pick up on that.

**Q1729 Tom Watson:** Would it be unusual for a journalist based in Manchester to give that advice to a client?

**Mr Coulson:** I do not know the detail of the relationship between Greg and Nine Consultancy, I do not know.

**Q1730 Tom Watson:** But you did work with Greg Miskiw, you were his boss.

**Mr Coulson:** I did for a while although Greg under my editorship changed jobs and, as I say, ended up in Manchester before he left the paper.

**Q1731 Tom Watson:** So you had moved him out to Manchester?

**Mr Coulson:** “Moved him out” is a harsh, harsh way of describing it, but I think that Greg had family in Manchester, I think I am right in saying, or certainly up that way, and it suited him and us for him to work from Manchester.

**Q1732 Tom Watson:** Has Greg Miskiw got a financial relationship with the company, Mr Kuttner?

**Mr Kuttner:** No, not so far as I am aware. I wonder if I could help you with perhaps just elaborating—

**Q1733 Tom Watson:** I will come back to you if that is okay.

**Mr Kuttner:** If I may, it is in respect of a question you just asked Mr Coulson vis-à-vis Greg Miskiw and Mulcaire. I do not know if this helps at all but my recollection is that we had had for some time I think, if you like, an ad hoc relationship with Mulcaire and I think it was Greg Miskiw who probably said, “Look, there is a better way of doing this, as an all-in deal,” and out of that because of the amount of enquiries and work that Mulcaire was doing I think the contract came as a result of Miskiw’s suggestion.

**Q1734 Tom Watson:** So in advance of the company Nine Consultancy you were making direct payments to Glenn Mulcaire?

**Mr Kuttner:** I cannot be sure. I am going back a long way. What I have in my mind is that possibly the all-in contract came out.

**Q1735 Tom Watson:** Mr Crone has committed to giving us chapter and verse on the companies that you had a relationship with and the payments both before he was convicted and after so that would clear it up.

**Mr Kuttner:** Okay.

**Q1736 Tom Watson:** Just one last round of questioning. You knew that you were going to resign before sentencing but on the day of sentencing you resigned from the paper.

**Mr Coulson:** I actually resigned two weeks before I announced it.

**Q1737 Tom Watson:** Two weeks before. And did you get a redundancy payment for that?

**Mr Coulson:** I got what was contractually due to me. Obviously I did not work my notice so I received what was contractually due.

**Q1738 Tom Watson:** Then you were six months out of work.
Mr Coulson: About five months.

Q1739 Tom Watson: And then you went work directly for the Conservative Party.
Mr Coulson: That is right.

Q1740 Tom Watson: And you have not got any secondary income other than that have you?
Mr Coulson: No.

Q1741 Tom Watson: So you did not do any work with PR firms in the meantime?
Mr Coulson: No, I had a brief conversation with an advertising agency about being a consultant but I never received any money from them.

Q1742 Tom Watson: So your sole income was News International and then your sole income was the Conservative Party?
Mr Coulson: Yes.
Tom Watson: That is great, thank you.

Q1743 Mr Sanders: Mr Kuttner, when you announced that you would not be continuing as Managing Editor, did you discuss this with senior management or the paper’s lawyers or both?
Mr Kuttner: In fact, it was not I who announced it but when the announcement was made—

Q1744 Mr Sanders: Prior to your announcing.
Mr Kuttner: Sorry, I did not mean to be pedantic.

Q1745 Mr Sanders: I said that you announced but what I mean is prior to you announcing that you would not be continuing as Managing Editor, did you discuss this with senior management or the paper’s lawyers or both?
Mr Kuttner: Prior to the announcement?

Q1746 Mr Sanders: Yes, that is what I said.
Mr Kuttner: The answer is yes there were weeks, perhaps months, of detailed discussion as to a stepping aside from the role of Managing Editor and a significant continuing role with the newspaper.

Q1747 Mr Sanders: And what was their advice?
Mr Kuttner: Advice in what respect, sir?

Q1748 Mr Sanders: You discussed with them that you did not wish to continue as Managing Editor. Their response was what? “Okay, goodbye,” or, “We don’t want you to go”?
Mr Kuttner: No, it was not quite like that. There were discussions within the company which went on for some while and out of that came the decision that I would step aside after a very long term as Managing Editor and the opportunity, if I wished to take it, to continue to represent the newspaper in other respects.

Q1749 Mr Sanders: Can I ask a similar question of Andy Coulson. Did you discuss your resignation with senior management or the paper’s lawyers or both?

Mr Coulson: I do not remember having a conversation with the lawyers but I had a conversation with Les Hinton two weeks before I actually left the paper and I sat down and explained my logic and I explained why I felt the need to resign.

Q1750 Mr Sanders: And what was his reaction?
Mr Coulson: I would add that it was entirely at my instigation. There was never any pressure on me to resign.

Q1751 Mr Sanders: What was his advice?
Mr Coulson: His advice?

Q1752 Mr Sanders: Or reaction.
Mr Coulson: He accepted my decision.

Q1753 Mr Sanders: Just that? Did you not discuss other options?
Mr Coulson: No, I was very clear what I wanted to do. I thought about it over Christmas. I had been thinking about it for some time. I talked about it with my wife and I was very clear when I went into the meeting that I would resign and I laid it out very clearly.

Q1754 Mr Sanders: Did your contract of employment at that time include some sort of confidentiality clause preceding the events over which you resigned?
Mr Coulson: I correct myself, I must have had conversations with the lawyers about my departure. That would have been normal corporate practice. I know that I had some restrictive covenants put on me when I left so I was not able for example to go and work in a senior position at another newspaper and I was not able to take up another significant journalistic job when I left them.

Q1755 Mr Sanders: Was that something that was already in your contract or was that something that came out later?
Mr Coulson: That would have been subsequent to my resignation.

Q1756 Mr Sanders: Okay. And was there any change in the remuneration that you then received when you worked out your contract? You said that you had received normal payment for working within your contract.
Mr Coulson: I received what was contractually due to me because I did not work my notice period. I suppose technically I worked two weeks of notice.

Q1757 Mr Sanders: You did not receive anything in addition to what you would have received in normal salary?
Mr Coulson: My departure was, in my view, entirely proper. The amount I received was an entirely proper amount. I do not believe that there was anything improper about it, if that is what lies behind the question.
Q1758 Mr Sanders: I am not suggesting there was anything improper. It is just you used the phrase it was contractual. That was part of your original contract and not part of any subsequent conversation?
Mr Coulson: My departure was agreed and, as I say, the significant aspect to it was that I had restrictive covenants placed on me so I was unable effectively to work, at least in any significant way, as a journalist.

Mr Kuttner: Was it my choice?

Mr Coulson: No, I think on balance—there were a number of options and I guess one was that I might have continued and there were other options and I opted by mutual agreement for the one I have.

Q1759 Mr Sanders: Mr Kuttner, when you announced that you would not be continuing as Managing Editor, was that actually your choice; did you really want to stop?
Mr Kuttner: It is possible I can but once again I would need to do the research. What I can say, if it is helpful to you and to the Committee, is that although, if you like, the issue of cash payments is a key issue here, in quantity terms, the old rate on the old figures, and indeed particularly the new figures, are not only very small but are a very small percentage of overall payments, but I can research figures if that is helpful.

Q1760 Mr Sanders: Yes.
Mr Coulson: No, I think on balance—there were a number of options and I guess one was that I might have continued and there were other options and I opted by mutual agreement for the one I have.

Q1761 Mr Hall: Mr Kuttner, you were present when I was talking to Mr Myler about the reductions he says he has made in the cash budget for paying for stories and he said it was reduced from between 82% to 89% and he said that you might be able to put an actual figure on that.
Mr Kuttner: I think the best way would be to put it into the Committee. I have got all the information here and it is a very small part of the budget. What I can say, if it is helpful to you and to the Committee, is that the new figures are not only very small but are a very small percentage of overall payments, but I can research figures if that is helpful.

Q1762 Mr Hall: That would be helpful but what also would be helpful is to know if this is an actual reduction in the cash that was spent or whether the money was spent in a different way either by bank transfer or by cheque?
Mr Kuttner: All right. I will ask the accountants if they can help me in that respect.

Q1763 Mr Hall: Who signs the cheques?
Mr Kuttner: They go through a process through our accounts department in Peterborough.

Mr Coulson: No, I think on balance—there were a number of options and I guess one was that I might have continued and there were other options and I opted by mutual agreement for the one I have.

Q1764 Mr Hall: And bank transfers are authorised by?
Mr Kuttner: Quite often they would be authorised by me.

Q1765 Mr Hall: By you?
Mr Kuttner: Yes.

Q1766 Mr Hall: And any cash payments that were made they would actually be signed for as well, would they?

Mr Kuttner: Yes.

Q1767 Mr Hall: Because you did say that regrettably there were a small number of improper payments that were made. Could you tell us precisely how many improper payments were made?
Mr Kuttner: When I used the term improper I was referring to the Goodman payments.

Q1768 Mr Hall: So those improper payments are exclusively to Goodman and whoever he may have paid as a third party and nobody else?
Mr Kuttner: When I used the term improper, perhaps that was the wrong term. I was referring to payments made when they were payments for information which had been obtained in what turned out to be an unlawful way.

Q1769 Mr Hall: Could you give the Committee more precise documentary evidence about that?
Mr Kuttner: That is all the material that the police gathered and formed the basis of the prosecution.

Q1770 Mr Hall: These were improper payments made by your newspaper?
Mr Kuttner: I used the term improper, Mr Hall, to mean payments made for something that should not have been done.

Q1771 Mr Hall: Sure but we would like to know what that was.
Mr Kuttner: Well, I think what it was was the subject of the prosecution.

Q1772 Mr Hall: This is information that you have got. Are you trying to rely on the fact that because of the prosecution there is confidentiality that is going to breached?
Mr Kuttner: No, I think there is a misunderstanding. I know of no other improper payments.

Q1773 Mr Hall: So improper payments were made to Goodman and nobody else?
Mr Kuttner: Not to Goodman.

Q1774 Mr Hall: Or by him?
Mr Kuttner: Yes.

Q1775 Mr Hall: To third parties? Do we know precisely how many third parties were involved?
Mr Kuttner: I do not know, no. I think they are the payments that are referred to as the Alexander payments.

Q1776 Mr Hall: And Alexander is a pseudonym for?
Mr Kuttner: As I understand it, Mulcaire.

Q1777 Mr Hall: How many other pseudonyms has he got?
**Mr Kuttner:** I do not know.

Q1778 Mr Hall: You know of at least two?

**Mr Kuttner:** I know of Alexander.

Q1779 Mr Hall: What about Williams? Who is he a pseudonym for?

**Mr Kuttner:** I have learned that Williams, of which I personally was unaware, is a name that I have heard that Mulcaire asked be used in respect of this, as I think we heard from Tom Crone in respect of a particular contract.

Q1780 Mr Hall: I think you have been asked this question before. Is it a widespread practice on pseudonyms and payments with the newspaper or not?

**Mr Kuttner:** No.

Q1781 Mr Hall: And I assume there is an audit trail to that particular answer that you can say you double-checked?

**Mr Kuttner:** Well, if there were such payments insofar as one could divine them then it would be possible to produce the information.

Q1782 Mr Hall: Mr Coulson, you have been very clear in your evidence that you were unaware of the activities that Goodman was involved in and that you thought that this was a one-off incident. You have been absolutely clear about that. But you were unaware of the Goodman case. How can you be so certain if you were not aware of the Goodman case, which has reached the public domain, that there were not others?

**Mr Coulson:** I only know what I know.

Q1783 Mr Hall: You know what you know but you did not know about Goodman, so there is a distinct possibility that there are lots of other things you do not know about.

**Mr Coulson:** I know what I know. I thought this might come out in evidence earlier—I am assuming that we are coming to an end—and this is not directly related to your question so apologies but I would add this: I received a call from Scotland Yard the Friday before last from a detective superintendent to be told that there is strong evidence to suspect that my phone was hacked. In fact, it would appear that there is more evidence that my phone was hacked than there is that John Prescott’s phone was.

Q1784 Mr Hall: That explains a lot about the John Prescott story, does it not?

**Mr Coulson:** It is not directly related to your question, I know, but I think it perhaps demonstrates as to your point of what I did know and what I did not know. I clearly did not know what Glenn Mulcaire was up to.

Q1785 Chairman: Scotland Yard’s suggestion was that Glenn Mulcaire had hacked into your phone?

**Mr Coulson:** Yes.

Q1786 Chairman: And was it suggested that he was working on behalf of the *News of the World*?

**Mr Coulson:** I sincerely hope not, Chairman!

Chairman: I am promised one final question from Mr Farrelly.

Q1787 Paul Farrelly: One final question, John, but I am about the break the promise because I hate hanging threads. We have asked questions about the payments to Goodman and Mulcaire afterwards. I was not going to ask this question because it seems impertinent, Mr Coulson, but the question of your notice period has been left hanging in the air. Was it six months or 12 months?

**Mr Coulson:** I will take advice from the Chairman here. I am not minded—and I will take your advice, Chairman, and please do not think me impertinent—to discuss the private details of my contractual arrangements or otherwise with News International. If you want to push me on it and you insist, then obviously I am open to your advice on it, but I feel I have given a pretty full answer to the question.

Chairman: If Mr Farrelly is determined to press this then we could receive it in confidence.

Q1788 Paul Farrelly: 12 months would not be unusual in the business, would it, for someone at your senior level?

**Mr Coulson:** As I say, I feel as though I have given a pretty full answer in response to it.

Q1789 Paul Farrelly: Was it made on the basis that you would be welcome back at some stage in the future to News International?

**Mr Coulson:** Certainly not from my end. I left on the basis that I was leaving a 20-year career in News International and I certainly did not leave on the basis that there was some way back.

Q1790 Paul Farrelly: My final question, and this would have given you the opportunity to have mentioned your call from Scotland Yard, but the question is made in a different respect: were you ever asked, Mr Coulson, during the long police investigation to help with their enquiries?

**Mr Coulson:** No, not directly.

Q1791 Paul Farrelly: What does that mean?

**Mr Coulson:** I was never interviewed and I was never asked to give any form of evidence.

Q1792 Paul Farrelly: Did that strike you as strange?

**Mr Coulson:** I think that is a question for the police. All I would say is I think I am right in saying that the police have made clear, the *Guardian* have made clear and I think the PCC have made clear that there is no evidence of my direct involvement in any of this.

Q1793 Paul Farrelly: Mr Kuttner, were you ever asked to help the police with their enquiries?
Mr Kuttner: No I was not. I took the view that both I and the newspaper generally should give the police the fullest co-operation but I was not asked.

Chairman: Mr Watson just wishes to make one short statement on the record and then we will be done.

Tom Watson: To clarify Chairman, in light of the letter sent from News International yesterday evening, I just would like to confirm that I did through the Clerks seek the advice of Parliamentary Counsel and their advice was that the letter received was very close to the line of improperly interfering with the Committee's work.

Chairman: I understand that it was Speaker’s Counsel.

Tom Watson: Speaker’s Counsel, yes. Did I say Parliamentary Counsel?

Chairman: Could I thank you both very much for your patience.
Wednesday 2 September 2009

Members present
Mr John Whittingdale, in the Chair

Janet Anderson
Philip Davies
Paul Farrelly
Mr Mike Hall
Alan Keen
Rosemary McKenna
Adam Price
Mr Adrian Sanders
Mr Tom Watson

Written evidence submitted by the Information Commissioner’s Office

1. The Information Commissioner has been asked to submit written evidence to the Committee’s inquiry into press standards, privacy and libel regarding “the implications of the allegation that phone tapping was widespread, the knowledge of the Information Commissioner’s Office (ICO) about the police and CPS investigation and what action the Commissioner now plans to take”. As members will know, the previous Commissioner Richard Thomas gave oral evidence to the Committee on 6 March 2007 about the practice of “blagging”, where private investigators obtain personal information from confidential databases either by deceiving the holders of the databases as to their identity and purpose or by paying corrupt employees for the information. In such cases private investigators could be acting on behalf of journalists but the media are certainly not the only ones behind this unlawful trade.

2. It is important to distinguish between the practice of “blagging” and the interception of communications (“phone tapping”) which is at the heart of the Goodman case. Blagging was the subject of two reports to Parliament by the Information Commissioner, “What Price Privacy?” and “What Price Privacy Now?”. As blagging involves unlawful access to personal data held by an organisation, it is regulated by the Data Protection Act 1998 (DPA) and comes within the scope of the Information Commissioner’s regulatory powers. Section 55 of the DPA makes blagging a criminal offence. The offence currently carries a maximum sentence of a fine of £5,000 in a magistrates’ court or an unlimited fine in the Crown Court. In his reports to Parliament the then Commissioner argued that the possibility of a prison sentence was needed to act as a deterrent to those involved in this unlawful trade in personal information. Section 77 of the Criminal Justice and Immigration Act 2008 (CJIA) subsequently included provision for a sentence of up to two years. However this provision cannot come into effect until the Secretary of State makes a relevant order. The Commissioner is not aware of any plans by the Secretary of State to make such an order.

3. The interception of communications is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA). Unlawful interception is a criminal offence under this Act; but this offence does not come within the scope of the Information Commissioner’s powers. It is the police who investigate RIPA offences and the CPS who prosecute.

4. The implications of the allegation that phone tapping was widespread. For the reasons outlined above the direct data protection implications are limited. It is likely that personal information that has been obtained by phone tapping will, if held electronically, be held in breach of the data protection principles because it has been obtained unlawfully. The first data protection principle requires that personal data are processed “fairly and lawfully”. However a breach of the principles is not a criminal offence and the ICO would give way to the police in any investigation where both criminal offences under RIPA and civil breaches of the data protection principles come into play.

5. The use of phone tapping does though illustrate the lengths that some journalists are prepared to go to in obtaining access to confidential personal information. It demonstrates that the type of unacceptable behaviour outlined in “What Price Privacy?” is not confined to the practice of blagging. Furthermore it draws attention to the disparity of sentencing possibilities in that phone tapping is an imprisonable offence whereas blagging is not. The Information Commissioner remains convinced that the penalties available for conduct of this nature, whether in the form of phone tapping or in the form of blagging, need to be custodial ones if they are to have the desired deterrent effect.

6. The knowledge of the Information Commissioner’s Office about the police and CPS investigation: The Commissioner became aware of the police investigation into phone tapping through media reports. The ICO contacted the police who agreed to keep the ICO informed of progress in their investigation. The ICO was made aware that the investigation had uncovered evidence to suggest that the voice mails of other celebrities in addition to Prince William might have been intercepted. The ICO did not take any part in the investigation. Our only involvement was to advise police on how they themselves should handle personal information uncovered in the course of the investigation so as to remain in compliance with the DPA.

7. What action the Commissioner now plans to take: The Commissioner will continue to monitor the commission of blagging offences involving journalists and others and to bring prosecutions where the circumstances justify this. It is though important to bear in mind that there is a defence available where any blagging can be justified “as being in the public interest”. From the evidence currently available to the ICO
it appears that this illegal trade in personal information has diminished since the publication of “What Price Privacy?” and “What Price Privacy Now?”, but it has not gone away. If the trade builds up again the Commissioner will consider making a formal request to the Secretary of State to use his order making power under the CJIA to bring in custodial sentences. The recent reports of phone tapping by print journalists would be used to support any case the Commissioner might need to make.

8. The Commissioner would be pleased to provide further assistance to the Committee in so far as he is able to do so. There is though not much more that he can usefully add on the practice of “blagging” to the information published in “What Price Privacy?” and “What Price Privacy Now?”.

July 2009

Further written evidence submitted by the Information Commissioner’s Office

I am writing as requested to confirm the outcome of our recent telephone discussion. You asked whether the Information Commissioner’s Office (ICO) had disclosed any of the invoices and ledgers seized during the Operation Motorman investigation to the press. I have made enquiries and can confirm that we have not disclosed any of this information to the press nor made it publicly available in any other way. As far as we are aware the only people who have any of this information are:

— the police, who were also involved in Operation Motorman; and
— the lawyers acting on behalf of Gordon Taylor to whom we supplied some of the information in response to a court order.

You asked whether we would be willing to supply any of the ledgers and invoices to your Committee. Whilst we are keen to assist the Committee in its Inquiry it would be difficult for us to provide any of this information unless we were under legal compulsion to do so or a convincing case was made as to how this level of detail, including the identity of individuals, would materially assist the Committee. It is important to bear in mind that the ledgers and invoices were seized under search warrant powers and their disclosure, other than for the purpose of our original investigation, might well be unlawful. Furthermore they contain personal information not just about journalists but also about other individuals unconnected to the media, who appear to have been involved in the “blagging” trade. This includes the victims of that trade whose involvement may not be in the public domain and who may not want any further intrusion into their privacy.

July 2009

Further written evidence submitted by the Information Commissioner’s Office

I refer to your letter of 27 July 2009 and must start by offering you an apology. When my Deputy Commissioner wrote to Elizabeth Bradshaw on 17 July 2009 he confirmed that we had not disclosed to the press any of the invoices and ledgers seized during the Operation Motorman investigation. This was his genuine belief at the time but it turns out that it was mistaken. We have now discovered that our press office passed limited and heavily redacted extracts to a journalist at the Guardian over two years ago. These were disclosed to help illustrate the Guardian’s coverage of our report “What price privacy now?” It seems likely that these extracts are the same documents that have been provided to your Committee by a witness.

Your request for me to provide the Committee with the full ledgers and invoices places me in some difficulty. You will recall that none of this material refers to telephone tapping, but rather relates to the “blagging” of personal information. I nevertheless want to be as cooperative as I can be and I recognise your Committee’s power to require the production of papers. I am though faced with Section 59 of the Data Protection Act 1998 (The Act). This makes it a criminal offence for me or any member of my staff to disclose any information that we have obtained for the purposes of the Act and which relates to an identifiable individual. The only exception is where the disclosure is made with lawful authority. A disclosure is made with lawful authority if, amongst other possibilities, the disclosure is necessary in the public interest, having regard to the rights and freedoms or legitimate interests of any person.

I can appreciate that there is a public interest in your Committee having sight of the full documentation to give them an insight into how the unlawful trade in personal information operates. I can also appreciate that heavily redacted extracts would not be an adequate substitute. However I have to set this against the legitimate privacy interests of those whose details are included in the invoices and ledgers. Some of the information is about celebrities or public figures, but much of it is about individuals who may be or may have been connected to such persons but are not celebrities or public figures themselves. It includes addresses, ex-directory phone numbers and other personal details which, because they had to be obtained in an underhand manner, are clearly information that the individuals concerned would not wish to have made public.

In order to satisfy our respective responsibilities may I suggest that my staff should make the full collection of invoices and ledgers available for inspection by you as Committee Chairman or by someone you might wish to nominate to act on your behalf such as the Clerk to the Committee? Such access would of course be on the basis that the confidentiality of any personal information is maintained. This approach would
mean that, with explanations that my staff would be happy to provide, you would be able to understand the full nature and extent of the ledgers and invoices without the risk of the personal information therein being taken away or disclosed more widely. So far as redaction is concerned I have no difficulty in principle in supplying you with redacted versions of the invoices and ledgers. My concern is a practical one. The invoices fill a large cardboard box and there are four A4 ledgers that run to around 100 double sided pages each. I estimate that it would take a member of staff between one and two weeks to perform the redaction needed to remove any personally identifiable information. I also have doubts as to whether supplying redacted versions of all the ledgers and art the invoices would serve any useful purpose. We will willingly supply you with redacted extracts from the invoices and ledgers that could be made public to illustrate the form the documentation takes. However given the extent of redaction necessary it is unlikely that any greater degree of public knowledge and understanding would be achieved by simply increasing the volume of redacted information released.

I hope that I have been able to suggest a way forward that is acceptable to you and your Committee. If so please let me know so that we can start to put the proposed arrangements into place.

August 2009

Witnesses: Mr Christopher Graham, Information Commissioner, and Mr David Clancy, Investigations Manager, Information Commissioner’s Office, gave evidence.

Q1794 Chairman: Good afternoon. This is a further session of the Select Committee’s inquiry into press standards, privacy and libel. Once again, this is specifically focusing on the stories that have appeared in the Guardian, both in relation to the activities of Clive Goodman and Glenn Mulcaire but also into what is known as Operation Motorman, which is something we will be focusing on in the first session. In the first session I would like to welcome the Information Commissioner, Christopher Graham, and David Clancy, the Investigations Manager at the Information Commissioner’s Office. Mr Graham, I believe you would like to make an opening statement.

Mr Graham: If I may, Chairman. Thank you. I became Information Commissioner on 29 June 2009. In a previous life I was a journalist. My predecessor as Information Commissioner, Richard Thomas, was very active in highlighting the unlawful trade in confidential personal information, and he gave evidence to this Committee on a number of occasions and your most recent report on self-regulation of the press supported the Information Commissioner’s call for the provision of a custodial sentence as the penalty for the most serious offences under section 55 of the Data Protection Act—obtaining, disclosing or procuring the disclosure of personal information knowingly or recklessly, without the consent of the organisation holding the information. The work on this problem by the Information Commissioner’s Office—the ICO—was summarised in two reports to Parliament in 2006: What Price Privacy? and What Price Privacy Now? Those reports concerned breaches of the Data Protection Act, often through what is called ‘blagging’—tricking organisations into revealing confidential personal information, illegal phone tapping and hacking. The issues highlighted by the Guardian story of 9 July were not at issue then and would be a matter for the police under the Regulation of Investigatory Powers Act (RIPA) and not the Information Commissioner’s Office. But, the continuing need for an effective deterrent to serious breaches of the Data Protection Act is underlined by the fact that the unlawful trade in confidential

Q1795 Chairman: You would like a copy circulated now. We will take a copy. Can I just clarify for absolute certainty that your Office had no involvement in the investigation of the Mulcaire/Guardian News International activities?

Mr Clancy: We had no involvement whatsoever, Chairman.

Q1796 Chairman: That is nothing to do with the Information Commissioner’s Office at all?

Mr Clancy: That is correct.

Q1797 Chairman: So we will focus entirely on Operation Motorman. First of all, you will have seen the reports in the Guardian, both of a few weeks ago and, indeed, this week. The principal source for those seems to be your Office, that you made available information from the inquiry to the Committee’s questions.

Chairman: That you. Mr Hall: Chairman, could we have a copy of that now?

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Chairman: That you. Mr Hall: Chairman, could we have a copy of that now?
Q1798 Chairman: This included the example which was originally given to this Committee by The Guardian, that did come from you.

Mr Graham: I think whenever you interviewed Mr Davies and he passed round some paper, that was a sample of what had been provided. I think it featured particularly News International.

Mr Clancy: There was lots of information from the entire Motorman database, which included information contained in the various ledgers.

Q1799 Chairman: Indeed.

Mr Graham: Our sample included a wider selection of titles. It did not give details of the journalist who was asking for the information or who the target was, or any of the personal data. I said there was a second area in which we had made information available and this was again, I think, under section 59 of the Data Protection Act, the lawful purpose being a court order in connection with solicitors acting for, I think it was, Gordon Taylor, the former footballer, who I think was suing the News of the World. We had to make available under a court order a quite substantial amount of information. I do not know whether David Clancy can help me here but I think it was probably in ledger form.

Mr Clancy: There was a sample of what had been provided. I think it featured particularly News International.

Q1800 Chairman: But it was not just restricted to Gordon Taylor, this was information covering a large number of individuals.

Mr Clancy: It would have been because obviously that would have been an exhibit for the court so it would contain more information.

Mr Graham: Again, I am obliged to assist those people who feel that under the special purposes that provide certain protection for journalism, literature and the arts, if the processing of information under those special purposes has in some way gone wrong and been abused, the Information Commissioner is charged with assisting citizens who are asserting their rights. I do not know but it may be that some of the wider information that appeared in the Guardian on Monday came from that source. That is purely conjecture; I do not know that. It certainly did not come directly from the Information Commissioner’s Office.

Q1801 Chairman: Not officially anyway.

Mr Graham: I just think not. I cannot prove a negative.

Q1802 Chairman: Mr Davies is in the room but I do not imagine he is going to tell us. The very large number of names which the Guardian printed who have been subject to inquiries by Mr Whittamore’s company, it did look as if that information came from somebody who had seen the ledgers.

Mr Graham: Well, it would if it had come from the Office.

Q1803 Chairman: But you do not think necessarily it did?

Mr Graham: It did not come from us, Chairman.

Q1804 Chairman: The names that appeared in the Guardian on Monday all relate to activities which took place 15 years ago, or sometimes more, and yet to quite a number of those names it came as a surprise that they were featured in Mr Whittamore’s ledgers. Can you tell us why did your Office when you obtained the ledgers not tell the people who appeared in those ledgers that they had been subject to possibly illegal inquiries?

Mr Graham: I think if I can just step back a bit. Any regulator has to make decisions about how it approaches a breach of the legislation that it uncovers. There were, I read in the Guardian, I have not counted them myself, 17,000 invoices or purchase orders for personal information on people in whom the press were interested. The only evidence we had was the ledgers and the invoices. The press, of course, would have the defence under the Data Protection Act that they were pursuing a story in the public interest. My predecessor had to make the judgement whether you throw the whole resources of the organisation into going through 17,000 pieces of evidence in order to assess the nature of a story and to work out whether the Ziggy Stardust in the ledger is the Ziggy Stardust you might need to alert. The decision was taken “no, we are going to approach this by trying to end the unlawful dealing in personal confidential information at source, we are going to go for closing down these operations and we are going to report formally to Parliament.” It was the first formal report that the Information Commissioner had given to Parliament under the legislation. We are going to say, “This is going on and it is going to go on until there is a real penalty in the Data Protection Act for this sort of thing”. So my predecessor reported in What Price Privacy? the need for a custodial sentence and, indeed, this Committee agreed with him. In a case you may have seen yesterday in Nottingham Magistrates’ Court, the District Judge regretted that he was only able to fine an individual who had been guilty of a pretty blatant breach of the Data Protection Act £100 plus costs, and he remarked that people would find it surprising that that is all he could do under legislation. The priority was to sound the alarm, to warn the industry, to talk to the PCC, to urge the provision of a custodial penalty, which is kind of half there, and perhaps more on that later when we get to the discussion, and what to do about the individuals concerned. I think with the benefit of hindsight what we might have done was to do what we did with the blacklist for the construction industry, the so-called...
Consulting Association, and Mr Kerr, who my colleague, Mr Clancy, ran to justice, where we closed down the business but we also, in making that very public, said, “If anyone has concerns that they may have been blacklisted and denied employment because their name is unfairly included in this register then get in touch with us and we will let you know what we have got”. David, you are dealing with a few of those applications now, are you not?

Mr Clancy: There are over 120 individuals who subsequently obtained their information and a number of those individuals are now bringing claims before the courts in relation to their consideration that they were blacklisted from the construction industry. I think if you compare the two we have got very favourable support from the press in relation to the consulting association, but with What Price Privacy? it was a situation where turkeys do not vote for Christmas!

Mr Graham: Could I just add, Chairman, as you have said, the information that was publicised in the Guardian on Monday dealt with some very old information. The ledgers that I have seen include invoices from 1999. If we collected these in 2002 there is old information there and the whole point is the journalists were trying to get a contact number to ring for a quote at the end of an investigation or whatever they were going to do, so the supposition was that the individuals would already have been contacted, so they would kind of know that their ex-directory number had gone AWOL. I think though we would all agree now that we are a bit more experienced in this and we are tackling some pretty dodgy customers that in What Price Privacy Now? when we listed the various newspaper organisations and said that 305 journalists had been at this, we should also have said, “If anyone is concerned that there may be information or wants to know how it was obtained they should contact the Information Commissioner’s Office and we will process that inquiry as we are doing with the construction industry”.

Q1805 Chairman: To say the onus is on individuals to ask you whether or not they appear in this ledger, and thanks to your Office I have seen the ledger, as you know, and there are hundreds of names, obviously there are some who are manifestly in the public interest, and to range against some pretty dodgy customers, leading celebrities, sportsmen and politicians, but the vast majority are people who are comparatively unknown. How would they know that they appeared there? How would they know to ask the question?

Mr Graham: Obviously we would have to work out what we would do, but how would I know what I could tell those individuals about what I had or how could I show it to them without showing a lot of other people’s personal information? Those ledgers, Chairman, as you have seen, are full of ex-directory phone numbers, mobile phone numbers, lists of friends and family and so on. It is an appalling situation. That is why Richard Thomas, my predecessor, was right to sound the alarm to Parliament and to say to the industry, “This is going on and it has got to stop. There must be that custodial sentence”. We seem to have got into the Alice in Wonderland situation where we are shooting the messenger. It was the Information Commissioner’s Office who highlighted this whole thing; we are the good guys in this, Chairman.

Q1806 Chairman: I am sure my colleagues may wish to return to this, whilst I finish the questions I have, you did not tell all the individuals and the other thing you did not do was you did not initiate prosecutions of any of the journalists named, you restricted prosecution to Mr Whittamore. Why were journalists not prosecuted when there was clear evidence that they had been knowingly commissioning illegal acts?

Mr Clancy: I think the difficulty would be the offence relates to “knowingly or recklessly obtaining personal information”. We had in the region of 400 journalists and, to be fair to those journalists, if we were to conduct an investigation we would have to investigate all 400 and satisfy the court beyond all reasonable doubt that journalist knew that information was unlawfully obtained. It was only when we knew that the directory telephone number, some of those numbers could have been obtained by ringing round friends or other people that they may know and, therefore, an ex-directory telephone number may have been obtained legitimately, we could not say for sure, so there would have had to have been 400 intensive investigations carried out by the Commissioner’s Office within the resources that we have got. That would mean that the Commissioner possibly could not carry out his other functions under the Act. A decision was made to go down the route of, “Let’s bring this into the public arena, change the public’s opinion of what’s going on”, and hopefully change the law so that the possibility of a custodial sentence hanging over people committing these offences would be a sufficient deterrent and protect people in the future.

Mr Graham: In the meantime, of course, you say the journalists were commissioning an illegal act; but we do not know that was the case because there is the defence of public interest and sometimes journalists have to do pretty underhand things to get stories that are manifestly in the public interest. The classic example, of course, is the Guardian and the ‘cod fax’ that got the evidence that put Jonathan Aitken in prison. If that had been in pursuit of some pop star’s sex life everyone would have condemned it, but as it was they said, “Well, there’s the public interest”. We did not even know what the stories were, never mind what the defence was. So I as the Information Commissioner had to decide, given the vast range of duties that I have for freedom of information as well as data protection, where do I deploy my resources. Do I put the whole organisation on to investigating 17,000 individual pieces of paper to work out what the story was, to work out whether or not it was in the public interest, and to range against some pretty well fee-ed lawyers on the other side? Or do I say to the industry, “Put your money where your mouth is. You talk about self-regulation, do it” and then get on with a few other little issues, like the construction industry database, like the Revenue and Customs losing everybody’s child benefit records, like concern
about CCTV cameras, databases and so on, never mind the Freedom of Information Act? There is a lot to do. It would not have been good regulation for the Information Commissioner’s Office to prioritise this particular bit of the jumble. That is only the journalists’ bit of the jumble, we are concerned with the whole trade in personal information which is about many other issues, as David can tell you.

Q1807 Chairman: You say that therefore you took the decision to tell the industry to put their house in order and asked for strengthened penalties, but in that case why did you not say to individual newspapers, “These are journalists employed by you who feature in the ledger and you might like to ask them why and to justify the inquiries they made”? 

Mr Graham: We started off by a general call to the industry which, indeed, was heeded to some extent in that the Editors’ Code Committee eventually amended clause 10 of the Code, made it much tougher, and we have done a lot of work with the PCC in training editors. We have done a couple of seminars, one in London and one in Scotland, to make sure that journalists understand that this is serious. I saw a copy of the Editors’ Code Handbook the other day and it makes it very clear that you mix with the Data Protection Act at your peril and you had better have a very solid public interest story very well documented, in order to do that. Chairman, the interesting question is why did not any of those titles that were listed in What Price Privacy Now? contact the Information Commissioner’s Office and say, “This is terrible, 45 of our journalists apparently have been doing this thing which we utterly condemn, tell us who they are”, and we then might have been able to talk turkey. Interestingly, of 305 journalists, and we listed the total in the document, we have not had a single inquiry from a journalist saying, “Am I on that list? Was I doing something wrong?”

Mr Clancy: That is correct.

Q1808 Chairman: So you published the table listing titles and numbers of journalists and you had no response from the industry seeking further information at all?

Mr Graham: No. I have seen a number of sessions of evidence to this Committee where the answer to some of your more probing questions is, “Ask the Information Commissioner, the Information Commissioner will know”, but nobody has actually asked the Information Commissioner.

Chairman: Thank you.

Q1809 Paul Farrelly: Thank you very much, Chairman. I just wanted to come back to what happened after the Motorman inquiry. We have discussed the fact that people were not routinely informed that they had been the victim, be they ordinary people in the street or public figures, of blagging or an illegal use of databases. One example is I spoke to Peter Kilfoyle following the Guardian article and Peter is quite happy for me to say that he is “incandescent with rage”—those were his words—that the Information Commissioner six years on had not told him that in this case, I understand, it was the Daily Mail that used the DVLA illegally to get his constituency home address for whatever reason from his licence plate number. Peter was angry that six years on you had not informed him even though he was a minister attached to the Cabinet Office at the time and there were, therefore, security implications and that he had to learn these details from a Guardian journalist over the telephone.

Mr Graham: You ask what we did after the Motorman investigation and the answer is with the Crown Prosecution Service we launched prosecutions against those who were involved in the trade. We then ran up against the very disappointing result of the very weak powers and the very weak penalties that exist in the Data Protection Act and, because of a technicality, it was even weaker than the rather pathetic financial penalties in the Act and everyone just got off with a conditional discharge. When we are invited to take further action you have got to see it against the context of a regulator that is trying to do the decent thing and has got seriously knocked back. I have already said that our experience with the construction industry database is that if we had our time over again we would do it a different way. Peter Kilfoyle’s name would have sprung out. There were a lot of names of ordinary individuals that would not have rung any bells. I would have had to put a very large number of people trawling through those 17,000 pieces of paper. Even if it had been in the name of bringing some prosecutions against journalists we faced the prospect of them getting no more than a conditional discharge. The responsible thing to do was to report to Parliament to say, “Let us have this custodial sentence”. I am very sorry if people feel let down by the ICO but against that I would say there was some very good investigatory work by David Clancy and his colleagues which has blown open this trade, which is still going on. The issue should not be whether the Guardian hates News International, it should be whether Parliament will now activate the custodial sentence that is there in abeyance in the Criminal Justice and Immigration Act and take that custodial sentence from behind the bar in the Last Chance Saloon, where it is sitting at the moment, and say, “You’re going to jail if you carry on doing this”. For dealers in personal information, that is the key decision.

Q1810 Paul Farrelly: Your position is very clear on that, as might be expected. If people approach you now and ask whether they featured in your Motorman files, will you let them have the records?

Mr Graham: We will look at each individual case. Obviously it has got to be somebody with proper standing; we are not going to have this as a way of investigative journalists running the story on a little bit further, it has got to be a proper process. Just as we are doing with the construction workers, we would certainly deal with these people. Please bear in mind that one of the invoices I have seen is from 1999 and it is inconceivable that somebody seeking someone’s ex-directory phone number in 1999 has
not used the number to check out the story, so the individual knows that their private number has been made public.

Q1811 Paul Farrelly: That is not necessarily the case and I want to come on to that. That is a leap that you cannot make, Mr Graham.

Mr Clancy: Can I just say that at this moment in time a number of individuals have sought access to that information that is contained within the Motorman database and that access is being processed within our Office.

Q1812 Paul Farrelly: Just let me be clear. If Peter Kilfoyle, to name one example, comes to you now and says, “I would like to see how and where my name features in the catalogue of activity in the Motorman files”, will you release that information to him?

Mr Graham: Yes, I would have to do that. I am just looking to see the particular section in the Act that charges me with doing that. I think it is section 13.1

Q1813 Paul Farrelly: Can I repeat the question in terms of what happened during and after Motorman. What about the organisations that were penetrated and their security procedures subverted. The whole catalogue that Nick Davies named in his latest article on Monday, did you go to each of those organisations to give them instances of how, where and when their databases had been penetrated so that they could improve their own security procedures in the future?

Mr Clancy: We approached a number of organisations obviously because we obtained witness statements from those organisations and they thoroughly assisted us with our inquiries. I think it is fair to say, again, we would not go through the entire ledgers and contact every particular organisation because we end up with very intrusive investigations in relation to individuals, “Who is Peter Kilfoyle? Whose car is that the registration number of?” We start obtaining his personal information for our purposes and then more and more people get their hands on this personal information that should be protected. We identified with the organisations, the banks, the telecoms companies, et cetera, that there were problems with this. We have worked actively with some of those companies in looking at security issues and it is an ongoing thing. I think it is fair to say that most organisations that process personal information nowadays, whether it be telecoms companies, banks, or building societies, are, to a degree, insecure and will be attacked and be constantly coming under attack by private investigators and people who obtain information to sell on to insurance companies, solicitors firms and organised crime gangs for witness intervention purposes, et cetera, so there is a massive trade out there. In fact, you can go on to the internet today, the website www.freelancesecurity.com and you will see private investigators advertising there to say, “I want to obtain a person’s bank account information”, and people will bid for that information. “I can get that for $2,000 or £2,000 within 10 days” because the trade is still there.

Mr Watson: Could you repeat that address?

Mr Clancy: It is www.freelancesecurity.com. It is a non-UK-based website, but some UK Private Investigators (PI) will bid for jobs on that website.

Q1814 Paul Farrelly: You mentioned witness statements and that just begs the question in my mind: were any journalists arrested following the Motorman inquiry and as a result of the parallel police actions, to your knowledge?

Mr Clancy: Other than for data protection purposes, there is no power of arrest under our legislation.

Q1815 Paul Farrelly: But that is not the question. Mr Clancy: But the police may have actually arrested people in relation to the conspiracy case.

Q1816 Paul Farrelly: Do you know of any instances?

Mr Johnson: I am not aware of any arrests.

Q1817 Paul Farrelly: I am told there were three arrests.

Mr Clancy: I am not aware of those personally.

Q1818 Paul Farrelly: So, as far as you know, no journalists were arrested?

Mr Clancy: As far as I know, I am not aware of any arrests.

Q1819 Paul Farrelly: There are two reasons why we have asked you here today and it is because there are two things that are new now. Firstly, there are the two revelations in Nick Davies’ two lengthy articles that give the public new details beyond what they already knew from your tables and in your What Price Privacy Now? document so that people can now judge whether the law was being broken from the information that was requested and the means by which it was accessed. Secondly, you are here because what else is new is that you were ordered by the court to provide documents in relation to the civil action brought by Gordon Taylor. Can you tell us what documents you were asked to provide in the Taylor case and how they may have been helpful to the Taylor case in relation to either the specific charges that were involved in the Goodman affair or to establish a pattern of behaviour at News International?

Mr Graham: I do not know whether David is going to be able to help with that, but, just before we try to answer that question, I am interested in the suggestion of ‘new’ information.

Q1820 Paul Farrelly: What is new in the public domain.

Mr Graham: But it is not evidence of what is going on now. What we have got is more information in the public domain legitimately or illegitimately of what was the case in 2006 when What Price Privacy? and

1 Witness correction: It is actually Section 53.
What Price Privacy Now? were published. We have not got any further information to share with the Committee about journalistic practices now.

Q1821 Paul Farrelly: That is not my question.  
Mr Clancy: I think it is fair to say in the Taylor case that a number of documents were obtained by Mr Taylor’s representatives which, they believed, would assist them to evidence the fact that News International were carrying out, in effect, a new investigation against their client and that the means that they used potentially were unfair and in breach of the Data Protection Act. Therefore, I think it is something we would build in support of evidence and it would not be evidence in relation to the actual hacking.

Q1822 Paul Farrelly: Can you tell us in what respects Mr Taylor’s name features in the Motorman files?  
Mr Clancy: I cannot exactly name every piece of information that is in there, but there would have been obviously references to News International at some point seeking information in relation to Mr Taylor which would not be found in the public domain.

Q1823 Paul Farrelly: What sort of information, from your knowledge?  
Mr Clancy: I cannot make a particular comment in relation to that, but obviously there is a massive amount of information there in relation to his legal representative seeking access to that information, and that was done via another department within our office, it was not the investigations team who managed that.

Q1824 Paul Farrelly: Did the documents provide details of accessing the sort of information through means which would clearly seem to be illegal?  
Mr Clancy: I think clearly, if it was information which was contained within ledgers, it would be evidence to say, “This is the particular activity of journalists. They’re obtaining information which cannot be obtained normally”, such as vehicle registration details, telephone conversations, converting their telephone number into an address, ex-directory numbers.

Mr Graham: What it does not contain is usually the technique used, though in one or two cases it does say on the face of the purchase order or the ledger log, “blag”, but it does not say, “hack” or “tap”. So we do not know how this information would have been obtained, except where it specifically says, “blag”, which of course is just ringing up and pretending to be somebody else.

Q1825 Paul Farrelly: But, just in respect of the Taylor case, which is one of the reasons why you are here again, there is evidence within the Motorman files of potentially illegal activity in relation to getting information connected, or to do, with Gordon Taylor?

Mr Clancy: Yes.

Q1826 Paul Farrelly: I just wanted to wrap up and just explore the reasons for not publishing the Motorman files in the public interest and whether you got this decision correct. Is it correct that individuals or organisations that have been targeted can only get that information now when they are being told by, in this case, a particular assiduous Guardian journalist? Is it satisfactory that people will only be able to get access to those records if they are generally determined or wealthy enough to take out a civil action and get court orders to instruct you to provide those details? Also, just in terms of the natural justice, have you considered whether your refusal to publish those, be it in redacted form, is undermining the process of press self-regulation? Let me give you an example from the latest article on Monday. In his article, Nick Davies talks of a case brought by, I assume it is a lady, Syrita Collins-Plante, “who complained to the PCC that The Sunday People had invaded her privacy and harassed her in search of a story about the boxer, Lennox Lewis, phoning her repeatedly until a police officer asked the newspaper to stop. The PCC ruled that her privacy had not been breached—without knowing that her private address and phone number had been blagged out of BT by Whittamore’s network.” Now, in other spheres that would count as a miscarriage of justice, so have you considered whether your refusal to publish the data, be it in redacted form or not, is actually undermining press self-regulation?

Mr Graham: If I published it in a redacted form, it is of no use to man or beast. You could have pages and pages of material that you have already got from me, but it is supremely uninformative, so that does not help us. If I publish it in a non-redacted form, I am publishing personal information that the Data Protection Act is there to stop, so in sort of general terms of publication I am between a rock and a hard place. I am specifically charged under section 59 of the Data Protection Act under penalty of a criminal sentence that we have established with the consulting database and help people who may be worried about it. And you mentioned the former Minister, Mr Kilfoyle; I think I had better contact him and say, “Can we sort this out?” It does not have to be by court order if people have good reason to come along. I showed the Chairman the files the other day.

Q1827 Paul Farrelly: Indeed, and how does that square with your duties?
Mr Graham: Because it was for assisting a parliamentary committee and I thought that, once your Chairman had seen what we were talking about, he would see the difficulty that I was in. So it would not have to be by court order. But we are not playing games here. I have statutory responsibilities to do things and also not to do things. What the Information Commission has been concerned to do is to flag up the issue, as I have said. Now, in relation to self-regulation, I have just come from being Director General of the Advertising Standards Authority, which of course is a self-regulatory body, so I know about this sort of thing. I would not presume to tell the PCC what to do, nor do I know the circumstances kept of this case, but it is perfectly open to the PCC to go back to the titles who were defending that particular charge and say, “We think we’ve been misled and we want to have a look at this again” in the same way as this Committee is doing.

Q1828 Paul Farrelly: But it is making decisions without the full knowledge of the facts. Can I just take issue with your assertion, Mr Graham, that a redacted form would be of no use to man or beast. Can I suggest that what would be very helpful in the public interest, it would certainly act as a very strong deterrent and it would allow those people in the general public, be they the man or woman in the street or public figures, to know whether they have been targeted and by whom, if you published the files in the following form: with the name of the journalist and the newspaper group involved, the kind of information requested, the person targeted, but not to the extent that the information is actually in the meticulous files kept of this case, but it is perfectly open to the response to the information. That would be very helpful in the public interest and certainly would be very useful. It would mean that anybody bringing a complaint, for instance, the PCC, would know whether they have been targeted and the PCC would know it as well, just to take one example.

Mr Graham: I just think that is not what I am here to do. If I listed the names of all the journalists, I am in danger of guilt through association. I do not know whether some of those journalists’ enquiries, for example, the head of the list in the Guardian referred to The Observer, and I do not know whether The Observer was dealing in the tittle-tattle and sex life of some popstar or whether it was a major scandal involving Ministry of Defence contracts, but those names would be up there with people who were simply dealing with celebrity gossip, but, having considered this, perhaps I had better go away and consider it further. At first blush—

Q1829 Paul Farrelly: I used to work for The Observer.

Mr Graham: And they did tittle-tattle?

Q1831 Paul Farrelly: I imagine The Observer did not do tittle-tattle and I imagine that the journalists, to the extent that they are still working for The Observer or are now working for other news organisations, will have their public interest defences there.

Mr Graham: Is it not also a gross invasion of privacy. Mr Farrelly, to list all the subjects of enquiry? They may not want it placed in the public domain that they were. It might be, you know, “no smoke without fire”, and we are talking about principals, their wives, their families, their girlfriends, their friends and family numbers, but this is just not what the Information Commission is here to do. We are here to stop the child benefit records going missing, we are here to help administer the Freedom of Information Act and we are here to deal with data-sharing between government departments. There is a lot to do and, if this Committee really wants me to devote the resources I should be spending on that to an after-the-event, line-by-line investigation of 17,000 pieces of paper, I think it is the wrong priority. What I want you to do and Parliament to do is to activate that section of the Act and introduce the custodial sentence. That will shut this down at a stroke. David, you were talking to one of these merchants the other day about it, were you not?

Mr Clancy: Yes, we speak to private investigators quite a lot and we have had situations where, when executing a search warrant, we find information which has been unlawfully obtained and the individual turns round and says, “Maximum fine £5,000? I’ll write the cheque out now”. Alternatively, at this moment in time a section 55 offence is not a recordable offence, it does not appear on the PNC, but I had a PI phone me up the other day to say, “I’ve been convicted. Does it appear on the PNC because my wife wants to go to Florida with the kids to see Mickey Mouse and I don’t want to go if I’m going to get stopped on the plane because it’s a conviction?” I had to tell him that it is not recorded and it is up to him whether he declares it. If we had that custodial penalty, it is as simple as that, it is a deterrent and people will go and find employment elsewhere doing stuff where they cannot get a custodial penalty.

Mr Graham: It is not just in this sort of sleazy world of husbands trying to find out what their wives are really worth in divorce proceedings, which is the one that is up on the site you mentioned at the moment, because the husband wants to reopen a consent order to get a better deal under the divorce settlement and he thinks his wife has been hiding assets from him. Charming stuff. But it is also things that interest the Serious Organised Crime Agency, SOCA, it is about witness intimidation, it is about jury-tampering. That is the sort of thing you can buy. Parliament, I think, was seduced by the siren voices of Fleet Street, saying that this was DNS panicking and it had a chilling effect on investigatory journalism, despite the fact that the journalist simply has to establish that the story was a serious story. I am not going to go after somebody who is doing something manifestly in the public interest, but I will go after people who play fast and loose with data protection legislation to no good purpose. I need that custodial sentence in place and I need it now.

Q1830 Chairman: When you say that Parliament was seduced by siren voices, Parliament was not given an opportunity because, as we understand it,
the Prime Minister received a call from Paul Dacre, Les Hinton and, I think, The Daily Telegraph, a sort of concerted lobby, and, as a result, the Government changed its policy.

Mr Graham: Well, I think that the issue goes so much wider than journalism that a strong recommendation from this Committee might put some backbone into it.

Q1831 Janet Anderson: I just wanted to pursue that, Mr Graham, and really a lot of the points I wanted to raise have been dealt with. The Chairman has said that he feels the Government did essentially what was a U-turn on this particular clause in the Criminal Justice and Immigration Bill which would have imposed a custodial sentence as a result of pressure from Fleet Street. Are you aware that that was the case, and do you know whether the ICO at the time strongly objected to that?

Mr Graham: Well, the position of the ICO at the time is set out in What Price Privacy? and What Price Privacy Now? I am afraid we are getting into territory I cannot comment on because I simply was not there. I only started on 29 June and I was not concerned with the higher politics of all this.

Q1832 Janet Anderson: But will you be lobbying the Government now that you are in post to restore that particular clause in some way because they have actually made it into a suspended clause and it is not quite clear what is needed to reactivate it? Will you be lobbying to make sure that it is reactivated?

Mr Graham: Yes, I contacted the Ministry of Justice last night and said that this would be the burden of my song before the Committee, and I understand it would involve a ministerial order. I do not think it even involves further parliamentary consideration. It is designed to be there as a Sword of Damocles. The trouble is that the threat is a wasting asset. The extent to which everyone is on their best behaviour at the moment is, I think, because of the Goodman jailing and because of all the talk about custodial sentences. But anyone reading the papers today, seeing that you get £100 plus £100 costs and the judge regretting that he cannot do more is pretty much an invitation to get back to the old business, so I think we really do need to have that custodial sentence in place.

Q1833 Janet Anderson: So you would like that to be a recommendation of this Committee to the Government that they reactivate that clause?

Mr Graham: I would very much welcome that, and it would only be repeating what you said in your previous Report, that you were convinced that the custodial sentence was necessary.

Q1834 Philip Davies: I understand your point about the custodial sentence, but, given that we do not seem to be able to keep murderers, rapists and even terrorists in prison, I think your chances might be slim, to be perfectly honest. Just on this point of deterrent, I was intrigued by your earlier answer to the Chairman about why you did not take any action previously, and the answer that you gave was that you were filing it under “Too difficult” or “Too time-consuming” perhaps, that there were 400 separate investigations you would have to carry out and, therefore, you just did not bother because there was too much to go at. Surely, whatever the penalties are, if something is taking place on such a wide scale that you cannot investigate it, it does not matter what the penalties are because nobody will ever be brought to justice anyway because, if it is so wide-scale, you are just going to file it under “Too time-consuming”.

Mr Graham: We are not filing it under “Too difficult” or “Too time-consuming”. Every regulator you deal with has to make decisions and choices. The Better Regulation approach urges us all to be proportionate and to pick our battles. When I was at the Advertising Standards Authority, I used to be infuriated that the Office of Fair Trading were not always willing to pick up the cases I wanted them to pick up. You know, you have to make choices. The question of the penalty is its deterrent effect; it is the big stick in the cupboard. As David has said, if people have to factor that risk in, it is a business that it is not worth being in, and the example he gave was of somebody concerned that his criminal record would show up and that would even spoil the family holiday in Florida. The problem at the moment is that it is simply a business cost and you just write it off against expenses; it is peanuts. Now, we need the big stick in the cupboard. At the moment, all we have got in the cupboard is a sort of promissory note, saying, “If it happens again, we will send off for a stick”. Now, that is not a deterrent. So, if we have the custodial sentence in place, then I confidently believe that the sort of operation we have been talking about of people dealing in confidential, personal information for no good purposes will stop at a stroke because it just will not be worth it, it will not be sufficiently profitable to make it worthwhile. At the moment, it is very profitable, thank you very much, and any fines you get in the magistrates’ court you simply dock off as expenses.

Q1835 Philip Davies: But what you said in your earlier answer seemed to indicate that, if somebody acts alone and there is one example of it, you will deal with it because there is only one to deal with and, if it is totally widespread and it is endemic across the whole board and there is so much of it, then you just have not got the resources to deal with it.

Mr Graham: No—

Q1836 Philip Davies: That appeared to be what you were saying.

Mr Graham: No, Mr Davies, you are misrepresenting what I said. I said that it was so big, with 17,000 individual items, 305 journalists and Lord knows how many titles, that the appropriate response was to make a big issue of it, to produce formal reports to Parliament, to call for a change in the law, to get the PCC moving to call on the industry and so on and so on. That is how you can deal with information in the mass. Individual applications from individuals, saying, “Assist me with what you may or may not have got on the file”,

Mr Graham: I understand your point about...
I can deal with. What I cannot deal with is going through forensically to the standard of proof to work in a court of law 17,000 particular instances and attaching them to stories and then working out whether the story was or was not in the public interest and working out whether my lawyers would be able to beat their lawyers. That simply would have been irresponsible given everything else that Parliament has charged the Information Commissioner’s Office with doing. I think the public would be outraged if they thought we were so up ourselves that we were just looking at journalists and not looking at the wider societal problems of witness intimidation, jury-tampering, people getting in the way of the course of justice in family proceedings and all these other things which are the big issue which we have it in our power to deal with. I do not want to get drawn into a battle between two newspaper groups and nor, I suggest, should the Committee.

Q1837 Philip Davies: Do you not think that the public might be outraged if you were aware of lots of things that were going wrong, but you were not doing anything about them because they were too time-consuming to deal with and you were looking at other things instead?

Mr Graham: But, as I have said, that is not what I said. We were tackling it at source dealing with the dealers in the information and at the top by dealing with legislation. We were let down. We were let down by the courts who did not seem to be interested in levying even the pathetic penalties they had at their disposal, we were rather let down by Parliament in the end because nothing came of the legislation and I think, frankly, we were let down by the newspaper groups who clearly did not take it as seriously as the ICO.

Q1838 Mr Watson: I am hopefully going to try and get your ideas for what we could do as a Committee to satisfy ourselves that this will not happen again, and you have raised a very important point about what legislation can be enacted to make that happen. I would like to tease you a little bit on whether you think that self-regulation in this area is working and, in particular, the test that a journalist has to make about public interest, how that is assessed and whether there could be self-regulatory rules that make sure that they are not just at it.

Mr Graham: I do not think it is the job of the Information Commissioner to offer a view on self-regulation of the press. I have already said that, coming from my previous job only a few weeks ago as Director General of the Advertising Standards Authority, I think effective self-regulation can be an extremely effective way of proceeding, but perhaps that is for another day. The idea of a public interest defence for the legitimacy of journalistic activity is absolutely fundamental and it is not just to do with the PCC, it is a defence under the Data Protection Act, and in my role I will, both under the Data Protection Act and the Freedom of Information Act, have to take many decisions, balancing sometimes competing interests in deciding where the public interest lies. I gave the example of the famous Guardian investigation into the Aitken family’s stay in that French hotel and the subterfuge that was employed to extract the bill from the vaults in the hotel, a very exciting story, and anyone who has been involved in journalism, as I have, would say that that was a legitimate piece of activity, so sometimes you do slightly doubtful things in a good cause. I suppose the issue is whether the undoubtedly doubtful things are simply in the cause of fluff and tittle-tattle.

Q1839 Mr Watson: Given that there is a public interest defence in the Data Protection Act, presumably what is in the public interest will be defined by case law?

Mr Graham: There will be similar cases which will no doubt inform, but I think every case has to be looked at on its merits. Of course it is a truism, is it not, that the public interest is not necessarily what interests the public?

Q1840 Mr Watson: Indeed.

Mr Graham: But it is very difficult to give you a view separate from specific cases.

Q1841 Mr Watson: If, because of resource problems or time or because you are trying to get corporate change, you do not bring any cases, it is very hard for people, for journalists working in the field, to know where they stand in terms of making that public interest test in the work they do. Is that not right?

Mr Graham: Well, it should not be for the Information Commissioner to go round prosecuting journalists because we do have the PCC and there is the Editors’ Code and, since they have amended clause 10, these are clearly breaches of the Editors’ Code, so I would expect the PCC would be dealing with that.

Q1842 Mr Watson: It is unlikely that the PCC would, and in fact I do not think they have the power to, bring a prosecution for people who break—

Mr Graham: They should not need to bring a prosecution because compliance with the Editors’ Code is part of a journalist’s employment contract. If people want to get tough, they can. I think our job is to attempt to get rid of the suppliers. You are talking about dealing with the punters, but I say there are other people to deal with the punters, not the ICO.

Q1843 Mr Watson: But the evidence you have in front of you shows that there was law-breaking on an industrial scale from the newsrooms of some of the major newspapers in the United Kingdom.

Mr Graham: But the only evidence, Mr Watson, that I have got is the ledgers and the invoices. I do not know what the story was in many cases and I do not know what the defence would be, so you would be asking me to switch the focus of the Information Commissioner’s Office from some very important work into something that could perhaps be better done by the PCC.
Q1844 Mr Watson: I understand the point you make. What I am trying to do is ascertain responsibility in the system for getting this right. Let me try it another way. Are you convinced that these practices have now ended in newsrooms up and down the country?

Mr Graham: I am not in a position to know. We did not know before Motorman. Motorman, and Dave will correct me if I am wrong here, was not at our instigation. We were riding on the back of—

Mr Clancy: Of a police investigation. It is very much like the work that we do on a day-to-day basis. We will get information, execute search warrants on premises and then we find, in some cases, vast amounts of information. I think the Anderson case was one such case whereby we had a couple based in St Ives who were prolific blaggers. They would obtain bank account information and information from any organisation for a price on a massive scale and, once we go in there, we see that. There may be another Whittamore out there, we do not know, so we cannot comment on whether the press are still using these practices or not, but our view is that, if we had a custodial penalty and there is the issue of vicarious liability of directors, perhaps that would focus the minds—

Q1845 Mr Watson: You have said this before. You have repeated this on numerous occasions now and I understand that is the point you make, but what I am trying to understand is that the decision you took, which, by the way, I think was the right decision, to blow this open, bring it into the public domain and try and effect massive change in the way journalists run about their work, I can understand why in a resource-sensitive area that is what you did, but what I cannot understand is why you have not gone back to see whether that has been successful or not or what gauge of success there is.

Mr Clancy: How can we measure it? Do we go to editors and say, “Have you come across any examples of journalists that have stepped over the line?”

Q1846 Mr Watson: Okay, so the only response you have got is, “We would like a custodial sentence for people who have broken the law”, so presumably you are still getting people raising these issues with you, providing you with leads and evidence?

Mr Clancy: These are non-press-related. This is the issue. You are focusing on the press and we are focusing on the trade.

Q1847 Mr Watson: I understand this is not necessarily your responsibility, but I would like to tease you a little bit. Is there anyone in this country who would know whether these practices are still going on other than editors and journalists in the newsrooms?

Mr Graham: Well, editors and journalists must know; it is a self-regulatory system. Our free press in this country is not regulated by statute, except in relation to defamation and a few other offences. It is a self-regulatory system and, for example, we have had evidence this afternoon that, on the face of it, the PCC was misled. Now, I do not think it is really up to the Information Commissioner to get involved. We are looking at the dealers, you are interested in the punters, and I do not think we are ever going to agree, but there is a role for both sides. If we put the dealers out of business, then the punters will have to go elsewhere.

Q1848 Mr Watson: There is a supply and demand here, I accept that. I am not trying to tell you how to do your job, I am trying to find out how we can be certain that this is not going to happen again. Is it your view that editors have a responsibility for this particular case and perhaps they should write to the people involved who are on the ledgers to apologise or put the matter right and let them know a bit more information? As you rightly say, it might not be your job to do that, but do you think that they have got a responsibility to do that?

Mr Graham: Well, why do we not get past square one and have some of these newspaper editors and proprietors reacting to What Price Privacy Now? published in December 2006 and say, “This is a bad business. Let’s hear more”?

Q1849 Mr Watson: Do you think it might be helpful if you were to give them the names of the journalists that they employed that you have on your files, given that they have not requested the names of the people?

Mr Graham: I want them to engage with the problem, however they do it. I do not know what my next step should be, but I do not want to make up policy in front of the Committee.

Q1850 Mr Watson: So, when they tell us that they think that they have thoroughly investigated the matter and they have put it right, do you think they could possibly have done that if they do not know the list of journalists that you have got on your files?

Mr Clancy: I think there might be information which would identify some of those journalists because some of the invoices quite clearly indicate that there have been blags in relation to particular stories and invoice numbers. Surely, their records should be able to cross-reference that to a particular journalist, and sometimes the invoices cross-reference the stories, so editors could examine their business and perhaps identify which journalists were or were not.

Q1851 Mr Watson: I think you could perhaps be a little proactive just to ensure that they have certainly done that or that they certainly have the information about the people who were at it.

Mr Graham: I understand what the Committee is saying, but you are not dealing with a regulator who is not proactive; we are proactive on a very wide front. Before another committee, I will be being asked, “What are you doing about child benefit records? What are you doing about tightening up security with credit reference agencies? What about the banks?” and so on. There are lots of ways we could spend our time.

Mr Watson: In a previous life, I did have some responsibility for data-sharing, so I am pleased that I am questioning you and not being questioned by you. Actually, I think that you have probably got the argument for the custodial sentence, not because of
the journalists’ enquiries, but because of these poor construction workers who have been denied their livelihoods over many decades because the construction industry has colluded with private investigators illegally, so you make a strong point and I am sure that in our deliberations we can take that in.

Q1852 Adam Price: You said, Mr Graham, in your opening remarks that the blagging industry, to dignify that term, continues to flourish. Are you talking generally or do you think it is continuing to flourish in relation to newspapers also using these services?

Mr Graham: We have got no evidence about the newspapers’ use of these private investigators beyond what we published in What Price Privacy Now? which came to us because of the Motorman investigation. I do not want the Committee to feel that the Information Commissioner’s Office was under siege from complaints from members of the public about the behaviour of the newspapers, decided to raid a particular private investigator and then, lo and behold, a few years later everything is hunky-dory. We just do not know.

Q1853 Adam Price: You do make raids and in any of those recent raids have any newspapers shown up as punters, to use your term?

Mr Clancy: I can honestly say that we have not identified any information which would indicate that newspapers or members of the press have obtained information. That is not to say it was not there because all we may find is an oblique reference to information which has been obtained and passed through to a name, a name we will not know, and individuals may not identify who that is, so we cannot say for certain whether we have come across information which is not clearly identified, as in the Motorman case where there has been information in relation to a particular newspaper and a particular reporter.

Q1854 Adam Price: So there could have been a journalist who knew that, but it was not clearly flagged up as a journalist?

Mr Clancy: Yes.

Q1855 Adam Price: Nick Davies, in his article, referred to a dozen or more private eyes that have been working in this field and you simply do not know who they are?

Mr Clancy: Other than the ones that will already have been identified by Motorman and the other inquiries. There are hundreds of investigators out there.

Q1856 Adam Price: He refers to the former actor who uses his skills as a mimic to blag the same database, and I have heard references to that former actor, in fact I have even seen the name somewhere. Are you saying you do not know who that is?

Mr Clancy: Again, we have had references to the former actor ourselves, but we have not been able to identify him. We have had references to “a Man in a Van”, who is a man who operated in South Wales out of a vehicle because he felt he could not be traced in that respect, using mobile phones, and he kept all his records in a vehicle.

Q1857 Adam Price: So, to be clear, you have heard references, which I have seen, from various sources of a former actor and you do not even know his name?

Mr Clancy: No.

Q1858 Adam Price: The former detective who was bounced out of the police for corruption and has spent years carrying cash bribes from newspapers to serving officers, I have seen references to that allegation before, but you do not know who that is?

Mr Graham: It may be in Nick Davies’s book which was published a couple of years back. Quite a lot of this is recycled from that rather exciting chapter about the ‘dark arts’; essential reading for all journalists.

Q1859 Adam Price: You read the chapter in his book, so did you have any thoughts about maybe stealing some of that? It shows up that this is part of a wider problem and you have said that yourself.

Mr Graham: I am afraid I am going to become repetitive. You simply cannot run regulatory bodies on the basis that you go chasing after every detail that a particular investigative journalist decides should be the agenda for the day when you have got other very big and important questions. I am not pleading poverty here. I am just saying that you can only do what you can do. We thought, possibly naively, that, by telling Parliament about this back in 2006 and calling for the custodial sentence, we could close the thing down. I think they still can, but it is taking too long.

Q1860 Adam Price: You have made that case convincingly and, as far as I am concerned, you are pushing at an open door. This is a marketplace which includes buyers and sellers and it has to be looked at as a totality, does it not? Coming back to the 305 journalists that you have not identified, you have talked about criminal sanctions as the ultimate deterrent and I can understand that, particularly in relation to private investigators, but the newspaper industry or a part of it trades on destroying people’s reputations, but it is very, very protective of its own reputation and that is why journalists do not tend to do stories about other journalists maybe. If some eminent former or current journalist is saying, “This is the biggest scandal that has attached itself to the newspaper industry”, surely the best thing to do would be to publish those names, and those journalists which have a legitimate public interest defence can use that and The Observer can defend its corporate reputation, but, if there are journalists, as you suggest, who sanctioned purchase orders and invoices which clearly have the word “blagging”, well, prima facie were they not involved in criminal activity?

Mr Graham: Not if the story was in the public interest.
Q1861 Adam Price: But that is the point, that they can say that, surely? How are we to know? Unless you publish those names, how will we ever know how far this went? I read a story in Private Eye that claims that an editor of a national newspaper was actually on the list. I do not know whether that is true. I have heard that another editor was on that list. Now, surely, when the editors, who are meant actually to be policing the Code of the PCC, are on the list, we need to know what is their defence and what is the background to this. This is very, very serious. If we cannot trust the newspapers, which are such an important part of democratic society; to obey the law; then that takes away one of the key foundations of democratic society, so it is actually very, very important. You have the information, so surely you should put it out there? You believe in freedom of information.

Mr Graham: Well, putting it out there. This is the sort of personal data which would be exempt from the Freedom of Information Act, so you cannot just say, “Well, we'll publish 305 names and see what happens”. Under the Data Protection Act, there are a number of possible defences. Under the Regulation of Investigatory Powers Act, it is an absolute offence and there is not a journalistic defence. Where this story started on 9 July was all about hacking and phone-tapping, which is an offence under RIPA, and we now seem to be off in a completely different domain where the ICO cannot help you because that is not what we do. So we are now back talking about what we do do, which is dealing with blagging, but there is a public interest defence. I would say the only person who could say what the public interest defence of an individual story could be would be the editor or the managing editor of a newspaper, and I have been a managing editor and I know what it involves. But we do not even know what the stories were, never mind whether they were in the public interest. What I have suggested is that it would have been a good idea in December 2006, and it is not too late now, for the titles who were named in that report to get in contact with me and say, “We're very concerned that 35 or 45 of our journalists appear to have been dealing with this deeply suspect individual. Can we talk about it?” At that point, I would share with a properly authorised editorial figure in a newspaper group the names that were on that list just on the basis that that is what the situation appeared to be in 2006.

Q1862 Adam Price: Seeing as you have some kind of joint and shared responsibility, you have argued, with the PCC, why do you not engage in a joint approach with the PCC, sharing the news with the editors and asking the PCC as well to be involved with a proper new investigation as to what lies behind these individual requests and, if there are any which are dubious, then obviously further action may be necessary?

Mr Graham: We have a co-operative relationship with a number of bodies and those reports, What Price Privacy? and What Price Privacy Now?, suggested a programme of action for a whole series of other regulators, self-regulatory bodies, trade associations and so on. But you are focusing on the PCC. We do not have any formal relationship with them, but I just accept that they do press standards and we do data protection and, where those two things cross over, then we probably need to talk. You have already spoken to the PCC. I have said I am very happy to deal with editors who ring me up to find out more, but there is no question of my being able to give a blanket publication of 305 names that were doing something in 2006; that would be a breach of section 59 of the Data Protection Act and, for that, I am criminally liable and I am not going to do it.

Q1863 Adam Price: So a list of names that was possibly involved in breaching other people's privacy you cannot release because you would be breaching their privacy?

Mr Graham: Without lawful authority.

Q1864 Mr Hall: In your opening statement, I sort of got the impression that you were saying that the problem about blagging, hacking, tapping and illegal access to DVLA records was an ongoing thing which, it subsequently emerges, the private investigators are doing and not the journalists.

Mr Graham: The journalists never were. It was always the journalists—

Q1865 Mr Hall: Who employed them.

Mr Graham:—as the clients of.

Q1866 Mr Hall: So they commissioned the work?

Mr Graham: The only evidence we ever had was of journalists commissioning the identification of individuals and their addresses, their ex-directory phone numbers, their friends and family details, their car registrations and other things.

Q1867 Mr Hall: Then you went on to say that in the Motorman case there was not any suggestion that hacking or tapping had taken place. Is that correct or did I misunderstand that?

Mr Graham: We have not got evidence.

Mr Clancy: There is no evidence whatsoever.

Q1868 Mr Hall: Have you reviewed the evidence that has been presented to you?

Mr Clancy: We looked at the evidence and the evidence clearly indicated that there were no transcripts of any calls whatsoever, it was just information in relation to telephone numbers, et cetera. They may have obtained those telephone numbers and subsequently hacked them, but we cannot say.

Q1869 Mr Hall: In previous questions from various members of the Committee, you then tried to establish the scale of the abuse that journalists carry out in this field, and the evidence that you have submitted to the Committee is that there is no evidence that you can see about whether this is an ongoing practice.
Mr Graham: There is no evidence that we hold beyond the evidence which contributed to What Price Privacy? and What Price Privacy Now? in 2006, which was well investigated.

Q1870 Mr Hall: I just want to be clear that that is what you said.
Mr Graham: I have not got anything else, so I cannot help you further.

Q1871 Mr Hall: So your evidence to the Committee is that the practice of private investigators continuing in this illegal activity is ongoing and is a serious problem?
Mr Graham: Yes.

Q1872 Mr Hall: But we do not know who the clients are anymore?
Mr Graham: Well, we know some of the clients because of the example we have given.

Q1873 Mr Hall: But they are not journalists?
Mr Graham: We have not got any further evidence of journalistic involvement beyond 2006.

Q1874 Mr Hall: Does that strike you as the news industry having actually cleaned up its act or as confirming the evidence that we have been given in this Committee that the government case was a one-off, rogue journalist acting ultra vires without the knowledge of his editor?
Mr Graham: But, if I could just say, that related to a different case.

Q1875 Mr Hall: It was a completely different case.
Mr Graham: That was the royal correspondent to the News of the World and that was hacking and tapping.

Q1876 Mr Hall: I know it is a completely different case, but we were told it was a one-off.
Mr Graham: I do not think it was ever suggested that the 305 journalists were a one-off, if that is possible. It was simply suggested that, since nobody seemed to know what the stories were they were engaged on, there may have been a public interest defence.

Q1877 Mr Hall: If you have read the transcripts of the previous sessions we have taken evidence, we have clearly had two editors, the former editor of the News of the World and the current editor of the News of the World, saying that the government case was a one-off. Mr Coulson, who was not aware that there were any, was surprised that there was one. Then, Mr Myler said that he had conducted a serious investigation and concluded that this was a solo incident, if you like. That is what has been said on the record, and my question to you is that he could have come and asked the Information Commissioner about the 305 journalists who are recorded as being engaged in some kind of activity, whether any of these other reporters were involved in that and that did not happen.

Mr Graham: It did not happen, but it was not the same thing. You were asking the News of the World management about the phone-tapping and offences—

Q1878 Mr Hall: We asked them about a whole series of activities.
Mr Graham: Well, the answers that they gave you, as I read in the transcript, were in relation to whether Mr Goodman was a one-off or symptomatic and they said that this was a one-off and nobody knew about it, but that does not say anything about the 305 journalists.

Q1879 Mr Hall: Would they not ask the Information Commissioner whether the 305 journalists, which you have a record of, were employed by the News of the World?
Mr Graham: But they did not need to ask us because it was published in December 2006. There is a table in What Price Privacy Now? and it lists a total of journalists.

Q1880 Mr Hall: And who they work for?
Mr Graham: Yes, 305 journalists, and top of the list is the Daily Mail. There are 58 journalists or clients using services and the number of transactions positively identified was 952 and it goes down the list.
Mr Hall: Can you find the News of the World?

Q1881 Chairman: It is 23.
Mr Graham: This is all what you looked at in your last inquiry. It is 19 journalists or clients, 182 stories, the Observer with four journalists or clients and 103 transactions, so some very assiduous journalists on the Observer asking a lot of questions, but quality not quantity. All the way down the list, the News of the World—

Q1882 Chairman: It is 23 journalists and 228 requests.
Mr Graham: I think these figures were updated somewhat after publication.

Q1883 Chairman: But 23 is the correct one.
Mr Graham: It is the correct figure.

Q1884 Mr Hall: So, just to clear another point which is made, when the PCC carried out their investigation into these in their general inquiry, they actually reached a conclusion similar to that reached by the News of the World, and you said in evidence that the PCC did not contact the Information Commissioner either to talk about individual journalists. Is that correct?
Mr Graham: Certainly the ICO was in contact with the PCC both before and after publication of those reports in 2006. We were not involved, so far as I know and I cannot think of any reason why we would be, in the most recent PCC investigation which was into the Goodman case which, I will repeat, was about hacking and not about blagging, so I would have been surprised if they had come to us and, if they had, I would have had to say, “Can’t help you, chum”.

Q1885 Mr Hall: I think you are referring to the Royal Correspondent to the News of the World—
Mr Graham: Yes.
Supplementary written evidence from the Information Commissioner’s Office

I refer to your letter of 20 October 2009. Christopher Graham is out of the office at present and has asked me to respond on his behalf.

You are right that the contents of the invoices and ledgers relating to the Operation Motorman case have been transcribed on to Excel spreadsheets and that it would be possible to make this information available to your Committee in redacted form. I assume that what you are suggesting here is the redaction of personally identifiable information but not redaction of the names of the media organisations that used the services of the private detective concerned.

Even providing information in this form could potentially place us in breach of Section 59 of the Data Protection Act. This makes it a criminal offence for the Commissioner or his staff to disclose any information that has been obtained under the Data Protection Act and relates to an identifiable person or business unless the disclosure is made with lawful authority. Lawful authority is provided where the release of information that identifies an individual or business is necessary in the public interest. We are though conscious that we have already released the names of the media organisations involved. If in the light of this you are able to assure us that the further release of information about the involvement of identifiable media organisations is necessary for your inquiry we will be satisfied that the public interest test has been met.

If we proceed to redaction of personally identifiable information there are two possibilities. First we could simply blank out all personally identifiable information such as names, addresses and telephone numbers. We estimate that this would involve around 15 days of staff time and could be completed in two weeks.

The second possibility would be to replace any blanked out information with a description eg “telephone number”, “name”. We estimate that this would take roughly twice as long ie 30 days of staff time with completion within four weeks.

We are prepared to proceed with either option but would ask you to bear in mind that both options involve the expenditure of public money on redaction and that, as you will have seen when you visited us, the extent of redaction required is such that the information that remains will reveal very little more than is already known to your Committee. In this connection our previous offer to provide you with redacted samples of the invoices and ledgers rather than the complete set still stands.
If you wish us to proceed with redaction I should be grateful if you could provide us with your assurance, as Chairman, that the redacted information is necessary for your Committee’s inquiry together with an indication of which of the above options you have selected. We will then proceed to prepare the redacted information as quickly as we reasonably can.

November 2009

Written evidence submitted by the Metropolitan Police Service

I acknowledge receipt of your letter sent to Sir Paul Stephenson on 9 July 2009 requesting written evidence regarding News International and the tapping of telephones. The attached report deals with your request, which provides an overview of the history to this case and subsequent actions taken.

I wish you to be aware that the Commissioner has also been asked by Keith Vaz MP, on behalf of the Home Affairs Committee to provide responses to specific questions in relation to the same matter. Therefore, I have also provided his office with a copy of the same report. In addition, the report has also been provided to the Home Secretary’s private office and the Chief Executive of the Metropolitan Police Authority.

Please do not hesitate to contact me if you require any further information.

July 2009

Metropolitan Police Service’s response to the Culture, Media and Sport Committee

1. In December 2005, concerns were reported to the Metropolitan Police Service (MPS) by members of the Royal household at Clarence House, relating to the illegal tapping of mobile phones. As a result, the MPS launched a criminal investigation and this identified the involvement of two men, namely Clive Goodman (The Royal Editor of the News of the World newspaper) and Glen Mulcaire (A Security Consultant).

2. The two men were engaged in a sophisticated and wide ranging conspiracy to gather private and personal data, principally about high profile figures, for financial gain. This involved publishing material in the News of the World newspaper.

3. The MPS investigation found that these two men had the ability to illegally intercept mobile phone voice mails. They obtained private voicemail numbers and security codes and used that information to gain access to voicemail messages left on a number of mobile phones. It is important to note that this is a difficult offence to prove evidentially and for an illegal interception to take place, access must be gained to a person’s telephone and their voicemails listened to, prior to the owner of the phone doing so. There will be other occasions where the two men accessed voicemails but due to the technology available at the time, it was not possible to prove via the telephone companies if they had accessed the voicemails prior to or after the owner of the mobile phone had done so. Hence, it was not possible to prove if an illegal interception had taken place.

4. Their potential targets may have run into hundreds of people, but the investigation showed from an evidential viewpoint, that they only used the tactic against a far smaller number of individuals.

5. The MPS first contacted the Crown Prosecution Service (CPS) on 20 April 2006 seeking guidance about this investigation, where an investigation strategy was agreed.

6. On 8 August 2006 both Clive Goodman and Glen Mulcaire were arrested and both made no comment interviews. On 9 August 2006 Goodman and Mulcaire were charged with conspiracy to intercept communications, contrary to section 1 (1) of the Criminal Law Act 1977, and eight substantive offences of unlawful interception of communications, contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000. The charges related to accessing voice messages left on the mobile phones of members of the Royal Household. The two were bailed to appear at the City of London Magistrates’ Court on 16 August 2006 when they were sent to the Central Criminal Court for trial.

7. During searches, police seized vast amounts of material, some of which was used in evidence. It is reasonable to expect some of the material, although classed as personal data, was in their legitimate possession, due to their respective jobs. It is not necessarily correct to assume that their possession of all this material was for the purposes of interception alone and it is not known what their intentions was or how they intended to use it.

8. When Mulcaire’s business premises were searched on 8 August, in addition to finding evidence that supported the conspiracy between him and Goodman regarding the Royal Household allegations, the MPS also uncovered further evidence of interception and found a number of invoices. At that stage, it appeared these invoices were for payments that Mulcaire had received from the News of the World newspaper related to research that he had conducted in respect of a number of individuals, none of whom had any connection with the Royal Household. They included politicians, sports personalities and other well known individuals.

9. The prosecution team (CPS and MPS) therefore had to decide how to address this aspect of the case against Mulcaire. At a case conference in August 2006, attended by the reviewing lawyer, the police and leading counsel, decisions were made in this respect and a prosecution approach devised.

If you wish us to proceed with redaction I should be grateful if you could provide us with your assurance, as Chairman, that the redacted information is necessary for your Committee’s inquiry together with an indication of which of the above options you have selected. We will then proceed to prepare the redacted information as quickly as we reasonably can.

November 2009
10. From a prosecution point of view what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire. It was the collective view of the prosecution team that to select five or six potential victims would allow the prosecution properly to present the case to the court and in the event of convictions, ensure that the court had adequate sentencing powers.

11. To that end there was a focus on the potential victims where the evidence was strongest, where there was integrity in the data, corroboration was available and where any charges would be representative of the potential pool of victims. The willingness of the victims to give evidence was also taken into account. Any other approach would have made the case unmanageable and potentially much more difficult to prove. This is an approach that is adopted routinely in cases where there are a large number of potential offences.

12. Adopting this approach, five further counts were added to the indictment against Mulcaire alone based on his unlawful interception of voicemail messages left for Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson.

13. In addition to obtaining evidence from these persons, the MPS also asked the reviewing lawyer to take a charging decision against one other suspect. On analysis, there was insufficient evidence to prosecute that suspect and a decision was made in November 2006 not to charge.

14. This progress in the case meant that its preparation was completed by the time Goodman and Mulcaire appeared at the Central Criminal Court on 29 November 2006 before Mr Justice Gross. When they did appear at court, Goodman and Mulcaire both pleaded guilty to one count of conspiracy to intercept communications—the voicemail messages left for members of the Royal Household. Mulcaire alone pleaded guilty to the five further substantive counts in respect of Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson. Hence, in total 8 individuals were identified as having had their telephones illegally intercepted.

15. Anyone who had been approached as a potential witness for the criminal prosecution was advised and informed that they had been the subject of illegal interception. Thereafter during the course of the investigation police led on informing anyone who they believed fell into the category of Government, Military, Police or Royal Household, if we had reason to believe that the suspects had attempted to ring their voicemail. This was done on the basis of National Security. In addition, appropriate Government agencies were briefed as to the general security risk that police had identified and advised that if they had any further concerns they should contact their own service provider.

16. For anybody else that may have been affected, police provided the individual phone companies the details of the telephone numbers (various) of the suspects and it was agreed that they (the service provider) would individually research, assess and address whether or not, and to what degree their customers had been the subject of contact by the suspects. It was thereafter a matter for the telephone companies to take appropriate action to reassure their customers and introduce preventative measures to ensure this type of interception did not recur.

17. On 26 January 2007 sentencing took place. Goodman was sentenced to four months’ imprisonment and Mulcaire to a total of six months’ imprisonment, with a confiscation order made against him in the sum of £12,300. On sentencing the two men, Mr Justice Gross at the Old Bailey said the case was “not about press freedom, it was about a grave, inexcusable and illegal invasion of privacy”.

18. This case has been subject of the most careful investigation by very experienced detectives. It has also been scrutinised in detail by both the CPS and leading Counsel. They have carefully examined all the evidence and prepared the indictments that they considered appropriate. No additional evidence has come to light since this case has concluded.

19. There has been much speculation about potential criminal involvement of other journalists in this case. Whilst it is true to say that other journalists names appeared in the material seized by Police, there was insufficient evidence to support any criminal conspiracy on their part.

20. Due to renewed publicity in this case in the Guardian newspaper, the MPS Commissioner asked Assistant Commissioner John Yates to establish the facts around the original investigation into the unlawful tapping of mobile phones by Clive Goodman and Glen Mulcaire and any wider issues in the reporting by the Guardian. Assistant Commissioner Yates was not involved in the original case and clearly came at this with an independent mind. He released a press statement on 9 July 2009 and considered that no further investigation was required as from the publicity, no new evidence had come to light.

21. The MPS does recognise the very real concerns, expressed by a number of people, who believe that their privacy may have been intruded upon. In addition to those who had already been informed in line with the aforementioned strategy (ie those fitting into the category of Government, Military, Police or Royal Household and the remainder being informed by the telephone companies), Assistant Commissioner Yates committed to ensuring that the MPS has been diligent, reasonable and sensible, and taken all proper steps to ensure that where we have evidence that people have been the subject of any form of phone tapping, or that there is any suspicion that they might have been, that they were informed.

22. As a result, on 10 July 2009, the MPS released a further press statement stating “The process of contacting people is currently underway and we expect this to take some time to complete”. 

23. Assistant Commissioner Yates was not involved in the original case and clearly came at this with an independent mind. He released a press statement on 9 July 2009 and considered that no further investigation was required as from the publicity, no new evidence had come to light.
23. It is also important to note that if new evidence came to light then the MPS would consider it. Nothing to date has been produced.

24. Following the CPS review of this case, the Director of Public Prosecutions, Keir Starmer QC confirmed the following:

“As a result of what I have been told I am satisfied that in the cases of Goodman and Mulcaire, the CPS was properly involved in providing advice both before and after charge; that the Metropolitan Police provided the CPS with all the relevant information and evidence upon which the charges were based; and that the prosecution approach in charging and prosecuting was proper and appropriate. In light of my findings, it would not be appropriate to re-open the cases against Goodman or Mulcaire, or to revisit the decisions taken in the course of investigating and prosecuting them”.

July 2009

Witnesses: Mr John Yates, Assistant Commissioner and Detective Chief Superintendent Philip Williams, Metropolitan Police Service, gave evidence.

Q1889 Chairman: Can I welcome you to the second part of this session. When the Guardian published their first story, you were asked to conduct a review and you concluded that no new information had been obtained and there was no reason for you to reopen the investigation. You concluded that review in a remarkably short space of time. Can you assure us of how thorough that review was?

Mr Yates: Would it be possible, Chair, just to make a few opening remarks in the first instance?

Q1890 Chairman: Yes.

Mr Yates: I am grateful for the opportunity to come here to provide some clarity, I hope, from a police perspective on a number of issues that have arisen since the Guardian story was published in July of this year. I think it is worth emphasising from the outset that the Guardian article talked about three entirely separate issues both in time and context. You have heard about Operation Motorman, and the related crunch investigation, Glade, was our investigation and there was the civil action in 2007. As I said previously, there is essentially nothing new in the story other than to place in the public domain additional material which had already been considered by both the police investigation into Goodman and Mulcaire and by the CPS and the prosecution team. There was certainly no new evidence and, in spite of a huge amount of publicity and our request of the Guardian and others to submit to us any additional evidence, nothing has been forthcoming since. You will also be aware as I think you have had a letter from DPP Keir Starmer who separately conducted his own review into the prosecution strategy in the Goodman and Mulcaire case, and for further reassurance he asked leading counsel, David Perry, to consider whether there was additional material that ought to have been subject to further investigation, particularly the Neville email, and he has written to you on 30 July and he makes it quite clear that he neither thought it appropriate to reopen the case from the prosecution perspective nor, importantly, to invite the police to reopen our investigation. Just turning to our investigative strategy in the case, you have had a very full note from us which I do not intend to go through of course, but I would just highlight some of the issues in terms of our investigative strategy in this case. It was based on the premise of to prosecute the most substantive offence. You have heard from the previous witness that, based on our advice, section 1 of RIPA, the Regulation of Investigatory Powers Act, thus intercepting or hacking, I will call it, voicemail messages, using that power was envisaged to be the simplest, most clear method to present to the court the most cogent evidence and it is of course the one they had the greatest sentencing powers with, so that was the principal strategy around that. There was then of course the technical evidence. We wished to ensure, in order to secure the confidence and support of victims, that their voicemails would not be played in court and we wanted to secure technical data, the best data possible, to ensure that we could prove the case and not by the revelation of private conversations. Then there is the case law, and this is rarely used. This was the first prosecution of its type in terms of voicemail messages, so success was clearly dependent upon having overwhelming and unambiguous evidence in this case. There were then numerous technical challenges around the way that the various phone service providers operate, and they all operate in a different way, and their basis was not to provide data which had integrity in terms of evidential process and they have business reasons around the way they use their data, so we had to find a way which would get the data out that had integrity to ensure there could not be found ways round it through a court process. The victims were the next issue. One of the key aspects of the case was to ensure we had sufficient victims and a breadth of victims to reflect the overall criminality in the case and to ensure that the court had adequate sentencing powers around those issues, and then there are the suspects. In 2006 and again more recently, we have been invited to say whether there were more suspects in this case, and I would hate to think that anyone thought that we were avoiding any aspect around other editors or other people who may be related to this case. I found a letter only this morning in terms of these matters where we clearly set out to the solicitors acting for the News of the World, and this was in September 2006, a range of issues that we wanted them to disclose to us, and we finished the letter by saying, “The investigation is attempting to identify all persons that may be involved, including fellow conspirators”. One of the bullet points we looked for was: “Who does Mr Mulcaire work for? Has he completed work for other editors and
journalists at the *News of the World*? Can we have a copy of any other records for work completed by Mulcaire for these editors and journalists, including the subjects on which you might have provided information?" There was a very clear strategy set out from the start to ensure that we covered all those bases if there was evidence in the case. Our job, as ever, is to follow the evidence and to make considered decisions based upon our experience which ensures limited resources are used both wisely and effectively and, supported by senior counsel, including the DPP, the collective belief is that there were then and there remain now insufficient grounds or evidence to arrest or interview anyone else and, as I have said already, no additional evidence has come to light since. What has been achieved, lastly? An individual’s right to privacy against the media’s right to publish in the public interest will always remain a matter for debate and they can often clash, but this investigation into an interception of this nature was the first of its kind in the UK. The prosecution brought absolute clarity that accessing people’s voicemails without their permission is a criminal offence for which you will go to prison. In terms of the wider public protection, it has also served to highlight some of the security vulnerabilities around the way people use their voicemail and, with the collaborative approach with the phone companies, there is now much greater awareness about how people should use the proper security measures they have within their phones to ensure that this cannot happen again. I hope that is helpful.

**Q1891 Chairman:** Yes, that is helpful. The evidence which the *Guardian* produced and indeed gave to this Committee actually came from you originally. It is evidence that was handed over to the court from the police investigation—

**Mr Yates:** Yes, it was unused material.

**Q1892 Chairman:**—which reached the *Guardian*. The key one, which you will be familiar with, is the email and “this is the transcript for Neville”. Why did you not think that it was sufficiently important to interview Neville?

**Mr Yates:** Well, again we took advice on this and it did form part of the original case and formed part of, what we call, the sensitive, unused material. There are a number of factors around it, some practical issues. Firstly, the email itself was dated, I think, 29 July 2005 and we took possession of it in August 2006, so it was already a minimum of 14 months old, that email, that is the minimum and we do not know when it was actually compiled or sent. We know from the phone company records that they are not kept for that period of time, so there was no data available behind that email. There was nothing to say that Neville, whoever Neville may be, had seen the document and, even if the person, Neville, had read the email, that is not an offence. It is no offence of conspiracy, it is no offence of phone-hacking, it is no offence of any sort at all.

**Q1893 Chairman:** Sorry to interrupt, but you say there is nothing to say whether Neville had read the email, but you could have asked him.

**Mr Yates:** Well, if I can finish, there is no clear evidence as to who Neville was or who is Neville. It is supposition to suggest Neville Thurlbeck or indeed any other Neville within the *News of the World* or any other Neville in the journalist community. Mulcaire’s computers were seized and examined. There is nothing in relation to Neville or Neville Thurlbeck in those computers and, supported by counsel latterly and by the DPP, they both are of the view, as we are, that there are no reasonable grounds to suspect that Neville has committed any offence whatsoever and no reasonable grounds to go and interview him.

**Q1894 Chairman:** Well, it does seem an extraordinary coincidence though that somebody working for the *News of the World* sends an email, saying, “This is the transcript for Neville” when the chief reporter of the *News of the World* is called Neville and you think that this is not sufficient to ask Neville Thurlbeck whether he is the Neville referred to in the email.

**Mr Yates:** Well, there is no evidence of an offence being committed, which is what I said first. There is no evidence. Reading that document is no evidence of an offence. There is no evidence that there are any other links between Neville, whoever he may be, and Mulcaire. As I say, we looked at his computers, so it is not as if we ignored this, but we looked at all of his computers, looked for the links in terms of any contact and there is no contact. As I say, both our view and the advice of leading counsel and the CPS was that there were insufficient grounds to certainly arrest or question; it would not take us any further.

**Q1895 Chairman:** The judge in the trial actually states that Glenn Mulcaire was working for others in the *News of the World* besides Clive Goodman.

**Mr Yates:** Yes.

**Q1896 Chairman:** But, despite the fact that that was the clear conclusion of the court, you—

**Mr Yates:** It is not quite like that. He said “worked with others”. Well, of course he worked with others because that is his job. He is a private investigator and he works with journalists. He is going to be working with a number of other people.

**Q1897 Chairman:** Let me give you an example. You knew that Mulcaire was illegally accessing the phone messages of a number of other individuals besides the people working in the Royal Household. Did you not seek to establish who on the *News of the World* might have been commissioning those intercepts?

**Mr Yates:** Well, we sought the information that I have read out of the letter which I can probably redact with sense and give to the Committee to see, so we did seek those issues from them and they said that there was no information there. Now, to go further, we have got to have very strong grounds to further suggest that they are misleading us and there
were no grounds on that. With all investigations, you have to set parameters as to what you are trying to prove and as to what is the proper use of resources to prove that. You would be the first to criticise us if we went off fishing somewhere because it seemed like a good idea, but we have got to actually have evidence to follow and to go through, so we are limited. There was a prosecution strategy, it was not just a police strategy, it was a prosecution team strategy, which said, “These are the eight people we’re going to concentrate on. That reflects the full extent of the criminality and that gives the court the greatest sentencing powers if there is a plea of guilty or if they are found guilty”, and that is the way the decisions were taken in 2006.

Q1898 Chairman: One of the reasons given by the DPP to us is that, in order to prove a criminal offence, you have to demonstrate that the phone message was intercepted and listened to before the intended recipient had himself opened and listened to it, and that was the criminal act. That is correct?

Mr Yates: Yes, the analogy is the envelope and the opened letter. It is not an offence to open the letter, but it is an offence to open the letter and read it, and that is the analogy.

Q1899 Chairman: However, let us say that somebody is accessing my voice messages and, therefore, if they get to that voice message before I have got round to listening to it, are they committing a criminal offence?

Mr Yates: Yes.

Q1900 Chairman: If I happen to have listened to it and not deleted it and they then manage to access it, that is perfectly legal?

Mr Yates: It is a breach of privacy. I am not sure it is legal, but it is certainly no offence under section 1 of RIPA.

Q1901 Chairman: This may be going slightly beyond your remit, but do you not think that is completely ridiculous?

Mr Yates: Well, I suppose you could take a view on it, but we are only dealing with what the law states and what we can do in terms of the evidence in terms of building a case.

Q1902 Chairman: I understand. Can I, finally, ask you about the notification of those many people where there was evidence that their phones might have been hacked into. There appeared to be some confusion as to how many of those were notified and when.

Mr Yates: If I take it from the start, all those subject to the indictment are clearly aware obviously. A number of other people who were approached as potential witnesses, but chose not to provide evidence for whatever reason, they too were aware. Then we looked at a system with the phone providers, and the decision was taken in 2006 and I have no reason to doubt them now, where we looked at certain sensitive areas, people in government, people in sensitive public positions, royal, military, police and the like, where there was a suspicion that they had been hacked or otherwise had their privacy breached where we would contact them, which we did. Then the service providers contacted other ones in the same sort of category that we were looking at who, they believed, had been hacked or otherwise had their privacy interfered with. They contacted them and, if they felt there was a greater degree of interference which merited further police investigation, then they came back to us, and there was one case where that happened which formed part of the indictment. Since July 2009, you will remember that at the end of my statement I said I was concerned as to had anything fallen through the net, and we had been following a very, very tight strategy around analysing whether something could have fallen through the net. There may have been a couple, it is a handful of people potentially, and we have gone back and worked with the phone companies again on that, and one of them of course was Andy Coulson who himself declared that he may have been subject to that type of activity, but it is very few, it is a handful, and we are still going through that process now.

Q1903 Philip Davies: Just going back to the point about Neville Thurlbeck, I am obviously not a police officer, you are the experts in these matters and I certainly do not want to presume that I know more about these things than you do because I do not, but, given that Clive Goodman was the royal reporter and there was evidence that phones hacked included those of people who were not in the Royal Family, would it not be a fairly easy conclusion to come to, or proposition to make, that perhaps, if he is the royal reporter and there are other people’s phones being tapped, there must be other people at the News of the World involved in this activity? Would that not be an early presumption that the police would make if investigating this?

Mr Yates: I think we made the presumption and the assumption that he was involved with numerous journalists from many newspapers and other outlets. All the evidence and material we seized from his home address indicated that that was his job. Whether it breached into the lines of illegality is a different matter, but he was a private investigator and you would expect him to have snippets of information and sometimes he had just a name, sometimes he had a date of birth, sometimes he had an awful lot of information around individuals, but that is what his job is. Our job was to follow the evidence around section 1 of RIPA, which is fairly narrow, fairly well defined and fairly challenging to prove.

Q1904 Philip Davies: Sure, I appreciate all that, but, given that you had the name “Neville”, this idea that he did not say which Neville it was and it could have been any Neville, how many Nevilles were working at the News of the World at the time? Did you look into it and come across a huge list of Nevilles at the News of the World when you were carrying out the investigation?
Mr Yates: I can absolutely see where you are coming from and where the Chair is coming from on this, but we are looking at using our resources wisely and effectively. I would say it is 99.9% certain that, if we were to question Neville Thurlbeck on this matter, he would make no comment. That was the position of every other journalist we spoke to during this inquiry. It was the position of Mulcaire, it was the position of Goodman and they made no comment. I have no evidence to put before him other than the fact that this is a Neville, that he has not read it and we know that he has not read it because it has not been transmitted by Mulcaire to Neville Thurlbeck. I can see where you are coming from, but we are making the decision based on where the evidence is going to be and where we are going to get the proof for a case to put before a court. The decision taken at that time was that it was not a viable line of inquiry and, I have to say, it has been supported by leading counsel and the DPP recently.

Q1905 Chairman: You could have asked the author of the email. We know precisely who he is.
Mr Yates: Who, Mulcaire or Ross Hindley?
Chairman: No, the individual employed by the News of the World whom we have not named at the request of the Guardian, but you know who it is because it is on the top of the email.

Q1906 Paul Farrelly: He has just been named.
Mr Yates: I did not mean to.

Q1907 Chairman: Well, you could have asked him.
Mr Yates: We could, and I can ask my colleague whether we did or not.
Mr Williams: No, we did not speak to him, but it comes back actually that, as part of our investigation strategy, we were asking the News of the World to supply more information pertaining to Mulcaire, his employment, his records of work, who he worked for and what stories he worked on, as was said, and any editors or journalists that he worked for because this was an ongoing process and we wanted to understand the whole picture. What it came back to was the News of the World saying, “No, there was no information” and, therefore, we were left in isolation, literally, with that document which, when you look at it, is not enough in evidence to pursue, which is where we have ended up.

Q1908 Philip Davies: Whether you think it is worth reopening this again at this stage is a separate matter, and you may well be right that, based on what you have seen, it is not, but would you not at least concede that, in reviewing Neville Thurlbeck on this matter, you would have been best practice if the police had spent a bit of time having a chat with Neville Thurlbeck on the basis of the emails that you had in your possession?
Mr Yates: In 2006 that may well have been the case but it is concentrating on using your resources properly. We would make a professional decision based on our experience, which collectively is quite considerable, that that is going to take us absolutely nowhere; therefore we were concentrating on using the resources that we do have in the areas where we are going to find the evidence. That is not going to take us anywhere. That was the decision taken at the time. Certainly, in 2009, I was absolutely of the view that it was not new; it was considered at the time by counsel, and there was certainly no value in reopening it.

Q1909 Mr Sanders: I will move away from Neville-Neville Land and come back to what actually happened when the Guardian wrote this story. There was a lot of excitement and then, almost within a matter of hours, it was announced there had been a review and that sort of killed it. Can you explain to the Committee how that review was undertaken?
Mr Yates: Firstly, it was not a review. The Commissioner asked me to establish the facts, two entirely separate exercises. A review involves a thorough—

Q1910 Mr Sanders: Hang on. It was very clearly reported as a review and I am almost certain I heard a police officer on television refer to it as a review at the time.
Mr Yates: I absolutely guarantee the word “review” was not mentioned that day.

Q1911 Mr Sanders: So where has the media got the idea that there was a review? Do you think they tapped somebody’s phone and got it?
Mr Yates: I have no idea. I was so clear on the day, through both my statement and through other means, that I was asked to establish the facts. In police circles, and no doubt in journalistic circles, a review has a completely different sense, which is a focus. Sometimes it is a forensic review, sometimes it is a complete review, but that involves a lot of work and a small team of people. I was asked to establish the facts by the Commissioner, and indeed if you read the transcripts of that day you can see absolutely clearly I was asked to establish the facts. I made a note to myself on that day as to what I was actually doing, what I was actually going to consider. I looked at the scale, the scope and the outcome in terms of the original case. I considered the level of liaison there had been with CPS and senior counsel and any advice they had provided. Clearly that was considerable.

Q1912 Mr Sanders: Did you consult with counsel at that time?
Mr Yates: No, I did not.

Q1913 Mr Sanders: So you just went back over what had been the—
Mr Yates: There were a number of other considerations that I made. I considered the approach adopted by the prosecution team in their papers, what were they actually focused on, and it was those eight cases. I considered the amount of complexities and challenges around the evidence then and what evidence would be available now, particularly in relation to the availability of the data. I considered the level of disclosure and who would review the material. In this case senior counsel had
reviewed the material. I considered how the case was opened after the guilty pleas. I considered whether there was anything new in the Guardian articles in terms of additional evidence, and I considered finally our approach to the victims, how they were managed and dealt with and the impact of further inquiries, if they had been necessary, on them, and I came to the view, and I appreciate you all thought it was rather quick, that there was no new evidence in this case. It was a conflation of three old stories.

Q1914 Mr Sanders: And this was an exercise you alone conducted?
Mr Yates: No, I did it with Philip and the team and the original team. We sat down for a number of hours that day and went through these points.

Q1915 Mr Sanders: How many hours was that day? What time did you start this process?
Mr Yates: It was a number of hours. I did not record it, but I came to the view—

Q1916 Mr Sanders: It presumably was not on your agenda that day.
Mr Yates: No. The diary was cleared that day, as you would imagine.

Q1917 Mr Sanders: At some point the diary must have been cleared. At some point somebody took a decision, in the light of this new story, “We have got to look at this again.”
Mr Yates: It was fairly early on in the day. I gave this considerable thought in terms of what was new and was there any—the principal point is, was there any new evidence, and the answer was there was not, and I have to say, whilst I came to the view fairly quickly, subsequent events, subsequent views of the DPP, subsequent views of senior counsel who had reviewed the material, had concurred with my view.

Q1918 Mr Sanders: At what time in the day was an announcement made to the media that this exercise was being undertaken?
Mr Yates: I think Sir Paul Stephenson had announced it up at the ACPO conference round about half past nine that morning. I cannot remember, but he certainly had a very early conversation in the morning with me. I cannot remember what time because I did not deem it relevant then, but it was a very early in the morning conversation.

Q1919 Mr Sanders: And at what time—
Mr Yates: You are trying to find out how many hours I spent on this?

Q1920 Mr Sanders: I am trying to get to the point of what time that day you then announced that this process had been completed.
Mr Yates: I think it was late—it was early evening. I think it was five-ish.

Q1921 Mr Sanders: What sort of relationship does the Metropolitan Police have with the News of the World?

Mr Yates: Cordial, professional, as we do with all the media outlets, both London and nationally. In terms of transparency and confidence in policing, of course we do engage with journalists at all levels, be it the most senior executive, and reporters on the ground. You would expect us to do that.

Q1922 Mr Sanders: Is the News of the World a newspaper you consider is more or less helpful than other newspapers in helping the Metropolitan Police with some of the inquiries they have to undertake?
Mr Yates: I think all newspapers can be extraordinarily helpful in terms of some crime inquiries, but I think—

Q1923 Mr Sanders: That is not what I asked. Is the News of the World more or less helpful?
Mr Yates: I would not like to give you a view on it. If you look at some of the coverage we have from newspapers, particularly the News of the World, occasionally, it is pretty brutal.

Q1924 Mr Sanders: I am not asking about how they portray you. I am saying is the News of the World more or less helpful with the Metropolitan Police in terms of the relationship that you have, in terms of the information that can be exchanged?
Mr Yates: We have a very professional relationship at a number of levels—with the Crime Reporters’ Association, which is at the more tactical level, all the way up to the senior executive level in terms of people like the Commissioner and myself. It is a professional, objective relationship where we will seek their help on a number of occasions and get their help on a number of occasions with serious crime matters when we are seeking information, and, quite rightly, they will hold us to account when we are perceived or otherwise to have made misjudgements. If you look at the G20 recently, if you look at the coverage of G20, what the News of the World gave us then, pretty brutal.

Q1925 Mr Sanders: In terms of the information that is passed to you, do you ever question how that information may have been obtained by a newspaper?
Mr Yates: In what sense?

Q1926 Mr Sanders: If you want to tap somebody’s phone you have to go through a process.
Mr Yates: Yes, we have to get a Home Secretary warrant. I am not sure what you are suggesting.

Q1927 Mr Sanders: I am asking whether you ever question how a newspaper that gives you information may have obtained that information.
Mr Yates: Of course we have to.

Q1928 Mr Sanders: What if that information had been obtained illegally?
Mr Yates: In supposition terms, any investigation would uncover that. You would have to source where the information came from in order to present
it into a court, and if we had uncovered that it had been sourced illegally then, of course, we would have to deal with that.

Q1929 Mr Sanders: That is if it formed part of the evidence.

Mr Yates: If it formed part of anything. We are dealing in supposition anyway so I cannot—

Q1930 Mr Sanders: Going back to when somebody listened to a recorded message that the original recipient had already listened to themselves, you suggested that that is not an illegal activity.

Mr Yates: No.

Q1931 Mr Sanders: But, surely, that they are listening to something without permission—in a sense, if I wanted to see something in your file that you did not want me to see but I somehow was able to see what was in that file, surely an offence has been committed for me to see what was in that file.

Mr Yates: It is not an offence under RIPA but it is a breach of privacy, which my colleague here—

Q1932 Mr Sanders: Would that not be under the human rights legislation?

Mr Williams: It is actually under the Misuse of Computer Act, which is one of the other offences that we considered, but, similar to the previous witness in terms of data protection, there are those three bits of law that cover broadly what is happening. Misuse of computer essentially is someone unlawfully gaining access to data that they should not have. The voicemail, being data, with it comes a sentence of six months and a fine, so it was considered in our case as one of the potential offences but the substantive offence that reflected the seriousness, the gravity, of what we were dealing with, was clearly the section 1 interception offence.

Q1933 Mr Sanders: So you could be fined. Has this ever been tested in law? Has anybody ever been— you might not know the answer to this, but has this ever been tested in law?

Mr Williams: You mean the misuse of a computer?

Q1934 Mr Sanders: That offence, in relation to voicemail.

Mr Williams: As far as I am aware, no. There have been cases of misuse of computer. It gets quite complex in proving what is data and that again was one of the reasons, when we liaised with the CPS, that in terms of simplicity, of presenting something clear and unambiguous before a court, section 1, interception, was something where everyone, we hoped, would readily grasp exactly what was happening and it would be clear what we were trying to prove, and it was by far the substantial offence that would give a court the greatest powers.

Q1935 Paul Farrelly: I just wanted to say that the written statement that there is no new evidence is not going to get us very far because that is a circular argument and because the Guardian’s evidence has come from what is in your files in the first place and in Motorman. The question really is, whilst we all appreciate the need for case management with limited resources, what evidence was there and whether it was acted upon, and, if not, why not. It does seem quite extraordinary to offer a justification that the chief reporter was not interviewed, nor the junior journalist who wrote the email, whom you have named as Ross Hindley, because they would have said, most likely, “No comment”, and I imagine that if that was the approach to all police interviews we would not be getting very far.

Mr Yates: That was a secondary point, Mr Farrelly. The first point was that there was no evidence to put to them and there were no reasonable grounds to question them. That was the point that both counsel for the CPS and ourselves came to the view on.

Q1936 Paul Farrelly: But there is a series of transcripts of telephone conversations.

Mr Yates: The secondary point is that, in terms of where was it going to take us in terms of proving the prosecution’s strategy at that time, that was where we chose to go then. I concede what Mr Davies has said: perhaps in 2006 it ought to have been done; I do not know, but in 2009 that is going to take us absolutely nowhere.

Q1937 Paul Farrelly: Could I ask Detective Chief Superintendent Williams what Clive Goodman and Glenn Mulcaire’s first comments were on the August date when they were hauled in front of the police? Was it “No comment”, or did they plead guilty immediately?

Mr Williams: I cannot remember what they replied to caution, but through all interviews it was “No comment”. In fact, they have never made a comment to us.

Mr Yates: As I opined in the trial.

Q1938 Paul Farrelly: We all have a problem with the words, of course, that are on your card, but we have all heard on the tele, “You may exercise your right to silence although this may effectively be held against you”, which would put the fear of God up me if I were unwilling to co-operate, but there is also the issue of interviewing people not as suspects under caution but as witnesses. It strikes me as extraordinary, given that this email existed with transcripts of telephone conversations, which was the very thing that you were investigating following the concerns that had been raised by members of the royal household, that these people and the editor and the managing editor who was authorising the payments to this person were not interviewed even as potential witnesses. Can you explain why that was the case, Chief Superintendent?

Mr Williams: After the arrest and having discovered this material, and it was not all discovered,—yes, obviously, it was discovered on the day of the search but it then had to be searched through and analysed—we did go through a process of seeking to explore who else knows about this. Now that the whole investigation was overt, as it were, people were aware of exactly what we were after, we were quite open in terms of exploring who else knows
about this. We had a list of things that we wanted to understand. We did consider getting things like legally something called a production order which would give us the authority to go in and require material. Again, we came up against what grounds did we have to ask for that material. With CPS and counsel advice we went through a process of cooperation with the lawyers representing News of the World. We quite clearly set out the range of material that we wanted to have access to, including things like an understanding of how their internal phone system worked. We asked for plans so that we could put a telephone on a desk in different offices because, as was already read out, we were open to the potential—were there other people who were involved in this conspiracy—because we were looking to explore all of that. That process went on over a number of months. The replies that we eventually got, I can quote some of them—

**Mr Yates:** Would it help if I briefly—it will take less than 30 seconds—read out for the record what we sought from the News of the World? This was obviously dealing with their lawyers on a lawyer-to-lawyer basis. We sought a copy of all documents relating to the contract for the employment of Glenn Mulcaire and his company, Nine Consultancy Ltd; any record of work completed in respect of Mr Mulcaire; how is the return of work for Mr Mulcaire’s weekly retainer confirmed; who does Mr Mulcaire report to; who does Mr Mulcaire work for; has he completed work for other editors/journalists at the News of the World; can we have a copy of any other records for work completed by Mulcaire for these editors/journalists, including subjects on whom he might have provided information; can we have the details of the service providers for the telephone systems installed in the offices where Clive Goodman works; details of the floor plan, to include the locations of telephone extensions in the office where Mr Goodman works; details of the phone used regularly by Clive Goodman, i.e., the number of the phone on his desk or any mobile issued to him by the company; and, lastly, itemised billing of the phones used regularly by Goodman, i.e., the phones on his desk or the mobile phones, for the period 1 December 2005 to 8 August 2006. As I said, the investigation was attempting to identify all persons that may be involved, including fellow conspirators, so we were not exactly ignoring it.

**Q1939 Paul Farrelly:** No. Can I ask you whether, from your memory of the investigation at the time, Detective Superintendent Williams, you got truthful and satisfactory replies to those questions from News International?

**Mr Williams:** I can tell you we got written replies. I can quote what they said: “No documents exist recording any work completed by Mr Mulcaire, monitoring of Mr Mulcaire’s return of work, reporting structure of any persons for whom Mr Mulcaire may have provided information. There is no floor plan. The telephone system installed at News Group Newspapers does not provide an itemised breakdown in respect of any particular extension number. We note with concern your assertion that you seek the telephone numbers of persons called before and after relevant unlawful calls. It is highly likely that such information will amount to confidential journalistic material.” What I would say is that they answered our questions by and large by saying, “We do not have it”. As I explained, we were exploring two routes: a production order to get this, which we have to do and go before a judge for and there is a set of criteria we need to meet. We were also looking on the financial side and I had financial investigators pursuing that side. I suppose it would be fair to say that these are solicitors representing, so they are acting within the law. It would be fair to say they are being robust, they are meeting what they need to meet in terms of their legal requirements, and indeed we did get financial material and documents relating to Goodman and Mulcaire, which indeed were part of the prosecution case, but their answer, as you have heard, to these other things was no, so when it comes to us considering everything in the round and we look at this other material, I have to consider where is this taking me in my investigation. Also, I look to what is it I am seeking to achieve, and I was very conscious, as Mr Yates has said in his opening, that this is an area of great public concern. There is always, as we have heard with the previous witness, this issue of public interest. Obviously, if I can find evidence I will pursue it; my team are very tenacious in that, but what I wanted to be clear about was to present a case that once and for all would clearly say, “This is wrong. It is criminal and you will go to prison”, because it would be the first time that this clarity had actually been produced. The other thing that I was very clear about was that, yes, this could very well be widespread potentially, and for everyone, all of us in this room and in the UK, how are we going to stop this happening again? That required very close and I must say good co-operation from all those companies involved, and I know that at the time and since then they have all brought in a raft of measures that should stop this happening again. It comes back to what Mr Yates said. In terms of what we were seeking to achieve, I understand that this might not be palatable but I have to follow the evidence and we pursued it.

**Q1940 Paul Farrelly:** And, of course, it all comes down to what the inquiry was seeking to achieve, of course.

**Mr Williams:** Exactly.

**Mr Yates:** In 2006.

**Q1941 Paul Farrelly:** And that prefaces everything, but I can imagine that you would certainly want to be tenacious, given replies like that from News International’s lawyers, particularly with respect to the existence of documentary evidence that now seems, after the fact, to be untruthful, quite plainly.

**Mr Williams:** I cannot say whether that is—their replies are official replies from the solicitors. I am in no way saying they are untruthful.
Q1942 Paul Farrelly: We know, because you found out from documentary evidence, for instance, that there are records showing authorisation of expense payments to Clive Goodman. 
Mr Williams: Oh, no, they provided those. I was obviously interested to know who else was involved in this, what other records do they hold.

Q1943 Paul Farrelly: And they were authorised by the managing editor, Stuart Kuttner. Presumably, if you wanted to examine how far-ranging the conspiracy was, you would not simply be satisfied with Clive Goodman’s or Glenn Mulcaire’s assurances that nobody else knew. You would want perhaps to go and interview the person who was authorising the payments to get his version, but that interview never took place.

Mr Williams: No, because we were going down the line of what the law requires us to do, because I was considering using the law, production orders, to get this information. Therefore, again, I admit, I was not deciding this in isolation. I had legal advice around this and therefore the process was through this cooperative route, through the lawyers appointed by News of the World, and therefore I have to ask for what I want, and they undertook that they were much willing to support the inquiry, and obviously we know what their replies are.

Q1944 Paul Farrelly: Can I just ask you which unit of the Metropolitan Police you were in? 
Mr Williams: I was then in what was the Anti-Terrorist Branch. It is now the Counter Terrorism Command.

Q1945 Paul Farrelly: Was that the unit that originally took up these inquiries? 
Mr Williams: It is, yes.

Q1946 Paul Farrelly: They were special operations? 
Mr Williams: Yes, specialist operations.

Mr Yates: Do not forget the inquiry started in terms of the Royal Family.

Q1947 Paul Farrelly: Yes, which is special operations. 
Mr Yates: And my remit is sensitive inquiries around those sorts of matters. That is why it was in that unit.

Q1948 Paul Farrelly: And decisions on the future of case management are not taken in isolation. I can imagine that, and there is a senior management team that convenes Monday, Wednesday and Friday, I understand.

Mr Williams: I would say there was extensive oversight on this case, and interest.

Q1949 Paul Farrelly: And I can imagine your Public Affairs Director—I have been in Italy; forgive me if I pronounce this wrongly—Dick Fedorcio, may have really in those meetings counselled against having a wide-ranging war against such a powerful news organisation rather than just nailing it down to a specific case involving as few people as possible.

Mr Yates: It is a nice leading question but no, that would not happen. These types of cases are not discussed at management board in that level of detail. They are then managed outside with some senior oversight; it might be someone like myself, to manage what we call a goal group. It is the common parlance. They do not get discussed in that level of detail. I was on the board at that time and I do not recall it ever being considered at that level.

Q1950 Paul Farrelly: Again to Mr Williams, can I ask you why you telescoped the period of the charges? Originally it was from 1 January 2005 to June 2006, and then when it came to court there was an amendment. You will be aware of why, even though it was the DPP and the counsel that were leading the case at that stage. It was telescoped from 1 January 2005, the period of conspiracy, to 1 November 2005, but that may have been in case management terms. It would be interesting to have your comments on why that happened, but clearly that would not in itself mean that there was no evidence on your part, whether you pursued it or not, that there was criminal activity before that time. One charge, count 2, which laid on the file, for instance, alleged that between 1 February 2005 and 6 April 2005 the phone of Helen Asprey, one of the royal staff, was accessed. Is that correct? Is there evidence of criminal activity before 1 November, and why was the period telescoped?

Mr Yates: I will explain in detail, and we are grateful that you gave us some foresight of that question because we can certainly help with a little diagram which I will pass round. It really says that what we were trying to prove was that there was a conspiracy between Mulcaire and Goodman and the period of time that that took place. We have got a little chart—here’s one we made earlier—which will help you, and Phil will take you through it.

Mr Williams: Can I just check—where you say it has been telescoped, are you referring to having read—

Q1951 Paul Farrelly: It was amended in court. 
Mr Williams: The indictment?

Q1952 Paul Farrelly: Yes, the indictment was amended. 
Mr Williams: It was amended, yes. Strictly speaking, the CPS and counsel actually finalised the indictment. It went through a number of different iterations. I think the straightforward answer is that it was changed because, having gone to a guilty plea, Mr Perry was presenting the evidence that specifically related to two bits—the conspiracy, which was between Clive Goodman and Glenn Mulcaire, which was predominantly around the royal household members, and, as he said in his opening, that essentially was over the period November to June. The only reason that we had evidence relating to Helen Asprey going back to February is that, when we were doing the initial inquiries, that was how we first came across that there was someone else other than Goodman, which led us into Mulcaire. In terms of that period, if you look on the diagram, and I am just saying this is the
best evidence we presented in court, the period from February to October is really a period where Mulcaire, using his office number, was doing potential interception. Our case was first covered around the conspiracy and working together and the best evidence of that starts in November. It was purely changed to reflect what evidence we were presenting to the court.

Q1953 Paul Farrelly: One of the mysteries of this case is, on counts 16–20 which involved five people who are not royals and in which Clive Goodman was not involved, to whom Mulcaire was passing these intercepts. From your inquiries, given that there were five guilty pleas on these separate offences, do you have evidence or grounds for suspicion that Mulcaire was passing these intercepts in those cases to other journalists at *News of the World*?

Mr Williams: We have no evidence as to who he was doing those inquiries for and whether anything ever came of it. Again, in terms of informing you, all I can point to is the mitigation factors presented by his own counsel, which was that he may have been working on those people but there were no stories forthcoming and he never got anything as a result of it, which is what was put forward pre-sentencing.

Q1954 Paul Farrelly: So you did not pursue that any further?

Mr Williams: There was nothing that we found that presented it, but what I would argue is that I was pursuing it in the things that I was asking of *News of the World* because I was asking, “What do your records show at the other end? Who is it that Mulcaire is working for? Which journalist is he working for? Which editors? What stories have come out of his work?”, so I was asking for all of that.

Q1955 Paul Farrelly: In your file of other evidence, unused evidence, do you have any, for instance, tape recordings of Glenn Mulcaire talking to other journalists at *News of the World* who he refers to by a name but the identity is not immediately clear?

Mr Williams: I have no evidence that he is talking to anyone at the *News of the World*.

Q1956 Paul Farrelly: Do you have any tape recordings?

Mr Williams: There are tape recordings, yes.

Q1957 Paul Farrelly: Where he may have been talking to other journalists at the *News of the World*?

Mr Williams: I do not know.

Q1958 Paul Farrelly: But there are tape recordings in the file?

Mr Williams: They are on tape recordings.

Q1959 Rosemary McKenna: I am sorry but I have to get a flight soon, so, just very quickly, is it normal practice to write to organisations with questions?

Mr Williams: It is, yes.

Mr Yates: Certainly when it is talking about potentially going into confidential journalist material, yes.

Q1960 Rosemary McKenna: It would not be in the first instance an interview with, say, the editor or the managing editor?

Mr Yates: No. Looking at the range of material we are after, it is perfectly normal practice for it to be on a lawyer-to-lawyer basis or investigation team-to-lawyer basis, particularly around the sensitivities with confidential journalist material where the first thing the editor would say would be, “Please speak to our lawyer”.

Q1961 Rosemary McKenna: It just seems to me most unusual that you would not just go and speak to the managing editor or the editor and try and establish, you know,—it does give them some time to consider their answers, does it not, if you write to them?

Mr Yates: We treat each case on its merits and this was a case where it would certainly be on a lawyer-to-lawyer basis.

Q1962 Rosemary McKenna: You did not consider speaking to the individual who actually signed off the payments? It was huge sums of money they were being paid. It was not considered that you would speak to the person actually authorising those payments?

Mr Williams: Which payments were these?

Q1963 Rosemary McKenna: To Mulcaire.

Mr Williams: What? His contract and—?

Q1964 Rosemary McKenna: The total amount of money that was paid to him, all of that.

Mr Williams: As I understand it, in terms of the cash payments they had a practice of it was Goodman who was making the payments.

Q1965 Rosemary McKenna: Yes, he made it a habit. That was signed off.

Mr Williams: He would be saying, “I have got this story. I am paying £500”, as it was, “to this person, using a pseudonym”.

Q1966 Rosemary McKenna: Yes, but the overall amount of money that was being paid to this person was absolutely enormous. Do you not think there would be various speaking to more senior people about the amount of money that was being paid?

Mr Williams: Yes, but, again, what I needed to know was the answer to a lot of the questions I put in to them: exactly who was he working for, who was he working to, who were the editors that he was working to, so that then, when you go to speak to someone, you have a basis for a conversation and hopefully you have some documents that you can put to them.

Q1967 Rosemary McKenna: You see, I am getting the impression that you quite happily accepted that Goodman was taking the rap, if you like, and although he was making no comment you were charging him, that he was the one who was saying, “All right, I’ll do the time”.

Q1968 Rosemary McKenna: Well, it seems to go a bit against the general practice, doesn’t it?

Mr Williams: It was—that is recorded in the file. It just seems to me most unusual that you would not just go and speak to the managing editor or the editor and try and establish, you know,”—it gives them some time to consider their answers, does it not, if you write to them?”
Mr Williams: To be fair, we did not actually know that until the court case, so all the work that we were doing beforehand, all those decisions around what is it we want to pursue and are we going to speak to anyone about that, was entirely before we knew what was going to happen. In many ways, personally speaking, although it sounds odd, I actually wish they had gone not guilty because that truly would have presented all the evidence and it would have been a test of the legislation. We worked out with counsel and CPS a package and a range of victims here whereby there was some evidence that was excellent in terms of absolutely categorically proving that there had been an interception, and then there was other, less strong evidence, but by inference you could say what was happening, so all of this package stuck together. In a way, this was the first time this legislation had been tested and we were hoping to use this as case law. The fact that they pleaded guilty meant that none of the evidence was truly tested. None of this came out in argument. In court both defendants would have had the opportunity to give their explanation, and they may well have said something and we may have been a lot wiser or better informed.

Q1968 Rosemary McKenna: Yes, which suited the News of the World, did it not?
Mr Williams: Sorry, the last bit?

Q1969 Rosemary McKenna: It suited the organisation that there is not case law, that all of the evidence did not come out.
Mr Williams: That is what happened but I cannot alter that fact. What I would come back to is that it was absolutely instrumental in making it clear in everyone’s mind that this is illegal; it is criminal and you will go to prison. That is what it has established and there has been a whole change in the practices in terms of how voicemail is managed.

Q1970 Paul Farrelly: Just to complete what I was trying to get at beforehand in terms of other people, the defence so far has been the one rotten apple defence and nobody else knew, but there is this mystery of who else the investigation would have been dealing with on non-royal stories. You say from your evidence that there are no other journalists where you might have reasonable suspicion from the evidence you have collected. In the evidence the court ordered you to hand over to help them with the Gordon Taylor civil case, as far as you are aware there would be no evidence there that might give a reasonable suspicion that other journalists in the News of the World were involved?
Mr Williams: There is no evidence that we can go forward with in terms of a criminal—

Q1971 Paul Farrelly: No, that is not the question, there is no evidence. Whether or not you went forward or chose not to go forward or decided that you would not go forward, is there any evidence where you might as the police have reasonable suspicion that other journalists within News of the World on these particular charges were dealing with Glenn Mulcaire and seeking transcripts of telephone conversations that were intercepted in the way that royal staff’s had been?

Mr Yates: I think it is fair to say that there was a whole range of documents seized from Mulcaire’s house which displayed the range of activity he had been up to as a private investigator. There could have been some blagging, there could have been all sorts of nefarious means used to get that information. There is no evidence to take any further. We were concentrating in 2006 on section 1 of RIPA and that is what we were looking at.

Q1972 Paul Farrelly: But that is not my question.
Mr Yates: As I have said previously, you would expect a private investigator to have a range of information and material to do with his role. We may not always agree with it, but that is what they do and there is employment out there for them. As to how they came by that information, there was nothing to take us any further forward from an investigation point of view.

Q1973 Paul Farrelly: Finally, there is one particular point. From the records and evidence that went into the civil case pursued by Gordon Taylor there could be no inference that Glenn Mulcaire was dealing with any other journalists at News of the World?
Mr Yates: Of course there would be. There was bound to be.
Mr Williams: He was obviously working for someone and I do not know who, and there is nothing in that material that points to who.
Mr Yates: And not necessarily in an illegal way. It is his job.

Q1974 Paul Farrelly: Just to finish this off, in this very strident editorial on 12 July after the original Guardian—and, remember, we already know at least one case where Goodman himself is directly accessing, using techniques that Mulcaire has passed over to him—the News of the World says the following: “So let us be clear. Neither the police nor our own internal investigations have found any evidence for allegations that News of the World journalists have accessed voicemails of any individuals”. Strictly speaking, given what we know about Goodman, that is not true, is it? If your unused evidence were to find tape recordings, for example, of conversations between Mulcaire and other people whom you did not pursue but may very well be journalists, then that would be doubly untrue, would it not?
Mr Williams: From what you are asking, there is nothing there that points me to any other journalists at the News of the World. The only person, if you like, unfortunately, is Goodman quite clearly taking part in this activity. Clearly, Mulcaire was under contract to the News of the World and doing a whole range of things; hence the question I asked News of the World “What is he doing for you?”. They say they have no records, so I cannot go any further. Equally, frankly, Mulcaire was not that organised. In my view he was not organised at all in how he was doing this. Everything was written. It was like a
flurry of papers everywhere, scrap notes and everything, so to make head or tail of it there was—and I am merely making the inference—no organised list in terms of a roller deck with names and addresses of people that you could go through and say, “Ah, these are the people who he is working for”. It just did not exist.

Q1975 Paul Farrelly: Could I just reasonably ask you to have a look at the unused evidence, Assistant Commissioner Yates, to see whether you might infer from what you have not used, because it is germane to this inquiry, whether Mulcaire was dealing with other journalists apart from Goodman, for instance, tape recording, where there was a journalist who was apparently a News of the World journalist by the first name of Ryan?

Mr Yates: I am quite happy to concede that he had contact with other journalists. That is what he did. That is his job. What we focus our minds on is evidence.

Q1976 Paul Farrelly: In relation to this sort of activity.

Mr Yates: In relation to the activity that we took both to court for in 2006. It is not our job to look beyond that. We can only follow the evidence, so I am happy to concede that he did. Of course he did. I have said so on several occasions.

Q1977 Paul Farrelly: I have just got one final line of inquiry. We have debated what constituted a review and what did not constitute a review, but in your statement, Assistant Commissioner, as you said, you had been asked to establish the facts around the inquiry, and in the statement that you made you said that there was clear evidence that people had been the subject of tapping they were all contacted by the police. Was that true in the case of Jo Armstrong?

Mr Yates: Sorry; I do not know who Jo Armstrong is.

Q1978 Paul Farrelly: She is the lady who is the legal adviser of the PFA whose phone was hacked into as well as Gordon Taylor’s.

Mr Yates: I suppose I have heard her name, by the way. I do not know the detail of that but in terms of the people about whom we had evidence that they had been hacked into under section 1 of RIPA and we took to court on, my understanding is that we contacted all those people. I do not know whether her phone was hacked into or whether there was a suspicion her phone was hacked into. That is an entirely different—

Q1979 Paul Farrelly: I think she is one of the ten where we have established that their phones had been hacked into.

Mr Yates: I will have to look into that and come back to you.

Q1980 Paul Farrelly: If you would, please.

Mr Yates: Presumably she knows now.

Paul Farrelly: I think she already knows. She is named.

Chairman: She is JA.

Q1981 Paul Farrelly: If you could come back to us on that particularly, please.

Mr Yates: Yes, I will.

Q1982 Paul Farrelly: There has been some controversy about what the evidence shows about how many people’s phones were hacked into. I think we have got to eight or ten so far, and Andy Hayman has said a handful and somebody said fewer than 20. Detective Chief Superintendent, do you have a feel for what your inquiry threw up in terms of how many people’s phones were actually hacked into?

Mr Williams: Our challenge has been the technical side, which is going back to the companies to understand what has gone on in terms of the voicemails, and this goes into the technical side. I think some of it may have been explained in the submission, but what we were relying on was each individual company’s internal engineering software to tell us what is happening in the voicemail box, and by and large that engineering software is not good enough to tell us because it is their own administration, so the only people that we can actually prove—and that was looking at our potential list of victims—is people that we have done a significant amount of work on in terms of frequency, duration of calls and what the individual companies can tell us, and in one instance the phone company had to write some new software to be able to do some of the analysis. I am being very cautious around knowing who is a victim of what, because he clearly has got an interest in a range of people which, as we have said, is his job. He has this ability but we do not know definitively to what extent he has used that and we are entirely reliant on the phone companies being able to look at their internal data and come back to us. I suppose the honest answer is we do not know, and if we were saying to people, “The honest answer is we do not know”, some of these people that were part of our case, it is an inference that they may have been a victim of this.

Q1983 Paul Farrelly: But we have got documentary evidence, which comes from your inquiry because it was released to Gordon Taylor’s case, that shows Jo Armstrong of the Professional Footballers’ Association, for instance, being a victim, as was Gordon Taylor. It is quite worrying to hear that the name was not being recognised and it is only one of a few names.

Mr Yates: It would have formed of the indictment. There have been 600 or 700 names bandied around, so I am not able to remember every one of them.

Q1984 Paul Farrelly: The issue was germane to the statement that you made, Assistant Commissioner, where you said you had been asked to establish the
facts. You made a statement that the people who had been subject to tapping were all contacted by the police. That does not seem to be the case.

Mr Yates: Yes, it is.

Q1985 Paul Farrelly: And then later on in the evening there is a corrective statement put out by Scotland Yard clarifying that, saying, “The process of contacting people is currently under way and we expect this to take some time to complete”.

Mr Yates: If you go to the end of the statement I think I make it clear that there could be people that fell through the gap and that was my concern, had we been sensible, reasonable and diligent, I think I used those words, in terms of contacting everybody, and that is what I undertook to do, so I make the assumption that Mrs Armstrong was one of those.

Q1986 Paul Farrelly: She was only one of eight or ten people.

Mr Yates: Okay. Your point is made.

Q1987 Paul Farrelly: Do you feel now that if there are further revelations and there is further public concern, and I think there are three categories of people—A, definitely hacked; B, suspicions but through case management we do not pursue them; C, targeted, i.e., if people do bring concerns to you and the issue stays live, there might be an argument for taking a fresh look at the case?

Mr Yates: We have always said and I have always said that if new evidence is presented we would, of course, consider it. No new evidence has been presented. It has been now two months since that article and no new evidence has come to light. Also, there has got to be a sense of what can you do with that material now, three years later, when there is no technical data. There have to be some sensible, pragmatic decisions taken around these things on occasion. If new evidence comes to light we have always said we would consider it, but no new evidence has come to light.

Q1988 Paul Farrelly: That is a circular argument, as we established when I opened my questions, but anyway, if further complaints are made, would you consider it?

Mr Yates: If there are further complaints with viable evidence that we can pursue, then of course we would consider it.

Q1989 Mr Watson: I do not envy you. It has got everything, this case, has it not? Competition, celebrities, Royals, big newspapers, you always seem to get them, and that must temper the way you look at this case. You have to proceed with caution. You said you asked a number of detailed questions of the News International lawyers when you were investigating the case. Did they tell you when they first had a relationship with Mulcaire, what year that was? I think you asked for contracts of employment and the year he started working for News International. Did they tell you that?

Mr Williams: I am now going totally off the top of my head, so be careful. In relation to Mulcaire, yes, I believe they did supply the information. We obviously found a contract and in relation to him—

Q1990 Mr Watson: It would be great if you could clarify that perhaps in writing afterwards. When we interviewed Tom Crone, the lawyer, and the editor, there was a bit of confusion about the year that Mulcaire started. I think they said he started in the late nineties. When you say there were a few people you suspected had had their phone hacked, did that include the royal princes?

Mr Yates: No, to my knowledge.

Mr Williams: Say the question again, sorry.

Q1991 Mr Watson: Did you suspect that the royal princes had had their phones hacked?

Mr Williams: In terms of them ringing their voicemails?

Q1992 Mr Watson: What did you suspect had happened to the royal princes’ phones?

Mr Williams: Yes.

Q1993 Mr Watson: By Goodman and Mulcaire?

Mr Williams: Yes.

Q1994 Mr Watson: And presumably you did not want to drag the royal princes into court, so you chose not to pursue that route?

Mr Williams: The criminality was through their private secretaries, so they are listening to their private secretaries’ voicemails which has messages.

Q1995 Mr Watson: From the princes?

Mr Williams: And other people.

Q1996 Mr Watson: And did you suspect that they had listened to the mobile phones of the royal princes?

Mr Williams: Yes, I think they may well have done.

Q1997 Mr Watson: I do not know how many people you have put away in jail over the years but it must run into hundreds. Does it run into hundreds?

Mr Williams: Yes.

Q1998 Mr Watson: Twenty-eight years yesterday.

Q1999 Mr Watson: When people go to jail they do not just lose their liberty; they lose their livelihoods, they lose their jobs, they are guilty of gross misconduct. Is there anyone that you have ever put away that you know has received a payoff from their employer, having received a custodial sentence and lost their job?

Mr Williams: I personally? What do you mean? Do you mean because—

Q1999 Mr Watson: They have received a payoff by their employer after they lost their job when they went to jail.

Mr Williams: What, legally?
Q2000 Mr Watson: Yes.
Mr Williams: Are you alluding to the fact that Mulcaire—
Mr Yates: I am not sure that we should comment on this.
Mr Williams: I suppose the short answer is no.
Mr Yates: And we would not know anyway.
Mr Williams: And I would not know anyway.

Q2001 Mr Watson: Mulcaire and Goodman got a payoff from News International.
Mr Williams: Did they?

Q2002 Mr Watson: Yes. News International will not disclose to us what they—
Mr Yates: It is not part of our business.

Q2003 Mr Watson: They say it is personal. Do you not think they have been bought off?
Mr Yates: It is not part of our business.

Q2004 Mr Watson: But is it not your business to investigate whether they have had their silence bought?
Mr Yates: Our business is to follow the evidence and put before the court the best evidence we can in terms of proving a case that we are investigating.

Q2005 Mr Watson: Does it not look suspicious that Mulcaire and Goodman, there they go, they have been hacking the royal family’s phones, they are guilty of a serious criminal offence, they have undermined their own reputations and that of their employers. Their employers then give them an undisclosed payoff. Their employers are not prepared to publicly admit how much that payoff was for and no-one has gone back to them and asked them what that financial arrangement was about?
Mr Yates: It is just not our business, Mr Watson. It is just not our business.

Q2006 Mr Watson: It must concern you though.
Mr Yates: I am pretty certain the lawyers of News International have been careful about how they have phrased or shaped that contract, whatever it was, but it is not our business. I am sure you have asked them as well.
Mr Watson: Okay. Those are all my questions, thanks.

Q2007 Janet Anderson: I wonder if I could take you back to the various counts in the court case, which were 1–20. In 1–15 it was clear that Goodman and Mulcaire had acted together and charges 16–20, and the judge made a point of differentiating between the two groups, where only Mulcaire was charged, but the judge did say, “As to counts 16 to 20, you had not dealt with Goodman but with others at News International. You had not been paid anything because no stories had resulted”. When you have been questioned by other members of the Committee about why no-one else was charged in relation to counts 16–20, I think you said there was no evidence, you had no further evidence about who Mulcaire was working for, who he was working to, but there was actually a contract which you will be aware of, signed by Greg Miskiw. He is the former news editor. He is the one who is quoted in his book as saying, “That is what we do; we go out and destroy other people’s lives”, and he had a contract offering Paul Williams, which is a known pseudonym of Glenn Mulcaire, £7,000 for delivery of a Gordon Taylor story. That contract was dated 4 February 2005. Despite that you did not feel the need to question Mr Miskiw. Is that because once the decision had been taken to truncate the period during which the offenses were going to be considered that particular contract fell out of that period? It was dated 4 February 2005 and the prosecution’s original ambit was from 1 January 2005, so it would have fallen within that ambit, but once it was decided, by agreement with the prosecution and the defence, to shorten that period, it then fell outside. Is that one of the reasons why you did not feel able to question Greg Miskiw?
Mr Williams: I think the reason the ambit of the prosecution fell into the January/February of 2005 was because of the phone data on Helen Asprey’s phone. That is what showed us potentially how far back this activity might have been going on. The only reason it was not included was because we needed to show a conspiracy, i.e., the two men working jointly together, and the only evidence we had from that was from when those victims first alerted us in November/December and we began the process of looking at it. In fact, we had a proactive phase around those particular victims where we were attempting with them to monitor what was going on, and through the work that we did we were able to show, as Mr Perry showed in his statement, the behaviour, the interaction, between Mulcaire and Goodman in the way that one would ring the other and one would ring one of our victims, then another would ring a customer service, then they would text, so that interaction was the strength of our case. It was our evidence to prove the conspiracy. Anything before November going back to January did not show that conspiracy, so it is merely, I would say, Mr Perry being neat and tidy and saying, “Well, strictly speaking, the best evidence and all we can prove in terms of a conspiracy is from November on”.

Q2008 Janet Anderson: Even though there was this contract offering £7,000 for delivery of a Gordon Taylor story, the prosecution apparently in the trial did not for some reason link that to instances of phone tapping. How did they think Mulcaire was going to get information to provide £7,000 of story?
Mr Williams: We, the prosecution, counsel, put in that document as evidence to show that Mulcaire had been working for News of the world right back there, but again, and it came up because it was challenged by Mr Perry in his book, Mulcaire’s counsel, what they were challenging was that there was no evidence to say what he was being paid for and there could be no inference that he was being paid for interception, so I believe it was a matter of fact and record that, yes, at that moment in time he appeared to have been
paid for a story about Gordon Taylor, but there could be no inference as to how he had got the information, in particular in terms of interception.

Q2009 Janet Anderson: But it did show you that there was a relationship between Mulcaire and Miskiw.
Mr Williams: Yes.

Q2010 Janet Anderson: And yet you still did not feel it might be a good idea to interview Greg Miskiw?
Mr Williams: This comes back to, yes, it is a piece of paper that shows that, but what was it for? Was he working for Mr Miskiw? What records are there? In addition to that, what else of substance is there in the company, because that was back in 2005, when we know from the technical point of view that we are simply not going to have the data in our case to go to prove anything? So it does go into the round, but more specifically around what our case is for we had this list of questions for News of the World which we did put in, and indeed, if there was any information that they did have and they produced to us, then it would have been considered, but what we came back with was a flat, “No, there is nothing held in this company that will answer all your questions”.

Q2011 Janet Anderson: Do you think the News of the World told you the truth?
Mr Williams: I do not know because what I am being very conscious of is this a firm of solicitors. I have absolutely no reason to doubt their reputation, and very conscious of is this is a firm of solicitors. I have had to have something very substantive to be a penalty for that?

Q2012 Janet Anderson: If it turned out that the News of the World had not told you the truth would there be a penalty for that?
Mr Yates: It would have enabled us then to get a production order.

Q2013 Janet Anderson: But it would be a reasonable assumption, would it not, if Mr Miskiw had made this kind of offer to Glenn Mulcaire once, that he had probably done it more than once?
Mr Yates: I do not know.

Mr Yates: The key around all this would be good, solid self-regulation. With any corrupt administration I have been involved in it is all about fear of detection and fear of being caught and having good people on your tail all the time. There are several models around banks in terms of what records they must keep, which may be suitable in this area; I do not know. It is certainly not our area of expertise. All we would like is the records being kept and being readily retrievable, be it phone data, be it banking data, be it other data, to make our job easier, and there is lots of regulation around that.

Q2014 Alan Keen: We were peacefully finishing our inquiry before the summer recess until we got an interesting article published in the Guardian. Since then it has been so frustrating. We have hardly had an answer and this afternoon, I am not sure whether you were here when the Information Commissioner—
Mr Yates: The last ten minutes.

Q2015 Alan Keen: — in answering what some of my colleagues asked, “Why did you not pursue this issue further”, said, “I do not know. We think the PCC should do it. It is nothing to do with us”. You said a short while ago in your interrogation of two people who pleaded guilty they did not say one word to you. We did a bit better than you when we had the editors and managing editor in front of us. They looked at each other and said, “I don’t know anything about it”. What is missing? Normal companies have financial records that can be traced. It appears that newspapers have almost nothing. It is no wonder you cannot go further and investigate it. Would you give us your idea as to what we could recommend so that in the future you would have something substantial to look into, some facts to look at, some records? There appears to be none.

Mr Yates: The key around all this would be good, solid self-regulation. With any corrupt administration I have been involved in it is all about fear of detection and fear of being caught and having good people on your tail all the time. There are several models around banks in terms of what records they must keep, which may be suitable in this area; I do not know. It is certainly not our area of expertise. All we would like is the records being kept and being readily retrievable, be it phone data, be it banking data, be it other data, to make our job easier, and there is lots of regulation around that.

Q2016 Alan Keen: We learn most of what we know about the police from watching TV dramas, admittedly. I used to believe the police had a slush fund out of which you paid informants. Is that true, and then over the years did you have to have some proof? Did people have to sign documents to show where the money was going, or is that all drama and not real?
Mr Yates: Yes, of course there is an informants’ fund, as you have read in the last few months, and, yes, through mistakes and otherwise we have learned to regulate ourselves in a slightly more formal way, so there are lots of pretty strict regulations about how these funds are paid and who they are paid with.

Q2017 Alan Keen: Do you agree with me that it appears that within newspaper organisations there are not the same sorts of strict procedures that you have adopted?
Mr Yates: I have no idea how they operate.

Q2018 Alan Keen: You have never seen any evidence of any strict procedures for authorising expenditure?
Mr Yates: No.
Q2019 Alan Keen: We could not find that out from editors and managing editors.

Mr Yates: Again, it is not our bailiwick and I have got no idea how they operate.

Q2020 Alan Keen: Listening to you, it would be hard for you to disagree with me when I say that to help you in the future we really need to recommend that newspapers have to keep proper financial records. I have always had the impression that the owners, the proprietors, distance themselves comfortably away from what goes on at the dirty end of newspapers. Again, to help you in the future, what would you like us to recommend as far as giving you records that you can actually look at?

Mr Yates: I come back to it: good self-regulation is clearly the starting point, a permanent fear of being caught, and a fear of detection has to be there all the time, and sentences that are comparable with the offences committed. With the Operation Glade I think they got conditional discharges, did they not? I think all the defendants got conditional discharges in that case. That is hardly sending out a signal that this is serious and important and a serious crime. It is those issues that are the key ones for us.

Q2021 Adam Price: I think some of us may still be struggling here a bit. Just briefly touching again on this issue of those parts of the indictment, counts 16–20, the hacking of the phones of Max Clifford, Andrew Skylet, Gordon Taylor, Elle Macpherson, Glenn Mulcaire was found guilty of those charges and so whether or not a story appeared was immaterial; a criminal offence had occurred. We have a contract from News of the World in relation to Gordon Taylor, We have a transcript in relation to Gordon Taylor, count number 18. The judge in the trial accepted that Clive Goodman was nothing to do with it because Glenn Mulcaire dealt with others at News International, so even the judge at the trial came to the conclusion that others at News International were involved in relation to, amongst other things, the Gordon Taylor hacking, and yet you are saying you did not even have enough evidence to go and interview Greg Miskiw or Neville Thurbeck. I find that extraordinary. Maybe it is not your fault. Maybe it is our fault, as Alan is suggesting, but there is a problem there surely.

Mr Yates: We can only deal with the evidence.

Q2022 Adam Price: A contract.

Mr Yates: Mulcaire had a lot of dealing with lots of journalists. We are not dealing with nefarious dealings of breaches of privacy and all those issues. We are dealing with phone hacking. That is what we are looking at and the evidence around that. It is circular. We have been going round this circle several times. We cannot go fishing somewhere for offences that may have been committed on which we have no reasonable grounds whatsoever. He is a private investigator. He deals with tittle-tattle. He deals with information about people in public life. That is what they do. We may not approve of it, we may have a view on it, but that is not evidence and section 1 of RIPA was what we were dealing with.

Q2023 Adam Price: Does not even the fact that a pseudonym was used in the contract set alarm bells off in your mind that here are potentially the elements of an attempt to prevent the information getting out, that there were dodgy dealings going on here and therefore we had better cover our backs?

Mr Yates: We deal with pseudonyms to protect sources. It is trade craft, if you want to call it that. That is what happens. It is not evidence of an offence.

Q2024 Adam Price: Now I am slightly worried. You said earlier, Mr Williams, that if only you had been clearer earlier on what the strategy of the accused was going to be or how they were going to plead—I read Mr Kelsey-Fry who was appearing for Mr Goodman. It was interesting that a leading counsel, a QC, was engaged for him, at considerable cost, I am sure, but he goes on to say that yes, he did not answer questions at interview but within days of being arrested he was offering to admit his guilt in court. That seems slightly out of kilter with what you were suggesting, that within days of his arrest—it is extraordinary as well, is it not, that somebody says that. It is being arrested he was offering to admit his guilt in court. That seems slightly out of kilter with what you were suggesting, that within days of his arrest—it is extraordinary as well, is it not, that somebody says nothing and then within days apparently they are pleading guilty?

Mr Williams: My objection is, if, just prior to when they formally appear and the indictment would be read out, there was an indication and they wanted it to be called an early indication, I do not remember at all it being around there because we were building a case on the basis that it would be a hard-fought battle and we wanted a strong case. It was only towards the approaching date that there was this potential indication but we would never have made the assumption that that was what was going to happen. We would always wait until the day.

Q2025 Adam Price: Mr Justice Gross goes on to say himself, the judge in the case, “I shall approach it on the basis that Mr Goodman pleaded guilty at the first available opportunity”, so he seemed to accept that. It suggests that somebody brought the shutters down. I am not pointing the finger of blame at you here. Mr Goodman said nothing to you and he pleaded guilty, and, of course, as you yourself said, that prevented you from shining a stronger light on all aspects of this case.

Mr Williams: All I am reflecting is that it would have been interesting for the case to have been contested in that all the evidence would have been tested. Both counsel would have had the opportunity to test in the ins and outs of the evidence, perhaps in similar opportunities to yourselves, the defendants may or may not have decided to say something, in which case we would have had the opportunity to really get in and test it and flag up some of these strange anomalies and we might have got answers to some of these questions and we still might have been
unhappy in terms of some of them, but that opportunity did not happen. They pleaded guilty. They said, “Yes, we have done that.”

**Mr Yates:** And it is quite normal to have, in the adversarial system we operate, the prosecution putting the case beyond reasonable doubt. We would show our case to the defence and then the defendant would take legal advice and would see the benefits on an overwhelming case of a guilty plea and his solicitor would advise him in that way. It is not unusual at all.

**Q2026 Philip Davies:** No, but, just to clarify this, it was actually said by his lawyer that Mr Goodman in fact offered to plead guilty at the magistrates court within days of his arrest. That is not what you are saying, Mr Williams.

**Mr Williams:** I must admit I do not remember that. Let us say that was said. It would never have been taken on face value. We would have been preparing for a full case. Hence, as you can see from the things that we asked for, in particular of News of the World, we were preparing this case on the basis that we would need a robust case, and indeed was there anything else?

**Mr Yates:** In a case like this, before the man is actually indicted before the crown court he can put a plea in and you are suspecting it is always going to be not guilty and you would always prepare accordingly.

**Q2027 Adam Price:** So you do not accept that he offered to plead guilty at the magistrates’ court?

**Mr Yates:** He may well have done. That is part of his mitigation; he may well have done, but you would never accept that as a plea.

**Q2028 Adam Price:** Can you just clear up one thing in relation to the now famous Neville Thurlbeck? Did you check how many Nevilles were working at the News of the World at the time?

**Mr Yates:** No.

**Q2029 Adam Price:** I think it probably is one but we will make inquiries. The CPS told Nick Davies, I think it was, that they were not given that email. You must have seen the story.

**Mr Yates:** I have seen the story, yes. What the DPP says is that he did not have that in his material possession when he was conducting his own review. What he also conceded later was that the prosecution counsel in the Goodman/Mulcaire case had reviewed that material during the prosecution of Goodman and Mulcaire. It was quite a semantic point but I understand that he did not have that in his material possession when he was doing his review in July. He then asked counsel to consider it again, which he did do, and you have seen the letter about what his view on that was.

**Adam Price:** Finally, just to clarify one of Tom Watson’s earlier questions, just for me to be absolutely clear here, we know that members of the royal household, the staff of the royal family, their phones were hacked into and that was the substance of the indictment against Mulcaire and Goodman.

Did you have any information which led you to believe that possibly Prince Harry’s and Prince William’s phones themselves had been targeted or had been accessed?

**Q2030 Paul Farrelly:** You answered yes to that, I think.

**Mr Williams:** Yes, through—

**Q2031 Paul Farrelly:** No, you said yes individually, I think.

**Mr Yates:** No.

**Q2032 Adam Price:** Their phones themselves, not their messages but messages on their phones.

**Mr Williams:** Oh, I see, yes. Their voicemail.

**Mr Yates:** We were talking about their voicemails.

**Q2033 Adam Price:** Yes, you are right, the voicemail on their own phones.

**Mr Yates:** Their messages to people that worked for them in their outer office. That is how their voicemails were accessed.

**Q2034 Adam Price:** Because there was a particular story which we referred to in the Committee which was a message left on Prince William’s or Prince Harry’s phone which formed the basis for a story by Clive Goodman and the now famous Neville Thurlbeck, and that could only have been done on the basis that somebody had hacked their phones themselves or their voicemail systems, not the voicemails of the royal staff but the princes’ phones themselves.

**Mr Williams:** I am not aware of that particular story. I know the stories that first brought it to attention were about messages that had been left on the private secretaries’ phones, and that is what sparked off the inquiry.

**Q2035 Adam Price:** We are aware of that but were the princes’ own phone messages to each other? Do you have any information which led you to believe that that happened?

**Mr Yates:** Not to my knowledge.

**Mr Williams:** Yes, other people and the princes, their voicemails may well have been intercepted.

**Q2036 Adam Price:** So the princes’ voicemails may have been intercepted?

**Mr Williams:** Yes.

**Q2037 Paul Farrelly:** On their own phones?

**Mr Williams:** On their own phones.

**Q2038 Chairman:** When you say “may”—

**Mr Yates:** We would never have been able to prove it.

**Q2039 Chairman:** Anybody may have been, but do you have actual—?
Mr Yates: It is the letter and the open letter bit.

Mr Williams: It is whether you can prove it.

Q2040 Adam Price: So this is solid information which has led you to believe that quite possibly or probably their own phones were intercepted as well?

Mr Williams: Yes.

Q2041 Mr Hall: One of the things that really concerned me about the very swift response from the Metropolitan Police that there was no new evidence in this case and therefore nothing further to investigate was that it came out very quickly, and yet right at the start of the session you explained the amount of time that you put in during the day to reach that conclusion. Would it have been wiser on your part to have perhaps deliberated a little bit further before making the statement?

Mr Yates: We are sort of damned if we do and damned if we do not in these cases. If we are tardy we get criticised and if we are too quick we also get criticised. With Phil and others around the team we sat down and looked at what Mr Davies was saying in his article. We understood the genesis of it in terms of this was three stories, three old stories, conflated into one. We considered whether there was anything new within it and there was not, and we came to a view fairly quickly. Far be it from me to say it, but events have proved that that was probably the right decision to reach. I think we considered the DPP's and senior counsel's view on that.

Q2042 Mr Hall: What has emerged this afternoon is that this investigation and the prosecution was a very narrow and very fixed investigation, and it did not go further because you were not permitted to do fishing exercises with the News of the World to see if this was a widespread practice, rather than with the information you had to show if you had a particular case in certain circumstances. I am thinking about the request you made to the News of the World for information and their response, which you say is a response but did not give you any more information or led you any further forward. Is that a fair assessment?

Mr Yates: We could only follow the evidence. To go fishing is neither appropriate, lawful or ethical, we can only follow the evidence, and that is what we did in this case.

Q2043 Mr Hall: At one point I thought Detective Superintendent Williams was actually going to explain how the money worked and then the questionner led you further away. Detective Superintendent, how was this money actually paid to Goodman and how was it paid to Mulcaire?

Mr Williams: Mulcaire had a fixed contract, so that went into his bank, and then he received individual payments from Goodman. Goodman, according to the material that News of the World gave us, would claim, for example, £500 and the records would show, which is what we got from News of the World, that it was Goodman to pay the pseudonym they were using for Mulcaire (and presumably Goodman) “Pay Mulcaire”. That amount of money over the period totalled £12,300, and because it was believed to be in relation to Mulcaire’s activities, the subject of our case, that was an amount we could say beyond reasonable doubt was as a result of this activity and therefore it became the subject of a confiscation order, which the judge granted, and it was not opposed.

Q2044 Mr Hall: If I can be clear, Mulcaire had a contract direct with the News of the World which they paid into his bank account, and he received subsequent amounts of money—

Mr Williams: Additional sums.

Q2045 Mr Hall: —from Goodman?

Mr Williams: Yes.

Q2046 Mr Hall: And Goodman claimed them from a pot in the News of the World organisation?

Mr Williams: Yes.

Q2047 Mr Hall: Is there an audit trail to the News of the World funds to show how much Goodman claimed and how much he passed on?

Mr Williams: Yes, and all that was the subject of the trial—

Q2048 Mr Hall: This was all disclosed at the trial?

Mr Williams: Again, off the top of my head, it was a number of payments totalling £12,300.

Q2049 Mr Hall: These were cash payments?

Mr Williams: I believe they were. I could not quote you on that. I do not know.

Q2050 Mr Hall: Having looked at Mulcaire’s bank accounts, there were no sums of money in his account which he could not actually account for?

Mr Williams: I do not know. I know we looked at his financial profiling, we knew where he was getting his money, from News of the World—

Q2051 Mr Hall: So if there were other deputy editors in the News of the World—say the Sports desk rather than the Royal Family desk—and they had an arrangement with a private investigator who was on contract, the payments would work the same way? That editor would claim them from a central pot in News of the World and pay them direct to the person supplying the information?

Mr Williams: If I have understood it, yes. Other people in News of the World had similar arrangements with other people. I am presuming, I do not know, is the honest answer, how they do it, but it could well be there would be similar records in News of the World to that.

Q2052 Mr Hall: Because of the requirements of the production order, you were not allowed to ask those questions?

Mr Williams: I can only ask in relation to what I am investigating. There is absolutely no basis to ask them that.
Q2053 Mr Hall: Did you follow the audit trail on the emails as well?
Mr Williams: Which?

Q2054 Mr Hall: The Goodman-Mulcaire audit trail via email? Was there an audit trail via email?
Mr Yates: Mulcaire’s computer was seized and has been examined for any relevant material.

Mr Williams: There was nothing on his computer.

Q2055 Mr Hall: We were told by the current editor that he looked at 2,500 emails and he could not find anything to suggest this practice was active anywhere else in the News of the World. I do not suppose you looked at the 2,500 emails, did you? Although why would you.
Mr Williams: I do not know which emails he looked at. Again, my basis would be, who is Mulcaire working for? Give me names of people, give me stories, and then if you get that you would look at what gets revealed, but I have been told there is nothing in our records, therefore legally I have no basis to pursue it.

Q2056 Mr Hall: One final question, was John Prescott’s phone actually tapped or not?
Mr Yates: No. As I said on the day, there is no evidence it was.

Q2057 Mr Hall: There have been plenty of stories about him which would be explained if his phone had been tapped.
Mr Yates: We have no evidence it was.

Q2058 Mr Watson: When you were examining the payments to the various people, the credit element and the cash payment element, did you have any reason to notify the Inland Revenue that tax offences might have been taking place?
Mr Williams: We did consider a raft of things. For instance, if he has received this fixed money, is there any basis for asset confiscation beyond the £12,300? So that was considered; all of that. There were some financial inquiries, but when it comes back to it, with counsel and CPS, we are completely unable to say on what basis he acquired that money; there is no basis to say it was unlawful. In fact the only basis we could say any of the payments were unlawful was that £12,300, so therefore that was the only bit that we could actually take off him. For the rest of it, we have no evidence to be able to support anything under asset confiscation or any of those matters.

Q2059 Mr Watson: With respect, that was not my question. I understand the point that you needed to find evidence of fraud for the trial—
Mr Williams: I think you were asking about tax.

Q2060 Mr Watson: In the course of your investigation you were looking at the system of payments, how it worked, how Goodman was getting these cash payments, as an officer in other cases do you think there might be grounds which the Inland Revenue should have investigated further?
Mr Williams: In relation to Goodman?

Q2061 Mr Watson: This system of payments at News International.
Mr Williams: I must admit I do not know enough about Inland Revenue and tax to know whether or not that would be. You are now out of my field. I would bow to my financial investigators. I know we talked about this, we talked about tax, had they paid tax, and again that would be something I would leave to my financial investigators because that is their world.

Q2062 Mr Watson: So it might be something you could have a view on?
Mr Yates: In terms of how we pay our sources, there are arrangements but I do not know what it is like with—

Q2063 Mr Watson: So it might be you would look at the Inland Revenue with others?
Mr Yates: Yes.
Chairman: We have kept you for long enough. Thank you very much.

Supplementary written evidence from the Metropolitan Police Service

Thank you for your letter of 20 October 2009 and I hope that the information and comments provided below will enable the Committee to bring its enquiry to a satisfactory conclusion.

In going through some of the questions it was considered that particular themes emerged. For ease of reference, I have grouped the questions together with my response under those subject areas.

PERSONS OF INTEREST/POTENTIAL VICTIMS

Question 1. I would be grateful if you would confirm who has been contacted by the Metropolitan Police as a result of the Guardian articles (Questions 1985–88 of 2 September refer.)

Question 4. In written evidence to us you said that the investigating police: “led on informing anyone who they believed fell into the category of Government, Military, Police or Royal Household, if we had reason to believe that the suspects had attempted to ring their voicemail” (para 15.) How many suspected victims were contacted in each of the four categories listed above and how many additional people since the police statements of 9 and 10 July? The submission goes on to state that the police contacted individual phone companies about other suspected victims. How many names and/or numbers were passed on for assessment in this way?
Question 5. Specifically we would be grateful for confirmation as to when the police contacted Tessa Jowell MP, who was named in the *Guardian* as a victim of Mulcaire.

**Answer**

“Given the nature of the issues the MPS was investigating i.e. interception of sensitive/personal telephone conversations, one of the key parameters of the investigative/prosecution strategy was to ensure proper consideration was given to individuals’ right to respect for their private and family lives. One of the fundamental tenets of the investigation was therefore to protect those individuals’ rights to privacy by not revealing any information without their consent. Furthermore many potential “victims” or “persons of interest” to Mulcaire and Goodman had potential national security issues, or personal sensitivities associated to their role/position in public life and therefore did not wish to be part of a prosecution. Many have also more recently requested that any communication with them remain “strictly private and confidential—not for publication”.

Given our duty to respect these individuals’ private and family lives, we are unable to provide all of the details requested, however we are able to confirm the following:

Question 1. As confirmed by Andy Coulson in public to the Committee, he was contacted by the MPS as a result of the *Guardian* articles. We are unable to confirm any other names but can inform the Committee that the numbers are no more than a handful.

Question 4. A very low number of individuals were contacted in the categories listed and no additional contact has been instigated by the MPS since the police statements of 9th/10th July 2009. In terms of part two of Question 4, to maintain individual privacy the individual phone companies were not supplied with lists of potential victims (apart from those who had agreed to be witnesses in the trial), but rather they were supplied with the potential phone numbers that Mulcaire and Goodman had used to see if they could ascertain to what degree their respective client base may have been vulnerable due to calls from these numbers.

Question 5. The MPS is not formally aware as to whether Tessa Jowell MP has made any public declaration in relation to this matter and therefore to respect her right to privacy we cannot comment any further.

To assist and reassure the Committee we can confirm that at the time of the investigation where we believed someone did fall into the relevant category as described above, those persons were contacted promptly individually and as part of further wider security awareness the Cabinet Office was briefed about the risks (not about individuals.)

**Material Seized**

Question 3. In evidence to us on 21 July Tom Crone, Legal Manager of News Group Newspapers, told us that: “The police raided Mulcaire’s premises; they raided Goodman’s premises; and they raided the News of the World offices. They seized every available document; they searched all the computers, the files, the emails et cetera”.

(Q 1339) We were also told during that session, by Colin Myler, that Glenn Mulcaire had a “vast database of contact numbers in the sport and show business world” (Q 1420.) Please would you confirm whether any such database was found during your searches.

**Answer**

The searches and seizure of material all took place on 8 August 2006. In the case of Clive Goodman his home and office at NOTW were searched. The offices of “Nine Consultancy” used by Glen Mulcaire, his home address and his parents address were also searched yielding a huge quantity of documents. Hundreds of unstructured handwritten sheets showed research into many people in the public eye. These included those linked to the Royal Household, Members of Parliament, military staff, sports stars, celebrities and journalists. There was also a quantity of electronic media and computers recovered which in Mulcaire’s case did contain similar personal data as found on the hundreds of handwritten individual sheets of paper. It is reasonable to expect some of the material, although classed as personal data, was in their legitimate possession, due to their respective jobs. It is not necessarily correct to assume that their possession of all this material was for the purposes of interception alone and it is not known what their intentions was or how they intended to use it.

**Material Sought as Potential Evidence**

Question 6. Further to your and Mr Williams’ answers to Questions 1938, 1989 and 1990 please clarify what the range of material was that the police sought and what answers you received from the lawyers representing the News of the World.

**Answer**

Post arrest there were meetings and a series of formal letter exchanges that took place between CPS, lead council, police and the solicitors employed to represent News of the World.

A range of material was asked for, examples include:

— All documents pertaining to the employment of Mulcaire.
— Any record of work completed by him.
— Who does he report to, has he worked for other editors/journalists—if so copies of that work.
— Details of their internal phone systems (including itemised billing) and floor plans of phone extensions.

We made clear that “the investigation is attempting to identify all persons that may be involved including any fellow conspirators.”

News of the World instructed lawyers to respond to our requests for disclosure and they took a robust legal approach to our requests and provided material strictly based upon the evidence against Goodman and Mulcaire. When it came to anything wider their position was that either the material did not exist or they assessed that it was confidential journalistic material. What was received did become part of the prosecution, but following legal advice we did not have any power or basis upon which to compel further disclosure.

**Material upon which the prosecution was based**

**Question 7.** A number of references were made on 2 September to material collected by the police as part of your investigation. We would be grateful for:

(a) a log of that material and in particular information on the material which you described to us as “sensitive, unused material” (Question 1892.)
(b) a log of the tape recordings of Mulcaire and to whom he was speaking and a transcript of any conversation with someone called Ryan.
(c) further information as to how and why you have reason to believe the Princes’ phones had been directly accessed; whether this was disclosed to the News of the World during the investigation; and why no prosecutions were pursued in this respect.
(d) a log of the evidence supplied to Gordon Taylor in his civil action.

**Answer**

7(a) The “logs” of material being requested are extensive, include material not relevant to the prosecution of Mulcaire and Goodman and sensitive material eg it might reveal investigative techniques or tactics or personal details of individuals. It is difficult to see how disclosure of this material can assist the Committee in their inquiry. Additionally as outlined in my answer to Q1, 4 & 5 above consideration needs to be given to individuals’ right to respect for their private and family lives, which much of this material consists of.

By way of assurance, the CPS examined all of these disclosure lists at the time and more recently. As part of that process, you will be aware that Keir Starmer QC, Director of Public Prosecutions has confirmed that he is satisfied that in the cases of Mulcaire and Goodman, the CPS was properly involved in providing advice both before and after charge; that the MPS provided the CPS with all the information and evidence and that the prosecution approach in charging and prosecuting was proper and appropriate.

7(b) Police hold no tape recording involving someone called Ryan.

7(c) In line with my opening comments in relation to seeking to preserve individual rights to privacy we are unable to provide any further information in respect of the Princes.

In terms of the witnesses who agreed to be part of the prosecution I would draw you to DPP Keir Starmer’s comments, “from a prosecution point of view what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire. It was the collective view of the prosecution team that to select 5 or 6 potential victims (in addition to the 3 Royal Household ones (Private Secretaries and Press)) would allow the prosecution properly to present the case to the court and in the event of convictions, ensure that the court had adequate sentencing powers.”

7(d) The “log” of material provided to Gordon Taylor was provided pursuant to a court order and it contains material relevant to the proceedings he brought against the News of the World. If relevant to the Committee the consent of Gordon Taylor should be obtained to disclose the terms of the order.

**Question 8.** You provided to us a schedule of intercepts which showed “potential intercepts” by both Clive Goodman and Glenn Mulcaire on Helen Asprey from February 2005. Please clarify the evidence that you have in relation to this, and why the charge period was shortened from January 2005—August 2006 to start instead from November 2005.

**Answer**

The final charges were a matter for the CPS.

It is our understanding that the reason Count 1 changed from January 2005 to read 1 November 2005 was primarily to ensure that the “best evidence” could be adduced to demonstrate Mulcaire and Goodman were working together as part of a “conspiracy”, (one of the key points to prove for Count 1 was the period from November 2005 onwards.) This directly supported “a prosecution point of view—what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire” and was therefore the optimum means of securing a conviction to “ensure that the court had adequate sentencing powers.”
PUBLIC STATEMENTS BY MPS

Question 2. Please would you provide a copy of all statements issued by the Metropolitan Police on this matter following the Guardian’s article.

Answer

Two statements have been issued by the MPS following the Guardian’s article and they are attached as Appendix “A”.

We have endeavoured to answer the Committee’s questions as fully as possible, whilst recognising our duty to balance individual’s rights to privacy. However, if the Committee feels we can assist further please do let me know.

John Yates
Assistant Commissioner
Specialist Operations
November 2009

APPENDIX “A”

STATEMENT FROM ACSO JOHN YATES—9/7/09

FOR OFFER: I have been asked by the Commissioner today to establish the facts around our inquiry into the alleged unlawful tapping of mobile phones by Clive Goodman and Glen Mulcaire. I was not involved in the original case and clearly come at this with an independent mind.

Just by way of background. In December 2005, the Met received complaints that mobile phones had been illegally tapped.

We identified that Goodman and Mulcaire were engaged in a sophisticated and wide ranging conspiracy to gather private and personal data, principally about high profile figures. Clearly they benefited financially from these matters.

Our inquiries found that these two men had the ability to illegally intercept mobile phone voice mails, commonly known as phone tapping.

Their potential targets may have run into hundreds of people, but our inquiries showed that they only used the tactic against a far smaller number of individuals.

In January 2007, Goodman and Mulcaire were jailed for four and six months, guilty to conspiring to unlawfully intercept communications.

Mulcaire also pleaded guilty to an additional five charges relating to similar matters.

On sentencing the two men, Mr Justice Gross at the Old Bailey said the case was “not about press freedom, it was about a grave, inexcusable and illegal invasion of privacy”.

The police investigation was complex and was carried out in close liaison with the Crown Prosecution Service, Senior Counsel and the telephone companies concerned.

The technical challenges posed to the service providers to establish that there had in fact been interception were very, very, significant.

It is important to recognise that our enquiries showed that in the vast majority of cases there was insufficient evidence to show that tapping had actually been achieved.

Where there was clear evidence that people had been the subject of tapping, they were all contacted by the police.

These people were made aware of the potential compromise to their phones and offered preventative advice.

After extensive consultation with the CPS and Counsel, only a few were subsequently identified as witnesses in the proceedings that followed.

I said earlier in this statement that these two men were engaged in a sophisticated and wide ranging conspiracy to gather personal data about high profile figures. One was a private detective and one was a journalist. It is reasonable therefore to expect them to be in possession of data about such matters as it’s part and parcel of their job.

I emphasise that our enquiries were solely concerned with phone tapping. This, as far as we are aware, affected a much smaller pool of people.

There has been a lot of media comment today about the then Deputy Prime Minister John Prescott. This investigation has not uncovered any evidence to suggest that John Prescott’s phone had been tapped.

This case has been subject of the most careful investigation by very experienced detectives. It has also been scrutinised in detail by both the CPS and leading Counsel. They have carefully examined all the evidence and prepared the indictments that they considered appropriate.
No additional evidence has come to light since this case has concluded. I therefore consider that no further investigation is required. However, I do recognise the very real concerns, expressed today by a number of people, who believe that their privacy may have been intruded upon. I therefore need to ensure that we have been diligent, reasonable and sensible, and taken all proper steps to ensure that where we have evidence that people have been the subject of any form of phone tapping, or that there is any suspicion that they might have been, that they have been informed.

STATEMENT FROM 10/7/09

FOR OFFER: Following on from a statement yesterday by AC John Yates in relation to the MPS investigation into unlawful mobile phone tapping by Clive Goodman and Glen Mulcaire the Met has this evening (10/7/09) begun contacting a number of people.

AC Yates said yesterday that he wanted to ensure that the Met has been diligent and sensible, and taken all proper steps to ensure—that where we have evidence that people have been the subject of any form of phone tapping by Goodman or Mulcaire, or that there is any suspicion that they might have been by the two men—that they have been informed.

The process of contacting people is currently underway and we expect this to take some time to complete.

Witness: Mr Mark Lewis, Solicitor Advocate, Stripes Solicitors, gave evidence.

Chairman: For the final part this afternoon, can I welcome Mr Mark Lewis, Solicitor Advocate at Stripes Solicitors. Paul Farrelly has some questions for you.

Q2064 Paul Farrelly: Thank you very much for agreeing to the request to come. There were a number of people who have declined to appear in front of us so far, so thank you very much. I saw you were present for all of the police evidence?

Mr Lewis: Yes.

Q2065 Paul Farrelly: But not the Information Commissioner’s evidence?

Mr Lewis: I think I was here for a short period ten minutes, and then the police evidence.

Q2066 Paul Farrelly: Do not be fooled by the empty gallery. This is being televised and there is not much else going on in Parliament at the moment, so journalists can watch this from the TV screen.

Mr Lewis: Could I start by setting in context the evidence I can give?

Q2067 Paul Farrelly: I want to ask you because you are under privilege here but personally you will feel there are things you can talk about or not.

Mr Lewis: I have three issues at least that I have to deal with. One is client confidentiality because there are certain things I have been told by clients that I have to protect, so that is my secondary privilege, or more primary privilege I suppose. There is a privilege on the documents which were provided to me under court proceedings and court orders which, whilst you might find interesting, are still under court privilege, documents given on disclosure, and therefore unless they have been referred to in the public domain they cannot be referred to. The third issue is that I am under threat by News International of an injunction against me acting for other people, so I will try not to upset them.
Q2069 Chairman: The key question, you correctly surmise, or at least we would say is your view, that it is unlikely Clive Goodman was commissioning information from Gordon Taylor’s phone. Do you have any evidence to suggest who in the *News of the World* might have been receiving information from Gordon Taylor’s phone?

Mr Lewis: This is interesting because I have heard the evidence given by the Assistant Commissioner and his side-kick. The methodology of the claim—and I have worked out there was a claim, it was obvious to me there was a claim but to make that stick I had to get documents which proved it—the way of getting the documents and the methodology, was applying for third party disclosure, as lawyers would call it, of various part bodies. That is why I applied for evidence from the Information Commissioner, and they consented, evidence from the CPS, and that was not a problem either, and evidence from the Metropolitan Police. When it came to the Metropolitan Police, the person who attended at the court was Detective Sergeant Mark Maberly. I can mention that because it was an open court, there were court hearings, and Detective Sergeant Mark Maberly said to me, “You are not having everything but we will give you enough on Taylor to hang them.” Those were his words, “to hang them”. So he quite clearly knew at that time there was sufficient evidence about my client, and I only had one client at that time. Mr Taylor, to hang the *News of the World* about that client. He also mentioned the number of people whose phones had been hacked. Whether that was an aside, whether that leads me into the threat of the injunction that the *News of the World* have made against me, or through their lawyers have made against me, the reservation of that right, but they had said that there was evidence about, or they had found there were something like 6,000 people who were involved. It was not clear to me whether that was 6,000 phones which had been hacked, or 6,000 people including the people who had left messages. I think I am able to explain to this Committee why it worked. I accept there is a difference in civil burden and criminal burden, so the police might have been looking at things very differently and therefore if someone was called Neville they did not bother to check that because they could not prove it on the criminal burden of proof, but the position was that with Gordon Taylor there was sufficient evidence to be disclosed by the police to do the hanging, as the police had called it. But there was evidence, for example, the Neville email, which you have been talking about today, and it is fair to say that was not disclosed initially. It is a shame that the court file is closed, because obviously that cannot be looked at, but I think it is a matter of record that initially the *News of the World*’s defence was, “This did not happen”. This defence was subsequently amended to say, “Yes, it did” and the settlement came about shortly after disclosure from the Metropolitan Police showing for example the Neville—I nearly said “the Neville Thurlbeck” but that has never been proved on any criminal basis—email came out.

Q2070 Paul Farrelly: I wanted to ask you, as far as you can, to describe your role in the case, when it started and when it was settled, part of which you have already done, Mr Lewis. Also, could you reflect a little further on the evidence the police have given, particularly with respect to the questioning about whether any of the evidence you were able to requisition through court orders gave you reasonable suspicion that other journalists were involved, either in the Taylor case or, and I do not know what evidence you are able to command, in the other cases as well, which is the question John asked? Before that, can I ask you to explain what is happening with News International now? They are not seeking to injunct you in respect of your appearance here, are they? Mr Lewis: No, they are not seeking to injunct me. I have copies of the letter but not necessarily for everybody.

Q2071 Paul Farrelly: Can you explain what—Mr Lewis: The difficulty for News International, or Farrer’s on behalf of News International, is that I know information which they say should not be used for other people. I disagree with that and I have responded to it. I have not had their substantive response to my letter but it says, “It goes without saying that our client . . . “, that is News International, “. . . will object to your involvement in this or any other related case as against our client for the reasons set out above. We reserve our client’s rights to take injunctive proceedings against you, should you choose to disregard the matters contained in this letter.” It then concludes by saying, “However, you have an opportunity to correct matters by confirming that you will now accept that you cannot act for any individual wishing to bring a claim against News Group in respect of the voicemail accessing allegations . . . ”, that is what they call this, voicemail accessing allegations, but I call it “phone-hacking” or such like. I think it can be summarised as, “You know too much, please don’t act against us or we will bring the whole weight of the organisation down on you.”

Q2072 Paul Farrelly: More than “please”. Mr Lewis: Perhaps I was being polite.

Q2073 Paul Farrelly: I have not heard of this happening before. Is this something you are aware has professionally happened before to other solicitors, where they are seeking to prevent you from practising your trade because you have been involved in one case against one—Mr Lewis: I am sure it might have happened before but I am not aware of it.

Q2074 Chairman: I do not quite follow. I understand why *News of the World* might not want you to appear on behalf of anybody else, but what are they threatening to do to you if you do? Mr Lewis: They threaten an injunction to stop me acting against them.
Q2075 Chairman: On what possible grounds?
Mr Lewis: On the basis that I won, I think.

Q2076 Chairman: No court will grant an injunction on that basis! Does the News of the World have any serious threat against you?
Mr Lewis: My response was no, they did not, but I took the view that I was entitled to act in the same way as anybody else who has now jumped on the bandwagon I have started rolling.

Q2077 Chairman: It seems an entirely pointless letter to me.
Mr Lewis: I think it was designed to upset me, but it did not.

Q2078 Paul Farrelly: It is part of a pattern of activity perhaps, Chairman, and something the Solicitors’ Complaints Authority might wish to have a look at if you were so bothered.
Mr Lewis: Perhaps.

Q2079 Paul Farrelly: Could you tell us when you started the case and when it was settled, just to give us a time frame?
Mr Lewis: It is difficult to give the exact chronology of it because a year or so before is when there had been the threatened story—and I was acting at that time for Jo Armstrong, who has been mentioned earlier today, rather than for Gordon Taylor—to stop a story which was absolutely ridiculous anyway, and I got a response from Tom Crone, who I understand has given evidence previously to you, to say that this was a proper journalistic inquiry but there would be no story run. My understanding is that Mr Crone would have understood there to be proper journalistic inquiry rather than any knowledge on his part that there was anything improper. I have no doubt about him saying things honestly. It was a year later, when I just happened by chance to see the 9 o’clock News or 10 o’clock News, and heard “That is a proper journalistic inquiry” and I have a good memory and I thought, “Hang on”, that phrase stuck out that these were not proper journalistic inquiries at all. It was at that point. So whenever the prosecution of the princes’ hearing, the sentencing hearing, took place, was the date that Gordon Taylor’s claim effectively was in embryo and started against News of the World.

Q2080 Paul Farrelly: There were several hearings?
Mr Lewis: That was the position. We started a claim based on an inference that Glenn Mulcaire got this information. That has been proven. Glenn Mulcaire’s counsel had given evidence in the criminal case that he only acted for News International, that he would not have been getting information for the likes of Clive Goodman because Gordon Taylor is not King Taylor yet.

Q2081 Paul Farrelly: When did the civil—
Mr Lewis: Very shortly after. We sent some letters pretty soon after the prosecution to say, “Please provide us with lots of money and not to repeat these things; you have been illegally hacking his phone.”

Q2082 Paul Farrelly: When was the settlement reached?
Mr Lewis: About a year ago, I would guess.

Q2083 Paul Farrelly: A year ago as of now?
Mr Lewis: It took a little while to get to that stage. The first stage in the case was News International saying that this was an open record. So at that stage all the documents which cannot be referred to now because the files are closed were in an open court file, so the claim and original defence which was put in said, “This never happened.” So it was there and was a public document at that stage.

Q2084 Paul Farrelly: You mentioned Mr Crone. Mr Crone came to us as part of a number of people from News International, and we were told they had not been able to correct the record, either with us or with the Press Complaints Commission, because of the confidentiality clauses which were in the settlement. Mr Crone was asked by the Chairman on what basis was it decided to keep the proceedings secret, was it at Gordon Taylor’s request, and Mr Crone said, “Actually I think he mentioned it first.” The Chairman said, “He mentioned it first?” Mr Crone said, “It was raised by him before it was raised by us but we fell in with it.” Have we been given accurate evidence?
Mr Lewis: The short answer would be no. The longer answer would be, and I have seen the transcript of that evidence, the position is that there are two different aspects to keeping something quiet. So the claim initially that was made sought an injunction to stop the repetition of information which was obtained illegally, so in that sense the existence of the information which was the subject matter of the story effectively which was the underlying aspect of the case. It was Gordon Taylor’s suggestion, or my suggestion on behalf of Gordon Taylor, that we asked that that be kept secret. It was right and proper that that should be done, because sometimes people say, “There’s no smoke without fire” and in this case there was no smoke without fire, but to stop that would be the usual libel type of practice to stop a story getting out. That is very different from stopping the existence of a settlement getting out, and that is a secondary point. That was not suggested by Gordon Taylor or by me on behalf of Gordon Taylor. That is not waiving any privilege or anything, that was the position that was put forward as part of the settlement offer.

Q2085 Paul Farrelly: By News International?
Mr Lewis: By News International or by their lawyers.

Q2086 Paul Farrelly: On what sort of grounds might that usually be the case, in your experience?
Mr Lewis: It would be hard for me to answer that question, what was in their mind, but I think the inference might be that it was part of the settlement offer.

Q2087 Paul Farrelly: It would have been embarrassing had that been disclosed?
Mr Lewis: I suspect it might have been embarrassing, it might have led other people to think, “Hang on a minute, there was a story about me. I wonder how they got that story?”

Q2088 Paul Farrelly: On the rounds through your involvement in this case, are you aware of any other similar sort of actions which have been settled in this way by News International, in relation to this sort of activity?
Mr Lewis: I do not think it had ever happened before. I think people had always looked at what the story said and, apart from a lawyer’s point of view—and this is my job—if the story was true but infringed privacy, then it would be a privacy action; if the story was not true then there would be a libel action. I do not think anybody had ever stepped back and said, “How did the newspaper get the story in the first place?” What can be seen from some of these cases—I think you referred to the “Neville” email, et cetera—at around that time there was a story which had been drafted which suggested the story had almost been laundered afterwards, that once the story had been got by the newspapers it could be legitimised afterwards by getting the relevant quotes from people.

Q2089 Paul Farrelly: You said that once you were successful in the court order requiring the evidence from the police, and I assume by extension from the Information Commissioner, that the situation changed in terms of readiness to settle and admit. I want to try and get to the bottom of the Chairman’s question. In the evidence you have been able to get, was there any inference or reasonable suspicion that Mr Mulcaire was providing these intercepts in the Taylor case, or on the other counts to the extent you have some information about those, to other journalists within News International?
Mr Lewis: Other than Mr Goodman?

Q2090 Paul Farrelly: Yes.
Mr Lewis: Quite obviously they would have been given to journalists other than Mr Goodman. At the time, to put it into context, there had been stories about people at the FA, not the PFA which Mr Taylor is from, having been involved in sexual misconduct or whatever. At the time there had been stories about Sven-Goran Eriksson with somebody called Faria Alam, and then there was a story about somebody at the FA with Faria Alam as well I understand. If I have that wrong, I am sorry, Ms Alam. This was supposed to be the third story in the sequence of “More Scandal at the FA”, but the story had been got by people hacking phones rather than actually doing proper journalism, so they had not bothered to check facts and it would have come out that actually it was a different organisation, different people and actually did not fit in anyway.

Q2091 Chairman: Are you saying you have seen specific documentary evidence to suggest those phones were hacked?

Mr Lewis: No, I am sorry, I am not suggesting that. It is just the way things were put together. I cannot stray on to documents I might have seen, but the answer is no.

Q2092 Chairman: Have you seen any documents which came from anybody other than Clive Goodman?
Mr Lewis: Anybody other than Clive Goodman? I have seen a “Neville” document.
Chairman: You have seen the “Neville” document.

Q2093 Paul Farrelly: You also asked for the Motorman files, can I ask why you did that and how helpful were they to you in respect of the particular grounds on which you brought the case for Mr Taylor, or generally to show a pattern of behaviour?
Mr Lewis: Generally to show a pattern of behaviour. Naturally, the nature of the case as it started was inferential, there had to be inferences which were drawn. This is the difference between a criminal case and a civil case. In a civil case one was able to say to the judge, “Look, this is the inference. Mr Goodman could not be getting information because it would not make sense for a royal correspondent to be getting information about somebody involved in the world of football, for example.” So to build up the inference, it was to say, “Look, here is an organisation, these are all the things it does wrongly in order to get stories”, and that helps to weigh up the evidential proof to suggest that this is not a one-off as it was described in the criminal case.

Q2094 Paul Farrelly: They refused to give us the figures in their response but there were payments made to Clive Goodman and Mulcaire after their convictions. Even though Goodman was dismissed and his internal appeal failed, they maintained it was still a compromise agreement and that he had employment rights and, likewise Mr Mulcaire, even though the payments to him and the contract, it was said in court, stopped before that case was brought. From your investigations, do you have any details or any information about the nature and the conditions behind those payments to Mr Goodman and Mr Mulcaire?

Mr Lewis: The very short answer is no. I do not. On two issues, if it is helpful, in respect of employment law, which is not particularly my field, one could say that if somebody has committed misconduct, as in the case of Mr Goodman being sent to prison, that misconduct would be sufficient to end his contract of employment. It is very difficult to see how somebody would be compensated for that as a loss of office, so presumably there would be some other reason for paying him, if he has been paid.

Q2095 Paul Farrelly: To keep quiet?
Mr Lewis: That might be so.

Q2096 Paul Farrelly: I have asked this question of the police: the News of the World editorial of 12 July, after the Guardian’s first revelations largely on the basis of the settlement of Gordon Taylor, said, “So let us be clear, neither the police nor our own internal
investigation has found any evidence to support allegations that News of the World journalists have accessed the voicemails of any individuals.” The editorial goes on to say, “Nor instructed private investigators or other third parties to access voicemails of any individual.” From your involvement in the Taylor case, would you say that was a truthful editorial or not?

Mr Lewis: Gosh! Believing what they say in the News of the World is an alien concept. I cannot see they would pay out a lot of money to anybody if they really believed that themselves; I certainly do not believe it.

Q2097 Alan Keen: Just to clarify, you mentioned the names of two people at the FA and a third person, who I obviously know the name of as well. You said you have not seen any evidence, why did you mention them? Did it happen at the same time as the Gordon Taylor case?

Mr Lewis: It sort of happened at the same time, and also I saw a draft of an article that said, “More sexual mayhem . . .” or such, “. . . at the FA” rather than the PFA, because the person who had written the article had thought it was the next one in the stage of the stories but it was a complete red herring.

Q2098 Alan Keen: It was just a red herring?

Mr Lewis: A complete red herring.

Q2099 Alan Keen: You had no evidence?

Mr Lewis: No, not at all.

Q2100 Janet Anderson: You referred earlier to a copy of a contract signed by Greg Miskiw offering Glenn Mulcaire, under the pseudonym of Paul Williams, £7,000 for the delivery of a Gordon Taylor story. This was referred to in the course of the case against Goodman and Mulcaire, but the prosecution, although they made reference to this contract, did not make a link to instances of phone-tapping. The prosecution apparently said that this merely showed there was a relationship between Miskiw and Mulcaire. Do you think the prosecution should have shown this was evidence of phone-tapping?

Mr Lewis: I heard what the police had to say earlier and I find it astonishing that, when they fall back on resources, for the length of time it took me to deal with it they could not have done that, because it was quite obvious where the story had come from; it quite clearly had come from phone-hacking, it was all documented, it was very easy to get. I got it from the police. I was reading their document.

Q2101 Janet Anderson: So the only way that Mulcaire could have delivered the Gordon Taylor story that Greg Miskiw wanted was through phone-tapping, in your view?

Mr Lewis: I think it incredibly unlikely to have been obtained any other way, because it was not a true story, it was a misunderstanding of a message which had been left on the phone, so how you would misunderstand a message left on a phone in any other way is completely beyond me.

Q2102 Janet Anderson: So they would have had to have heard the message?

Mr Lewis: In order to misunderstand it, they would have had to hear it.

Q2103 Paul Farrelly: I asked this question of the Information Commissioner and his investigator: clearly Gordon Taylor was the target for the News of the World and they were relying on Glenn Mulcaire to come up with the goods. I might imagine the News of the World was using other investigators, including Stephen Whittamore and Motorman, to target people to see what they could come up with as well. Was that the case from the Motorman files? Did Gordon Taylor’s name come up in the Motorman files?

Mr Lewis: I cannot answer that. I cannot remember the specific information. In a sense, what the police said to me outside court when we got the papers was that there was enough information to hang the News of the World, and as a civil lawyer I had done my job, I had got the evidence I needed, and then the negotiations started.

Q2104 Paul Farrelly: We have seen the pleadings before the judge when the sentencing occurred on 26 January 2007, what we do not have are the reports from the probation officers and the statements in mitigation in full. I do not know whether you have seen that as part of your researches, but there seems to be the implication in both Mulcaire’s and Goodman’s statements in mitigation that they were just one of quite a few people doing this and it was just commonplace and “right”—I think that is one word which has been used. Without the benefit of seeing those—

Mr Lewis: I did not have the benefit of seeing those but the inferential case which was put forward on behalf of Mr Taylor was that this practice was endemic within the News of the World and the desire to get stories. It might well have been the fact that Mr Goodman was the scapegoat for the News of the World and that perhaps is a matter for someone other than me to surmise, but quite clearly Mr Goodman was not interested in Mr Taylor. Why would he be? He was the royal correspondent.

Q2105 Adam Price: The whole story so far is an extraordinary set of circumstances. We have had Clive Goodman and Glenn Mulcaire being paid off after they came out of prison, and we do not know whether there is a confidentiality clause somewhere in those agreements but I suspect there is. The News of the World tried to get two members of this Committee thrown off and now they are trying to gag one of the key lawyers. It sounds like corporate stabblings in there. What is going to be your next step? Are you going to continue undaunted? Are you going to represent any other clients in relation to this case?

Mr Lewis: I was always taught as a lawyer—and this sounds very pompous—to be absolutely fearless of any organisation, whether it be News of the World, whether Mr Murdoch himself or anybody; they are not going to
frighten me. Actually I see it as rather flattering if somebody threatens me with an injunction. I had wanted to give the answer before, when the question was, have you heard of this before, “Oh yes, it happens to me all the time”, but unfortunately I could not give you that answer! I would like to be as good a lawyer as I can be so nobody wants me to act against them.

Chairman: I think that is all we have for you. Thank you very much.
Tuesday 15 September 2009

Members present
Mr John Whittingdale, in the Chair
Janet Anderson Mr Mike Hall
Philip Davies Adam Price
Paul Farrelly Mr Tom Watson


Q2106 Chairman: Can I this afternoon welcome Les Hinton who is giving evidence to the Committee from New York. Les is currently the Chief Executive Officer of Dow Jones but was the previous Executive Chairman of News International at a time when the Committee previously took evidence in its last inquiry into self-regulation of the press. Les, thank you for making yourself available this afternoon. May I start by referring back to the evidence which you gave to the Committee in March 2007 because at that time in relation to the Clive Goodman affair you said that there had been a full rigorous internal inquiry, that you were convinced that Clive Goodman was the only person that knew what was going on but that the investigation continued. Can you say what the final outcome of that investigation was and if it remains the case that you are convinced that only Clive Goodman knew about the tapping of phones by Glenn Mulcaire?

Mr Hinton: Yes, Chairman. As you have already heard, when Colin Myler took over as Editor he continued studying the events there and had the assistance, as you know, of a firm of solicitors, and I know from recollection he went through thousands of emails. He never delivered any evidence that there had been anyone else involved. At the same time as that of course our biggest concern was that the News of the World, having gone through a pretty terrible time, that he was going to make absolutely certain that whatever lapses had happened in the past would not be repeated. I think he gave you some pretty detailed information about the measures that he took to be certain that everyone there was well aware of the rules and the boundaries, but, no, there was never any evidence delivered to me that suggested that the conduct of Clive Goodman spread beyond him.

Q2107 Chairman: When you conducted the investigation were you aware of the email which the Guardian subsequently produced in the Committee, the “transcript for Neville” email?

Mr Hinton: What I was aware of later after I had spoken to you the last time was that there had been a complaint from Taylor. I do not recall the detail of it and I never knew about any memo, no.

Q2108 Chairman: So you were never aware of the email which was sent by a reporter at the News of the World to Glenn Mulcaire headed “Here is the transcript for Neville”?  

Mr Hinton: No.

Q2109 Chairman: When you carried out these investigations, and you said you looked through thousands of emails, none of those emails related to anybody other than Clive Goodman having knowledge of what Glenn Mulcaire was doing?

Mr Hinton: Look, I obviously did not look at those emails personally but I know that that scrutiny went on and no emails that raised any further suspicion were brought to my attention.

Q2110 Chairman: When you conducted the investigation did you ask individual reporters on the News of the World whether or not they had any knowledge of what Glenn Mulcaire was doing?

Mr Hinton: Not personally but remember that Colin had come in from New York, a very experienced editor with a clear remit to do two things: make sure that any previous misconduct was identified and acted upon and that the prospect of any future misconduct would be ruled out. So he was there in that position with absolute authority and no involvement in any possible conduct before that time. I thought bringing him in—and I still think it—was a perfect way to create an independent, experienced judge of what had been going on or what ought to be going on in future.

Q2111 Chairman: But presumably the investigation did include asking employees of the News of the World whether or not they had any knowledge of what had happened?

Mr Hinton: Look, again I know you had a conversation with Colin Myler. He spent a long time talking to lots of people and I cannot recall more reliably than he the nature of them. However, importantly, he did not come to me with any concerns relating to what had gone on other than, obviously, the Goodman matter.

Q2112 Chairman: But specifically did you ever speak to Neville Thurlbeck about this?

Mr Hinton: No.

Q2113 Chairman: You did not?

Mr Hinton: No because I was not aware of Neville Thurlbeck having been involved. In any event, I relied upon Colin as the independent newly appointed Editor to conduct that kind of questioning.
Q2114 Chairman: Neville Thurlbeck was the author of a number of stories with Clive Goodman some of which appeared to have used material obtained from phone messages.

Mr Hinton: I do not know, Chairman.

Q2115 Philip Davies: Can I ask you about your suspicions about other people being involved at the time when many of the phone-tapping incidents had nothing to do with the Royal Family, and so given that Clive Goodman was the Royal Reporter did you or anybody else think to yourself if people who were not part of the Royal Family were being tapped then surely this must go beyond Clive Goodman?

Mr Hinton: That is a good question but you have to put yourself in the position that we were in at the time remembering that the police had conducted an exhaustive inquiry that went on for many months, even before the charges were laid against Goodman and the private investigator, and I think it is reasonable, when we are looking at the work carried out by some of the best brains at Scotland Yard, for us to accept that that had found no evidence beyond speculation—and there was a great deal of speculation in other newspapers, as you know, some of it perhaps (but probably not) malicious—and there was never any substantive additional evidence produced. Although I have not followed meticulously all the proceedings since the summer I did look at the evidence that John Yates of the Yard provided to you only a couple of weeks ago and I think he said rather pointedly that the Guardian story that has so excited this Committee and certain parts of the media contained no new evidence and in the two months since its publication no new evidence had arisen. I think it is fair to say that since no evidence has come up it would be hard to find any because there are lots of very capable people I am sure from establishments such as the Guardian looking for it and it has never been presented. We were in a situation where there was no clear evidence, there was lots of gossip but the most important thing at that point, having gone through this really difficult period—and the News of the World is populated, I promise you, overwhelmingly by decent hard-working people—they did not deserve the difficulty they had gone through and I was attaching a lot of importance to getting things back to normal with Colin’s appointment.

Q2116 Philip Davies: Do you accept that even if you were unable to identify a particular individual, given that other people’s not just people in the Royal Family phones were being tapped, that other people at the News of the World must have been involved in this?

Mr Hinton: I am afraid I cannot quite follow the logic of that because whatever may have been happening in the offices of the private investigator, whether or not it was being relayed to the News of the World, I just had no reason to believe that, but there was a lot of gossip, there was a lot of speculation, there were a lot of accusations that we could never find any firm foundation for, so in the light of them we went, I promise you, to extraordinary lengths both within the News of the World itself and from my own position at the time—I was also Chairman of the Editors’ Code Committee—we clarified the Code. There were a number of measures taken across the industry because there was only so much you could do retroactively.

Q2117 Philip Davies: I want to focus on the payments that you have made to Clive Goodman and Mulcaire specifically since their conviction, or certainly after they were arrested and charged. First of all, did you in any way pay for any of the legal fees for Clive Goodman or Glenn Mulcaire?

Mr Hinton: I absolutely do not know. I do not know whether we did or not. There were certainly some payments made afterwards but on the matter of legal fees I honestly do not know.

Q2118 Philip Davies: The problem I have here is that whenever we have questioned anybody who was involved at the News of the World or News International, even including very senior people such as yourself, everybody has always said they do not know and they have also been able to further add that they have no idea who would know. This is all becoming rather incredible that some of the most senior people involved in News International either did not know or did not know who would know. Stuart Kuttner said that he did not know and he said that he did not know who would know. Now you are saying you do not know. Who on earth would know these things?

Mr Hinton: That is a fine flourish of a question, Mr Davies, but I have answered your question: I do not know.

Q2119 Philip Davies: Well, who would know in your organisation? You were a senior person in this organisation. Who in your organisation would know?

Mr Hinton: If we paid their legal fees the company would know; I do not.

Q2120 Philip Davies: Who at the company would know? The company is not a person. What person would know?

Mr Hinton: Sorry?

Q2121 Philip Davies: What person at the company would know if the legal fees had been paid or not?

Mr Hinton: Well, I would guess the Director of Human Resources but I do not know. When employees get into difficulty it is not unusual for them to be indemnified by the company that employs them and for their legal fees to be paid, but I am sorry, I just do not know. I am just surprised that of all the people you have had before you in the past two months you have not asked that question before. I just do not know, I am sorry.

Q2122 Philip Davies: We keep asking everybody who comes before us who knew about the payments and everybody says they do not know, but Clive Goodman—
Mr Hinton: I thought you were asking me about the legal fees, I am sorry.

Q2123 Philip Davies: Clive Goodman was represented in his case by John Kelsey-Fry, who is a very eminent lawyer in this country and I suspect a very expensive lawyer as well. Is John Kelsey-Fry a lawyer that News International would employ on a regular basis?

Mr Hinton: I do not know. I know his name but I do not know how frequently we employed him.

Q2124 Philip Davies: Because John Kelsey-Fry in Clive Goodman’s defence, when Goodman was pleading guilty to certain counts, and Kelsey-Fry may well have been paid by News of the World, said that it was important to recognise that Goodman’s involvement was limited to the events to which he pleaded guilty and that whoever else may have been involved at the News of the World, Clive Goodman’s involvement was so limited. Would you accept that that is a fair analysis for John Kelsey-Fry to make?

Mr Hinton: I am sorry but I did not actually follow Mr Hinton: that is a fair analysis for John Kelsey-Frey to make? What you said. Perhaps you should read it again.

Q2125 Philip Davies: I will read out again what John Kelsey-Fry said. He said in defending Clive Goodman that it was important to recognise Clive Goodman’s involvement. He made the point that whoever else may have been involved at the News of the World Clive Goodman’s involvement was limited to the counts on which he pleaded guilty. Would you not accept that everybody is making that point? The Crown accepted that Clive Goodman had got nothing to do with the other counts laid point? The Crown accepted that Clive Goodman's involvement was limited to the counts on which he pleaded guilty and that whoever else may have been involved at the News of the World, Clive Goodman’s involvement was so limited. Would you accept that that is a fair analysis for John Kelsey-Fry to make?

Mr Hinton: I am sorry but I did not actually follow what you said. Perhaps you should read it again.

Q2126 Philip Davies: Perhaps you could explain to us the payments that were made after their conviction?

Mr Hinton: Well, there were employment-related payments made to them after their conviction. I have been told by News International that they are subject to confidentiality. Even though I have been told not to relay the information, I do not remember it except that in the case of Mulcaire it had reached some point of employment tribunal proceedings but I ended up being advised that we should settle with them and I authorised those settlements.

Q2127 Philip Davies: When somebody breaks the law to the extent that they did which led to a conviction and prison, can you tell me what employment-related claims there are because surely most people would be subject to a summary dismissal under those circumstances?

Mr Hinton: That is a good question and I have to tell you that I have not had an awful lot of experience of dealing with the departure of people who had been to prison. The employment law was complicated and I was told that we should settle and I agreed to do it.

Q2128 Philip Davies: On what grounds were you told that you needed to settle if it was your decision to make?

Mr Hinton: I was given advice by them that there were grounds that we should settle and I accepted the grounds.

Q2129 Philip Davies: Did you not question the grounds?

Mr Hinton: No.

Q2130 Philip Davies: You are a senior executive, clearly a high flyer. Did you not even say, “Why on earth are we giving payments to people who have been sent to prison?” Would that not be the first question that anybody in your position would ask?

Mr Hinton: I agree that it is unusual for people who go to prison to be given financial settlements or people to even commit gross acts of misconduct or abuse of trust. In this case that was the advice that I was given. There was a great deal going on at the time and my biggest concern, as I have said before, at that stage in events was to get the newspaper settled down and back to normal. People sometimes do gain money after gross misconduct. I think under your own terms of employment a Member of Parliament has to be sentenced to more than one year in prison before they automatically lose their jobs under the Representation of the People Act. I guess therefore Clive, if he had been a Member of Parliament, would have been able to do this and continue working.

Q2131 Philip Davies: Yes, we will ignore the smokescreen if you do not mind, Mr Hinton.

Mr Hinton: It is not a smokescreen; it is a statement of fact, is it not, unless I am wrong?

Q2132 Philip Davies: Can I finally put a proposition to you and just gain your reaction to it before letting someone else try and jog your memory. A payment might have been made, might it not, to Clive Goodman and Glenn Mulcaire to make sure that they did not spill any beans to anybody else about any of the other activities that had been going on at the News of the World? What do you make of that presumption?

Mr Hinton: Not surprisingly, I was waiting for you to get to that point, but I cannot actually see what silence there was left because these chaps had been through months of police interrogation, months of investigation, they were taken before the court and I do not know what silence there was. There was a court hearing, there was a rigorous police inquiry; I am not sure what silence you are talking about, so therefore I think it is wrong to assume that.
Q2133 Adam Price: Good morning presumably to you; it is good afternoon from here.
Mr Hinton: It is good morning.

Q2134 Adam Price: Just returning to the trial for a minute, referring to counts 16 to 20 in the indictment—and I remind you they referred to those individuals that Philip Davies referred to a moment ago, non-Royal individuals if you like, people like Gordon Taylor, Max Clifford, et cetera—in relation to those phone-hacking cases what the judge actually said in his summing up is that he accepted that Clive Goodman was not involved with that phone hacking and that Glenn Mulcaire was acting with others at the News of the World. Why would the judge say that in a trial if there was not even the hint of any evidence that that had been the case?
Mr Hinton: I do not know but you have had the principal investigating officers from Scotland Yard saying they found no evidence to warrant further charges and I do not know. I do not remember that particular passage. I am sure you are quoting it correctly but all I can tell you is Yates of the Yard said that there was no basis for making further charges.

Q2135 Adam Price: What they also said to us was if they were conducting the investigation again today they would probably do it differently and maybe if they had done, Mr Hinton, we would not be having this conversation now. You said that no further evidence has come to light but you would accept that we have an email from a junior reporter, now named by the police as Ross Young, with a series of transcripts of phone messages relating to Gordon Taylor, a story that we know the News of the World was interested in from other evidence, and that is the email the Chairman referred to right at the very beginning “copy for Neville”. There are no other Nevilles that I am aware of—and possibly you might be able to enlighten us as to whether there were any other Nevilles at the News of the World at the time—other than the Chief Reporter of the News of the World. Surely on the basis of that piece of information, it is reasonable to draw the conclusion that that junior reporter and the Chief Reporter of the News of the World were aware that phone hacking was being commissioned by the News of the World in relation the Gordon Taylor story?
Mr Hinton: In answer to your question about Neville, I have never done a Neville count on the News of the World staff, I do not know of any others, but this took place, the issue of this email happened, I have not been there for two years, and I just do not know the detail. I gather that you have asked questions about this in the past and I am not sure of the answers that you have been given, but that was post my time there so I am afraid I cannot really give you a qualified response to it.

Q2136 Adam Price: I would just like to correct something, it was Ross Hindley who was the junior reporter and I now he is permanently resident in Peru having left the employment of the News of the World. If we return again then to the issue of the payments which were made to Mulcaire and to Goodman after they left prison, in this case where an employee was guilty, from your perspective it is your position that Clive Goodman was working alone and, according to Colin Myler’s letter to the Press Complaints Commission, it is your position that he deceived his employers and his managers, so why was he not summarily dismissed?
Mr Hinton: But he was summarily dismissed, was he not? People not involved, the Legal Department of News International and the Human Resources Department of News International, who were in no way involved in any of this, gave the advice that these people were entitled to a settlement which I authorised.

Q2137 Adam Price: So, hang on, your initial advice was that he should be summarily dismissed, which was perfectly reasonable from your perspective if you did not know about his criminal activity, and yet how could he then bring an unfair dismissal case against you?
Mr Hinton: I have not discussed the terms of that or the grounds for the case because I have been told I should not.

Q2138 Adam Price: Well, did Clive Goodman in those negotiations in relation to his dismissal threaten to make public information which would have been damaging to the News of the World?
Mr Hinton: That was never suggested at the time.

Q2139 Adam Price: At whose behest, who first mentioned placing a confidentiality clause in relation to these payments to Mulcaire and Goodman?
Mr Hinton: So far as I can remember, if I knew at all, it was mutual.

Q2140 Adam Price: Well, who first raised it?
Mr Hinton: I do not know, I was not that involved in the discussion.

Q2141 Adam Price: Finally, it was mentioned by the Chairman that a number of the stories which were at the heart of this case had two bylines on them, Clive Goodman and Neville Thurlbeck, including one from the spring of 2006 where we now know from the police’s evidence that actually it was the Princes’ phones themselves that were hacked into because the whole basis of the story, with the byline of Clive Goodman and Neville Thurlbeck, was a message left by one Prince on another Prince’s phone. Did nobody ever think to ask Neville Thurlbeck, who co-wrote that story, what he had thought at the time as to the provenance of the story? It could only have come from one source and if it had not been fabricated it could only have come from phone hacking.
Mr Hinton: I do not know anything about that story, I am sorry, I cannot help you, I just do not know. I do not know the circumstances in which it was written. I do not remember it. I just do not know, I am sorry.
Q2142 Adam Price: It is incredible that nobody from the editor down or senior executives ever knew anything about that story. I am sure that if we got Neville Thurlbeck who co-wrote that story he will probably plead the Fifth Amendment as well.

Mr Hinton: Mr Price, I did not plead the Fifth Amendment. Just to give you some context, I was responsible for five newspapers and 4,000 employees. I am sure you do not expect me to be familiar with the detail of every single story that we published.

Q2143 Adam Price: This story has been the subject of recent press coverage because it has now been established, pretty incredibly and I cannot think of another case of this, that a reporter, and probably more than one reporter, writing a story in your newspaper actually hacked into the phones of the Royal Family of this country. It was quite a big story. You would imagine that you might have read some of the press coverage about that.

Mr Hinton: I am sorry but I am at a bit of a distance and I am not familiar with it, I am sorry.

Q2144 Mr Watson: Hello again, Les. Does it surprise you that Andy Coulson did not know the provenance of that story?

Mr Hinton: He might well have known. Mr Watson, you have to put it in the context of the amount of work that the Editor of one of those big papers does. If there were three or four particular big stories going on and he was trying to arrange employment with people or other stories, an Editor does not vouch for everything that goes in the paper. It is one of the things he might well have known about but it does not particularly surprise me that he did not, no.

Q2145 Mr Watson: So in the measures that you have put in place post the Goodman incident to stop journalists obtaining information illegally, who would actually verify the provenance of a story today?

Mr Hinton: That is exactly the right question. The point about the way in which a newspaper works is that information comes from the bottom up, if you like. You have lots of reporters who provide information and depending upon the nature of the story it will be visited with more scrutiny as it gets up the line before being published. The most important thing is that the reporters who are on the ground who are at the coalface getting this information are properly aware of when it is proper and improper to use borderline methods to gain information.

Q2146 Mr Watson: Mr Hinton, you have made a very strong case to say mistakes were made in the past and that you have learnt by those and what I am trying to do is establish how responsibility can be taken for it not happening again. Would you say now that an editor should investigate the provenance of those stories more deeply than perhaps happened in the past?

Mr Hinton: Two things—I think that what is right and wrong can be made very clear to the people who are actually gathering the information, but obviously if I were back in the days when I was an editor and if I were an editor now I would be especially sensitised to the need to make certain and to get involved personally to make sure that something like this was not happening unless there was a really good reason for it to happen.

Q2147 Mr Watson: You were Chief Executive of five newspapers; from the learning you took from the News of the World how confident are you that those activities were not happening in the other four News International newspapers?

Mr Hinton: They were across thelondonpaper, The Times, The Sunday Times and The Sun and there was never any suggestion, but they were all equally reinforced with the rules about what it is proper to do. I never attached the possibility of suspicion to the Times Literary Supplement so I probably did not speak to them.

Q2148 Mr Watson: In the case of a paper deciding to break the law or commit an illegal act where you think there is a public interest test at what level in the organisation would that public interest test be scrutinised? Would that be at editor level now?

Mr Hinton: It would be at least at the editor level. In the case of really big matters—for example the Telegraph's exposure of the expenses misconduct in Parliament—that may have gone beyond the editor. When the Hutton Report was obtained by Trevor Kavanagh at The Sun I was involved in knowing what we were going to do, but at least the editor has to have responsibility.

Q2149 Mr Watson: So the Editor of The Sunday Times would take responsibility for embedding Claire Newell into the Cabinet Office and stealing Government documents?

Mr Hinton: I am not familiar with that case, Tom. I cannot remember the grounds or anything else, but you would have thought if a major act was being carried out to discover information that was judged to be very possibly in the public interest, then I would expect at any stage, and certainly in this particular situation, for an editor to be aware.

Q2150 Mr Watson: Claire Newell was a journalist who then applied for a job through a temporary employment agency as an assistant in the Cabinet Office and was then arrested with an armful of documents when leaving the building. I think she now works on The Sunday Times Insight Team. In that particular case the Editor would have taken responsibility for that decision; is that right?

Mr Hinton: I would not be surprised if he did but I do not know the circumstances, frankly, all I know is what you are telling me now, Tom, so I am not sure.

Q2151 Mr Watson: Okay. Just one last question, Mr Hinton, what did Rupert Murdoch think about all this?
Mr Hinton: Are we going back to the Goodman case?

Q2152 Mr Watson: Yes?
Mr Hinton: He was very concerned about it.

Q2153 Mr Watson: And so he would expect that any current activities that might reflect some of the activities of the past would be completely eradicated and he would expect his editors to take responsibility for that now? Is that a fair assessment?
Mr Hinton: Without wanting to put words in his mouth, I think that is a fair assessment. I would have thought if anyone were found conducting themselves in the way that Clive Goodman did, first of all, I think it is highly unlikely, but if they did, yes, there would be no question about that.
Mr Watson: Thank you very much.

Q2154 Mr Hall: Mr Hinton, in evidence that we have had previously from Colin Myler and Mr Coulson, and again repeated by you this afternoon, that the Goodman case was a one-off case, you said that all the evidence points to that and you backed that up by saying that there was a very thorough police investigation. The police investigation was very specific with a very specific remit. It did not have the remit to do a broad investigation into the wider practices of the News of the World. Is that correct?
Mr Hinton: I do not know. I do not know quite what the grounds were. They spent a long time and they have said it again and again that they had no evidence to charge anyone other than Goodman and the private investigator. I would imagine the police would make an investigation as broad as they see fit and you know what they have said. Certainly I have never spoken to any of them and they have never spoken to me about it. There was never any suggestion by them or anyone else other than the media that the place was a ferment of telephone hackers.

Q2155 Mr Hall: They had other evidence of telephone hacking and telephone tapping of the Royal Family and other celebrities. Goodman was responsible for the Royal desk. Who was responsible for the Royal deskl Who was the editor who was responsible for that now? Is that correct?
Mr Hinton: I do not know who else’s phones were tapped by reporters from the News of the World.

Q2156 Mr Hall: Elle Macpherson, Gordon Taylor, to name two, Max Clifford, Simon Hughes, two more.
Mr Hinton: Hang on, there was a settlement with Gordon Taylor. I do not know what the terms of it were and I do not know if we acknowledged or agreed that we had access. I am not familiar with that because it happened after I left.

Q2157 Mr Hall: This came out during the trial. Counsel on behalf of Mulcaire stated that he had hacked into the phones of Gordon Taylor, Sky Andrew, Elle Macpherson, Simon Hughes and Max Clifford as well as several members of the Royal Household, and was working almost exclusively for News International and Goodman was responsible for the Royal desk; who was responsible for the celebrity desk?
Mr Hinton: Clive did a range of stuff. He was predominantly the Royal Editor but I cannot answer that question off the top of my head.

Q2158 Mr Hall: That would be the editor who would authorise activities on behalf of News International following what you have already given in evidence this afternoon. That would be the editor who authorised those actions, surely?
Mr Hinton: We were talking more specifically with Mr Watson about those issues where there is a clear public interest reason for engaging in certain activity and if that were being done, now or ever, by any newspaper, The Times or The Sunday Times, it would be a matter for very serious discussion in advance of it being done. That is what I think Mr Watson was referring to.

Q2159 Mr Hall: I am referring to Gordon Taylor, Sky Andrew, Elle Macpherson, Simon Hughes, Max Clifford and others whose phones were tapped, admitted in evidence in 2007 on behalf of News International.
Mr Hinton: Tapped by whom, by Mulcaire?

Q2160 Mr Hall: By Mulcaire and admitted by his counsel.
Mr Hinton: I know that it has been said that he tapped an awful lot of phones including Andy Coulson’s and I think Rebekah Wade’s, now Rebekah Brooks, but whether he was doing it on behalf of the News of the World we never had that evidence provided to us.

Q2161 Mr Hall: Repeated by you this afternoon and given in evidence previously by Mr Myler, we are told that he looked extensively through about two and a half thousand emails to see if he could find any other evidence that this was a more widespread practice within the News of the World.
Mr Hinton: If that is what he told you, I do not know.

Q2162 Mr Hall: Is it correct to say that up to 2007 the culture at the News of the World was to pay for stories or information that led to stories by cash payments? Is that correct?
Mr Hinton: Look, the News of the World does not need me to champion it. It has a great history in investigatory journalism. Over the years it has conducted investigations that have resulted in dozens of people going to prison for all kinds of major crimes. Lord Archer of Weston-Super-Mare was sent to prison for four years for perversion of the course justice and, interestingly, he is still a Member of the House of Lords entitled to frame the country’s laws, and there were many others, and those stories were obtained in a proper manner by very seasoned, very good investigative journalists. I am not involved in this business any more to argue for the
**News of the World** which has a great history of proper, sometimes annoying and occasionally intrusive journalism, but they have done investigative work that represents world-class journalism over the years.

Q2163 Mr Hall: To get back to the question: was there a culture of paying for those stories in cash?

*Mr Hinton:* There may well have been. Payments to people are not uncommon on certain newspapers and the **News of the World** on occasion would pay in order to obtain information, yes, that is no secret.

Q2164 Mr Hall: It is more than on occasion because in the evidence presented to us by Colin Myler he actually cited the fact that they had reduced cash payments by about 90% since the Goodman case and they had moved to other methods of payment. Going back to the Goodman case, we really wanted to get to the root of whether this was a widespread practice at News International or the **News of the World**. Would it have been a good idea to look at the cash payments that were made at around the time to see who those cash payments were being made to? Did that happen?

*Mr Hinton:* I think that has been discussed, has it not? The payments that were made by Clive—and I hope my memory is right on this—to Glenn Mulcaire were made using a pseudonym with cash and the knowledge at the **News of the World** as to who the payments were going to or why was not clear. That has been discussed. I think I discussed that when I testified two years ago or maybe more than two years ago.

Q2165 Mr Hall: The question I am asking is we are aware of Goodman’s cash payments to pseudonyms and various other issues. Was that practice elsewhere within the **News of the World**? This is the question. Did the investigation that was conducted internally by yourself and then by Mr Myler actually look at the cash payments that were made for stories at that time?

*Mr Hinton:* Again you have had Colin here to answer your questions. He conducted a very, very rigorous review and, as he told you, there was a reduction in the way cash was being used to get stories. I can only refer you to what he said at the time he gave evidence to you.

*Mr Hall:* Thank you.

Q2166 Paul Farrelly: Mr Hinton, I just want to come to the investigation which is the reason we have asked you back because of the evidence you gave two years ago. You mentioned Andy Hayman having said to us that the **Guardian** had no new evidence. When I put that back to him he admitted that that was a circular argument because anything the **Guardian** has produced has come out of Scotland Yard’s files. Then he went on to produce the statement that they did have evidence about a new fact that the **News of the World** reporters hacked, or Mulcaire hacked directly into the Princes’ phones, to which afterwards the **News of the World** effectively said, “That is news to us.” So there have been new facts that have been established by this inquiry.

*Mr Hinton:* Yes, are you referring to Hayman or Yates, Paul?

Q2167 Paul Farrelly: Sorry, Yates, when he came in front of us.

*Mr Hinton:* Yes, and I have looked not at all of his evidence but some of it and I think that the person that he had accompanying him when asked was there a suspicion that the Princes’ phones had been hacked into, said yes, but I have to tell you that I have never heard that before. It seemed to me listening to what they said that they said suspicion but they did not provide any evidence that they established it. I do not know; all I know is what he said.

Q2168 Paul Farrelly: I just wanted to respond to the point made about Mr Yates’ evidence. We have asked you back here because we want to establish how you responded in the affirmative to the Chairman’s question that you carried out a full rigorous internal inquiry and you said yes you had. Can I just ask you on what basis did you feel able to give that answer, that to your recollection Tom Crone said that various investigations had been undertaken internally as the facts established themselves as the charges and trial developed. Can you tell us on what basis you gave us that answer?

*Mr Hinton:* Okay. You have had the benefit of hearing the testimony of people that were much more closely involved in it than I, but when it all happened my first detailed conversation was with Andy Coulson and I said, “Andy, we have got to make certain the extent to which this has been going on.” He had numerous conversations, the charges were laid, he invoked the help of Tom Crone, who is a company lawyer with a lot of experience and who again was disassociated from this, and there was a decision to bring him in to meet people and to help the police with their enquiries to make sure that they were being properly informed and helped without people that might have an interest in what was being told. We brought in a firm of solicitors and there were many, many conversations with the police, and not involving me. There was never firm evidence provided or suspicion provided that I am aware of that implicated anybody else other than Clive within the staff of the **News of the World**. It just did not happen, Paul, and had it have happened then we would have acted. I cannot tell you the state of alarm that Andy was in when all this happened because he felt a massive burden of responsibility for it having happened on his watch, which is why in the end he decided to quit. That was leading up before Andy’s departure. When Colin came in things were still very live but at that point everybody was pretty exhausted by it all. There were two things I wanted Colin to do: (a) keep speaking to people, keep looking around to see whether or not any of this had happened before and (b) to settle the staff down because most of them of course had had no involvement in this at all, this was just Clive, and to get people focused on doing
their job and being proud of what they do. He had a two-fold issue, a leadership issue and the issue of cleaning up and making certain that we were doing everything we could. We co-operated a lot with the Press Complaints Commission and through our own commonsense to make certain that we had as thoroughly as possible made people aware of the need to behave very, very carefully in certain areas.

Q2169 Paul Farrelly: Before you came to the inquiry to give the answers that you did, had you seen written up reports internally of the various investigations or their various strands or did you simply rely on a briefing from Andy Coulson?

Mr Hinton: I may have seen some stuff, but most of all my conversations were with Andy, of course, and with Tom Crone, who was regarded as just a little outside things. They were the two that I relied upon. It was a difficult period for them. They were the two that I relied upon.

Q2170 Paul Farrelly: You left in December 2007, is that correct, to go to New York?

Mr Hinton: I was kind of out of action in News International a little bit before then but I started my job formally in mid-December 2007 here.

Q2171 Paul Farrelly: By that stage, to your recollection how many internal reviews and investigations into this affair, or strands of investigations, had the newspaper and the company conducted by the time you had left?

Mr Hinton: How many? I do not know. The first several months of Colin’s tenure there, apart from trying to continue to produce a really good newspaper, which he managed to do, was looking into these issues, speaking to individuals, finding out just what kind of conduct may or may not have been going on and, again—to repeat—to make certain that he was getting lawyers in, experts in, obliging everybody to attend seminars and rewriting people’s employment contracts to make sure that there was no prospect of anyone straying the way Clive had. It took up a lot of his time. I do not know the numbers. Again, you had Colin there to talk to because it was part of his day for months to come when he took the job.

Q2172 Paul Farrelly: To your recollection did these inquiries go further than just examining Goodman’s relations with Mulcaire, they went to Mulcaire’s relations with what work in turn he was performing for the company into the various agreements he had or, indeed, the various agreements that the News of the World might have had with other enquiry agents?

Mr Hinton: I imagine they did but, as I am sure you know, because you have very diligently more than I have studied the transcript, the judge did recognise that Mulcaire, although he was guilty of misconduct for which he was imprisoned, had in fact also overwhelmingly been working on legitimate and legal forms of investigations for the News of the World and for other newspapers I think.

Q2173 Paul Farrelly: We have got another bundle, no doubt you will not have seen it, in which in dealing with the Press Complaints Commission, this is February 2007. Colin Myler said to the Press Complaints Commission at that stage that he did believe that Mr Mulcaire was operating in a “confined environment run by Clive Goodman”. We know that since not to have been the case because it has become apparent that phone hacking was going on in relation to Gordon Taylor in 2005. We also knew at that stage because it was in the transcript of the trial that there was an agreement between Mulcaire and Greg Miskiw dated 4 February 2005 and that was in a false name. Did that ever come up in the discussions that you had with Tom Crone and Andy Coulson about the scope of the inquiries?

Mr Hinton: I do not remember that, Mr Farrelly. Sorry.

Q2174 Paul Farrelly: Did it ever come up, to your recollection?

Mr Hinton: I do not recall it ever coming up, no.

Q2175 Paul Farrelly: Would that not beg the question about how thorough the inquiry was then if it had already been mentioned by the prosecution at the trial?

Mr Hinton: I do not recall it. In fact, I know I am not failing to recall it, it did not come up in any conversation with me. I am equally sure that every single detail of every single thing that they did was not brought to my attention as well. They were giving me a pretty comprehensive idea of what was going on but I do not remember that at all.

Q2176 Paul Farrelly: Was it brought to your attention by Mr Crone or Mr Coulson as to how far the various inquiries had gone into looking at the paperwork behind the invoices, the payments, some of which detailed the targets of the phone hacking activities? Do you remember having conversations about that with Mr Crone and Mr Coulson?

Mr Hinton: No. I thought the whole issue of the Goodman/Mulcaire relationship was that there was cash and there were no invoices, but I cannot remember.

Q2177 Paul Farrelly: It has appeared subsequently that there is extensive paperwork but you do not recollect having that conversation or asking the questions?

Mr Hinton: I do not remember that, no.

Q2178 Paul Farrelly: When we interviewed Tom Crone, who you say is a very experienced old hand, he told us that the first that he learned of the contract between Greg Miskiw and Glenn Mulcaire, and indeed the “for Neville” email, was in April 2008 when Gordon Taylor’s lawyers produced it, and then he had a second thought and told us that it may have been referred to in the trial, which it was indeed, that sort of approach, and what you are telling us about the details that were disclosed to you as to the
extensiveness of the inquiry, it does not suggest that there was a very thorough inquiry into all these activities.

Mr Hinton: I do not remember. They spent a lot of time doing it. It is very possible looking back on it that there were things that they failed to do that they might have done, but I have to say that in talking to them it was my impression that they were being very conscientious. Whether or not they did everything they might have, whether or not there were things they should have done or should have uncovered and did not is a fair point, but I think that they tried very, very hard and they did it in a climate again where there was no suggestion by the police that there were loads of guilty men lurking around the News of the World. That just was not the climate.

Q2179 Paul Farrelly: In hindsight, having given the evidence two years ago and learned about many things subsequently, do you think before giving evidence to us you might have asked more searching questions about the extent of the inquiry and more details about what had actually been looked into?

Mr Hinton: Hindsight is a wonderful thing. I was happy when I gave evidence to you all two and a half years ago that the answers I gave were sincere and that the efforts made to discover any other wrongdoing had been conscientious and thorough, and I think people worked very hard in very difficult circumstances to both investigate what might have happened and to make sure that it did not happen again.

Q2180 Paul Farrelly: Are you happy in hindsight that you asked Mr Crone and Mr Coulson all the questions that you might have asked them?

Mr Hinton: I am, yes. I am trying to think but Andy and Tom and then Colin Myler were the trilogy of investigators and I think they worked very hard to see if there was any tangible evidence that they could act upon. There was none. They had no suspicions that they relayed to me and I wanted them to make certain that we got on with life.

Q2181 Paul Farrelly: I am not asking the trilogy, I am just asking you whether, given what has happened subsequently and the fact that you are here now answering these questions, in hindsight you are happy that you asked all the questions that you might have asked and learned, in case it comes up in the future, anything from it?

Mr Hinton: Yes, I am happy.

Q2182 Paul Farrelly: That is a surprising answer. Can I just come on to the payments to Clive Goodman and Glenn Mulcaire which have been mentioned because that is also a new fact that has been established by this inquiry. There was some gossip in Private Eye and from Tom Crone and Stuart Kuttner, after a bit of going back and forth, we gained the admission that these payments had been made. Colin Myler in a letter to us has also said that you were aware of the terms of the settlement. Can I ask you what was the process of authorisation of both these settlements when you were there in terms of who would have signed them off, was it you or would they have gone to the board as well?

Mr Hinton: Putting aside signatures, I would take responsibility for a payment such as that. As I said before, we employ lots of people all over the place. Any settlement of that sort is usually brought to my attention and I would have the chance to object to it. In that particular case, I decided not to and to authorise them. Just to make sure I am answering your question properly, the judgment about that would have been made by the Legal and Human Resources Departments, not by the News of the World.

Q2183 Paul Farrelly: Would you be acting with delegated authority from the board of either News Group Newspapers or News International to do that or would it have gone to the board?

Mr Hinton: I am sorry?

Q2184 Paul Farrelly: In authorising that would you have been acting with delegated authority from the board of News International or News Group Newspapers?

Mr Hinton: Right, just to explain the structure, I was the Executive Chairman of a wholly-owned subsidiary and therefore I was responsible for management decisions so there was no delegation, I would have taken that responsibility myself. We have an Executive Committee which I would keep apprised of things but in matters such as that as it is a wholly owned subsidiary within a public company that decision would have been mine entirely.

Q2185 Paul Farrelly: You said a settlement at that level would come to you. In terms of financial expenditure at what level would you be involved? I am not asking for the amount you gave them.

Mr Hinton: I did not mean to say level. Of that nature, by and large, when there were employment issues, and there were many complex issues such as claims of discrimination or mistreatment by superiors, there were loads of issues like that which frequently came up and very often in those cases, talking hypothetically, they will be looking at the prospect of perhaps a long hearing and there were sometimes just pragmatic decisions to reach a settlement, so I liked to be aware of them when they were being made, and so I would generally sit down with HR or with one of the legal people and just be very quickly brought up-to-date about what had happened and what they were proposing to do. It was part of my job.

Q2186 Paul Farrelly: I understand that. In the case of Clive Goodman he was summarily dismissed and then exercised his right of appeal internally which he lost, presumably on the advice of your employment lawyers and human resources people throughout the process, and then what did he do, did he bring a tribunal claim or threaten to bring one?
Mr Hinton: I haven’t discussed the terms. There was action taken by Mulcaire and Goodman and the judgment was made by our HR and legal people that we should reach a settlement, which we did.

Q2187 Paul Farrelly: But I am surprised if he has exhausted his internal rights of appeal where the pressures would have been involved that for good employment reasons only you would find a reason to settle with him.

Mr Hinton: Well, I decided to act upon the advice of the lawyers and HR.

Q2188 Paul Farrelly: It came out in the trial that Clive Goodman was proposing to write a book. Under the terms of the settlement is Clive Goodman at liberty to write a book about his experience now?

Mr Hinton: You know, I have no idea. I do not know what his rights to write a book are. I just do not know.

Q2189 Paul Farrelly: These are sensitive matters in which you as Executive Chairman felt the need to become involved and writing a book would clearly have a reputational effect on the News of the World.

Mr Hinton: Frankly, I do not ever remember hearing in a trial or anywhere else that he was planning to write a book. I just do not know.

Q2190 Paul Farrelly: You are not aware that that was any part of the settlement, that he refrain from writing a book?

Mr Hinton: Sorry?

Q2191 Paul Farrelly: You do not remember that it was a part of any settlement that he refrain from writing a book?

Mr Hinton: I do not remember it ever being raised with me that he even wanted to write a book, no.

Q2192 Paul Farrelly: I am coming to a conclusion now. With Glenn Mulcaire at the time of the trial, payments under his contract had stopped and that was stated in court. He was a convicted criminal. It was also stated by News International executives, but contrary to statements in court, that he may have been working for other people, despite a clause in his contract saying he had an exclusive relationship with you. Again, it is very hard to find pure employment or contractually related reasons why you might settle before going to tribunal. Would you think that a fair comment?

Mr Hinton: What, to settle before going to a tribunal?

Q2193 Paul Farrelly: Yes.

Mr Hinton: It is not at all uncommon.

Q2194 Paul Farrelly: On the basis of employment rights only.

Mr Hinton: You will have to repeat that, I did not hear it.

Q2195 Paul Farrelly: On pure employment rights only, with Glenn Mulcaire it would seem strange that you would feel the need to settle with him given what had gone on.

Mr Hinton: It was heading for a tribunal and, as in many cases, there is a judgment made that it is better to settle before the tribunal because of the prospect of—again, I am talking hypothetically, not about this case—winning or losing and you can save time, you can save money, and if you think it is a marginal case hypothetically then you say, “Let’s settle and be done with it”. That is a common, pragmatic decision that employers make when they are faced with an employment tribunal and that is not unusual.

Q2196 Paul Farrelly: Indeed, they commonly make them, because tribunals are held in public, for fear of publicity. Hypothetically, in this case might that have been a consideration?

Mr Hinton: That is fair to say. The consideration was that we could just as easily be done with it, put it behind us and get on with life. The issue of being public, I do not know.

Q2197 Paul Farrelly: Can I ask just one final question on the settlement with Mr Mulcaire. My understanding is that contains an indemnity for him in respect of any civil claims he might face following his activities on behalf of the News of the World. That is an open-ended contingent liability. What would be the benefit to News International or News Group Newspapers of agreeing an open-ended indemnity like that?

Mr Hinton: First of all, and I feel I am repeating myself here, I am not going to discuss the terms of it. I would be very interested to know why you are so sure that an indemnity existed in the agreement.

Q2198 Paul Farrelly: It is based on good information, shall we say.

Mr Hinton: I am not going to discuss the terms of the agreement.

Q2199 Paul Farrelly: It is—

Mr Hinton: Frankly, I will tell you this much: if that indemnity were to be in there, which I do not know that it is, I do not recall it being in there, you seem to be better informed than me because I cannot remember.

Q2200 Paul Farrelly: If that is true, and we have got very good reason to believe it is true, then the very revelation of an indemnity might encourage people who have been the target of his activities to sue Glenn Mulcaire knowing that News Group stands behind him.

Mr Hinton: Well, politicians treat hypothetical questions very cleverly and I will treat that one the same way.

Q2201 Paul Farrelly: Okay. I am just pointing out that it is a risky thing for you to have done. One final question: clearly Gordon Taylor’s settlement happened after you left, but the one thing about the Gordon Taylor settlement that is interesting is we
heard from Gordon Taylor’s lawyer at the last session and heard how the first defence that the company put in was “none of these things happened”, then they were confronted with documents and then changed their tune and said actually it had happened and came to the settlements. In your opinion, would you condone going to court as a senior executive within News Corp and actually denying the truth?

Mr Hinton: Mr Farrelly, I heard a little bit of that solicitor’s testimony but I do not know what actually happened so I am in no position to give a qualified judgment on it.

Q2202 Paul Farrelly: We also heard from Mr Taylor’s solicitor that the evidence that Mr Crone had given us in terms of who had asked for confidentiality was not entirely accurate. We heard that it was the newspaper and the company in that case that had asked for the confidentiality to be preserved that there was a settlement at all. Was that an aspect within the settlements with Glenn Mulcaire and Clive Goodman that under your tutelage it was requested that they keep confidential the fact of any settlements?

Mr Hinton: Two things: I cannot remember the detail and, in any event, I have been told by News International not to discuss it.

Paul Farrelly: Thank you.

Q2203 Janet Anderson: Mr Hinton, you said that you authorised a settlement with Goodman and Mulcaire on the basis of advice you received from your legal department and your human resources department. You also said that you relied very heavily at the time for advice on Tom Crone. Was it Mr Crone who gave you that legal advice?

Mr Hinton: No. There is the corporate legal department and there is the legal department that deals with publication and, in particular, issues of libel. Tom is not an employment lawyer, his expertise is libel, so he would not have been involved in that at all.

Q2204 Janet Anderson: Was the advice that you received that you should agree a settlement for fear of being taken to an employment tribunal?

Mr Hinton: The advice that we should settle was based upon the fact that there were, however surprised you all may be, grounds for settling.

Q2205 Janet Anderson: If I can just refer you here to a letter from Colin Myler to all the staff at the News of the World when it was decided to “toughen up” the staff contracts, Mr Myler particularly referred to clause 5.7 of the old contract, which was presumably the one under which Mr Goodman was employed, which specifically said: “The employer endorses the Press Complaints Commission Code of Practice and requires the employee to observe the terms of the Code as a condition of employment”. If that was in Mr Goodman’s contract then he was clearly in breach of that condition, so why the fear of an employment tribunal?

Mr Hinton: The advice that was given was that we should settle with him, and we did.

Q2206 Janet Anderson: Could you tell us which people specifically gave you that advice? You have mentioned that Mr Crone was not an employment lawyer and, indeed, he did say that to us when he gave evidence. Who was it in the human resources department who was an expert on employment law who gave you that advice?

Mr Hinton: You know what, there were several senior people and I cannot remember. Nor can I remember the particular legal people. There were people who gave me the advice and I cannot remember who they were.

Q2207 Janet Anderson: So you took their advice and you authorised a settlement to both these people but you cannot remember who the people were who gave you that advice?

Mr Hinton: It is brilliant the way you are doing this but the fact is there was a massive amount going on at the time, it was a very difficult situation, we were dealing with lots of difficulty within the newspaper and I also had another quite substantial company to run. I am not going to guess at names in a public place like this, I just cannot remember.

Q2208 Janet Anderson: I think I am right, Mr Hinton, that when we took evidence from Mr Crone and Mr Kuttner they both denied that they had known about this settlement at the time. Surely they would have known about it.

Mr Hinton: I did not know that they denied it.

Q2209 Janet Anderson: So you thought they did know? You think that Mr Crone and Mr Kuttner did know about the settlement which you authorised?

Mr Hinton: I would have thought that they knew but not necessarily the detail.

Janet Anderson: Thank you very much.

Q2210 Mr Hall: Mr Hinton, in the advice that you were given about settlements with the two gentlemen referred to, you said the advice was that you needed to settle and you took it. Was that advice in relation to the statutory requirements of employment law or other considerations?

Mr Hinton: The advice was based on employment issues, yes.

Q2211 Mr Hall: On employment law?

Mr Hinton: Not other issues.

Q2212 Mr Hall: Not other issues?

Mr Hinton: Employment regulations, yes, not on the basis of anything else.

Q2213 Mr Hall: So no other considerations, like keeping these two quiet?

Mr Hinton: I have already been asked that question. I do not know how much silence there was for them to keep. They had been the result of massive publicity, the spotlight was on them and the
newspaper for months and months and there was a court hearing, so I do not know what silence there was for them to keep.

Mr Hall: Okay, thank you.

Q2214 Philip Davies: Can I just ask what advice you have been given about giving evidence to us today, and who gave you any advice about how to answer the questions?

Mr Hinton: I received one of those Q and A things that imagine the kinds of questions you might get asked, and I have to say they were about 70% wrong, but that is a fairly routine thing to do, as you know.

Q2215 Philip Davies: The thing that strikes me about today’s evidence session is how incredibly similar you and your colleagues were to the ones that were given to us by Mr Crone and Mr Kuttner, which were all along the lines of—if I might parody slightly—“I don’t remember anything and I didn’t know anything”. Was any of the advice you were given along the lines of to say, “I don’t remember anything and I didn’t know anything”?

Mr Hinton: I heard a bunch of the evidence that they gave and, believe it or not, maybe in the past two months if I have spent an hour in total talking to London about this, that would be about it. I followed it to some extent but I had the view all along that basically when I gave evidence I was telling you what I knew. I knew there was a concern when I was initially called, there was a belief that I think the Chairman referred to that maybe my evidence contradicted what had subsequently been revealed and I cared about it being understood that I had not deliberately intended to mislead the Committee. Apart from that, I have a job to do over here, so I have been travelling a lot.

Q2216 Mr Watson: Every day as an MP these days I have a bit of a Jim Hacker moment but I am trying to move on from that and I understand you are trying to move on from your time as Chief Executive and you are trying to make sure that the organisation’s reputation stays intact. One of the things that we have got to do as a Committee is convince ourselves that these things will not happen again, so I have got a couple of afterthought questions to throw at you on that basis. When Colin Myler talked to us he made a convincing case that the cash payments element to expenses had been reduced because obviously that was how Goodman supplemented the activities of Mulcaire with cash going through the system. That has now been tightened up on the News of the World and you were responsible for making that happen.

Mr Hinton: Making a reduction in the payments happen?

Q2217 Mr Watson: Yes.

Mr Hinton: Colin did that because clearly he would have assumed that the issue of control in areas that may be dubious were in cash payments, so I think it was a very smart thing for him to do.

Q2218 Mr Watson: News of the World is in the spotlight on this but, of course, there were other newspapers that in my view were “at it”. Some of this was endemic and some of your executives have made that point about Operation Motorman. One of the things we need to do is show what learning has taken place across the industry. How confident are you that the other News International titles have tightened up their use of cash payments to contacts?

Mr Hinton: The heavies, The Times and The Sunday Times, generally do not engage in cash payments. The Sun and the News of the World do and I am certain that not just cash payments but across the board that has been curtailed.

Q2219 Mr Watson: So if we were to make a recommendation, and I do not want to pre-empt what colleagues say, that there is some kind of tightening up you can do on that, you would be confident that The Sun in particular have learnt from the experience of their sister paper, the News of the World?

Mr Hinton: I would be very surprised if they had not. Just on your point, there has been a great deal of discussion during these recent hearings on what may or may not have happened in the past, and I think it is perfectly understandable, but what I think it is important for you to appreciate and to discover for your own comfort as a Committee is the massive amount of work that has gone on within the industry in the past few years. I met Richard Thomas when the Motorman thing was going on, I had long conversations with him, he wanted to put us in jail and stuff like that. There was a lot of very intelligent discussion and intelligent action taken, in particular in the area of digital accessing and the way in which new technologies could be misused. One of my last acts as the Chairman of the Editors’ Code Committee, and it was always clear it was not proper, was to more clearly state accessing digital content, to really spell out what the rules were. There has been a lot of work done across the industry. Maybe there could be more done, but I do think when the Committee is satisfied that it has investigated this particular area involving the News of the World sufficiently there is a lot the Committee could do to take comfort, or not, in what has been done in the industry in the past couple of years.

Q2220 Mr Watson: One last question on that line. On the use of enquiry agents, private investigators, call them what you will, the Press Complaints Commission said that the activity of enquiry agents would be regulated by the PCC Code and that the responsibility lies with the paper to make sure they behave within that code. Do you think there would be any merit in a form of transparency where the PCC produces a list of recognised enquiry agents that are used by national newspapers?

Mr Hinton: I had not thought of it and I do not really know. It is certainly an interesting idea. The Code, in fact, now specifically refers to the obligation to behave properly on third parties that are being employed by newspapers, so the issue of private
detective agencies and the need for them to behave under the same rules is very explicitly spelt out under the Code in the last two years.

**Q2221 Mr Watson:** So if a private investigator were to rummage through someone's bins, they would either have been given permission or they were breaking their contract?

**Mr Hinton:** Most probably, but it would depend on whose bin it was, Mr Watson, and why.

**Q2222 Mr Watson:** A citizen.

**Mr Hinton:** Hypothetically I could think of reasons why borderline activity might be warranted if it were believed that a senior politician was receiving illegal funds into his bank account, and I have used this example before of the Republic of Congo. If you have got really firm evidence of something like that then I think the measures you take, although you have to do so with great care, to establish that so you can publish it do fall under different rules than hacking into a telephone for tittle-tattle about Prince Harry.

**Q2223 Mr Watson:** We are getting into hypotheticals here and you warned us against that. The point is an enquiry agent to rummage through a bin would have to get permission from base to do that. Is that your understanding of how that would work now?

**Mr Hinton:** Yes. If I were an editor and any activity were going to take place that was borderline personally I would want to have a proper conversation, be completely satisfied that there were sufficient grounds, sufficient foundation for doing it, absolutely.

**Q2224 Mr Watson:** Where would the citizen go if it was the case that that had been broken? Would you expect the newspaper to terminate the contract with that agency?

**Mr Hinton:** If a third party, such as a detective agency, having been told specifically what the rules were, were to step beyond them, if I were the editor I would dismiss them instantly, yes.

**Q2225 Paul Farrelly:** That seems to have been the case with Mr Glenn Mulcaire yet you settled with him.

**Mr Hinton:** I only heard the “settled with him” part of that.

**Q2226 Paul Farrelly:** With respect to enquiry agents, and Tom’s last question, that seems to have been the case with Mr Mulcaire in that he had served a jail sentence and yet you settled with him.

**Mr Hinton:** Yes.

**Q2227 Paul Farrelly:** I just want to follow that up. When you were asked on a couple of occasions regarding the prospects of a tribunal, which would be clearly aired in public, you said effectively that the concern about adverse publicity was not a factor in making these settlements with Mr Goodman and Mr Mulcaire because you could not see what else could be kept under wraps. That is not exactly the case, is it, because both of these people pleaded guilty and were not cross-examined in a witness box?

**Mr Hinton:** There was a great deal said about what they were supposed to have done. The answer to the question is the issue was that the grounds for settling were advised to me as ones we should settle on, and we did.

**Q2228 Paul Farrelly:** They pleaded guilty and it took them three months to indicate that they were going to plead guilty following their arrests and finally pleaded guilty at the end of November. Clearly it could have been much worse had they been cross-examined.

**Mr Hinton:** I do not know, they pleaded guilty. They chose to plead guilty.

**Q2229 Paul Farrelly:** Can I just follow up one final point. During that time are you aware of any advice that was given by the company, the newspaper, Mr Crane or lawyers as to how they should plead?

**Mr Hinton:** I am not, no.

**Q2230 Paul Farrelly:** As you said earlier in response to a question from Mr Davies it is quite often the case that companies will back their employees by paying their legal costs, but it is also the case that such agreement is conditional on them accepting advice. Would you accept that?

**Mr Hinton:** I do not really know. It sounds logical but I just do not know. It sounds logical.

**Q2231 Paul Farrelly:** Final question: do you think it will be a fruitful question to ask the News of the World now in writing whether those legal costs were indeed paid for the trial and whether there is any conditionality attached to that in terms of the pleas that were entered?

**Mr Hinton:** You do not need my advice on whether or not it is a fruitful question. If you consider it to be fruitful then go ahead and ask it.

**Paul Farrelly:** Thank you very much.

**Q2232 Adam Price:** I just wanted to clarify because Mr Crane did tell us in his evidence that he was not aware of any payment to Clive Goodman and you said you thought he probably was aware. Could you help us. On what basis do you think that he probably knew?

**Mr Hinton:** You may have misheard me because I have not spoken to Tom. I thought that he said to you when he gave evidence whenever it was in July, I am not sure when, that he had been aware of a payment but that he did not know the details. Maybe I am mistaken.

**Q2233 Adam Price:** Maybe the confusion was it appears he was aware of the Mulcaire thing but not the Goodman thing.

**Mr Hinton:** Yes.

**Q2234 Adam Price:** It seemed to come as a bit of a shock to Colin Myler, I remember him doing a bit of a double-take, he had not been aware of either
payment. Why was that information kept from him? Would it not have been sensible for him to have known that happened considering the public interest in this case?

Mr Hinton: I do not know. I did not know he did not know and I cannot imagine why it would be kept from him.

Q2235 Adam Price: Definitely finally: Justice Gross in summing up the case in mitigation in relation to Clive Goodman had this to say: “You”, referring to Clive Goodman, “had operated in an environment in which ethical lines were not clearly defined or observed”. Do you think that is an unfair slur on the reputation of the News of the World by Justice Gross?

Mr Hinton: Could you repeat that just to make sure I heard it properly?

Q2236 Adam Price: Yes. This is the judge summing up at the end and he is listing a whole series of factors in mitigation in relation to Clive Goodman’s sentencing, one of which is the fact that: “You”, Clive Goodman, “had operated in an environment”, that is the News of the World, “in which ethical lines were not clearly defined or observed.” I just wonder what your comment is on that conclusion by the judge in this case.

Mr Hinton: I do not know how specifically he was referring and whether he was referring to Goodman. It is not clear to me from what you have just read that he was referring to the entire newspaper and its culture. If he was, he was wrong. The newspaper has operated for many, many years, over 100 years, and it is a popular newspaper. It sometimes gets under the skin of people but over many years it has had everyone from the Archbishop of Canterbury to Winston Churchill writing for it. It is read by many millions, it is a fine newspaper. I dare say it has not behaved universally entirely properly, there have been lapses, as there have been with every newspaper, but I think it is a fine newspaper and the people who work there deserve to be proud to be working there.

Q2237 Chairman: I think on that note we will draw this session to a halt. Can I thank you very much, Les, for giving up time for us today.

Mr Hinton: Thank you very much.
Written evidence

Written evidence submitted by The Campaign for Press and Broadcasting Freedom (CPBF)

The CPBF was established in 1979. It is the leading independent membership organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership-based, drawing its support from individuals, trade unions and community-based organisations. Since it was established, it has consistently developed policies designed to encourage a more pluralistic media in the UK and has regularly intervened in the public and political debate over the future of press regulation in the United Kingdom.

1. The Committee has sought views on a large number of interesting questions. However, the CPBF would like to concentrate mainly on responding to those pertaining to the European Convention on Human Rights and its impact upon both privacy and press freedom. However, our answers to these questions will also lead us to respond briefly to the questions posed by the Committee about the role of the PCC in certain recent high-profile cases.

2. Although the Human Rights Act 1998 (HRA) was trumpeted by the government as “bringing rights home”, the plain and simple fact is that free speech as a right never had a home in Britain until given one by Article 10 of the European Convention on Human Rights (ECHR), which the HRA finally introduced into British law. Of course, Article 10 is by no means absolute; under certain circumstances prescribed by Article 10(2) governments may introduce restrictions on freedom of expression; furthermore, occasions may arise when Article 10 has to be balanced against other rights, in particular Article 8 which, under certain circumstances, establishes a limited right to privacy from media intrusion. However, not only has Convention jurisprudence established that when such balancing acts take place, there is a clear presumption in favour of Article 10, but when the HRA was debated in Parliament, a clause was inserted By Lord Wakeham, then chairman of the Press Complaints Commission, which laid down that in any case brought against the media, the court must have particular regard to the importance of the right to freedom of expression, and, in the case of “journalistic, literary or artistic material”, to the extent to which “(i) the material has, or is about to, become available to the public; or (ii) it is, or would be, in the public interest for the material to be published”. The clause also laid down that the court must also have particular regard to “any relevant privacy code”, which would of course include the Press Complaints Commission’s Code of Practice.

2.1 It is therefore immediately obvious that neither the ECHR nor the HRA establishes a right to privacy in the manner suggested by many newspapers and by editors such as Paul Dacre. However, it is precisely because they do fear that it establishes such a right (and also because they loathe anything contaminated by “Europe”) that most British newspapers have, from the very start, expressed such resolute hostility to the Act—although rarely have they been as honest about their motives as Dacre, preferring instead to invent and propagate myths about the HRA being a charter for terrorists, hijackers and freeloaders. In so doing, they have played the central role in creating the bizarre situation in which, apparently, the majority of the inhabitants of a democracy have come to believe that “human rights” are dirty words. Indeed, as early as 1999, the anti-human rights clamour from most of the national press had become so deafening that a bemused Hugo Young felt moved to write in the Guardian: “Unembarrassed by the fact that the Human Rights Bill is a general law, applying to every citizen in his or her relationship with state authority, [newspapers] demand that the press be treated differently ... They propose that the press, alone among institutions with public functions, should stand above international human rights law”. Indeed, one might go further and ask whether newspapers which are fundamentally hostile to a measure which for the first time in British history has established a statutory right to freedom of expression, deserve seriously to be considered members of the “Fourth Estate” as the term is generally understood.

2.2 In answer to the Committee’s question, we would therefore argue that the ECHR has had a salutary effect in requiring the courts to balance competing claims to the right to privacy and the right to press freedom, with a clear presumption in favour of the latter.

3. Lord Wakeham’s amendment to the HRA was particularly important in that it is one of those much-needed measures which has helped to introduce a long-overdue public interest defence into cases involving the media. Again, this aspect of the HRA, like Article 10, serves only to enhance the protection offered by the law to serious journalism. And thanks to the Law Lords in the cases of Reynolds and Jameel, we now have a comprehensive and authoritative account of what actually constitutes the public interest as far as media content is concerned. (In comparison, the account given of the public interest in the PCC Code is scrappy and superficial).

3.1 In his speech to the Society of Editors conference, 9 November 2008, Paul Dacre addressed this question by arguing that “if mass-circulation newspapers, which, of course, also devote considerable space to reporting and analysis of public affairs, don’t have the freedom to write about scandal, I doubt whether they will retain their mass circulations with the obvious worrying implications for the democratic process ... If the News of the World can’t carry such stories as the Mosley orgy, then it, and its political reportage and analysis, will eventually probably die”. This is an approach which was also taken by Lord ...
Why newspapers which fulfil no serious public purposes should be exempt from VAT.

Firstly, we would seriously question the extent to which papers such as the News of the World and other such tabloids, which are the main offenders in the matter of invasion of privacy, do actually carry serious political reportage and analysis. Second, whilst it may indeed be the case that the middle-market tabloids the Express and the Mail, who are also offenders in this area, carry a certain amount of political reportage and analysis, it is our view that this so coloured by those papers' editorial lines that it is all too frequently quite impossible to tell fact from comment (and indeed from fiction); it thus not at all clear to us that this can be considered as serious journalism. Newspapers such as The Times and Guardian quite clearly do contain a great deal of serious journalism, which thus may avail itself of the public interest defence if necessary, and this manages to survive without being "subsidised" by scandal-mongering elsewhere in the paper. If popular British newspapers wish to turn themselves into entertainment-based, celebrity-driven scandal sheets then that is entirely their decision, but they cannot then expect the legal protection now offered to serious journalism which operates in the public interest—into which category no reasonable person would claim for one moment that the Max Mosley story falls. Nor, incidentally, can we see any reason why newspapers which fulfill no serious public purposes should be exempt from VAT.

In answer to the Committee’s question, therefore, we would firmly argue that in the light of recent court rulings, the balance between press freedom and personal privacy is the right one.

An excellent example of certain newspapers’ inability to distinguish fact from comment is in fact provided by their coverage of human rights issues. Thus, after the Max Mosley case, News of the World editor Colin Myler complained vociferously that “our press is less free today after another judgement based on privacy laws emanating from Europe. How those very general laws should work in practice has never been debated in the UK parliament. English judges are left to apply those laws to individual cases here using guidance from judges in Strasbourg who are unfriendly to freedom of expression. The result is that our media are being strangled by stealth”. It has also long been customary for certain newspapers to refer to judges as “dictators in wigs”. This is a particular specialty of the Mail, and it was thus not surprising to find Paul Dacre repeatedly taking this line in his above-mentioned speech. For example, he argued that “this law (privacy) is not coming from Parliament—no, that would smack of democracy—but from the arrogant and amoral judgements—words I use very deliberately—of one man”. This was the unfortunate Justice Eady, described by Dacre as possessing “awesome powers” which enable him to “bring in a privacy law by the back door” and “with a stroke of his pen”. He was also echoed in these sentiments by Graham Dudman, managing editor of the Sun, who told the Today programme: “Parliament has not made these decisions, one man has”. This is quite simply juridical and constitutional illiteracy. Journalism courses accredited by the National Council for the Training of Journalists spend a great deal of time teaching the fundamentals of law and public administration to their students, and it is frankly extraordinary to find editors of national newspapers spouting arrant nonsense which would disgrace a first year student on such a course.

The HRA strode in straight through the front door of Parliament, and is a quite decidedly British piece of legislation. As the Chief Justice Lord Woolf has made perfectly clear, UK law now includes the Human Rights Act, and judges are simply ensuring that the laws made by Parliament are upheld. Parliament makes the law, the Executive ensures that it is carried out under law, and the judiciary interprets and applies the law. By enacting the Human Rights Act, Parliament required the courts to interpret and apply both statute law and common law compatibly with the rights and freedoms protected by the European Convention. To argue that the courts are exceeding their authority in this matter, or that we are seeing a “wholesale erosion of Parliamentary sovereignty”, simply beggars belief. In the real world and not that of Dacre’s fevered imaginings, the Act simply requires the courts to interpret legislation in a way which is compatible with Convention rights. The courts thus develop law in line with the Convention. In the case of legislation which they deem incompatible with Convention rights, all they can do is to issue a declaration of incompatibility and leave it up to Parliament to amend the legislation accordingly.

These are such obvious and fundamental points that they should not need stressing. However, the waters have been so thoroughly muddied by Dacre, Coulson and their ilk that we think it worth reproducing part of a letter to The Times, 11 November 2008, signed by the QCs Desmond Browne, Andrew Caldecott, Adrienne Page and Richard Rampon in which they state that: “The suggestion that Mr Justice Eady is conducting a one-man mission to create a law of privacy, thereby circumventing the function of Parliament, does not bear proper examination. Firstly, the Judge was applying the law as Parliament intended. The Human Rights Act requires the English courts to recognise European Convention rights, including the right to respect for private and family life. Indeed, Parliament expressly made it unlawful for a court to act in a way which is incompatible with Convention rights. The task of the Court is to resolve the tension between personal privacy and freedom of expression, an area where there are no absolutes. In weighing these rights the public interest will always ensure that the corrupt and crooked will not “sleep easily in their beds”. Mr Dacre may well prefer an era when freedom of expression did not have to take account of privacy rights, but Parliament has decided the contrary. Secondly, the decisions of Mr Justice Eady (like those of the many trial judges who have decided privacy cases) are subject to three levels of review: the Court of Appeal, the
House of Lords and ultimately the European Court of Human Rights. In the cases cited by Mr Dacre, the Judge was doing no more than applying the law, as he was bound to do, developed by the House of Lords in the Naomi Campbell case and the European Court of Human Rights in the case of Princess Caroline.

4.3 There are yet further factual flaws in Dacre’s attack on Justice Eady. Firstly, he does not have a “virtual monopoly” on privacy cases; for example, he was not involved in the Naomi Campbell, JK Rowling or Prince of Wales cases, all of which have contributed to the development of privacy law. Second, in the case of Lowe v Associated Newspapers (2006), Justice Eady actually strengthened the defence of fair comment which is available in defamation cases; ironically this involved a paper of which Dacre is Editor-in-Chief. Third, he has strongly promoted the statutory offer of amends procedure, which has been very widely adopted by media defendants as a means to settle libel complaints speedily and economically.

4.4 Given the increasing frequency with which newspapers, and especially the Mail, mount personal attacks on named judges, we strongly recommend the ending of the convention by which judges do not respond publicly to such attacks, and urge senior members of the judiciary to make official judicial responses to these attacks in future.

5. In the light of Dacre’s animus against the judiciary, we wonder whether he would like to see a return to the situation of the late 1980s when juries, revolted by the sensationalist antics of the popular press, awarded massive damages against offending newspapers. This finally resulted in juries being given judicial guidance about the size of the damages to be awarded in particular cases, and in the Court of Appeal acquiring the power to substitute its own awards in place of those which it considered excessive. We seem to remember these measures being strongly supported by the press—the selfsame press which now complains about the “excessive” power of judges.

5.1 Whatever the case, however, and in answer to the Committee’s question, we would strongly argue that financial penalties for libel or invasion of privacy applied either by the courts or a self-regulatory body, should be exemplary rather than compensatory. We would also argue that the courts or a self-regulatory body should be empowered to ensure that the award of any such damages be carried with due prominence in the offending newspaper(s).

5.2 As the Campaign for Press and Broadcasting Freedom we firmly believe in the “publish and be damned” principle—in other words, newspapers should be free to publish what they will, but also free to take the consequences. The consequences, however, have to be meaningful ones. In our view, given the enormity of the offences committed by various newspapers, the awards of £60,000 to Max Mosley, and, in the McCann and McCann-related cases, of £550,000 to the McCanns themselves, of £375,000 to the so-called “Tapas Seven”, and of £800,000 to Robert Murat, Michaela Walzuch and Sergey Malinka, were nothing less than derisory. Given the incomes of the papers in question, and, more particularly, given the increases in sales which these stories generated, these damages (and the associated costs) were little more than pinpricks and were no doubt simply laughed off by the editors concerned. Significantly, the News of the World’s response to its defeat at the hands of Mosley was to run a full page advertisement in the Press Gazette featuring a woman in a basque over which was superimposed the word “Domination”. The advertisement was headed “Mosley’s not the only one getting a spanking” and boasted that “we’ve been beating our rivals for 165 years”.

5.3 At the very least, then, damages should be fixed at a level which ensures that no paper can actually profit from running a story which is later shown to have broken the law. This means that damages have to be computed, in part, in terms of sales figures and associated advertising revenue. But this ensures merely that newspapers cannot profit from their crimes. Computing the exemplary aspects of damages is considerably more difficult, but, when doing so, it should be borne in mind that (a) popular newspapers routinely insist that those breaking the law should be publicly “named and shamed”, and that their sentences should be primarily punitive and retributive; and (b) that the vast majority of the British press vociferously supported the “sequestration” of the assets of those unions which broke industrial relations law in the 1980s. Admittedly the British press routinely acts as though its endless strictures apply to everything except newspapers, but in our view what’s sauce for the goose …

6. At 5.1 above there is mention of a “self-regulatory body”, and this is clearly a reference to the PCC. However, we have not the slightest doubt that the PCC as presently constituted would never dream of levying financial penalties on newspapers which infringed its Code and/or the law. As we have argued in earlier submissions to this Committee, were the PCC to become a regulator with real teeth, the newspaper industry would simply cease forthwith to finance it. Indeed, one of the most striking things about both the McCann, McCann-related and Mosley cases has been the almost complete invisibility of the PCC—an invisibility which springs from the fact that none of those who were libelled or whose privacy was infringed thought the PCC remotely worth bothering with, a judgement with which we would heartily concur. Even so, one might have expected the PCC to institute some kind of retrospective enquiry or inquest into the McCann and McCann-related cases which, between them, involved every single popular national daily newspaper published in Britain. But no. Absolute silence.

6.1 Furthermore, the Executive Editor of the News of the World, Neil Wallis, sits on the PCC Code of Practice Committee, and this is chaired by Paul Dacre. This illustrates all too clearly why the PCC is part of the problem and not part of the solution when it comes to the questions raised by this Committee. The PCC cannot act effectively on these matters—even if it wanted or knew how to—because it is financially and
organisationally beholden to the very newspapers which repeatedly insist on infringing the law, abusing the judiciary and thereby violating the European Convention on Human Rights and the Human Rights Act 1998. Thus since the PCC is congenitally incapable of constructing and enforcing a satisfactory code on privacy, and governments are far too terrified of being monstered by the press even to contemplate formulating a privacy law, the only option is to allow the courts to do so in ways which are fully compatible with the ECHR and HRA and which thus give adequate protection to freedom of expression. \textit{We thus conclude in answer to the Committee’s questions that news organisations have made no changes whatsoever in the light of the McCann and McCann-related cases, and that the successful libel actions against the Express and other papers arising out of these cases indicate a near-fatal weakness with the self-regulatory regime of the PCC.}

\textit{January 2009}

\textbf{Written evidence submitted by the Press Association}

\textbf{Introduction}

1. The Press Association (PA) is the national news agency for Great Britain and the Republic of Ireland. It provides a 24-hour-a-day news service to subscribers, which include national and regional press, national and regional broadcasters, online news services, foreign media organisations, and non-media customers, including commercial organisations, Government departments and political parties.

2. PA reporters cover major court hearings in England and Wales, Scotland, Northern Ireland and Ireland. Dedicated teams of journalists are based at the Central Criminal Court, the Royal Courts of Justice, and at Parliament. Reporters are based in London and in major centres across the United Kingdom, as well as in smaller towns and cities.

3. The organisation also has a major photographic service, with an archive reaching back over the major events of the past century.

4. This submission is intended to cover some, but not all, of the issues raised in the announcement of this current inquiry made on November 18 2008. Some of the submissions in this document will, of necessity, touch upon more than one issue. They are also necessarily brief, given the committee’s preference for a limit on the length of submissions, but the Press Association will expand its views should the committee wish.

\textbf{Interaction between the effect of UK libel laws and press reporting}

1. It has always been known that the libel laws have the effect of restricting what may be reported. Various defences are available to those who publish material for public consumption. But the fact is that the balance is weighted against the publisher and in favour of the claimant. When a publisher is sued for defamation, the claimant asserts that the publisher has put before the public material which damages his reputation in the eyes of right-thinking members of society as a result of which he or she has suffered damage—the damage is in fact assumed to have been suffered.

2. But at no point in a defamation case is the claimant under any obligation to demonstrate the truth of what he or she asserts. The publisher, editor or writer bears the burden of having to prove, to the satisfaction of a judge or jury, that what is being alleged is not merely true, but demonstrably true. This point was raised recently by the United Nations Committee on Human Rights\textsuperscript{1} which warned in its report that the practical application of the libel law as it currently stands in the UK “has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as ‘libel tourism’.”

3. “Libel tourism” has seen foreign businessmen and millionaires coming to the High Court in London to sue foreign publishers. The case of an American researcher, Dr Rachel Ehrenfeld, who was sued in London by a Saudi businessman and his two sons over a book which was not published in the UK\textsuperscript{2} has led to the states of New York and Illinois passing legislation to protect writers and publishers from the enforcement of defamation judgments in other courts unless the courts of those states are satisfied that the foreign courts accord the same protection for freedom of speech as New York and US Federal law. The US Federal legislature is now considering whether to enact similar legislation. The effect of the legislation in New York and Illinois is to make foreign judgments against US writers and publishers virtually unenforceable in the courts of those states.

4. The UN Committee, on page seven of its conclusions, went on to say at paragraph 25:

“\textit{The advent of the internet and the international distribution of foreign media also create the danger that the State party’s unduly restrictive libel laws will affect freedom of expression worldwide on matters of valid public interest.”}


\textsuperscript{2} Neutral Citation Number: [2005] EWHC 1156 (QB). In total, some 23 copies of the book were sold into the UK via the internet. The first chapter of the book was available on the internet.
5. It recommended:

“The State party should re-examine its traditional doctrines of libel law, and consider the utility of a so-called ‘public figure’ exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures, as well as limiting the requirement that defendants reimburse a plaintiff’s lawyers (sic) fees and costs regardless of scale, including Conditional Fee Agreements and so-called ‘success fees’ especially insofar as they may have forced defendant publications to settle without airing valid defences. The ability to resolve cases through enhanced pleading requirements (eg. requiring a plaintiff to make some preliminary showing of falsity and absence of ordinary journalistic standards) might also be considered”.

6. The lack of a single publication rule has a serious effect on internet archives. The Press Association believes the law should be reformed to introduce a single publication rule. The current lack of such a rule means that news organisations which run internet archives expose themselves to limitless liability for a defamation action, as the limitation period is deemed to re-start as soon as an article is accessed via the internet. This dates from the case of Duke of Brunswick v Harmer. An article which allegedly defamed the Duke was published in the Weekly Dispatch on September 19 September 1830. The limitation period for libel at that time was six years. But 17 years after its publication an agent of the Duke bought a back number containing the article from the Weekly Dispatch’s office. Another copy was obtained from the British Museum. The Duke sued on those two publications. The publisher contended that the action was time barred, relying on the original publication date. But the court held that delivering a copy of the newspaper to the Duke’s agent constituted a separate publication over which he could sue. The act of defaming someone was complete by the delivery of the copy, and its legal character was not altered “either by the plaintiff’s procurement or by the subsequent handing over of the writing to him”.

7. In Dow Jones and Co Inc v Yousef Abdul Latif Jameel the Court of Appeal declared that the Duke of Brunswick’s case would now be struck out as an abuse of process. The then Master of the Rolls, Lord Phillips of Worth Matravers, said (at paragraphs 54–56 of the judgment):

“An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing-field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice. ...”

“There have been two recent developments which have rendered the court more ready to entertain a submission that pursuit of a libel action is an abuse of process. The first is the introduction of the new Civil Procedure Rules. Pursuit of the overriding objective requires an approach by the court to litigation that is both more flexible and more pro-active. The second is the coming into effect of the Human Rights Act. Section 6 requires the court, as a public authority, to administer the law in a manner which is compatible with Convention rights, insofar as it is possible to do so. Keeping a proper balance between the Article 10 right of freedom of expression and the protection of individual reputation must, so it seems to us, require the court to bring to a stop as an abuse of process defamation proceedings that are not serving the legitimate purpose of protecting the claimant’s reputation, which includes compensating the claimant only if that reputation has been unlawfully damaged.

“We do not believe that Brunswick v Harmer could today have survived an application to strike out for abuse of process. The Duke himself procured the republication to his agent of an article published many years before for the sole purpose of bringing legal proceedings that would not be met by a plea of limitation. If his agent read the article he is unlikely to have thought the Duke much, if any, the worse for it and, to the extent that he did, the Duke brought this on his own head. He acquired a technical cause of action but we would today condemn the entire exercise as an abuse of process”.

8. In December 2002 the Law Commission called for newspapers and other organisations which run online archives to be given greater protection against the risk of a libel action. It said that while the one-year limitation period for defamation cases could cause hardship to would-be claimants, as it gave them little time in which to prepare a case, it was also potentially unfair to allow claimants to bring actions possibly decades after the original publication of an article, when it would be extremely difficult to mount an effective defence. It said: “We agree with the Court of Appeal that online archives have a social utility, and it would not be desirable to hinder their development”.

9. It went on to suggest that consideration could be given to adopting the single publication which applies in the United States. Under this rule, a single edition of a newspaper or book is considered to be “single publication”, no matter how many copies are distributed, and the limitation period runs from the first date of publication, even if copies are available months or years later. Courts in the United States have applied the rule to website publications, finding in the case of a report published at a press conference and placed on a website the same day that the limitation period ran from the time at which the document was put online.

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3 (1849) 14 QB 185
5 Law Commission, Defamation and the Internet, Scoping Study No 2, December 2002
10. None of the Commission’s recommendations has been implemented.

11. The attitude of the English courts to material on the internet is a stark contrast with the attitude to a book, for example, or even to press cuttings in a newspaper’s library. If a book is published which contains defamatory material about Mr A, he has, under normal circumstances, one year in which to sue for libel.\(^6\) If someone reads a copy of that same book three years after its publication and brings it to Mr A’s attention, he cannot then sue for libel. If, however, the same reference to Mr A were to be made in an article in an online archive, and were to be accessed by someone who brought it to Mr A’s attention, he could sue for defamation on the grounds that it is a new publication.

The impact of Conditional Fee Agreements on press freedom

12. The introduction of the Conditional Fee Agreement (CFA) regime as part of the government’s attempt to ensure access for justice has had a seriously chilling effect on press freedom, and the Press Association has had anecdotal evidence that good stories have not been published because of the risk of the newspaper being sued by a claimant operating on a CFA. The Media Lawyers’ Association recently prepared, on behalf of a large group of media organisations, a submission for a consultation on the CFA regime currently being conducted by the Civil Procedure Rules Committee which warned that costs in defamation and privacy cases and other legal actions involving publications were running out of control. It said the CFA regime should be reformed because it was having a seriously chilling effect on the media’s right to freedom of expression, and called for cost-capping to be mandatory in all cases involving publication or the right to freedom of expression under Article 10 of the European Convention on Human Rights.

13. It warned that small media publishers could no longer afford to fight libel actions—even in simple cases they could face closure if they lost a case at trial—and said that another effect of the spiralling costs was that investigative or controversial stories were not being published. The cost of claims was also forcing media organisations to settle cases and retract stories where there was no editorial need to do so, it said, adding that claimants who were genuinely worthy of censure were winning libel claims because it was too expensive for the media to fight them, and that costs were also invariably disproportionate to the damages awarded.

14. An example of the way in which costs can rise alarmingly was given by Paul Dacre, editor-in-chief at Associated Newspapers, in a speech to the Society of Editors’ annual conference in November 2008. Mr Dacre outlined the case of Labour MP Martyn Jones, who sued the Mail on Sunday over a claim that he had sworn at a Commons official. He said:

“The Mail on Sunday believed it had rock-solid witnesses and decided to fight the case. In the event, they lost and were ordered to pay £5,000 in damages. The MP’s lawyers claimed costs of £388,000—solicitor’s costs of £68,000, plus 100% success fees, barrister’s costs of £63,000, plus 100% success fees, VAT and libel insurance of £68,000. Associated’s costs were £136,000 making a total of £520,000 costs in a case that awarded damages of just £5,000 in a dispute over a simple matter of fact.”

15. A further example of the way in which costs can rise at an alarming rate is to be found in the article by Alan Rusbridger published in the January 15 2009 edition of the New York review of Books. Mr Rusbridger details the costs racked up in the case, and pointed out that had the case got to trial, the total costs would have been some £5 million, even though the damages would undoubtedly have been extremely modest by comparison. But it should be noted that there was no suggestion that Carter-Ruck, Tesco’s law firm, was operating in this case on a CFA.

16. The Press Association supports all these contentions.

Contempt of Court and the internet

17. The Contempt of Court Act 1981 is intended to protect the integrity of the criminal justice system by helping ensure that an accused defendant has a fair trial while limiting the operation of the so-called “strict liability rule” under which the media can be punished for publishing material which creates “a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced”.

18. One difficulty with the legislation is that it is based on the assumption that potential jurors at a criminal trial will be influenced by what has been published in the print media or broadcast by radio or television stations, and that the allegedly prejudicial effect of that publication will remain with the jurors throughout the proceedings. There is no evidence to support this assumption, as no research has been carried out in this country to investigate what, if any, effect media reporting of trials might have or has had on potential jurors.

19. This point was recognised in May 2007 by the then Attorney General, Lord Goldsmith QC, who told the Reform Club Media Group in a speech that the government should conduct research into the effects pre-trial media publicity had on jurors, and should also consider ways in which it could give the public more information in criminal cases in which there was a strong public interest such as terrorism investigations.

\(^6\) The limitation period may be extended at the court’s discretion.
20. The assumption is that media publicity will have such an effect on jurors or potential jurors that they will be more influenced in reaching a verdict by what they might have read in a newspaper weeks or months before a trial than they will by seeing and examining the evidence and hearing the arguments and submissions of prosecuting and defence counsel. Members of the Committee might care to ask themselves if they believe that this assumption can be applied to the people they know and with whom they deal—and, if it cannot, why it should be applied to all other potential jurors.

21. The Court of Appeal has made plain its belief in the robustness of jurors. In R v B— a case involving reporting restrictions on the sentencing hearing for self-confessed terrorist Dhiren Barot, who plotted to set out a radioactive device in central London, among other things—the Court of Appeal said (a paragraphs 31 and 32 of the judgment):

“There is a feature of our trial system which is sometimes overlooked or taken for granted. The collective experience of this constitution as well as the previous constitution of the court, both when we were in practice at the Bar and judicially, has demonstrated to us time and time again, that juries up and down the country have a passionate and profound belief in, and a commitment to, the right of a defendant to be given a fair trial. They know that it is integral to their responsibility. It is, when all is said and done, their birthright; it is shared by each one of them with the defendant. They guard it faithfully. The integrity of the jury is an essential feature of our trial process. Juries follow the directions which the judge will give them to focus exclusively on the evidence and to ignore anything they may have heard or read out of court. No doubt in this case Butterfield J will give appropriate directions, tailor-made to the individual facts in the light of any trial post the sentencing hearing, after hearing submissions from counsel for the defendants. We cannot too strongly emphasise that the jury will follow them, not only because they will loyally abide by the directions of law which they will be given by the judge, but also because the directions themselves will appeal directly to their own instinctive and fundamental belief in the need for the trial process to be fair.

“In this case there are at least two safeguards against the risks to which our attention has been directed. There is the responsibility of the media to avoid inappropriate comment which may interfere with the due administration of justice in this case and there is the entire trial process, including the integrity of the jury itself.”

22. Despite this, courts continue to make orders prohibiting the publication of reports of criminal trials because a defendant faces another trial in the future.

23. In addition, in at least one case, a court has expressed the view that failing to remove what defence counsel have claimed to be prejudicial material from a newspaper archive would be viewed as a contempt—even though the court has no power to order the removal of such material. Further details cannot be given because the case is covered by reporting restrictions.

24. The development of the internet has left the courts flat-footed in their approach to the information age. Instead of concerning themselves with how can persuade jurors to avoid material on the internet, or to ignore it if they see it, they concentrate on trying to stop the flow of information to the public at large. In the recent trial of Peter Tobin for the murder of schoolgirl Vicky Hamilton, the court heard serious concerns voiced by defence counsel Donald Findlay QC, who described the Wikipedia entry on Tobin as being “on the face of it, the most blatant contempt of court I have seen in my entire career”. Wikipedia is based in and run from San Francisco. It was the decision of a Wikipedia user that the relevant page should be taken down for the duration of the trial—but the court itself would have had no right to order the removal of the material, and could have done nothing to stop jurors accessing it if they wished except by telling jurors not to do so. In addition, Tobin was convicted in 2007 of the murder of a Polish girl, Angelika Kluk, and it is stretching credibility to believe that jurors at the Vicky Hamilton murder trial would not already have known at least something of Tobin’s past. This would be only reasonable, first because the jury cannot too strongly emphasise that the jury will follow them, not only because they will loyally abide by the directions of law which they will be given by the judge, but also because the directions themselves will appeal directly to their own instinctive and fundamental belief in the need for the trial process to be fair.

25. The State of Victoria in Australia has taken a different route. It recently passed a law which forbids jurors, and members of jury panels, from doing their own research, which includes research on the internet, into any case on which they are sitting. The penalty for any juror or panel member found to have conducted internet searches or other investigations is a fine of up to 13,214 Australian dollars—about £5,140. The new law, introduced in the Victoria’s Courts Legislation Amendment (Juries and Others Matters) Act 2008, came into effect in September. Victoria Deputy Premier and Attorney-General Rob Hulls said the ban on inquiries by jurors was necessary to ensure that verdicts at trials were reached on the basis of the evidence seen and heard in court, and that there had been retrials in New South Wales as a result of undirected juror investigations.


The Wikipedia entry on Peter Tobin, with a discussion on why the page was taken down for a time is at http://en.wikipedia.org/wiki/Peter_Tobin
The effect of the European Convention on Human Rights on the courts' view of the tension between personal privacy and press freedom—and the balance between the two

26. The attitude of the courts on this issue is largely derived from the decision of the European Court of Human Rights (ECtHR) in the Princess Caroline case. The ECtHR held that Germany failed to give Princess Caroline sufficient protection for her private life because she was unable to obtain a remedy under German law for having been photographed in magazines while engaging in a number of anodyne activities.

27. The decision, reached by a Chamber of the Court, stressed the importance of a free press but then went on to tilt the balance away from a free press and towards the personal privacy of Princess Caroline. The court rejected Germany's argument that she was a public figure, and said there was no justification for photographing her while she was doing things such as shopping or riding a bicycle. She was doing these things as a private person, and was not performing any formal function. To some extent, it may be said that the court's reasoning allows any public figure to decide that they do not wish to be pictured (or possibly written about) not merely in situations in which they seek privacy, but also in those in which they might be in public, but might be in a condition about which they would rather the public did not know.

28. The reasoning of the ECtHR placed political free speech at the top of the league table in importance—politicians had to expect to be subject to scrutiny because of their position in public life. But it also effectively discounted the idea that people are, or do become, role models for others. Footballers are often seen as role models, particularly by young people, who seek to emulate their skills, and may well view other activities in which they indulge as being normal, possibly even desirable, behaviour for people who achieve such a position. The same applies to many others, including celebrities, whose behaviour is seen as being in some way as exemplary. But the Convention could become a hypocrite's charter for all those apart from politicians who indulge in hypocrisy, dishonesty, or questionable dealings.

29. The danger for the UK is that if the courts continue to follow the line of reasoning now being pursued by the ECtHR, it will at some time or other be difficult, if not impossible, for the press to write about anyone who is not a politician or engaged in some form of political activity or discourse. But life is about much more than politics—and the way the balance is swinging so far in favour of personal privacy threatens to rob the media of their ability to reflect and report on many elements of the modern world.

30. A stark example of the way in which the balance is moving against the press, and against freedom of expression can be seen in the decision by Mr Justice Stephens in the Queen's Bench Division of the High Court in Northern Ireland to make permanent an injunction banning the Sunday Life newspaper in Belfast from publishing any unpixellated picture of Kenneth Callaghan, who was convicted of the rape and murder in October 1987 of 21-year-old Carol Goudie. He broke into her house before she arrived home from work, attacked her when she got home, then placed a cushion cover over her head—to disguise the fact that she was not the girlfriend who had recently ended their relationship—and raped Ms Goudie as she lay dying or when she was in fact dead.

31. Sunday Life has been running a campaign to raise public awareness of the fact that people convicted of serious offences and sentenced to life terms are being released on to the streets of Northern Ireland.

32. In his order Mr Justice Stephens also banned the newspaper from giving a number of details about Callaghan. But he also acceded to an application from the Northern Ireland Office to issue a blanket ban on Independent News and Media, publisher of Sunday Life and of the Belfast Telegraph, from publishing a photograph of any current serving prisoner who is attending or has attended its Prisoner Assessment Unit without the consent of the Northern Ireland Office. The order amounts to a blanket ban on any newspaper publishing any picture of a prisoner who is at the assessment centre without the consent of the Northern Ireland Office.

Should financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, be exemplary rather than compensatory?

33. No. The Press Complaints Commission does not impose financial penalties, and the Press Association would not support its having the ability to do so. It is important to remember that the press in this country consists not merely of national newspapers, but also of more than 1,200 regional and local newspapers, many of which are already facing serious problems because of shrinking markets and the current economic situation. Adding the risk of exemplary penalties for invasion of privacy will merely ensure that they will reduce coverage, or stop coverage completely, of any story which could lead to a complaint that they have invaded someone's privacy.

34. There is no need to impose exemplary penalties for defamation or alleged invasion of privacy. An action for defamation is aimed at vindicating the claimant's reputation, and the damages awarded are considered to be sufficient compensation. Many might argue that such damages over-compensate, given the levels of compensation normally paid in relation to serious physical injury suffered in a road accident, for example. The costs which normally accompany any libel action are already seriously disproportionate, and can be grossly inflated by the addition of a "success fee" if the winning claimant's solicitor is on a CFA.

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Footnotes:
9. 2004, Application no. 59320/00; [2004] EMLR 21 ECHR
10. The judgment is available online at http://www.courtsni.gov.uk/NR/donlyres/E9B5FD23-CA51-43BC-AD4B-D8BC2CEC48F2/0/j_j_STE7313Final.htm
Adding an exemplary element to such damages would simply produce an even greater chilling effect on the freedom of the press, and its ability and willingness to report the stories which are of greatest public importance and interest, as these are also the ones which carry the greatest risk of provoking a defamation action.

January 2009

Written evidence submitted by the National Union of Journalists

INTRODUCTION

The National Union of Journalists (NUJ) is the TUC-affiliated union representing journalists working in Great Britain, Ireland and internationally. The union has 38,000 members working as journalists or on editorial content in newspapers, broadcasting, websites, news agencies and public relations.

The NUJ has always seen the relationship between democracy and journalism as important and has had a Code of Professional Conduct since 1936. This code helped to inform the current Press Complaints Commission Code.

The union’s rules allow it to discipline members who breach its code and even expel them from membership for serious breaches. The code was reviewed and rewritten in 2007. The union’s Ethics Council is charged by the union’s rules with:

- the responsibility for the promotion and enforcement of the professional and ethical standards of the union, with particular reference to the enforcement of the union’s code of conduct and with researching and debating ethical issues in media freedom and regulation.

The Ethics Council is made up of members of the union directly elected by the members from the various industrial sectors of the union as well as representatives from the union’s Black Members Council, Equality Council and Disabled Members Council.

The NUJ believes strongly in the right to freedom of expression and sees it as a vital freedom that underpins all other public freedoms. Without the right to publish a wide range of views, investigate and publish the activities of the powerful and what they are claiming to do in the name of the public, there can be no democracy.

The union is also acutely aware of the distinction between the right to publish in the public interest and the right to publish what will interest the public and thereby sell newspapers. The public may want to know about the private lives of celebrities but that does not mean that they need to know in order to protect their democratic rights.

However, there are individuals who seek to improve their status or earning power by courting publicity and presenting themselves as a certain kind of person, and the NUJ believes that it can be in the public interest to present a true picture of them to the public. When a person has entered public life and attempted to capitalise on their image or popularity, the public has a right to know the truth in order to make appropriate judgements about them.

There is also a public interest in freedom of expression itself; but the union believes that the random destruction of people’s reputations simply to boost a newspaper’s circulation or a TV show’s ratings is not in the public interest and is the point at which freedom of expression has to bow to the right of individual privacy.

THE SELECT COMMITTEE’S QUESTIONS:

Why the self-regulatory regime was not used in the McCann case, why the Press Complaints Commission (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case

The NUJ is not surprised that the PCC was not used in the McCann case, nor that the PCC did not invoke its own inquiry. It is likely that the PCC would not have upheld complaints from the McCanns since it is arguable whether there is direct evidence that the articles concerned breached the PCC Code of Practice, which does not prevent speculation.

The PCC is a complaints body. It has no other purpose. It does not investigate ethical issues of concern of its own accord. Its predecessor, the Press Council, produced a series of reports following in investigations of key reporting events, which allowed lessons to be learnt. The PCC has steadfastly refused to be so proactive and while it occasionally produces guidance, this is limited to specific advice on individuals’ addresses or on photographing the UK royalty. We believe that the PCC should act proactively, investigating the coverage of major stories or stories that have sparked particular concern about the ethics of their coverage.
Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime

There is no protection for reputation in the PCC’s regulatory code—nor in the NUJ’s. The redress for the McCanns was in libel law. The NUJ’s code does seek to ensure that journalists differentiate between fact and opinion. The PCC code has a similar clause.

We do not believe it would be appropriate to try to regulate for protection of reputation in the PCC code. What the NUJ has consistently campaigned for is a “conscience clause” for journalists in the code. This would allow reporters who feel they are being pressured to produce material that is not supported by evidence, or whose reporting is being stretched beyond credulity in its presentation, to refuse that assignment. This could have been helpful in the McCann case.

The NUJ wants to see such a conscience clause to be built into contracts of employment, but failing that we believe that the PCC should at the very least have a confidential contact point for journalists, allowing them to make contact when they feel they are being asked to act unethically or if they feel their material is being used in an unethical way; we would like the PCC then to investigate without putting reporters’ career at risk. Evidence that journalist had contacted the PCC could be used in an employment tribunal, in the event of employers taking action against them. The NUJ operates such an “Ethics Hotline” itself, which many reporters have found helpful.

The interaction between the operation and effect of UK libel laws and press reporting

UK libel laws and the operation of CFAs have a chilling effect on reporting in the UK. The NUJ agrees that people’s reputations should not be harmed purely for the entertainment of readers and to increase circulations; nor should someone’s reputation be damaged by lies, smears or innuendo. However, in order to report on the fitness of people in public life, whether politicians, those in public office or those who deal with the public through their business or personal inclinations, it is necessary to expose wrongdoing or anti-social behaviour. We believe there should be a “public figure” defence to libel, such as exists in the US. This would mean that someone in public office would have to prove there has been either a reckless disregard for the truth, or malice, when damaging information about them has been published. Refusing to print corrections or clarifications would be evidence of reckless disregard. At the moment, there is less risk to a newspaper in publishing true, but private revelations of some private citizen’s sex life, than there is about publishing details of corruption in business or political life. This is not acceptable and the libel laws should be amended.

The NUJ very much welcomes the development of the ‘Reynolds’ Defence to defamation cases, effectively establishing qualified privilege where a publication can show it has met certain standards in producing the article in contention. These standards are those the union expects from its members—checking information, affording a right to comment and so on. They also effectively set a “public interest” criterion that is also welcome. However, we are concerned that Reynolds cannot be fully exploited by the courts because of publications’ reluctance to defend cases for reasons of cost.

The impact of conditional fee agreements on press freedom, and whether self-regulation needs to be toughened to make it more attractive to those seeking redress

CFAs have made it very difficult for newspapers to defend lawsuits, since the surcharge on costs that lawyers are able to impose makes them so high that few newspapers will risk a fight and nearly all will pay off the suit at an early stage—no matter how strong the evidence, or the compliance with Reynolds criteria. Only publishers with very deep pockets dare contemplate fighting a case; regional newspapers have effectively stopped defending libel cases altogether. This is one reason for the continuing decline in serious investigative journalism, since newspapers will not risk attracting lawsuits.

The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the internet

Fewer court cases are reported now in the UK than ever before. The days of local newspapers sending one or two reporters to cover the courts every day are long gone. Staff reporters only attend to cover the big sensational cases.

Often the courts will seek to anonymise a defendant, or to limit publication of certain evidence, only to find that with the posting of reports online, accessible in countries outside the jurisdiction, the information will appear on the internet. UK law prevents the naming of minors of the victims in sexual offence cases, but again this can be thwarted by the web.

In major murder or other serious cases there is a high temptation to publish potentially prejudicial information post-arrest and pre-trial, in contravention of the 1981 Act. Again such details can be published on the internet from abroad. With such information in the public domain, easily accessible to any potential jury member, it is difficult to see the present contempt laws as serving much useful purpose. In any case, there are very few cases indeed of contempt for pre-trial publication; virtually all have been over what has been published during a trial.
Research from the US, where full publication has always been allowed, suggests that this would not lead to wholesale miscarriages of justice. However, such a change after years of judicial censorship in the UK would probably lead to problems. The UK is one of the few countries that do not have the need for responsible court coverage in its ethical codes. The right to a fair trial and the right to be presumed innocent, as established by the Human Rights Act, could be used to ensure some fairness, but it would be a number of years before the balance between fairness and publication was achieved.

**What affect the European Convention on Human Rights has had on the courts' views on the right to privacy as against press freedom**

The NUJ supports the Human Rights Act and therefore the European Convention and believes that its effect on the courts has been beneficial.

**Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, might be exemplary rather than compensatory**

The NUJ believes that the PCC should be able to fine newspapers for breaches of its Code of Practice. The PCC opposes this but the NUJ finds its arguments unconvincing. The PCC adjudicates very few cases each year, and even fewer are upheld (between ten and 20 each year). Not many of these are privacy intrusions—indeed, most of the worst cases upheld are thoughtlessness rather than malice. To fine in those cases would rarely lead to more than five cases a year on present statistics, but since these would be the worst cases and ones where the PCC would have decided the newspaper had deliberately or recklessly breached the code, the fine would send out a message that the PCC has teeth and would be prepared to bite. We believe its objection is rooted in a fear that the PCC would risk losing the industry’s support and probably collapse.

As to the courts, we believe that current balance is about right. Any attempt to strengthen the existing law on privacy would be, in the NUJ’s view, to put serious journalistic investigation at risk. Much of “celebrity” journalism is really public relations, done with the participation of the subject, so legislation to protect privacy further than the courts are doing already is likely to increase the publication of this kind of information, at the expense of genuine journalistic enquiry in the public interest. The jailing of Clive Goodman in 2007 showed that the law can apply strong penalties to journalists who abuse private information.

**Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one**

The NUJ supports the right to privacy, though we would like to stress that this is a general right and not one limited solely to media invasions: invasions of privacy by CCTV, the police, the intelligence services or commercial operations without the authority of the law are just as damaging to a free society as invasions of privacy by the media.

Citizens’ privacy should only be invaded if there is good reason to believe it is in the public interest so to do, whether this is because they are believed to be committing a crime or social misdemeanour, misleading the public in some way or endangering the health and safety of themselves or others.

The Union’s Annual Delegate Meeting discussed privacy in 2001 agreeing the following motion:

ADM recognises that it is a mark of a free and democratic society that all people have a right to respect for their private and family life, their home and their correspondence. ADM also believes that people have both a right to know what is being done in their name and a right to information on which to base their choices and that this might legitimise the revelation of information that by the earlier definition should remain private.

ADM believes the only way to determine which information should be revealed and which remain private is for a journalist to test whether the information is in the public interest—which is not the same as information that will interest or titillate the public.

ADM declares that information revealed in the public interest is that which is required for members of the public to use to determine their intentions and opinions to seek to ensure probity and honest dealings amongst the civil and military authorities, the judiciary, politicians and all those holding positions of public authority or who have courted prominence in all walks of life.

We believe that despite the outrage expressed by many editors desperate to justify what are often quite outrageous intrusions into the private lives of public figures, the moves made by the courts to firm up the law of confidence and apply it to privacy claims are largely justified. Key cases such as Loreena McKennitt, Max Mosley and others from Europe have helped to draw a reasonable and straightforward line between private and public. While there have been one or two cases where the judgements have been more difficult to interpret and apply—the Naomi Campbell case, for instance, where the courts decided it was in the public interest to publish the story, but not in the public interest to publish the pictures that were the main evidence in support of the story—generally the line identified has clearly distinguished between private and family life and public life.
ADDITIONAL COMMENTS

We would ask the Committee to consider the importance of journalists being responsible for their professional conduct. Newspaper editors insist that they are solely responsible for ethical conduct within their newspapers. While they are certainly responsible for what is published, they are not, nor can they be, entirely responsible for everything done in the name of the newspapers. The PCC is insisting that its Code of Practice is written into the contracts of employment of journalists, which concerns the NUJ. We believe that journalists are responsible for their work and are therefore entitled legally to refuse instructions they consider unethical, through a “conscience clause” as outlined above in this submission.

January 2009

Written evidence submitted by News International Ltd

1. This response is made on behalf of News International Ltd, whose subsidiaries publish The Sun, The Times, News of the World, The Sunday Times, and thelondonpaper.

EXECUTIVE SUMMARY

2. News International welcomes the opportunity to contribute to the current inquiry into press standards, privacy and libel. It comes at a critical time when the industry faces both severe commercial challenges and challenges to press freedom.

3. Last year alone, hundreds of editorial jobs were cut across the industry as publishing businesses faced with the challenges of the digital revolution had to cope with the additional difficulty of rapidly shrinking advertising markets.

4. On top of this, a series of privacy rulings, culminating in the judgment by Mr Justice Eady in the case of Mosley vs News Group Newspapers Ltd, have dangerously tipped the balance away from press freedom.

5. The same publishing businesses that are finding their reporting freedoms restricted and their commercial basis endangered have been pushed further towards the edge by the iniquitous system of Conditional Fee Arrangements—originally intended to provide access to justice for those who could not afford it, the system instead has been widely used by wealthy complainants and lawyers charging exorbitant fees. Newspaper publishers have often been left with little choice but to settle complaints, even where they believe they have a strong defence.

6. Against this background, the Press Complaints Commission has continued to operate a first class service for the public. The Committee should not recommend any measure that would undermine self-regulation.

7. As Lord Bingham said in McCartan, Turkington Breen vs Times Newspapers Ltd, the press are “the eyes and ears of the public to whom they report”. It is essential to the proper functioning of a democracy that we should maintain a healthy, commercially viable press.

8. With this in mind, we have made a number of constructive proposals which we believe address some of the urgent problems facing the press today.

THE MCCANN CASE AND THE PRESS COMPLAINTS COMMISSION

9. When a child goes missing, the press and the media play a vital role in helping to raise publicity and aid the search. The McCanns recognised this and were proactive in keeping the story at the top of the news agenda. However, the circumstances of their case were rare, if not unique. The combination of factors that were relevant to the way the media in general responded included: that the events took place abroad; that the local police had issued a blanket ban on media coverage; that at the same time the local police were leaking information to the local press; that the case had attracted massive public interest in this country and was therefore rightly being followed closely by all of the media, that the hunt for Madeleine went on for so long and that there was a lengthy time lag before any of the published stories were challenged.

10. The fact that the McCanns chose to pursue complaints against the Express Group titles through the courts does not, in our view, have any bearing either way on the system of self-regulation. The Editors’ Code does not replicate or compete with the law of libel. It is quite separate and distinct and deals with accuracy, not “reducing people’s reputations in the eyes of right thinking people”.

11. In any case, it is hard to see where and when the PCC could have intervened. An enormous amount of factual material was being put out for publication by those involved. No formal complaint was made to the PCC by the McCanns or any other party. And, in the circumstances of an ongoing police investigation, how could the PCC take unrelated action to intervene?

12. News International strongly supports the system of press self-regulation administered by the PCC. It has proved itself robust and adaptable. The Code continues to evolve and the remit of the PCC itself has expanded to meet the challenges of the digital age.
13. At News International, our commitment is demonstrated by the in-house training we provide for our journalists. Not only is the Code of Practice in all our journalists and editors’ contracts, but our titles regularly run training revision programmes on a wide number of editorial issues. This ensures that everyone contributing to our papers is clear about the meaning and intention of the Code and the wider legal framework within which we operate. In addition, senior editorial staff check any PCC-related issues and advise the editors to make any changes in coverage to make sure we meet code requirements.

14. In spite of this, we acknowledge that sometimes mistakes are made. But as Lord Nicholls observed in Reynolds v Times Newspapers Ltd 2001, “Historically the common law has set much store by the protection of reputation. . . . There must be exceptions. At times people must be able to speak and write freely, uninhibited by the prospect of being sued for damages should they be mistaken or misinformed. In the wider public interest, protection of reputation must then give way to a higher priority.” In this case the “higher priority” was trying to find Madeleine or the person responsible for her abduction. Given what the House of Lords has said about “higher priorities”, in this increasingly fast-paced, highly competitive media world, self-regulation is the best tool for ensuring that standards are upheld.

15. At the end of its last inquiry into press self regulation in 2007, the Culture, Media & Sport Select Committee concluded: “We do not believe that there is a case for a statutory regulator for the press, which would represent a very dangerous interference with the freedom of the press. We continue to believe that statutory regulation of the press is a hallmark of authoritarianism and risks undermining democracy. We recommend that self regulation should be retained for the press, while recognising that it must be seen to be effective if calls for statutory intervention are to be resisted”.

16. These conclusions remain valid today.

The Interaction between the Operation and Effect of UK Libel Laws and Press Reporting

17. English libel law has traditionally given disproportionate protection to an individual’s reputation, at the expense of the right of the media to be “the eyes and ears of the public to whom they report” (Lord Bingham). While the Reynolds, “public interest” and “responsible journalism” defence has had new life breathed into it following the decision of the House of Lords in Jameel v Wall Street Journal Europe (No 2) (HL) 2006, UK law is still heavily weighted in favour of a claimant. This is because a claimant is presumed to have an unblemished reputation and the words are presumed to be false until proven otherwise. In effect, the newspaper is presumed guilty until it has proven its innocence.

18. Because UK libel laws are so favourable to claimants, London has become the libel capital of the Western World and US courts have begun to refuse to enforce UK libel judgments because they regard UK libel law as an unjust and unconstitutional restraint on free speech. US courts particularly object to the UK principle that the burden of proof falls on the defendant (see above) rather than on the claimant who is seeking monetary compensation.

19. “Libel tourism” is therefore a serious problem, which is now made possible with electronic internet publication across borders and actions are brought in the UK at considerable expense to taxpayers even though there has been minimal publication in this jurisdiction.

20. The following reforms to our current libel laws are therefore urgently needed if the UK is not to be found in breach of the European Convention on Human Rights and taxpayers are not to be asked to fund the cost of expensive libel actions over here which involve celebrities outside the jurisdiction but with a cause of action in the UK, such as Jameel (above) and Loutchansky (below):

(i) In an age of electronic communications, there is no effective limitation period (the one year period in which a claim has to be brought against a publisher of defamatory material) for articles retained on electronic databases, particularly where they can be accessed years after they were first placed on a website. Quite extraordinarily in a modern electronic age the UK courts are bound by an 1849 judgment, Duke of Brunswick v Harmer, in which the Duke sent out his manservant to buy a back issue of a newspaper which he had overlooked some 17 years previously. By selling a back copy of the newspaper, there was a second publication of the defamatory article. This gave the Duke a “new cause of action” and he was able to sue for libel 17 years after the article had first appeared. Nowadays, anyone accessing a newspaper, magazine or television website containing archival material can cause the republication of a defamatory article and thus create a new cause of action without the publisher having done anything to actually “cause” that publication.

This anomaly has been pointed out to the Government but the Ministry of Justice still has not drawn up proposals for a Single Publication Rule, like they have in the United States, where there is a rule that the publication of an electronic article takes place when it is downloaded to a website not when the article is accessed, what may be years later by a member of the public. This point has been taken to the European Court of Human Rights by Times Newspapers Ltd, an NI subsidiary, following its libel action with Grigori Loutchansky, a Russian oligarch who had sued over here even though he had been refused entry into the UK by two Home Secretaries for being a “mafia” boss. The ECHR has already declared this application by Times Newspapers to be “admissible” and prima facie an interference with free speech under Article 10 of the ECHR in the UK. However, the UK Government has still done nothing to sort out this unnecessary and disproportionate restraint on free speech and a final ruling by the ECHR is expected next year, 2009.
(ii) Under UK law, libel actions are still for the most part tried by juries, which is a constitutional right under s. 69 of the Supreme Court Act 1981. This is an anomaly because jury trials in personal injury actions were abolished many years ago and trial by judge alone is the norm in all other tortious claims. Many claimant lawyers therefore refuse what may be a perfectly sensible and reasonable offer by a media defendant to have the question of the “meaning” of an article, which can lie at the heart of a libel action, referred to independent and speedy arbitration by a judge or libel silk and two lay assessors (see Times Newspapers’ Fast Track Arbitration Scheme—copy attached as Appendix 1). Solicitors acting for a wealthy claimant often insist on their client having a statutory right to put their case to a jury—at tax payers’ expense—many years later and after huge legal costs may have been run up on both sides. This makes no sense, when resolving the meaning of an article in the first month of a libel action could lead to the speedy settlement of many libel actions. Section 69 of the Supreme Court Act should therefore be amended so that libel claimants do not have an automatic prima facie right to jury trial, particularly where the key issue is one of meaning which should be decided at the beginning of a case by a judge or preferably by a judge with two lay assessors under section 70 of the Supreme Court Act.

(iii) Under present High Court rules, it is impossible to “order” the parties to a libel action to go to binding arbitration on the meaning of an article even though this is likely to lead to speedy resolution of many libel claims. Often the key issue will be whether the article actually accused the Claimant of “being a terrorist” (a Chase level 1 meaning) or “there being reasonable grounds to believe that the Claimant might be a terrorist” (a Chase level 2 meaning) or “that there might be grounds to investigate the Claimant” (a Chase level 3 meaning). A provision should therefore be inserted into the Civil Procedure Rules of the High Court under which parties could be “ordered”, in appropriate cases, to go to binding arbitration on any sensible issue such as the meaning of an article or the quantum of damages if an offer of amends has been made. The parties could agree the form of arbitration but if there was no agreement the judge could order it to be done by a judge alone as a preliminary issue or by a libel silk with two lay assessors to reflect a wider divergence of opinion on the reading of an article in a borderline case.

THE IMPACT OF CONDITIONAL FEE AGREEMENTS ON PRESS FREEDOM

21. Conditional Fee Agreements (CFAs) or “no-win, no-fee” agreements were brought in as an alternative to civil legal aid and to make justice accessible to the less well off. However, CFAs allow solicitors and barristers operating under them to double their fees if they are successful (the uplift or success fee) and reclaim what may be a huge insurance premium (ATE cover), even though it will never have been paid, from a losing defendant. If the claimant does not have insurance and is impecunious, a media defendant is in a “no win” situation. It will have to pay a huge amount to defend the action but with no hope of recovering its costs even if it wins the case; if it loses, it will not only have to pay its own lawyers but also damages and on top of that the claimants lawyers’ fees with what may be a 100% uplift and what could be a huge insurance premium. As Lord Justice Brooke said in Adam Musa King v Telegraph Group Limited [2004] EWCA (Civ) 613, paragraph 90:

“It is not at all clear whether Parliament ever turned its mind to the consequences of defamation actions being conducted under a CFA without any ATE cover, or to the ECHR considerations that were of such concern to Eady J and Gray J . . .”

22. In Callery v Gray (Nos 1 and 2) [2002] Lord Bingham had already recognised that this new funding regime “was obviously open to abuse in a number of ways”. He listed “excessive base costs” of claimant unreasonable costs that can be run up by claimant lawyers in CFA driven cases, particularly where the

23. The Government now appears to be waking up to the enormity of CFAs in publication proceedings and how the “blackmail effect” of CFAs can act as an incentive to buy out of proceedings for commercial reasons to avoid a massive financial penalty if an action is lost. This is having a profound effect in free speech cases and any genuine quest for the truth. It is therefore only a matter of time before a small publishing company is put out of business because it has had a huge costs order made against it in a marginal case but the claimant’s solicitors are on a CFA and are entitled to claim a 100% uplift on base hourly costs of anything up to £550 per hour. [In Campbell v MGN Ltd, Ms Campbell sued MGN for breach of confidence and was awarded £3,500 damages and her costs of £1,086,295.47. She had entered into a CFA for the purpose of her appeal to the House of Lords. The costs of that two day appeal to the House of Lords were £594,470 including a success fee of £279,981.35].

24. In 1990 the Government had to introduce legislation to give the Court of Appeal the power to reduce massive jury awards in libel actions following the £1.5 million award of damages in the case of Lord Aldington v Tolstoy Miloslavsky. It is now up to the Government to rectify the disproportionate and unreasonable costs that can be run up by claimant lawyers in CFA driven cases, particularly where the
claimant is a wealthy celebrity without any need to go onto a CFA or claimant solicitors have “cherry picked” cases which are “sure fire winners” and involve no risk, simply so that they can double their own costs with a 100% uplift or “success fee”.

25. Late last year, the Master of the Rolls announced a “fundamental review of the rules and principles governing the costs of civil litigation and to make recommendations in order to promote access to justice at proportionate cost”. This review under Lord Justice Rupert Jackson will obviously include a major review of CFAs and how they are impacting on various areas of the law. While they may have worked reasonably well in Road Traffic Accident cases which revolve around insurance claims and also in many personal injury cases, they have undoubtedly had a disastrous effect in publication proceedings and caused costs awards which are wholly disproportionate to the damages awarded. While CFAs will remain an integral part of the current costs regime, we believe that they need fundamental reform in the area of publication proceedings. News International will be putting the following reforms to Lord Justice Rupert Jackson’s committee:

(i) All costs in publication proceedings must be “reasonable and proportionate” in order for them to be recoverable. This means the abolition of Costs Practice Direction 11.9 which specifically allows them to be unreasonable when any “uplift” (allowed by a CFA) is added to the base hourly rate of a specialist lawyer in this field, which might be as high as £550 per hour thus generating an hourly rate of £1,100 per hour.

(ii) In all publication proceedings, where there is an estimate in the Case Allocation Questionnaire that the case is likely to involve legal costs of over £50,000 or £100,000 there should be an automatic referral of the case to a judge for the judge to call for detailed cost estimates so that he can impose a “cost cap” or a “costs budget” ie a maximum sum recoverable for different stages of the litigation. This would not prevent a party spending as much as it wanted in fighting a case but simply restrict it to what it can reasonably and proportionately recover from the other side.

(iii) There should be no “uplift” or right to claim an ATE insurance premium (“additional liability”) from a defendant before the defendant has had a reasonable opportunity to make an offer of amends under section 2 of the Defamation Act 1996. In privacy or confidence cases where there is no right to make an offer of amends, no uplift or ATE premium should be allowed until the Defendant has either served a defence or made it quite clear that the claim is rejected.

(iv) Judges should be given wide discretionary powers to refuse any uplift or ATE premium where there was prima facie evidence that the claimant did not need to enter into a CFA in order to obtain justice.

(v) Just as claimants may have to pay their own solicitors out of the damages they recover in employment cases so too in publication proceedings should a judge have the power to make claimants pay part of their own costs out of any damages awarded where either the client has not exercised sufficient cost control over his own lawyers or it would be fair an equitable for the claimant to have to pay some of his own costs from the damages awarded.

(vi) The Costs Council should set out base hourly rates for specialist lawyers in publication proceedings. Those base rates would be taken as the normal rates and it would be up to the parties to show why the rates should be exceeded.

THE OBSERVANCE AND ENFORCEMENT OF CONTEMPT OF COURT LAWS WITH RESPECT TO PRESS REPORTING OF INVESTIGATIONS AND TRIALS, PARTICULARLY GIVEN THE EXPANSION OF THE INTERNET

26. The expansion of the internet and electronic newspaper websites with substantial volumes of archival material on them will inevitably radically affect the law of contempt. This is particularly the case where a simple online search under a key word can bring huge amounts of electronic information to the attention of someone who might be a juror.

27. The media would not dispute that IF this material were “displayed” on the face of the newspaper website as available and contemporaneous material, it would be the sort of material that could, in many cases constitute a serious contempt in that it could give rise to a substantial risk of serious prejudice to someone’s trial. However, the prejudicial material will lie passively in the newspaper’s electronic archive until it is accessed which needs a positive act by a third party. The way therefore to deal with this problem is for the Judge to give instructions to the jury to stay away from the internet in general and from newspaper websites in particular.

28. Indeed, this is not an uncommon problem. The solution adopted in Queensland and New South Wales, Australia, has been to make it an offence for jurors to conduct investigations about the defendant including by means of the internet. In New South Wales, it is also an offence for jurors to conduct their own investigations with respect to the trial. While there may be no certain mechanism to ensure that jurors obey the judge’s instruction not to conduct investigations on the internet or otherwise, directions along the lines of those suggested are likely to substantially if not completely reduce the risk of such conduct.
29. It is well known and has been commented upon by judges (for example in *Ex parte Telegraph* [1993] 1 WLR 987) that “...a court should credit the jury with the will and ability to abide by the judge’s direction to decide the case only on the evidence before them”). Research suggests that jurors are impressed with the solemnity of their task and endeavour to abide by the judge’s directions. It is reasonable to assume that most jurors would not engage in conduct which they have been expressly told by the Judge they must not do.

30. In September 2001, Lord Osborne delivered an opinion in the High Court of Judiciary in the case of William BEGGS. He was being prosecuted for murder and assault. An attempt was made to commit various newspapers for contempt on the basis that their online archives contained accessible material which was seriously prejudicial to the accused. After hearing argument, the judge ruled inter alia that there was no contravention of the strict liability rule because the test in section 2(2) was not breached. He found that “...the availability of the material as part of an archive, as opposed to part of a current publication, renders it less likely that it may come to the attention of a juror than would be the case if it formed part of a contemporaneous publication” (para 24 of the Opinion).

31. Further, in December 2002, the Law Commission published its Scoping Study No 2 which was primarily concerned with defamation and the internet. In a self-contained section of the study (Part Five), the Commission dealt briefly with the decision in BEGGS and the significance for online publishers. The Commission concluded that this was not a priority for law reform and that the risks to publishers were overstated. It did not deal in any detail with the construction of section 2 of the 1981 Contempt of Court Act, but, crucially, it did “accept that it is not practically possible to monitor all criminal trials in the country and subsequently to remove from internet archives any potentially prejudicial material” (para 5.25). The Commission added that it “is clear that jurors cannot be prevented from using the internet to search for detrimental material on criminal defendants” (para 5.26). It felt that “much of the prejudicial effect of such material” could be removed by an appropriate judicial direction to try the case on the evidence.

32. Research is surely necessary in this area. Currently, proper academic research about a jury room deliberation is precluded by section 8 of the Contempt of Court Act (1981). This needs to be amended to allow proper and detailed research as to what in practice is prejudicial to jurors.

33. The reality, which courts and the legislators have eventually to recognise, is that in cases where the defendant (or a witness) have matters in their past which have been widely publicised there is nothing which can be done (short of incarcerating the jury for the whole trial) to prevent electronically inquisitive jury members discovering that material. The available publication “pool” from which information can be fished out goes far beyond UK newspapers and broadcasters.

**THE BALANCE BETWEEN PRESS FREEDOM AND PERSONAL PRIVACY**

34. News International believes that successive High Court privacy case judgments, culminating in the recent Max Mosley judgment, are creating precedents that undermine the freedom of the press and are diverging from public policy determined by Parliament.

35. The Human Rights Act requires that a fair balance be struck between European Convention Article 8 (Privacy) and Article 10 (Freedom of Expression) and that the right of free speech should only be interfered with where there is a “pressing social need”. However, in just a few years, UK privacy case law has skewed that balance so far in favour of Article 8 that, post-Mosley, morality no longer has any place in the Court’s decision-making.

36. As Mr Justice Eady decreed in his judgment on the Max Mosley case: “It is not for journalists to undermine human rights, or for judges to refuse to enforce them, merely on grounds of taste or moral disapproval”. This means that commonly held moral values no longer weigh in favour of free speech and publication. Consequently, determining what is in the public interest or is a “higher priority” to the protection of someone’s reputation or privacy is extremely difficult to discern and is far too dependent on the subjective views of a High Court judge.

37. News International believes that the public has a right to expect fit and proper standards of behaviour, both professionally and privately, from those in public life, whether through election or otherwise. The public has a right to know when the behaviour of public figures, particularly those elected to office, is hypocritical or is such that it is likely to bring disrepute on the organisations or people they represent. Public accountability is an essential part of that process.

38. The law being applied by Mr Justice Eady has never been debated in the UK parliament and a draconian privacy regime is being introduced by the back door by one person. This is a thoroughly unsatisfactory state of affairs.

39. The law in this area should be developed in line with public policy determined by Parliament but this is not happening. Last year, section 78 of the Criminal Justice and Immigration Act 2007 brought some degree of consistency to the “public interest” defence for media defendants in civil and criminal actions brought under the Data Protection Act 1998 for misuse of personal information—an area of law which is analogous and closely related to the law of privacy. Parliament accepted, after specialist advice from Antony
White QC, a leading silk on privacy and Data Protection, that the “public interest” defences under sections 32 and 55 of the DPA should be brought into line so that any media defendant which “reasonably believed that it was acting in the public interest” should have an absolute defence as to what is in the public interest. Providing that the media defendant had a “reasonable belief” that it was in the public interest is therefore a much more objective test and is much more easily evaluated prior to publication.

40. News International therefore believes that the Government should look for a suitable opportunity to introduce an amendment that would bring judge-made law in this area into line with public policy. We enclose a copy of the latest opinion we have from Antony White QC making out this case (Appendix 2).

41. Until some uniformity is brought to this area of law and there is some degree of legal certainty over a “public interest” defence for the media in Article 10 cases, English judges will continue to apply the law in individual cases here in a subjective way with one eye on the latest cases coming out of the European Court of Human Rights in Strasbourg. Unfortunately the ECtHR cases are fact-specific with the Princess Caroline of Monaco case skewing the law heavily in favour of privacy rights while earlier judgments had favoured the right of free speech except where there was a pressing social need.

42. News International believes it cannot be right that a principle so fundamental to the healthy functioning of a democratic society is left to be interpreted by one person. The right of privacy must be carefully circumscribed so that where appropriate a “higher priority” or what is “reasonably” believed to be in the public interest provides a sensible defence.

43. If this does not happen, investigative journalism will be the victim of a law which will fundamentally undermine the Fourth Estate and the vital role it plays in a healthy democracy. We will end up with a judge-made law which is heavily reliant on judicial hindsight “to protect the legal but immoral behaviour of the better classes behind closed doors” as one American law professor has put it.

44. A society that allows its media to lose the right, even by default, to investigate and report on the doings of those in power is a society on the slide to censorship and secrecy.

PRESS SELF-REGULATION AND FINANCIAL PENALTIES

45. The current system of self-regulation administered by the Press Complaints Commission delivers a service which is fast and costs the complainant nothing. Its procedures and rulings, and the Code to which it works, are all set out in non-technical language. No expert knowledge is required in order to make a complaint. With its emphasis on resolution, the PCC succeeds in dealing with the majority of complaints rapidly and to the satisfaction of the complainant. Further, Editors hate having to publish adverse findings of the PCC so there is a strong incentive on the part of a newspaper to try to resolve matters prior to a complaint going to adjudication.

46. Over recent years the PCC has been increasingly pro-active in warning newspapers about what might constitute a breach of the Code of Practice. The PCC sends out regular warnings to the Press when it receives letters or emails from members of the public or their solicitors asking for the press or the paparazzi to desist from approaching them or trying to take photographs. High profile celebrities like Kate Middleton, and other less well-known members of the public like the victims and daughters of the man who was convicted of rape in Sheffield last November, have taken advantage of the system and the press have been advised by the PCC not to approach the person or persons further without it giving rise to a harassment complaint.

47. These are the positive benefits of the current system, which has evolved over the last 15 years. If it were to be “toughened” in order to make it “more attractive to those seeking redress”, we can only imagine that this would mean the introduction of financial penalties.

48. But as has been argued before, and as the Culture, Media and Sport Select Committee accepted in the conclusions to its last inquiry into this area, the introduction of financial penalties would “risk changing the nature of the organisation and might need statutory backing to make the power enforceable”.

49. Once financial penalties are introduced, the system will inevitably become more legalistic and have to be compliant with legal principles.

50. Currently, the only serious overlap between the PCC Code of Practice and the law is Clause 3 of the Code of Practice which concerns “Privacy”. In the past and while there was no enforceable law of privacy, the PCC was the only means of redress. Sara Cox, the DJ, is perhaps the best known PCC complainant who, having complained to the PCC in 2001 and through it having negotiated a favourable apology from the People newspaper for publishing photographs of her naked on honeymoon, then instructed her lawyers to sue Mirror Group Newspapers for breach of privacy and financial compensation. What is interesting about that case was that within a week the People agreed to publish an apology to her but it took up to two years for the lawyers to agree the damages of £50,000 in a final out of court settlement.

51. A body that was able to impose fines would bear little resemblance to today’s PCC. Its work would be slowed down by the involvement of lawyers on all sides and it would find that newspapers would be less likely to admit mistakes and offer ways of resolving complaints.
52. We believe this would be to the detriment of the vast majority of complainants. We believe that the PCC and its complaints procedure work well.

January 2009

APPENDIX 1

FAST TRACK ARBITRATION RULES FOR RESOLUTION OF “MEANING” OR “QUANTUM” DISPUTES IN LIBEL ACTIONS

The following rules shall apply to any arbitration where the parties voluntarily agree to refer either:

(i) a dispute as to the “meaning” of a particular article to arbitration, or
(ii) a dispute as to the appropriate amount or quantum of damages to arbitration.

Referring such a dispute to voluntary arbitration under this “Fast Track” procedure has the following benefits:

(a) the arbitrator’s fees and those of any assessors will be paid by the newspaper,
(b) it will enable any dispute to be resolved in a matter of days with an agreed apology appearing in the paper or the publication of a fair and accurate report of the arbitrator’s findings,
(c) it enables the Claimant to resolve this kind of dispute without incurring substantial High Court legal costs or the risk of having to pay the newspaper’s legal costs, and
(d) it enables the Claimant (where appropriate) to be awarded up to £10,000 in damages to vindicate his/her reputation and compensate him/her for the hurt and suffering of the original article and up to a further £5,000 in legal costs.

Any such arbitration will be conducted on the following basis and the rules below will form a binding contract between the parties.

A. “MEANING DISPUTES”

1. The Claimant shall select a chairman from a list of Queen’s Counsel experienced in libel actions drawn up by the newspaper. The chairman so selected shall then in turn select two is assessors (one male and one female) to help him/her determine the meaning of the article in question. Either the Claimant or newspaper may object to the Chairman’s selection of intended lay assessors. The newspaper shall pay any costs or fees of the panel so chosen.

2. As soon as the panel has been appointed, the Claimant shall submit four copies of the complete article with the words complained of underlined in red. In an accompanying Statement of Meaning the Claimant shall submit what in his/her opinion the article means. The Claimant can submit more than one meaning but should list only those meanings which are damaging AND inaccurate. The Claimant should also list any facts which are relevant to the question of meaning and how the article might be understood to be damaging by those with additional knowledge to that which is contained in the article.

3. The chairman shall then send the newspaper a copy of the Claimant’s submissions and invite the newspaper to comment on those meanings and state clearly and precisely what meanings the newspaper meant to convey to the average reader. The Claimant shall then be sent a copy of the newspaper’s submission and invited to reply to it.

4. The question of meaning shall be determined through written submissions. However, the panel shall retain an absolute discretion to order an oral hearing if thought appropriate. If an oral hearing is ordered either party may be asked to give evidence under oath as to any relevant facts or matters.

5. Having received the Claimant’s and newspaper’s submissions, the Chairman and his two assessors shall decide which of the meanings submitted by the parties the words actually bear. Their decision on meaning shall be final and binding.

6. Where the panel’s finding on meaning is in favour of the Claimant, the newspaper shall make an immediate “offer of amends” to the Claimant. This shall include a suitable correction/clarification and sufficient apology and where appropriate an offer of damages. If the Claimant finds the newspaper’s “offer of amends” unsatisfactory either on the wording or placing of a suitable correction/clarification and sufficient apology or on quantum of any damages, the Claimant shall invite the chairman of the panel to give a formal ruling on the adequacy of the newspaper’s suggested correction and apology and/or refer the question of damages to be determined by arbitration.

7. The newspaper shall be under a binding obligation to publish any agreed correction, clarification or apology as soon as possible after the panel’s adjudication on meaning. If no correction, clarification or apology can be agreed between the parties, the newspaper shall publish a fair and accurate report of the chairman’s ruling on the newspaper’s offer of amends.
B. “Quantum Disputes”

1. Quantum disputes may be referred to arbitration either where the newspaper admits the defamatory meanings) attributed to the article by the Claimant or where a meaning dispute has been resolved in the Claimant’s favour.

2. If no chairman of a panel has been appointed, the Claimant shall select a single arbitrator from the attached list of Queen’s Counsel who shall act as a sole arbitrator. The newspaper shall pay any costs or fees of the arbitrator.

3. The maximum sum under the heading of general damages that the arbitrator may award shall be £10,000. Any sums so awarded shall reflect the pain and suffering and loss of reputation experienced by the Claimant. There shall be no appeal from the findings of the arbitrator.

4. The arbitrator shall where appropriate award the Claimant a sum in respect of his/her legal costs/out of pocket expenses but this shall not exceed £5,000. The arbitrator shall not be empowered to award any costs against the Claimant but may indicate if the Claimant’s solicitors should forgo any costs.

5. Either party shall be entitled to make written submissions on the issue of damages and the Claimant’s general reputation. The Rules of Evidence shall not apply but the arbitrator shall have an absolute discretion to admit or exclude any evidence. This shall normally include the article concerned and the inter-solicitor correspondence.

6. The arbitrator shall have the widest discretion permitted by law to ensure the just and expeditious determination of the dispute and all questions relating to it.

APPENDIX 2

SECTION ON PUBLIC INTEREST FOR NEWS INTERNATIONAL SUBMISSION TO THE DCMS COMMITTEE ON LIBEL AND PRIVACY AND SELF-REGULATION

The development in English law of a cause of action for misuse of private information following the decision of the House of Lords in Campbell v MGN Ltd [2004] 2 AC 457 has led to a dramatic increase in the number and complexity of “privacy” claims against media defendants. It may well be the case that prior to the decision in Campbell the law in this country provided insufficient protection to those who complained of unjustifiable invasion of their privacy through unauthorised publication of private information. However, the pendulum has now swung too far in the other direction—the law is developing in such a way as to make it extremely difficult for a media defendant to succeed in a privacy claim. Importantly, the law has developed in a way which is inconsistent with public policy in this area ‘discernible from recent legislation, and an important part of the legal analysis in Campbell, has been overlooked in the later decisions.

It is very important that the law in this area should be developed by the courts in conformity with the public policy determined by Parliament and reflected in recent legislation dealing with misuse of personal information. If the courts develop the law in a way which is inconsistent with that public policy the democratic process is undermined and public confidence in the law is eroded. Yet that is precisely what has happened in recent court judgments in this area. The public policy determined by Parliament is clearly discernible in a recent, and very recently amended, enactment which sets the limits of civil and criminal liability for media defendants in relation to the misuse of personal information. The statute in question is the Data Protection Act 1998, as recently amended by section 78 of the Criminal justice and Immigration Act 2007. Under sections 32 and 55 of the Data protection Act 1998 there is a defence available against both civil and criminal liability for the unauthorised publication of personal data in circumstances in which the media defendant reasonably believes that it is acting in the public interest.

However, in the closely related judge-made area of law in which liability may arise for unauthorised publication of personal information, there is at present no defence if the media defendant reasonably believes that publication is in the public interest, but only if the judge rules that it actually is in the public interest. This emerges very clearly from the recent judgment of Eady J. In the case of Mosley v News group Newspapers Ltd [2008] EWHC 1777 (QB), at paragraphs 135, 137 and 171.

This is anomalous. Both the Data Protection Act 1998 (which implements in domestic law the EC Data protection Directive) and the judge-made developing law of privacy, are founded upon the balance to be struck between the rights of privacy and free expression enshrined in Articles 8 and 10 of the Convention. It cannot be right for the balance between those Articles to be struck in one way by Parliament in sections 32 and 55 of the 1998 Act as amended, and in a different and inconsistent way in the developing law of privacy.

In Campbell at paragraph 32 Lord Nicholls explained that it was common ground that Ms Campbell’s claim under the Data Protection Act 1998 should be decided in the same way as her claim for invasion of privacy. This appears to have been overlooked in the later development of the cause of action established in the Campbell case—as explained above, under the 1998 Act a media defendant will not be liable if it acted in the reasonable belief that the publication of the personal data was in the public interest, whereas in a privacy claim it will only avoid liability if the judge decides that publication actually was in the public interest. A genuine, reasonably held belief is sufficient under the statute but not at common law.
When Parliament enacted the Data Protection Act 1998 it took into account the need to balance the public interest in the protection of privacy with the public interest in a free and robust press. It recognised that investigative journalism is necessarily an urgent endeavour and that on occasions mistakes may be made. A standard of genuine, reasonable belief that an article is in the public interest was therefore considered appropriate. This is particularly clear from the Hansard debates relating to the provision which became section 32 of the Act. The balance was reconfirmed when section 55 of the 1998 Act was amended in 2007.

It is of real practical importance to the media that journalists are judged by the standards of genuineness and reasonableness when preparing and publishing articles which may contribute to debate in a democratic society, and not by the rarely achievable standard of judicial hindsight.

The developing common law has taken a wrong turning. The Government should look for a suitable opportunity to introduce an amendment that would bring judge-made law in this area into line with public policy. It should be done as soon as possible.

Written evidence submitted by Society of Editors

The Society of Editors (SoE) has more than 400 members in national, regional and local newspapers, broadcasting and digital media, media law and journalism education. Its members come from a wide variety of working backgrounds and have a wide range of opinions. The Society supports and endorses the newspaper industry's response to the committee, along with submissions from other media organisations, and would add the following:

1. THE SUCCESS OF THE PCC SYSTEM

The SoE has no formal role in either the PCC or the Editors’ Code Committee but membership of both is drawn from the Society’s membership. The Society’s view is that any regulation of newspapers must be balanced carefully against the crucial need for editorial freedom and freedom of expression. Membership of the Society implies support for the PCC system and particularly the Code of Practice. Indeed we provide a wallet-sized version of the Code that can carried by journalists at all times in order to demonstrate its value and importance.

Without doubt the PCC system has made a substantial contribution to the behaviour of newspapers. This is widely recognised across politics and increasing usage of the system by the public reflects its acceptability and reputation.

Too often it is dismissed as a self serving system of self regulation. The reality is that as it has developed it has shown its independence from the industry that created it and continues to pay for it. In essence, while it is financed by the industry, regulation is administered by a body that has a significant majority of lay members while having the advantage of editor members to provide expert opinion and to maintain credibility in the process among editors and journalists.

The Society and its members support and take part in a great deal of behind the scenes work by the PCC to maintain standards, advise editors of requests from the public, review policies and discuss issues raised by the public. All of this helps both the media and the public.

2. SPECIAL CASES

The PCC deals with thousands of cases each year. Newspapers carry many hundreds of thousands of stories each year that provoke no complaint. It would be wrong to undermine a system that is clearly working by reference to the tiny number of cases each year that raise special issues. They should be considered individually and precisely on the unprecedented matters that they raise. The PCC, and indeed the industry, have demonstrated their ability to review, adapt and respond to such issues. Above all, the PCC system is dynamic and is always able to react to new situations and changing public perceptions.

3. FINES AND COMPENSATION

The case for fines and compensation has not been made. The PCC system would be destroyed and the huge advantages of voluntary compliance lost.

Any legal or quasi legal system deals with the consequences of bad behaviour but does not necessarily deter or change such behaviour. There is substantial evidence that the behaviour and indeed the culture of newspapers has been changed dramatically by the voluntary system of compliance with the Code and publication of adjudications.

Arguments that the PCC has no teeth simply miss the point that the majority of the work of the PCC is complaints resolution to the satisfaction of all concerned. It is extremely successful in this. It should also be remembered that governments and private organisations invest heavily in public relations teams in order to keep bad news out of the papers. When an adverse adjudication is published by the PCC newspapers voluntarily report bad news about themselves and their competitors may also carry reports. That is potentially costly and damaging to the credibility of any news organisation. Adverse adjudications are powerful deterrents to be avoided.
4. CFAs and Freedom of Expression

The media has explained to the MoJ that the CFA system requires urgent reform to address the freedom of expression problems which it has created for all sectors of the media. It has produced a chilling effect upon publication and “ransom” effect in litigation, forcing settlement rather than defence of legal actions, because of the potential litigation costs- high base costs, success fees uplifts and ATE insurance premiums. In meetings and speeches the Secretary of State has recognised our concerns.

Media organisations have put forward a number of proposals for reform that would deal with the worst problems but which do not require primary legislation. These points, which could be implemented simply by making changes to the Costs Practice Directions, could be carried into effect relatively quickly. While we all recognise the importance of access to justice, there is no justice in a system in which media companies, however rich they may appear, face disproportionate costs. That applies to the largest national organisation as much as the smallest regional or local newspaper.

In the case of the regional press, the reality is that not all media organisations are major national or multi-national operations. In the regional media each centre tends to be treated as a stand alone operation. Privately owned publishers tend to be small to medium sized local enterprises.

There is no justice and no public interest in damaging the ability of the media to report on behalf of the public or in a disincentive to investigate and publish information that the public has a right to know.

There is no justice in a system that means editors will settle actions even when they have a complete defence simply because they cannot risk the level of costs that they may need to commit in advance and most of which will be irrecoverable. Costs of £10,000 to £20,000 represent substantial sums in regional newspaper budgets. Costs of £100,000 could cover salaries of a weekly paper reporting team for a year. The editors of medium to large regional daily newspapers and indeed national newspapers have to think carefully about embarking on stories that could threaten their budgets at that level even if they were able to provide a full and solid defence.

CFAs are a dramatic and dangerous threat to freedom of expression. They seriously inhibit the kind of reporting that government ministers continually demand of the media. It is a reasonable request that because of well-intentioned legislation that has become inappropriate in practice, editors frequently have to refuse. That is unacceptable.

When the Secretary of State met our Parliamentary and Legal Committee we stressed that reform could not await the outcome of the scoping study, any subsequent research and any government action which might eventually result. CFAs are bound to have a chilling effect on journalism that is in the public interest although it is clearly difficult to provide direct detailed evidence of this. Tony Jaffa is a solicitor who represents many regional newspapers. He says his experience is that the CFA system fails to discourage weak claims and the regime allows claimants and their lawyers to hold publishers to ransom because both claimants and publishers know that publishers incur risks of huge costs that are probably irrecoverable even if they defend an action successfully. It means that regional publishers may have to make financial commitments that they cannot afford.

At our meeting with the Secretary of State for Justice we mentioned several cases that were particularly disturbing. They included a national newspaper involved in a legal dispute concerning someone who had been convicted under the Terrorism Act and a regional newspaper that had been involved in a long running dispute in which the costs bore no relation to the claimant’s original case. In essence the claimant accepted £3,000, the newspaper’s London lawyers costs were less than £3,000 but the plaintiff’s lawyers demanded more than £25,000.

In the latter part of 2008 the SoE received evidence of three more CFA cases in which a regional newspaper has faced huge bills.

**Case 1**

A weekly newspaper was sued by three senior officers of a borough council. They used a London solicitor on a CFA. The issue concerned electoral law after postal votes were not counted in a close-fought borough election. The paper won substantially at the High Court and the council officers (actually the council, which backed the officers) were ordered to pay 80% of costs and the paper 20% of theirs. Two of the three took it appeal. One dropped out because he was convicted of criminal charges. The other won on appeal, even though he had not been named in the article. The costs order was turned around and the paper had to pay 80% of costs. Costs of £700,000 were doubled under the CFA to £1,400,000. With the paper’s costs the bill came to £2 million, even though damages awarded were £25,000.

**Case 2**

A teacher was sacked in 2005 for gross sexual misconduct and sued the paper for reporting the story after obtaining a “private” letter. The case was thrown out at the preliminary stage but the paper’s costs still came to £15,000 which the litigant could not pay, leaving the paper to foot the bill. The paper recovered £5,000, which was all he owned.
CASE 3

A paper visited the home of the CEO of an Icelandic bank. He was not there but a reporter spoke to his wife. It was claimed that the paper invaded the family’s privacy by arriving at their home unannounced and lawyers demanded an apology and costs with the threat of a privacy action.

The paper carried a page one apology. The apology concerned a point of accuracy, over whether the family received threats or death threats. While the paper maintained it was told death threats it agreed to apologise as they subsequently proved to be threats. After the limited apology, lawyers claimed the statement was defamatory as the paper knew it to be a lie, because it had apologised. The lawyers’ letter also referred to a claim for breach of privacy, “for which damages are payable”.

Journalism would be severely restricted if reporters had to make appointments before questioning people in the public eye. And the action of complainant’s solicitors in this case is hardly in keeping with the PCC system. Why should editors cooperate with the PCC if lawyers then use negotiated apologies as the basis for a legal action?

The level of costs such as in these examples are not sustainable even in large media organisations, let alone small weekly newspapers. They clearly have a significant and dangerous chilling effect on journalism that is clearly in the public interest.

5. CONTEMPT OF COURT

Traditional media, including their websites, are assiduous in complying with the law. Breaches are rare. The law of contempt is a major part of media law training and news organisations take great care in maintaining systems to ensure compliance.

The Society has had discussions with the Ministry of Justice and senior judges and lawyers regarding the working of the law of contempt. The growth of the internet raises major issues for both the media and the administration of justice. Clearly the UK media is put at a disadvantage against overseas media when it is not able to report cases in full while detailed reports are available on the internet. There is sometimes a problem in this regard concerning different jurisdictions within the UK.

It is also a problem for the administration of justice in that the public may feel that the lack of reporting by traditional media suggest that cases may be covered up and the law is therefore brought into disrepute.

The Society has consistently called for review of the current law supported by Ministry of Justice sponsored research into the effect on jury decisions of media publicity and the availability of detailed information on the internet. The Society is also working with the Ministry of Justice to establish a central database of court orders that will help the media comply with reporting restrictions.

6. PRIVACY LAW

The Society is concerned that assurances about the importance of freedom of expression have been undermined by the application and interpretation of the Human Rights Act.

Any legal restrictions on the media must be considered with proper regard for the value of editorial freedom and freedom of expression in a democratic society.

It is right that the committee should look at all of the restrictions on a free media together. While legislation regarding libel and the development of privacy law by judges might be well intentioned, together they can have a seriously damaging influence on media freedom, especially when they are misused.

7. CONCLUSION

The Committee asks if the balance between media freedom and personal privacy is correct. It is clear that the intentions expressed in Parliament when it approved the Human Rights Act have not been followed. The media accepts that there must be a balance but it has moved too far in the wrong direction if the media is to be allowed to play its full and vital part in a free and democratic society. The problem is compounded by the application of other parts of the law so that the effect on the freedom of the media is exacerbated by a combination of all of the factors that the committee is researching. Each can cause difficulty, the whole can create a serious chilling effect on journalism in the public interest.
Furthermore, while there is imbalance the wider public right to freedom of expression is also undermined. This was surely never the intention of human rights conventions nor of the UK Parliament.

The Society would be happy to expand on any of these points and to give oral evidence to the committee.

January 2009

Written evidence submitted by Article 19

1. ARTICLE 19, Global Campaign for Free Expression, is an international human rights NGO based in the UK which works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees freedom of expression.

2. ARTICLE 19 has a long track record of working on defamation law reform in countries around the world, as well as of developing international standards in this area. Our July 2000 publication, Defining Defamation: Principles on Freedom of Expression and the Protection of Reputation, has been endorsed by, among others, the UN Special Rapporteur on freedom of opinion and expression and is widely relied upon as a leading statement of appropriate defamation standards. We have engaged in defamation litigation before a number of national courts, as well as before the European Court of Human Rights and the Inter-American Court of Human Rights.

3. Our submission focuses on four key defamation issues, namely jurisdiction, standards, damages and costs. It looks at these issues from the particular perspective of NGOs which engage in public advocacy. These NGOs, as part of their core work, often engage in criticism, sometimes trenchant in nature, which renders them potentially subject to defamation liability. In the vast majority of cases, their criticism touches on matters of genuine public concern and, frequently, these NGOs are among a small number of social players who approach these issues from a true public interest perspective. Although advocacy NGOs should not be immune from being sued in defamation, it is of the greatest importance that they not be deterred from engaging in responsible advocacy out of fear of the consequences of defamation actions.

Jurisdiction

4. In the modern world, any statement published online can be accessed anywhere via the internet. Many NGOs publish all of their reports and public statements online. This means that they may be held liable in any jurisdiction for their publications, depending on the applicable legal rules, as their material may be downloaded, and hence said to have an impact, everywhere. This, in turn, poses a risk of a “lowest common denominator” approach to the freedom of expression of those who publish on the internet, as plaintiffs forum shop or, to put it more colourfully, engage in libel tourism, seeking a jurisdiction which is likely to be more sympathetic to them and where they can exert some influence over the defendant.

5. The UK, and London in particular, is well-known internationally as a “good” jurisdiction for defamation plaintiffs for a number of reasons, including relatively weak standards of protection for freedom of expression in the context of defamation law. UK courts have in the past exercised jurisdiction in cases which had little connection to the UK. An example is the case of Berezovsky against Forbes magazine, where the House of Lords held that the UK was a suitable jurisdiction even though Forbes’ circulation in the UK was only 2000 copies, compared to nearly 800,000 copies in the US and Canada. To prevent the UK being used as a venue for libel tourism, we recommend that rules be put in place which require a more substantial connection to the UK than is currently the case.

Standards

6. A key driver behind libel tourism is the desire of plaintiffs to find jurisdictions where their cases will have a greater chance of success. The fact that the UK is so popular with defamation plaintiffs points to the nature of the balance that UK courts have struck between freedom of expression and protection of reputation. US courts have in the past refused to enforce defamation judgments issued by UK courts on the basis that they were offensive to the First Amendment guarantees of free speech and the states of New York and Illinois have recently passed legislation to this effect.

7. In many jurisdictions, defamation defendants benefit from a strong good faith or reasonableness defence, whereby they do not incur liability if they acted in good faith or where they took reasonable steps to verify the accuracy of their statements. This takes different forms. In the US, public figure plaintiffs, defined broadly, have to prove that the defendant acted with actual knowledge of falsity or with reckless disregard for the truth. Similar standards apply in India and New Zealand. In Australia, there is a defence of reasonable publication for political debate, while in South Africa, a reasonableness defence also applies.

8. The UK has, over the last ten years, also moved to recognise a form of reasonableness defence, starting with the Reynolds case in 1999, and being further developed in the Jameel case in 2006. In practice, however, defamation law remains hostile to defendants in the UK relative to many other jurisdictions. We recommend that rules be put in place which are more protective of freedom of expression, particularly in cases involving.
Although we are not calling for the “reckless disregard for the truth” standard which applies in the US, the rules should provide broad protection for statements on matters of public concern which are made in good faith and where, taking into account all of the circumstances, it was reasonable for the plaintiff to make.

**DAMAGES**

9. A key problem with defamation cases in many jurisdictions, including in the UK, is their heavy focus on damages, instead of on remedies which more directly redress the harm done. Furthermore, although measures were put in place in the UK some years ago to limit defamation damages, they remain much higher than in most European jurisdictions (albeit not as high as in the US, where, however, it is much more difficult to win a defamation case). In particular, there remains a tendency to make awards which are at the higher end of physical damage awards, even though the underlying social harm of being defamed can almost never properly be compared to losing an eye or a limb. Such potential damage awards are extremely threatening to NGOs, many of which are charities operating on small budgets and prohibited from turning a profit.

10. Within the European context, as in many other parts of the world, there is much greater reliance on non-pecuniary remedies for defamation and, in particular, a right of reply or correction. Indeed, the Council of Europe has adopted resolutions calling for the availability of such a remedy (see Resolution (74) 26 on The Right of Reply). We recommend that consideration be given to further reducing the level of awards in defamation cases and to placing more emphasis on non-pecuniary remedies. This might include taking into account any self-regulatory remedies which have been awarded (for example, as provided by the Press Complaints Commission), as well as the failure of the plaintiff to take advantage of such remedies.

**COSTS**

11. Costs in defamation cases in the UK have now reached what may, without exaggeration, be called crisis proportions, particularly from the perspective of NGOs. Costs can be crippling, even if one is ultimately successful in winning a case. The pure “harassment” value of defamation cases has been recognised in many countries, where rich and powerful individuals bring cases which have no chance of success, simply to deter potential critics.

12. Although some effort has been devoted in the UK to measures to reduce the costs of defamation actions, these have largely failed. Furthermore, conditional fee arrangements have substantially exacerbated the problem, driving overall costs up, providing various incentives to lawyers to promote defamation cases and, most obviously, encouraging plaintiffs to bring potentially dubious cases in the first place. We note that the viability of the current defamation law regime rests importantly on the vast majority of individuals being prepared to tolerate a good measure of even unfair criticism, and that if everyone with a decent prospect of winning were to bring a defamation case, freedom of expression would be in serious peril. We recommend that conditional fee arrangements either be prohibited altogether in the context of defamation actions or that stringent conditions be placed on them to prevent these negative effects, perhaps including rules on when they may be used and by what sorts of plaintiffs.

*January 2009*

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**Further written evidence submitted by Article 19**

**INTRODUCTION**

Defamation laws serve an important social purpose, namely the protection of reputations or, put differently, the prevention of unwarranted allegations that lower the esteem in which people are held in society. For this interest to be engaged, a statement tending to have this effect must be printed, broadcast, spoken or otherwise communicated to others. As a result, defamation laws necessarily represent an interference with the right to freedom of expression. In many cases, this interference will be justified. At the same time, international courts have often found that national laws in this area are not justified, in particular because they fail to promote an appropriate balance between the need to protect reputations and the fundamental right to freedom of expression.

Defamation laws may fail to strike an appropriate balance between freedom of expression and reputations for a number of reasons. In some countries, defamation laws go beyond the legitimate purpose of protecting individual reputations, broadly prohibiting criticism of heads of State, foreign governments, the flag and/or State symbols. Officials and other public figures are naturally tempted to abuse defamation laws to silence their critics and, in some countries, they have effectively muzzled debate and critical voices by invoking harsh defamation laws. In others, the technicalities of litigation and the cost of defending defamation actions serve to chill free discussion on matters of public interest. Traditional defences may offer inadequate protection for free speech in a democracy, while excessively heavy sanctions may inhibit open political debate.

In this paper, we argue that criminal defamation laws inherently fail to strike an appropriate balance between reputations and freedom of expression. Criminal defamation laws are a major obstacle to freedom of expression in many parts of the world. The key problem with criminal defamation is that a breach may lead to a custodial sentence or another form of severe criminal sanction, such as a suspension of the right
to practise journalism. The stigma of a criminal conviction can harm a journalist’s career long after the penalty has formally been discharged. The threat of such sanctions casts a wide shadow as journalists and other steer well clear of the prohibited zone to avoid any risk of conviction. This can lead to serious problems of self-censorship, stifling legitimate criticism of government and public officials.

This paper examines international standards relating to freedom of expression generally and then in the particular context of defamation laws, focusing mainly on the jurisprudence of the European Court of Human Rights. These standards, as well as comparative standards in this area, have been encapsulated in the ARTICLE 19 publication, Defining Defamation: Principles on Freedom of Expression and Protection of Reputations (Defining Defamation) (see Annex One). These principles have attained significant international endorsement, including by the three official mandates on freedom of expression, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.

The paper goes on to outline ARTICLE 19’s key concerns with criminal defamation laws, arguing that they often fail to serve a legitimate aim, that they are disproportionate to the harm caused and that they are not necessary as civil defamation laws offer adequate redress for harm to reputation.

**INTERNATIONAL STANDARDS ON FREEDOM OF EXPRESSION**

**Global Standards**

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. Article 19 of the Universal Declaration on Human Rights (UDHR), a United Nations General Assembly resolution, guarantees the right to freedom of expression in the following terms:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

The International Covenant on Civil and Political Rights (ICCPR) elaborates on many rights included in the UDHR, imposing formal legal obligations on State Parties to respect its provisions. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR.


Freedom of expression is a key human right. Not only is it a fundamental human value in and of itself, freedom of expression also provides a key underpinning for democracy—there can be no democracy if people are not free to say what they want and do not receive sufficient information to cast an informed vote—and it is key to enforcing other rights. This has been recognised by international courts and bodies worldwide. It is worth recalling that at its very first session, in 1946, the UN General Assembly adopted Resolution 59(I) which states: “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”

This has been echoed by other courts and bodies. For example, the UN Human Rights Committee has said:

> The right to freedom of expression is of paramount importance in any democratic society.

International law permits limited restrictions on the right to freedom of expression in order to protect various interests, including reputation. The parameters of such restrictions are provided for in Article 19 of the ICCPR, which states:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

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12 See their Joint Declaration of 30 November 2000. Available at: http://www.unhchr.ch/huricane/huricane.nsf/view01/EFE58839B169CC09C12569AB002D02C0?opendocument
13 UN General Assembly Resolution 217A(III), adopted 10 December 1948.
14 UN General Assembly Resolution 217A(III), adopted 10 December 1948.
18 14 December 1946. “Freedom of information” is referred to in the broad sense of the free circulation of information and ideas.
Any restriction on the right to freedom of expression must meet a strict three-part test. This test, which has been confirmed by the Human Rights Committee,20 the body of independent experts responsible for overseeing States’ implementation of the ICCPR, requires that any restriction must be:

1. provided by law;
2. for the purpose of safeguarding a legitimate interest (including, as noted, protecting the reputations of others); and
3. necessary to secure this interest.

The first part of this test implies not only that the restriction is based in law, but also that the relevant law meets certain standards of clarity and accessibility. The law must be formulated with sufficient precision that it is possible to foresee in advance what is being prohibited.21

Article 19(3) of the ICCPR provides an exclusive list of aims in pursuit of which the exercise of the right to freedom of expression may be restricted for purposes of the second part of this test.

The necessity requirement set out in the third part of the test implies, in particular, that the law should restrict freedom of expression as little as possible, should be designed carefully to achieve the objective in question and should not be arbitrary, unfair or based on irrational considerations. Vague or broadly defined restrictions, even if they satisfy the “provided by law” part of the test, are unacceptable because, at least potentially, they go beyond what is strictly required to protect the legitimate interest. Furthermore, restrictions on freedom of expression, must be proportionate to the harm done and not go beyond what is strictly necessary in all of the circumstances to protect reputation.

The European Convention on Human Rights

Freedom of expression is protected in Article 10(1) of the European Convention:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The European Court of Human Rights has recognised the vital role of freedom of expression as an underpinning of democracy:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.22

The Court has also made it clear that the right to freedom of expression protects offensive and insulting speech, stating repeatedly:

[Freedom of expression] is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.23

It has similarly emphasised: “Journalistic freedom . . . covers possible recourse to a degree of exaggeration, or even provocation.”24 This means, for example, that the media are free to use hyperbole, satire or colourful imagery to convey a particular message.25 The choice as to the form of expression is up to the media. For example, the Court will not criticise a newspaper for choosing to voice its criticism in the form of a satirical cartoon and—it has urged—neither should national courts.26 The context within which statements are made is relevant as well. For example, in the second Oberschlick case, the Court considered that calling a politician an idiot was a legitimate response to earlier, provocative statements by that same politician,27 while in the Lingens case, the Court stressed that the circumstances in which the impugned statements had been made “must not be overlooked”.28

The Court attaches particular value to political debate and deliberation on other matters of public importance. Any statements made in the conduct of such debate can be restricted only when this is absolutely necessary. As the Court has frequently noted: “There is little scope . . . for restrictions on political speech or debates on questions of public interest”.29

The guarantee of freedom of expression applies with particular force to the media. The Court has consistently emphasised the “pre-eminence of the role of the press in a State governed by the rule of law”30 and has stated:

20 See, for example, Laptsevich v Belarus, 20 March 2000, Communication No. 780/1997.
21 The Sunday Times v United Kingdom, 26 April 1979, Application No 6538/74, para 49.
22 Handyside v United Kingdom, 7 December 1976, Application No 5493/72, para 49.
23 Ibid, para 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.
24 Dichand and others v Austria, 26 February 2002, Application No 29271/95, para 39.
26 See, for example, Bledet Tromso and Stenssau v Norway, 20 May 1999, Application No 21980/93, para 63 and Bergens Tidende and Others v Norway, 2 May 2000, Application No 26131/95, para 57.
27 Oberschlick v Austria (No 2), 1 July 1997, Application No 20834/93, para 34.
28 Lingens v Austria, 8 July 1986, Application No 9815/82, 8 EHRR 407, para 43.
29 See, for example, Dichand and others v Austria, note 14, para 38.
Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.31

Closely related, and as the Court has stressed in nearly every case before it concerning the media:

The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart—in a manner consistent with its obligations and responsibilities—information and ideas on all matters of public interest. Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”. [references omitted]32

While the right to freedom of expression is not absolute, any limitations must remain within strictly defined parameters. Article 10(2) recognises that freedom of expression may, in certain narrowly prescribed circumstances, be limited:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary.

This is quite similar in practice to the three-part test for restrictions under the ICCPR.

Defamation and the ECHR

The European Court of Human Rights has decided a large number of cases involving defamation. These cases establish a number of principles on freedom of expression and defamation, which are outlined below. These principles apply a fortiori to criminal defamation laws, even though some of these cases are based on civil defamation laws, given the more intrusive nature of criminal defamation as a restriction on freedom of expression.33

It is well-established that defamation liability constitutes an interference with freedom of expression, even when no award for damages is made.34 As a result, defamation laws must remain within the parameters set by the Convention and, in particular, must meet the three-part test established under Article 10(2) of the Convention. In considering these cases, the Court strictly follows the structure of Article 10(2).

The requirement that the restriction on the ground of defamation be prescribed by law is usually found by the Court to be easily met,35 even though some such laws are phrased, and interpreted by the judicial organs, extremely loosely so that it is not possible to determine in advance, even with the assistance of a legal expert, what, exactly, is prohibited.

Legitimate Aim

As noted above, Article 10(2) of the Convention provides an exclusive list of aims in pursuit of which the exercise of the right to freedom of expression may be restricted. In virtually all cases before the Court, the “protection of the reputation or rights of others” has been invoked to justify defamation laws.36 In one case, the Court also considered that the speech complained of was potentially inflammatory and could lead to large-scale public unrest. In those circumstances, the Court found that the respondent Government could invoke the “prevention of disorder” as a legitimate aim.37

ARTICLE 19 considers that the European Court has devoted insufficient attention to the question of legitimate aim. Although there is little doubt that defamation laws in almost all cases do in general provide protection for reputation, in many actual cases, we question whether this is the real aim of the defamation action. Rather, it may be to prevent criticism of government, to undermine an opposition party or to serve some other aim unrelated to reputation. Given that the Court’s mandate is to consider the facts of the case before it, rather than the law in general, it should look carefully at the facts to determine whether the real aim of the case was to vindicate reputation.

31 Castells v Spain, 24 April 1992, Application No 11798/85, para. 43.
32 Handside v United Kingdom, 7 December 1976, Application No 5493/72, para 49.
33 See, for example, Dichand and others v Austria, note 14, para 40.
34 See, for example, McVicar v the United Kingdom, 7 May 2002, Application No 46311/99.
35 Overly broad and/or vaguely defined offences should not, in principle, be considered to be prescribed by law but in practice the Court has been very reluctant to find a breach on this basis alone in defamation cases.
36 See, for example, Lingens v Austria, note 18, para 36 and Schwabe v Austria, 28 August 1992, Application No 13704/88, para 25.
37 Castells v Spain, note 21, paras 38–39.
Many defamation laws aim to protect honour and dignity but, depending on how this is interpreted, it may be rather different than reputation, which focuses on external perceptions rather than internal feelings. Furthermore, laws that penalise “insult” or “giving offence” without linking this to the reputation of the offended party should fail the “legitimate aim” test.

Public Officials

The Court has been very clear on the matter of public officials and defamation: they are required to tolerate more, not less, criticism, in part because of the public interest in open debate about public figures and institutions. In its very first defamation case, the Court emphasised:

The limits of acceptable criticism are . . . wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance.

The Court has affirmed this principle in several cases and it has become a fundamental tenet of its caselaw. The principle is not limited to criticism of politicians acting in their public capacity. Matters relating to private or business interests can be equally relevant. For example, the “fact that a politician is in a situation where his business and political activities overlap may give rise to public discussion, even where, strictly speaking, no problem of incompatibility of office under domestic law arises”.

In statements on matters of public interest, the principle applies to public officials and to public servants as well as to politicians. Although in the case of Janowski v Poland, the Court held that public servants must “enjoy public confidence in conditions free of perturbation if they are to be successful in performing their tasks,” this case did not require the Court to balance the interests of freedom of the media against need to protect public servants and, importantly, did not concern statements in the public interest. In the later case of Dalban v Romania, the Court resolutely found a violation of freedom of expression where a journalist had been conviction for defaming the chief executive of a State-owned agricultural company. In the recent case of Thomsa v Luxembourg, the Court put the issue beyond doubt:

Civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than private individuals.

Indeed, the Court has rejected any distinction between political debate and other matters of public interest, stating that there is “no warrant” for such distinction. The Court has also clarified that this enhanced protection applies even where the person who is attacked is not a “public figure”; it is sufficient if the statement relates to a matter of public interest.

Facts vs Opinions

The Court has made it clear that defamation law needs to distinguish between statements of fact and value judgments. This is because the existence of facts can be demonstrated, whereas the truth of a value judgment is not susceptible of proof. It follows that: “The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right to [freedom of expression].”

In a number of cases before the Court, domestic courts had wrongly treated allegedly defamatory publications as statements of fact. For example, in Feldek v Slovakia, the Court disagreed that the use by the applicant of the phrase “fascist past” should be understood as stating the fact that a person had participated in activities propagating particular fascist ideals. It explained that the term was a wide one, capable of encompassing different notions as to its content and significance. One of them could be that a person participated as a member in a fascist organisation; on this basis, the value-judgment that that person had a “fascist past” could fairly be made.

The Defence of “Reasonable Publication”

It is now becoming widely recognised that in certain circumstances even false, defamatory statements of fact should be protected against liability. A rule of strict liability for all false statements is particularly unfair for the media, which are under a duty to satisfy the public’s right to know where matters of public concern are involved and often cannot wait until they are sure that every fact alleged is true before they publish or broadcast a story. Even the best journalists make honest mistakes and to leave them open to punishment...
for every false allegation would be to undermine the public interest in receiving timely information. The nature of the news media is such that stories have to be published when they are topical, particularly when they concern matters of public interest. In response to a submission to this effect by ARTICLE 19, the Court held:

"[N]ews is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest."

A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably in publishing a statement on a matter of public concern, while allowing plaintiffs to sue those who have not, what might be termed the defence of reasonable publication. For the media, acting in accordance with accepted professional standards should normally satisfy the reasonableness test. This has been confirmed by the European Court, which has stated that the press should be allowed to publish stories that are in the public interest subject to the proviso that “they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.”

Applying these principles in the case of Tromso and Stensaas v Norway, the European Court of Human Rights placed great emphasis on the fact that the statements made in that case concerned a matter of great public interest which the plaintiff newspaper had covered overall in a balanced manner.

**Statements of Others**

The European Court has also held that journalists should not automatically be held liable for repeating a potentially libellous allegation published by others. In the case of Thoma v Luxembourg, a radio journalist had quoted from a newspaper article which alleged that of all eighty forestry officials in Luxembourg only one was not corrupt. The journalist was convicted for libel but the European Court held that the conviction constituted a violation of his right to freedom of expression: “[P]unishment of a journalist for assisting in the dissemination of statements made by another person … would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.” The Court also dismissed the contention that the journalist should have formally distanced himself from the allegation, warning the public that he was quoting from a newspaper report:

A general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press’s role of providing information on current events, opinions and ideas.

**Exemptions from Liability**

Certain statements should never attract liability for defamation. This applies, for example, to statements made in legislative assemblies or in the course of judicial proceedings, or reports of official statements or reports quoting from the findings of official reports.

With regard to statements made in legislative assemblies, the European Court has recognised that, “[the] aim of the immunity accorded to members of the . . . legislature [is] to allow such members to engage in meaningful debate and to represent their constituents on matters of public interest without having to restrict their observations or edit their opinions because of the danger of being amenable to a court or other such authority.” Thus, because freedom of parliamentary debate is the very essence of modern-day democracies, statements made in Parliament may justifiably attract absolute immunity.

In the case of Nikula v Finland, the Court held that statements made in the course of judicial proceedings should enjoy a similarly high degree of protection. Statements made in court by lawyers should receive protection in particular, since they play an important role as “intermediaries between the public and the courts” and they must be free to defend their client to the best of their ability. The Court explained:

"[T]he threat of an ex post facto review of counsel’s criticism of another party to criminal proceedings—which the public prosecutor doubtless must be considered to be—is difficult to reconcile with defence counsel’s duty to defend their clients’ interests zealously. It follows that it should be primarily for counsel themselves, subject to supervision by the bench, to assess the relevance and usefulness of a defence argument without being influenced by the potential “chilling effect” of even a relatively light criminal sanction or an obligation to pay compensation for harm suffered or costs incurred."
Sanctions

It is clear that unduly harsh sanctions, even for statements found to be defamatory, breach the guarantee of freedom of expression. In the case of Tolstoy Miloslavsky v the United Kingdom, the European Court of Human Rights stated that “the award of damages and the injunction clearly constitute an interference with the exercise of the right to freedom of expression.” Therefore, any sanction imposed for defamation must bear a “reasonable relationship of proportionality to the injury to reputation suffered” and this should be specified in national defamation laws.

Similarly, in a Declaration on Freedom of Political Debate in the Media, the Committee of Ministers of the Council of Europe stresses the need for sanctions both to be proportionate and to take into account any other remedies provided:

 DAMAGES AND FINES FOR DEFAMATION OR INSULT MUST BEAR A REASONABLE RELATIONSHIP OF PROPORTIONALITY TO THE VIOLATION OF THE RIGHTS OR REPUTATION OF OTHERS, TAKING INTO CONSIDERATION ANY POSSIBLE EFFECTIVE AND ADEQUATE VOLUNTARY REMEDIES . . .

This is clearly of the greatest relevance to criminal defamation.

One aspect of this requirement is that less intrusive remedies, and in particular non-pecuniary remedies such as appropriate rules on the right to reply, should be prioritised over pecuniary remedies. Another aspect is that any remedies already provided, for example on a voluntary or self-regulatory basis, should be taken into account in assessing court-awarded damages. To the extent that remedies already provided have mitigated the harm done, this should result in a corresponding lessening of any pecuniary damages.

ARTICLE 19’S KEY CONCERNS WITH CRIMINAL DEFAMATION

The criminalisation of a particular activity implies a clear State interest in controlling the activity and imparts a certain social stigma to it. In many countries, the protection of one’s reputation is treated primarily or exclusively as a private interest and experience shows that criminalising defamatory statements is unnecessary to provide adequate protection for reputations. Criminal defamation laws in many countries have either fallen into disuse or their use has come under heavy criticism. In Castells v Spain, the European Court of Human Rights noted:

THE DOMINANT POSITION WHICH THE GOVERNMENT OCCUPIES MAKES IT NECESSARY FOR IT TO DISPLAY RESTRAINT IN RESORTING TO CRIMINAL PROCEEDINGS, PARTICULARLY WHERE OTHER MEANS ARE AVAILABLE FOR REPLYING TO THE UNJUSTIFIED ATTACKS AND CRITICISMS OF ITS ADVERSARIES OR THE MEDIA.

One of the most serious problems with criminal defamation laws is that a breach may lead to a harsh sanction, such as a heavy fine or suspension of the right to practise journalism. Even where these are not applied, the problem of a “chilling effect” remains, since the severe nature of these sanctions means that they cast a long shadow. As noted above, is now well-established that unduly harsh penalties, of themselves, represent a breach of the right to freedom of expression even if the circumstances justify some sanction for abuse of this right. In the very first defamation case before it, the Court considered that:

THE PENALTY IMPOSED ON THE AUTHOR . . . AMOUNTED TO A KIND OF CENSURE, WHICH WOULD BE LIKELY TO DISCOURAGE HIM FROM MAKING CRITICISMS OF THAT KIND AGAIN IN THE FUTURE . . . IN THE CONTEXT OF POLITICAL DEBATE SUCH A SENTENCE WOULD BE LIKELY TO DETER JOURNALISTS FROM CONTRIBUTING TO PUBLIC DISCUSSION OF ISSUES AFFECTING THE LIFE OF THE COMMUNITY. THE SAME TOKEN, A SANCTION SUCH AS THIS IS LIABLE TO HAMPER THE PRESS IN PERFORMING ITS TASK AS PURVEYOR OF INFORMATION AND PUBLIC WATCHDOG.

A number of authoritative statements have been made by various international officials to the effect that criminal defamation laws and penalties breach the right to freedom of expression. The UN Special Rapporteur on Freedom of Opinion and Expression has reiterated this on numerous occasions. In his 1999 Report to the UN Commission on Human Rights, he stated:

SANCTIONS FOR DEFAMATION SHOULD NOT BE SO LARGE AS TO EXERT A CHILLING EFFECT ON FREEDOM OF OPINION AND EXPRESSION AND THE RIGHT TO SEEK, RECEIVE AND IMPART INFORMATION; PENAL SANCTIONS, IN PARTICULAR IMPRISONMENT, SHOULD NEVER BE APPLIED.

In his Report in 2000, and again in 2001, the Special Rapporteur went even further, calling on States to repeal all criminal defamation laws in favour of civil defamation laws. Every year, the UN Commission on Human Rights, in its resolution on freedom of expression, notes its concern with “abuse of legal provisions on defamation and criminal libel”.

58 13 July 1995, Application No 18139/91, para 35.
59 Ibid, para 49.
60 Adopted 12 February 2004.
61 See, for example, Ediciones Tiempo SA v Spain, 12 July 1989, Application No 13010/87 (European Commission of Human Rights).
62 Castells v Spain, note 21, para 46.
63 Lingens v Austria, note 18.
64 Promotion and protection of the right to freedom of opinion and expression, UN Doc E/CN.4/1999/64, 29 January 1999, para 28.
66 See, for example, Resolution 2005/38, 19 April 2005, para 3(a).
The three special international mandates for promoting freedom of expression—the UN Special Rapporteur, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression—have also taken this issue up jointly. In their Declarations of November 1999, November 2000 and again in December 2002, they called on States to repeal their criminal defamation laws. The 2002 statement read:

**Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.**

Similarly, the UNESCO sponsored Declaration of Sana’a declared, “Disputes involving the media and/or the media professionals in the exercise of their profession … should be tried under civil and not criminal codes and procedures.”

The UN Human Rights Committee has repeatedly expressed its concern about the use of custodial sanctions for defamation. The Committee has often commented on criminal defamation laws, welcoming their abolition where this has occurred, calling for “review and reform [of] laws relating to criminal defamation,” and expressing serious concerns about the potential for abuse of criminal defamation laws, particularly where expression on matters of public concern is at stake.

So far, international courts have not gone so far as to rule out criminal defamation per se, and the European Court has implicitly approved it by failing find a breach of the right to freedom of expression in some criminal defamation cases. However, in Castells v Spain, the Court stated that criminal measures should only be adopted where States act “in their capacity as guarantors of public order” and where such measures are, “[i]ntended to react appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith.” It is significant that the Court approved the application of criminal measures only as a means of maintaining public order, and not as a means of protecting reputations.

Furthermore, two recent cases decided by the Inter-American Court of Human Rights, both of which resulted in a finding of a breach of the right to freedom of expression, reflect the increasingly suspicious stance of international courts towards this form of restriction on freedom of expression.

1. **Criminal defamation laws frequently fail to pursue a legitimate aim**

As noted above, defamation laws are frequently abused to serve aims other than the protection of the reputation of the plaintiff. This is a particular problem in the context of criminal defamation laws, given that in many countries these may be enforced by official rather than private prosecutions. While this may not, as a matter of legal argument, be sufficient reason to hold that these laws, per se, represent a breach of the right to freedom of expression—after all, practically any law can be abused, particularly where judicial oversight is weak—it is, nevertheless, a good argument for doing away with these laws.

Also as noted above, laws which provide special protection for the reputations of public officials cannot be justified; in fact, these individuals should be required to tolerate greater criticism than ordinary citizens. Again, it is often criminal defamation laws which provide for special protection for officials. These laws may favour public officials by substantive or procedural rules, including State assistance in bringing or prosecuting cases, or because they provide for heavier penalties for defamation of public officials than for private individuals.

2. **Criminal defamation laws are not necessary because civil laws provide adequate protection for reputation**

It is well established that the guarantee of freedom of expression requires States to use the least restrictive effective remedy to secure the legitimate aim sought. This flows directly from the need for any restrictions to be necessary; if a less restrictive remedy is effective, the more restrictive one cannot be necessary. In its judgment in Castells v Spain, the European Court struck down a criminal defamation provision, stressing that restraint should be used in resorting to the criminal law, “particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media” (emphasis added).

The Inter-American Court of Human Rights has put the matter even more clearly:

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68 Declaration of Sana’a, 11 January 1996, endorsed by the General Conference by Resolution 34, adopted at the 29th session, 12 November 1997.
69 This concern has been expressed in the context of specific country reports. For example in relation to Iceland and Jordan (1994), Tunisia and Morocco (1995), Mauritius (1996), Iraq and Slovakia (1997), Zimbabwe (1998), and Cameroon, Mexico, Morocco, Norway and Romania (1999), Azerbaijan, Guatemala and Croatia (2001), and Serbia and Montenegro (2004).
71 For example, in its Concluding Observations on Norway, 1 November 1999, CCPR/C/79/Add.112, para 14.
72 For example, in relation to Kyrgyzstan: “[The Committee] is especially concerned about the use of libel suits against journalists who criticize the Government. Such harassment is incompatible with the freedom of expression . . . . The State party should ensure that journalists can perform their profession without fear of being subjected to prosecution and libel suits for criticizing government policy or government officials. Journalists and human rights activists subjected to imprisonment in connection with articles 9 and 19 of the Covenant should be released, rehabilitated and given compensation pursuant to articles 9.5 and 14.6 of the Covenant.” Concluding Observations on Kyrgyzstan, 24 July 2000, CCPR/C/69/KGZ, para. 20. See also the Concluding Observations referred to above, note 58.
73 Castells v Spain, note 21, para 46.
75 Castells v Spain, note 21, para 46.
As a result, to the extent that civil defamation laws are effective in appropriately redressing harm to reputation, there is no justification for criminal defamation laws. Perhaps the best evidence of the sufficiency of civil defamation laws for this task comes from the growing number of jurisdictions where they are either the preferred means of redress or growing in popularity, even though criminal defamation laws are still on the books. This is the case, for example, in many European countries, including Austria and the Netherlands. In other countries, criminal defamation laws have fallen into virtual desuetude. There has been no successful attempt to bring a criminal prosecution for defamation in the United Kingdom for many years and no private actor has even attempted to do so for over 25 years.77

A number of countries have completely abolished criminal defamation laws. These include Bosnia-Herzegovina (2002), Estonia, Georgia (2004), Ghana (2001), Mexico (2007), New Zealand (1992), Sri Lanka (2002) and the Ukraine (2001). These countries have not experienced any noticeable increase in defamatory statements, either of a qualitative or quantitative nature, since they abolished criminal defamation.

In the United States, criminal defamation laws have never been upheld by the Supreme Court,78 and there is no federal crime of criminal defamation. Other US courts have also struck down criminal defamation laws and they have been repealed in some states, including California and New York, although they do remain on the books in some 17 states.

It may be noted that civil actions are, in any case, better equipped to remedy the harm of defamation than criminal actions, because they are designed to remedy the injury to the victim’s reputation by compensation in terms of damages. In contrast, criminal sanctions do not for the most part aim to remedy the actual harm caused to the victim but, rather, to punish the defendant.

It may be concluded that the experience of a range of countries where criminal defamation laws have been struck down by the courts, repealed by the authorities or fallen into virtual disuse shows that such laws are not necessary to provide appropriate protection for reputations. In these countries, civil defamation laws have proven adequate to this task. Furthermore, this experience is not limited to established democracies but includes countries undergoing a transition to democracy, and from different regions of the world.

Another way in which criminal defamation laws do not represent the least restrictive approach is that, in many countries, they shift the burden of proof onto a criminal defendant by requiring the defendant to prove the truth of his or her statement, the “reasonableness” of his or her opinion, or that the publication was for the public benefit.

Addressing this point in the English case of Gleaves v Deakin, Lord Diplock expressed the view that the offence of criminal libel violated Article 10 of the European Convention on Human Rights. Indeed, he said it turned Article 10 “on its head” because:

Under our criminal law a person’s freedom of expression, wherever it involves exposing seriously discreditable conduct of others, is to be repressed by public authority unless he can convince a jury ex post facto that the particular exercise of the freedom was for the public benefit; whereas article 10 requires that freedom of expression shall be untrammelled by public authority except where its interference to repress a particular exercise of the freedom is necessary for the protection of public interest.79

3. Criminal defamation laws are not necessary because the sanctions they envisage are disproportionate

As noted above, disproportionate sanctions for defamation, of themselves, represent a breach of the right to freedom of expression. Criminal sanctions for defamation fall foul of this rule because they are unduly harsh, taking into account the harm caused. The threat of a criminal record, a penal sentence or even a suspended sentence all impose a great and unnecessary burden on a potential critic. There may also be penalties associated with having a criminal record. In the case of Mr Herrera Ulloa, whose conviction by the Costa Rican courts for criminal defamation was found to breach his right to freedom of expression by the Inter-American Court of Human Rights,80 these included ineligibility for probation upon further conviction for criminal defamation, and being barred from adopting a child, holding a position in the civil service or practising a profession.

77 Historical attempts include Goldsmith v Pressdram [1977] QB 83, Gleaves v Deakin [1980] AC 477 and Desmond v Thorpe [1982] 3 All ER 268. None of these cases have gone to trial because either the plaintiffs failed to obtain leave to proceed or the cases were discontinued.
78 They have been struck down on at least two occasions. See Garrison v Louisiana, 379 U.S. 64 (1964) and Ashton v Kentucky, 384 US 195 (1966).
79 Gleaves v Deakin, note 66, 483.
80 Note 63.
The European Court of Human Rights has upheld criminal defamation convictions on occasion but, in these cases, it has been at pains to point out that the sanctions were modest and hence met the requirement of proportionality. For example, in Tammer v Estonia, the Court specifically noted, “the limited amount of the fine imposed” in upholding the conviction; the total fine in that case was ten times the daily minimum wage.81

The Court’s jurisdiction is limited to assessing the facts of the case before it so that, if a sanction is limited, it must recognise that. However, a more general assessment of criminal defamation laws leads to the conclusion that the possibility of criminal sanctions exerts a serious chilling effect on freedom of expression and cannot be justified. In its Report on the Compatibility of “Desacato” Laws With the American Convention on Human Rights, the Inter-American Commission on Human Rights noted the particular problem with sanctions of a criminal nature, stating:

The fear of criminal sanctions necessarily discourages people from voicing their opinions on issues of public concern . . .82.

This has also been echoed by the UN Human Rights Committee, which has made it clear that criminal convictions for defamation tend to be disproportionate to any damage caused, stating that, “the severity of the sanctions imposed on the author [a prison sentence and a fine] cannot be considered as a proportionate measure to protect . . . the honour and the reputation of the President . . .”83.

Conclusion: Abolishing Criminal Defamation Laws

In many countries, criminal defamation laws are abused by the powerful to limit criticism and to stifle public debate. ARTICLE 19 considers that the threat of harsh criminal sanctions, especially imprisonment, exerts a profound chilling effect on freedom of expression. As the jurisprudence and decisions of the UN and regional human rights bodies testify, such sanctions clearly cannot be justified, particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals’ reputations. There is always the potential for abuse of criminal defamation laws, even in countries where in general they are applied in a moderate fashion. ARTICLE 19 therefore calls on States to repeal such laws.

At the same time, it is recognised that in many countries criminal defamation laws are still the primary means of addressing unwarranted attacks on reputation. To minimise the potential for abuse or unwarranted restrictions on freedom of expression in practice, it is essential that immediate steps be taken to ensure that these laws conform to international standards.

Recommendations

(a) All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.

(b) As a practical matter, in recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:

(i) no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;

(ii) the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;

(iii) public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;

(iv) prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

81 6 February 2001, para 69. See also Constantinescu v Romania, 21 March 2000.
82 Part IV(B).
DEFINING DEFAMATION: PRINCIPLES ON FREEDOM OF EXPRESSION AND PROTECTION OF REPUTATIONS

PREAMBLE

Considering, in accordance with the principles proclaimed in the Charter of the United Nations, as elaborated in the Universal Declaration of Human Rights, that recognition of the equal and inalienable rights of all human beings is an essential foundation of freedom, justice and peace;

Reaffirming the belief that freedom of expression and the free flow of information, including free and open debate regarding matters of public interest, even when this involves criticism of individuals, are of crucial importance in a democratic society, for the personal development, dignity and fulfilment of every individual, as well as for the progress and welfare of society, and the enjoyment of other human rights and fundamental freedoms;

Taking into consideration relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights, the American Convention on Human Rights and the European Convention on Human Rights and Fundamental Freedoms, as well as provisions in national constitutions;

Bearing in mind the fundamental necessity of an independent and impartial judiciary to safeguard the rule of law and to protect human rights, including freedom of expression, as well as the need for ongoing judicial training on human rights, and in particular on freedom of expression;

Mindful of the importance to individuals of their reputations and the need to provide appropriate protection for reputation;

Cognisant also of the prevalence of defamation laws which unduly restrict public debate about matters of public concern, of the fact that such laws are justified by governments as necessary to protect reputations, and of the frequent abuse of such laws by individuals in positions of authority;

Aware of the importance of open access to information, and particularly of a right to access information held by public authorities, in promoting accurate reporting and in limiting publication of false and potentially defamatory statements;

Cognisant of the role of the media in furthering the public’s right to know, in providing a forum for public debate on matters of public concern, and in acting as a “public watchdog” to help promote government accountability;

Recognising the importance of self-regulatory mechanisms established by the media that are effective and accessible in providing remedies to vindicate reputations, and that do not unduly infringe the right to freedom of expression;

Desiring to promote a better understanding of the appropriate balance between the right to freedom of expression and the need to protect reputations;

We recommend that national, regional and international bodies undertake appropriate action in their respective fields of competence to promote the widespread dissemination, acceptance and implementation of these Principles:

SECTION 1 GENERAL PRINCIPLES

Principle 1: Freedom of Opinion, Expression and Information

(a) Everyone has the right to hold opinions without interference.

(b) Everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

(c) The exercise of the right provided for in paragraph (b) may, where this can be shown to be necessary, be subject to restrictions on specific grounds, as established in international law, including for the protection of the reputations of others.

(d) Anyone affected, directly or indirectly, by a restriction on freedom of expression must be able to challenge the validity of that restriction as a matter of constitutional or human rights law before an independent court or tribunal.

(e) Any application of a restriction on freedom of expression must be subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal, as an aspect of the rule of law.

The “we” here comprises the participants at the London Workshop referred to in footnote 3, a broad consensus of opinion among the much larger group of individuals who have been involved in the process of developing these Principles, as well as a growing list of individuals and organisations who have formally endorsed them.
Principle 1.1: Prescribed by Law

Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous and narrowly and precisely drawn so as to enable individuals to predict with reasonable certainty in advance the legality or otherwise of a particular action.

Principle 1.2: Protection of a Legitimate Reputation Interest

Any restriction on expression or information which is sought to be justified on the ground that it protects the reputations of others, must have the genuine purpose and demonstrable effect of protecting a legitimate reputation interest.\(^{85}\)

Principle 1.3: Necessary in a Democratic Society

A restriction on freedom of expression or information, including to protect the reputations of others, cannot be justified unless it can convincingly be established that it is necessary in a democratic society. In particular, a restriction cannot be justified if:

(i) less restrictive, accessible means exist by which the legitimate reputation interest can be protected in the circumstances; or
(ii) taking into account all the circumstances, the restriction fails a proportionality test because the benefits in terms of protecting reputations do not significantly outweigh the harm to freedom of expression.

Principle 2: Legitimate Purpose of Defamation Laws

(a) Defamation laws cannot be justified unless their genuine purpose and demonstrable effect is to protect the reputations of individuals—or of entities with the right to sue and be sued—against injury, including by tending to lower the esteem in which they are held within the community, by exposing them to public ridicule or hatred, or by causing them to be shunned or avoided.

(b) Defamation laws cannot be justified if their purpose or effect is to protect individuals against harm to a reputation which they do not have or do not merit, or to protect the “reputations” of entities other than those which have the right to sue and to be sued. In particular, defamation laws cannot be justified if their purpose or effect is to:

(i) prevent legitimate criticism of officials or the exposure of official wrongdoing or corruption;
(ii) protect the “reputation” of objects, such as State or religious symbols, flags or national insignia;
(iii) protect the “reputation” of the State or nation, as such;
(iv) enable individuals to sue on behalf of persons who are deceased; or
(v) allow individuals to sue on behalf of a group which does not, itself, have status to sue.

(c) Defamation laws also cannot be justified on the basis that they serve to protect interests other than reputation, where those interests, even if they may justify certain restrictions on freedom of expression, are better served by laws specifically designed for that purpose. In particular, defamation laws cannot be justified on the grounds that they help maintain public order, national security, or friendly relations with foreign States or governments.

Principle 3: Defamation of Public Bodies

Public bodies of all kinds—including all bodies which form part of the legislative, executive or judicial branches of government or which otherwise perform public functions—should be prohibited altogether from bringing defamation actions.

SECTION 2 CRIMINAL DEFAMATION

Principle 4: Criminal Defamation

(a) All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.

(b) As a practical matter, in recognition of the fact that in many States criminal defamation laws are the primary means of addressing unwarranted attacks on reputation, immediate steps should be taken to ensure that any criminal defamation laws still in force conform fully to the following conditions:

(v) no-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;

85 See Principle 2.
(vi) the offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;

(vii) public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;

(viii) prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

SECTION 3 CIVIL DEFAMATION LAWS

Principle 5: Procedure
(a) The limitation period for filing a defamation suit should, except in exceptional circumstances, be no more than one year from the date of publication.

(b) Courts should ensure that each stage of defamation proceedings is conducted with reasonable dispatch, in order to limit the negative impact of delay on freedom of expression. At the same time, under no circumstances should cases proceed so rapidly as to deny defendants a proper opportunity to conduct their defence.

Principle 6: Protection of Sources
(a) Journalists, and others who obtain information from confidential sources with a view to disseminating it in the public interest, have a right not to disclose the identity of their confidential sources. Under no circumstances should this right be abrogated or limited in the context of a defamation case.

(b) Those covered by this Principle should not suffer any detriment in the context of a defamation case simply for refusing to disclose the identity of a confidential source.

Principle 7: Proof of Truth
(a) In all cases, a finding that an impugned statement of fact is true shall absolve the defendant of any liability.  

(b) In cases involving statements on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.

(c) Practices which unreasonably restrict the ability of defendants to establish the truth of their allegations should be revised.

Principle 8: Public Officials
Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status. This Principle embraces the manner in which complaints are lodged and processed, the standards which are applied in determining whether a defendant is liable, and the penalties which may be imposed.

Principle 9: Reasonable Publication
Even where a statement of fact on a matter of public concern has been shown to be false, defendants should benefit from a defence of reasonable publication. This defence is established if it is reasonable in all the circumstances for a person in the position of the defendant to have disseminated the material in the manner and form he or she did. In determining whether dissemination was reasonable in the circumstances of a particular case, the Court shall take into account the importance of freedom of expression with respect to matters of public concern and the right of the public to receive timely information relating to such matters.

Principle 10: Expressions of Opinion
(a) No one should be liable under defamation law for the expression of an opinion.

(b) An opinion is defined as a statement which either:
   (i) does not contain a factual connotation which could be proved to be false; or
(ii) cannot reasonably be interpreted as stating actual facts given all the circumstances, including the language used (such as rhetoric, hyperbole, satire or jest).

**Principle 11: Exemptions from Liability**

(a) Certain types of statements should never attract liability under defamation law. At a minimum, these should include:

(i) any statement made in the course of proceedings at legislative bodies, including by elected members both in open debate and in committees, and by witnesses called upon to give evidence to legislative committees;

(ii) any statement made in the course of proceedings at local authorities, by members of those authorities;

(iii) any statement made in the course of any stage of judicial proceedings (including interlocutory and pre-trial processes) by anyone directly involved in that proceeding (including judges, parties, witnesses, counsel and members of the jury) as long as the statement is in some way connected to that proceeding;

(iv) any statement made before a body with a formal mandate to investigate or inquire into human rights abuses, including a truth commission;

(v) any document ordered to be published by a legislative body;

(vi) a fair and accurate report of the material described in points (i)—(v) above; and

(vii) a fair and accurate report of material where the official status of that material justifies the dissemination of that report, such as official documentation issued by a public inquiry, a foreign court or legislature or an international organisation.

(b) Certain types of statements should be exempt from liability unless they can be shown to have been made with malice, in the sense of ill-will or spite. These should include statements made in the performance of a legal, moral or social duty or interest.

**Principle 12: Scope of Liability**

(a) No one should be liable under defamation law for a statement of which he or she was not the author, editor or publisher and where he or she did not know, and had no reason to believe, that what he or she did contributed to the dissemination of a defamatory statement.

(b) Bodies whose sole function in relation to a particular statement is limited to providing technical access to the internet, to transporting data across the internet or to storing all or part of a website shall not be subject to any liability in relation to that statement unless, in the circumstances, they can be said to have adopted the relevant statement. Such bodies may, however, be required to take appropriate action to prevent further publication of the statement, pursuant either to an interim or to a permanent injunction meeting the conditions, respectively, of Principle 16 or 17.

**Section 4 Remedies**

**Principle 13: Role of Remedies**

(a) No mandatory or enforced remedy for defamation should be applied to any statement which has not been found, applying the above principles, to be defamatory.

(b) The overriding goal of providing a remedy for defamatory statements should be to redress the harm done to the reputation of the plaintiff, not to punish those responsible for the dissemination of the statement.

(c) In applying remedies, regard should be had to any other mechanisms—including voluntary or self-regulatory systems—which have been used to limit the harm the defamatory statements have caused to the plaintiff’s reputation. Regard should also be had to any failure by the plaintiff to use such mechanisms to limit the harm to his or her reputation.

**Principle 14: Non-Pecuniary Remedies**

Courts should prioritise the use of available non-pecuniary remedies to redress any harm to reputation caused by defamatory statements.

**Principle 15: Pecuniary Awards**

(a) Pecuniary compensation should be awarded only where non-pecuniary remedies are insufficient to redress the harm caused by defamatory statements.

(b) In assessing the quantum of pecuniary awards, the potential chilling effect of the award on freedom of expression should, among other things, be taken into account. Pecuniary awards should never be disproportionate to the harm done, and should take into account any non-pecuniary remedies and the level of compensation awarded for other civil wrongs.
(c) Compensation for actual financial loss, or material harm, caused by defamatory statements should be awarded only where that loss is specifically established.

(d) The level of compensation which may be awarded for non-material harm to reputation—that is, harm which cannot be quantified in monetary terms—should be subject to a fixed ceiling. This maximum should be applied only in the most serious cases.

(e) Pecuniary awards which go beyond compensating for harm to reputation should be highly exceptional measures, to be applied only where the plaintiff has proven that the defendant acted with knowledge of the falsity of the statement and with the specific intention of causing harm to the plaintiff.

Principle 16: Interim Injunctions

(a) In the context of a defamation action, injunctions should never be applied prior to publication, as a form of prior restraint.

(b) Interim injunctions, prior to a full hearing of the matter on the merits, should not be applied to prohibit further publication except by court order and in highly exceptional cases where all of the following conditions are met:

   (i) the plaintiff can show that he or she would suffer irreparable damage—which could not be compensated by subsequent remedies—should further publication take place;

   (ii) the plaintiff can demonstrate a virtual certainty of success, including proof:

      — that the statement was unarguably defamatory; and

      — that any potential defences are manifestly unfounded.

Principle 17: Permanent Injunctions

Permanent injunctions should never be applied except by court order and after a full and fair hearing of the merits of the case. Permanent injunctions should be limited in application to the specific statements found to be defamatory and to the specific people found to have been responsible for the publication of those statements. It should be up to the defendant to decide how to prevent further publication, for example by removing those particular statements from a book.

Principle 18: Costs

In awarding costs to both plaintiffs and defendants, courts should pay particular attention to the potential effect of the award on freedom of expression.

Principle 19: Malicious Plaintiffs

Defendants should have an effective remedy where plaintiffs bring clearly unsubstantiated cases with a view to exerting a chilling effect on freedom of expression, rather than vindicating their reputations.

June 2009

Written evidence submitted by Loreena McKennitt

1. INTRODUCTION

1.1 My name is Loreena McKennitt and I was the claimant in a 2005 UK privacy case, McKennitt v Ash.

1.2 As an artist and businesswoman in the music industry, I have run my own recording and management company since 1985 and have sold over 14 million recordings around the world. In addition to being responsible for the creative direction for this company, I continue to be intimately and continuously responsible for many of the day-to-day business affairs involving analysis, marketing, promotion, communications, staffing, budgets, and timelines.

1.3 For my civic duties, and charitable contributions, I have been recognized as a Member of the Order of Canada, awarded three honorary doctorate degrees from leading Canadian universities, and as well hold a role as Honorary Colonel in the Canadian Military. I am a member of Amnesty International and PEN.

1.4 I would also add that as a citizen and consumer I have long had a keen interest in the media both in and outside of my professional career. I have travelled annually to the UK since 1981 and my familiarity with print, radio and television media there is relatively current. This is in addition to that of most Canadian media.
2. **APPROACH TO THIS SUBMISSION**

2.1 I would like to thank the Committee for the opportunity to make a submission and to offer my comments on the subject of privacy and media accountability:

2.1.1 First, setting out some framework of what I understand privacy to be and why it is necessary for human dignity.

2.1.2 Presenting my perspective on the media, their business model, how their commercial interests can undermine their ability to serve the public’s interests and some aspects of the relationship of artists and the media.

2.1.3 Lastly, supporting my comments by sharing with you some of my own experience with UK and international media and the manner in which they became involved in the UK legal proceedings of *McKemmitt v Ash*. In doing so, I set out my particular concerns with regard to the freedom and responsibilities of “the media”.

3. **WHAT IS PRIVACY?**

3.1 As described in the academic research of such experts as Dr Alan Westin of Columbia University, historically privacy has been an essential ingredient in the healthy psychological development of humans, the animal kingdom, and their respective societies.

3.2 Privacy is spoken to in both the United Nations Declaration of Human Rights and the European Convention on Human Rights. Commonly, it is understood as a desire to be left alone without undo and relentless observation, to be one’s own self and undertake all the important, mundane or even frivolous activities of one’s life; of living, learning, and even making mistakes without constant judgment and commentary. It also means the autonomy to impart information with respect to one’s self as one feels comfortable or is relevant in the best interests of themselves or family.

3.3 Sometimes, privacy is not well served by the English language. Often confused with secrecy, privacy (in the sense of confidentiality) can be integral to industrial, political or business applications as well as personal ones. It can be an essential condition in exploring, discussing or negotiating all manner of content in a way where there is less danger of information being conveyed to outside parties prematurely, out of context, insufficiently, inaccurately or counter-productive to what would be generally accepted as the common good. Examples of these kinds of situations could be the recovery of kidnapped citizens, employee negotiations or indeed the option that this submission at hand be restricted to this committee’s use.

3.4 Until recently, privacy has not been a significant subject of concern for most “anonymous” persons as their very anonymity has protected their privacy. It has been kept in check by the “analogue” manner in which information was captured and the small circle of people in which that information might have been circulated. However, since the advent of digitized content—the internet, data bases, data collection and mining—and the speed at which this information can be widely disseminated, much of the public has become aware of certain vulnerabilities concerning their privacy, and subsequently most businesses have developed privacy policies.

4. **THE NATURE OF “THE MEDIA”**

4.1 Most media outlets are privately owned and commercially driven corporations. Within their multiple platforms, they trade in commodities called “stories” in order to sell advertising real estate. Stories, (including reports, articles and commentary) like any piece of “art” are designed to work optimally in a certain scale, composition, attitude and dynamic in order to elicit from the reader/viewer/listener responses ranging from simple entertainment to outrage, dismay and heartache. These parameters are also designed to support the fiscal qualifications and demands of the media’s business plan and other considerations such as the commercial sensibilities of advertisers or shareholders.

4.2 Technological advances, in a faster and increasingly competitive market place, have caused a “tsunami” of change in relation to the media’s business model and they (like the music and film industries) are in transition, attempting to find new models that can sustain them into the future.

4.3 During this time of transition, media outlets are making numerous changes. This affects their infrastructure, technology, staffing, bureau locations, the kinds of stories presented, the manner in which those stories are generated, the platforms on which they reside, where they will be stored and retrieved and whether they will be free or purchased à la carte or by subscription.

4.4 Lengthy, well-researched and accurate “stories” (once the craft of journalists in the past) have become less viable and much more expensive to create and sustain, especially if the subject matter is in any way complex. Instead of news and genuine reporting there is a growing trend towards reality TV, citizen journalism and opinion and commentary where the standards are demonstrably lower and for which fewer financial and human resources are needed. Some of this content is well researched, accurate, balanced and fairly presented. A considerable amount is not and the laws regarding privacy and libel (and those entities responsible for administering them) strain to keep up to the pace. So does the taxpayer’s pocket book.

4.5 Moreover, the tone of commentary is increasingly snide and bullying, implying that editors are bereft of the courage to let the other side explain or defend themselves.
4.6 Not only has this “wild west” environment callously disrupted or destroyed many lives and businesses and interfered in world events, it has set up a toxic and dysfunctional environment for what should be healthy dialogue between public officials, leaders and the public, often sending a chill to those who are in or considering public office.

5. **erosion of privacy with respect to the media**

5.1 At the same time social networking sites on the internet such as Facebook and MySpace have played into a portion of the public’s appetite for voyeurism and fascination with fame, contributing to an erosion of a healthy understanding and respect for the role that privacy holds in our everyday lives. This in turn lays the psychological groundwork for the media to create and pursue the “cult of celebrity”. Fame is being sold as a goal to be pursued which is more important than education or accomplishment.

5.2 The journalistic media are not alone in this celebrity driven commerce. Record, film and publishing companies, agents and managers for example, in addition to selling their products, also work to package their artist’s persona as a commodity. Many artists in early stages of their career can become trapped in this promotional web, not yet understanding the business and personal implications of the activity they are often required to support. Others are more able to separate their personal life from the professional. They do not seek fame, but the success of their art alone can place them in a relentless media limelight. What might have begun as a mutually beneficial professional arrangement of content and commerce has often disintegrated into an inhumane exercise of stalking and entrapment that resembles the pursuit of a wild animal in an ever-decreasing natural habitat.

5.3 The whole process perpetuates itself like a feedback loop inducing a sense of entitlement to know everything about everyone under all circumstances. Once an appetite has been developed, the media’s response to critics is: “We are simply delivering what the public wants”.

5.4 How much of the public? I would ask, and at what price? Is serving the curiosity and voyeuristic tendencies of some to be at the cost of the dignity and human rights of others? This has recently been illustrated in a variety of transgressions ranging from publicising of the medical records of well-known people to the tapping of the royal household phones, or photographing or describing in intimate detail the manner in which some people have committed suicide.

5.5 It is not just well known persons or true public figures whose privacy is intruded upon but also unknown people who become “newsworthy” by virtue of being victims of or witnesses to “interesting” events.

5.6 It is most disingenuous when the media coyly substitute what the public is interested in for the true public interest when attempting to justify their freedom of expression, which I might rather call “exploitation of expression”. As intimate daily events become raw fodder for the media “beast” the media have grown away from covering the news in a neutral way, to becoming part of it and rendering much of it as superficial entertainment as they abdicate their own code of ethics.

5.7 When media infringements do occur, personal lives and reputations are damaged and difficult if not impossible to repair. There is seldom a quick or satisfactory mechanism of redress either due to lack of financial resources, or the intimidation that more privacy or reputation will be compromised through a legal process with no promise of success. Most press councils on both sides of the Atlantic are funded and administered by the media. As in most other segments of society, financial or otherwise, self-regulation has not proven to be sufficient or satisfactory.

5.8 A rap on the knuckles long after the fact does nothing to assuage the pain of intrusions into one’s private sphere, nor the damage to reputation that can result from reckless exploitation. At one time, when apologies or corrections might have been noticed in the newspaper of record it might have had some practical relevance. Today the initial story may have travelled around the world in seconds and been amplified and further distorted by repetition in news clips, blogs and fan sites. Sadly, retractions never follow the same paths of dissemination and so blatant untruths remain like litter awaiting a search engine request.

5.9 It is ironic to note that it is the media which has coined the term “libel tourism” in order to frame with ridicule all matters of libel as nothing more than recreational activities by the “rich and famous” from abroad. Although so called “libel and privacy tourism” has been decried as a threat to democracy and media freedom, they are false decoys thrown up by the media to distract from the true effects of international internet access. Shopping for a favourable jurisdiction is far more likely to originate from members of the media seeking to avoid any limitation on their activity (such as a publication order or a judgment), regardless of how lawful and justified the restriction may be or how damaging the false or intrusive revelation is to justice, security or innocent bystanders. Defenders against media giants have a necessity to pick their battles and should have a right to enforce judgments if they can.

6. **mckennitt v ash**

6.1 With respect to the privacy case in which I was the claimant there are two main aspects that I believe to be relevant to your inquiry.

6.2 The first aspect was the book written by a former and aggrieved friend and employee. In addition to containing false and libellous information, this book was found to have breached my privacy as it pertained

88 Link to McKennitt v Ash—Judgment; Link to McKennitt v Ash—Appeal.
to matters concerning my bereavement after the death of my fiancé, my health, personal relationships, and the description of my home.

6.3 The legal process began by my attempting to protect an employee confidentiality agreement and resulted in a trial in the High Court in November 2005. Ms Ash (the defendant) was a resident of the UK and published her book there.

6.4 The second aspect occurred with respect to the coverage of this case in both the UK and Canadian media, in their international bureaus and of course across the internet.

6.5 The points of concern include the following:

6.5.1 When the media has a vested commercial interest in the outcome, how does this shape their coverage of a story?

6.5.1.1 Media consortium in appeal stage. Once the UK media became aware of the impact of the judgment with respect to potential curtailment of “kiss and tell” journalism, they formed a consortium which sought to intervene by seeking standing before the Court of Appeal and providing the Court with a written submission.

6.5.1.2 Cross-pollination between international media of factual inaccuracies. Errors in reporting by elements of the Canadian media were propagated by media in the UK. Most significant was the assertion that the claimant (I) did not challenge the veracity of the book’s contents, when in fact even a cursory reading of the trial judgment would reveal that more than half the book’s content was challenged and examined at trial. This grave and revealing error was most recently repeated in Paul Dacre’s speech before the Society of Editors in November 2008.

6.5.1.3 Members of the media become involved in a case. A member of the Canadian media with whom the defendant had been corresponding before and during the trial made his way into the case (See para 160 trial judgment) and continued to write about it following the judgment, not notifying his readers. Moreover it was this individual who first falsely asserted that the claimant had not challenged the veracity of the book’s contents.

6.5.1.4 Attacking the judge of first instance by framing his work as establishing privacy law by stealth. This outrageous assertion speaks to the chill the media would like to exert on anyone who stands in their way. Even if the judge is only interpreting existing law and his judgments are confirmed by numerous other judges in the appeal process.

6.5.2 The relationship between Media and aggrieved individuals

This case raised concerns about how media responds to aggrieved or vengeful individuals in the development of a story, particularly when it involves a well-known person. How reliable are their sources of information and what research is undertaken to broaden the understanding of what is involved? In McKennitt v Ash, the defendant Ash had courted connections with the media not only upon publication of the book, but during and after the trials. This content was then picked up in the UK by writers and media “educators” such as Roy Greenslade, who wrote four articles on the case all from the sympathetic standpoint of the defendant (including over tea in her London drawing room.) He was then invited to speak on national radio (CBC) in Canada.

6.5.3 Speaking to litigants during a trial

Most media are well aware that the justice system frowns on litigants speaking to or through the media during a trial. The inability to respond to this biased coverage, combined with lack of research and inaccurate reporting on the part of journalists and bloggers put the claimant in a compromised position with respect to the public’s understanding and appreciation of the case. Are any measures in place to ensure that the privacy and reputation of the subject are not being prematurely leveraged through threat of publicity until a trial has been conducted and all evidence is reviewed?

6.5.4 Lack of accurate, thorough and balanced reporting

6.5.4.1 Through the challenging of the book’s contents, it was found that the defendant had “beefed up” witness statements with respect to a previous property dispute in order to portray the claimant as a “dishonest and vindictive” person, for the purposes of her attempted public interest defence. This glaring and important information was never reported by any media, nor did they reveal that she sought to leverage the claimant’s reputation via the media as evidenced in a letter she wrote her solicitor at the time. (See Para 121, trial judgment). Either they didn’t see this or chose not to as it did not serve their interests.

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89 Link to McKennitt v Ash—Judgment; Link to McKennitt v Ash—Appeal.
6.5.4.2 Because the media played an important role in the defendant’s strategy of “revenge” she was in constant contact with them. Once the media consortium asserted that their interests were at stake in this case by seeking standing at the appeal, many gave her and her version of the story considerable sympathetic coverage. At no time did anyone in the UK media seek to speak with the claimant once the trial was over and was then in a position to speak with them.

6.5.4.3 There was little evidence to indicate that journalists had read judgments and core documents relevant to a case before reporting.

6.5.4.4 Many commentaries on this case, including that of Roy Greenslade, misled the public to believe that the media’s ability to pursue matters of true public interest would be compromised by the outcome of this case. A careful reading of the judgment could not support such an assertion.

6.5.5 Coverage of a legal case by non-legal reporters

Because this case involved a singer and a writer, Canadian media coverage was conducted by “entertainment writers”. There was virtually no balance from the point of view of human rights or legal background to the case. In the UK it was covered by a range of “media interest” reporters.

7. Impact and Costs of Trial and Media Coverage

7.1 The trial itself and the ensuing media coverage of this case was a most difficult and unsettling experience. To a great degree my privacy and reputation were further needlessly and irrevocably compromised. Wounds of grief were reopened. Not only did it cost a considerable amount of money and resources which my small company could ill afford, it also took away valuable time from my family which I will never recover. Moreover, I can only view it as a massively and disrespectful use of UK tax payer’s money. Although the defendant had hoped individually to capitalise on my established audience and publicity about the case for her own book sales, she was abetted and psychologically supported by a media who had their own vested commercial interests.

8. Conclusions

8.1 Corporate media hold a firm grip on most of the major mechanisms of communication in our society. In so far as they promote themselves as the watchdogs of society and defenders of free speech and democracy, does not the public deserve greater transparency and accountability with respect to their operations? When balancing the broad freedom entrusted to the media in exchange for their responsibility to serve the public’s true interest, a vital question must be asked:

When their commercial interests are in conflict with the public’s interests, whose do they serve first and how to they reach that conclusion? Who watches the watchdog?

8.2 To ignore the commercial dimension of the media in our society is to fail to undertake a complete appreciation of the situation. It is at our peril that we do so for they continue to erode important human rights and set up increasingly toxic environments for what should be healthy democratic discourse and debate.

8.3 With respect to privacy, it is my strong belief that the balancing of the rights of free speech and privacy are best undertaken in the courts of law, or in independent process which is properly set up to examine evidence and hear witnesses, not trial by media.

8.4 I understand it is the duty of this committee to wrestle with media accountability. It is my personal and humble opinion that I am not alone as a member of the public in feeling that the commercial media has crossed a line and is increasingly abdicating the trust our society have placed in them.

8.5 We are left with the impression that free speech is only for those who have the power to express it. All others will be denied. The message is, free speech does not mean equal access to free speech.

8.6 If this is indeed so, I can only hope that this committee and other legislators will find the courage it will take to tackle this powerful entity in our society, to bring it back into line with other segments of society in protecting and defending all human rights. Not just that of freedom of expression.

Thank you for your consideration and good luck with your work.

January 2009
Written evidence submitted by the Media Standards Trust

INTRODUCTION TO THE MEDIA STANDARDS TRUST

The Media Standards Trust was established in 2006. It is an independent registered charity that aims to foster the highest standards of excellence in news journalism and ensure public trust in news reporting is nurtured.

The Select Committee’s Inquiry is timely. Not only have several high profile events in recent years brought some elements of the national press into public disrepute, but journalistic standards are being threatened as never before by longer term trends in the way in which news is gathered, edited, packaged, published, marketed, delivered, and consumed.

THE SUBMISSION

In this submission we will respond briefly to the questions outlined by the Select Committee in its call for evidence. We will focus on those where we believe we have most to contribute. We would be happy to provide further oral evidence if required.

Entirely separate to this inquiry the Media Standards Trust has, since the summer of 2008, been conducting its own review of self-regulation of the press in Britain. We will be publishing the first part of this review in February 2009. Although there is some overlap with the Select Committee’s inquiry, our own review is based on a wider range of regulatory issues, each of which is examined and assessed on the basis of independent evidence. In our first diagnostic report we conclude that the present self-regulatory regime is unsatisfactory and fails to protect both the press and the public.

We are now following this diagnosis with a wide-ranging consultation on the alternatives to the current system of press self-regulation. We will make Part 1 of our review and the evidence supporting it available to the Select Committee.

The views expressed in this submission are those of the Media Standards Trust, not the independent review group on press regulation.

RESPONSE TO QUESTIONS

1. Why the self-regulatory regime was not used in the McCann case, why the Press Complaints Commission (PCC) has not invoked its own inquiry and what changes news organisations themselves have made in the light of the case

1.1 The self-regulatory regime of the press was not set up to monitor standards or to keep a check on poor reporting. It is a complaints body that seeks to mediate complaints made about the press on behalf of the public. If the public do not complain, it does not react. This compromises its role as a “regulator”. Neither the McCanns, Robert Murat, or the so-called “Tapas Seven”, chose not to complain about accuracy in the press, and therefore the self-regulatory system was not used.

1.2 The PCC has not been provided by the industry with the resources to conduct major inquiries. Its budget is far lower than other comparable self-regulatory organisations. In 2007, for example, its budget was £1.82 million, compared with the Advertising Standards Authority that had a budget of over £8 million. This is only slightly higher than its initial 1991 budget of £1.5 million. According to the outgoing Chairman even these meagre resources are now under threat (comments made at Society of Editors conference).

1.3 When the PCC does invoke an inquiry, as it did after the conviction of Clive Goodman (the royal correspondent at the News of the World), its powers are limited and its remit narrow. In that inquiry, for example, it did not interview Goodman’s editor, Andy Coulson, and focused almost all its attention on the News of the World, even though the Information Commissioner had given evidence to the PCC showing hundreds of journalists were using subterfuge to gather confidential personal information (from “What Price Privacy?” and “What Price Privacy Now?”, ICO).

1.4 Not working within a news organisation it is very difficult to judge whether any changes have been made as a consequence of the McCann coverage. There have been, however, no obvious public changes made as a consequence. Indeed in the case of the Daily Express, “Madeleine McCann” remains the most searched for term on Express’s website, despite the fact that many of the Express’ McCann articles had to be removed because they were defamatory.

2. Whether the successful action against the Daily Express and others for libel in the McCann case indicates a serious weakness with the self-regulatory regime

The successful action does give an indication of serious weaknesses in the existing system of self-regulation.

2.1 The successful action shows the public are increasingly liable to take serious action to the courts rather than to the PCC. We expect celebrities and billionaires to go directly to the courts. But when the public choose lengthy, expensive legal action over “fast, free and fair” redress from self-regulation, there is clearly a serious weakness in the self-regulatory system.
2.2 The action shows that the courts are also liable to oblige. Traditionally, in industries where there is an effective self-regulatory body the courts will defer to that body. If the body is not effective, the courts become an alternative form of redress.

2.3 As Lord Wakeham wrote in 1998 when discussing the opportunity of the PCC becoming a “public authority”: “The opportunity is that the courts would look to the PCC as the pre-eminently appropriate public authority to deliver effective self-regulation fairly balancing Articles 8 and 10. The courts therefore would have to intervene only if self-regulation did not adequately secure compliance with the [European] Convention [on Human Rights]”. The courts have since intervened.

2.4 The action also indicates that the current system of self-regulation is unable to restrain or discourage newspapers from printing defamatory content. The editor of the Daily Express, Peter Hill, was a member of the PCC throughout the paper’s coverage of the disappearance of Madeleine McCann, and even remained a member after the court had found much of the newspaper’s coverage to be defamatory.

2.5 The current system is structured in such a way that any possible educational value of complaints is almost entirely lost. Unlike Ofcom or the ASA, the PCC does not make public the number of complaints it has received about particular articles or coverage in a timely fashion. Indeed most of them remain unknown unless they are adjudicated on or resolved. If, for example, hundreds of people complain about the reporting of a public figure, the PCC does not make that public. Contrast this to the BBC, that gives contemporaneous information about complaints (eg about the BBC refusal to broadcast the DEC appeal), or Ofcom (eg about Celebrity Big Brother), or the ASA (eg complaints made against AMI billboard campaign, “Want longer sex?”). Such information may encourage news organisations to reflect on their coverage, and sometimes to adapt it.

3. The impact of conditional fee agreements on press freedom, and whether self-regulation needs to be toughened to make it more attractive to those seeking redress

Self-regulation currently offers very little redress for those misrepresented in the press. Unless self-regulation is reformed increasing numbers of people are likely to turn to the courts.

3.1 Compare the options open to a member of the public who has been harmed by inaccurate or misrepresentative coverage by the press. S/he can (a) make a formal complaint to the PCC, which has less than a 250:1 chance of being adjudicated in their favour (based on PCC annual report 2007, p 25, 16 upheld adjudications from a total of 4,340 complaints). Even if it is, their only redress will be the publication of the adjudication in the offending paper with due, if not equivalent, prominence to the original offence. Or (b) s/he can ask a lawyer to accept the case on Conditional Fee Agreement and hope for a possible financial award and a prominent correction/apology.

3.2 For those people who believe they have been seriously misrepresented or harmed by inaccurate coverage it is difficult to see the attractions of the first option.

3.3 Nor is legal action without risk. Austen Ivereigh fought and eventually won a two year battle with The Daily Mail though, he says, he faced bankruptcy, the loss of his home, and vilification by the press had he lost.

3.4 If self-regulation did lead to a fair redress, or to an outcome that ensured the publication did not repeat the same error again, there would be much greater motivation for the public to pursue this course.

4. The observance and enforcement of contempt of court laws with respect to press reporting of investigations and trials, particularly given the expansion of the internet

Contempt of court laws appear now to be routinely ignored by the press. De facto we seem to be shifting to a US model where the press can report on cases regardless of the status of legal proceedings.

4.1 “Re-publication” online: after someone has been arrested it is against the law for newspapers to publish details of those involved (over and above basic information). Yet, thanks to easily available online news archives, it is now straightforward to search for and find these details on newspaper websites. Each time a reader finds one of these archived pages it is considered, in legal terms, a re-publication. The publisher should therefore be liable.

4.2 Yet there are many instances in which people have been arrested and charged but the news articles online have neither been changed nor removed (in some cases new articles with further details have been published).

4.3 In the case of a 12-year-old girl, for example, who went missing in 2003, newspapers widely reported the girl’s disappearance (including her name). They then reported she had been found with an ex-US Marine in Holland (with his name). He was then charged and subsequently convicted. Yet his name, the name of the girl, and the details of the case, were—and still are—widely available online. The name of the girl continues to be widely available despite his conviction, and despite his extradition to the US in 2008.

4.4 To take a separate example, if there are reporting restrictions on certain stories, only accredited journalists can access those restrictions. Members of the public who publish online (eg on blogs) will not have knowledge of those restrictions and so could unknowingly find themselves liable to contempt (eg in the recent Baby P case).
4.5 It would be to the benefit of the press—who are at risk of prosecution due to re-publication, and to the benefit of the public, who are now not protected by contempt of court laws—for the government to clarify the law on contempt of court.

5. What effect the European Convention on Human Rights has had on the courts’ views on the right to privacy as against press freedom

The effect of the ECHR on the courts view of the right to privacy was predictable after Parliament decided to integrate the Convention to British law.

5.1 Article 8 of the Human Rights Act states that “Everyone has the right to respect for his private and family life, his home and his correspondence”.

5.2 In 2003 Alan Rusbridger, editor of The Guardian, brought to the attention of fellow editors a recent European Court of Human Rights judgment which found that victims of privacy did not have sufficient remedies in the UK. He warned that if self-regulation were not seen to be open, independent and effective, then the courts would intervene to provide sufficient remedies.

5.3 Since then the courts, in line with the judgment of the European Court of Human Rights, have ruled in favour of a number of cases brought under Article 8. This has, in turn, created precedents for a right to privacy with greater legal remedies than previously existed.

5.4 However, it would be preferable for most people, in terms of time and cost, to be able to avoid going to court. More effective self-regulation would make this a more acceptable alternative.

5.5 When cases have been brought based on Article 8, the courts have recognised that it has to be balanced against Article 10, regarding press freedom.

5.6 But not enough cases have been fought under Article 10 such that we have a clear understanding of the type of journalism that is protected under the public interest.

5.7 Without more cases like that of Sally Murrer (who successfully won her case against the police on the basis of “public interest” journalism) journalists investigating stories that are genuinely in the public interest will not feel adequately protected.

6. Whether financial penalties for libel or invasion of privacy, applied either by the courts or by a self-regulatory body, might be exemplary rather than compensatory

Financial penalties for libel or invasion of privacy are already available to the court.

6.1 People will always resort to the courts unless a means can be found to provide appropriate compensation, including financial, to the victim.

6.2 As regards the press self-regulatory body, financial compensation would, in many cases, be the most suitable response. If a newspaper deliberately publishes intrusive material in order to promote sales, and is found to have broken the press Code of Practice, then financial compensation would seem to be most appropriate response.

6.3 The PCC cannot now impose either exemplary or compensatory financial penalties. Its only sanction is an adjudication, which then has to be printed in the offending newspaper. This sanction is currently having neither a preventative nor a salutary impact on the press.

6.4 Still, even without imposing financial penalties, there are many other methods of redress that would make the current system of self-regulation more effective, some of which the PCC virtually already has but does not use.

6.5 If, for example, newspapers were required to correct egregious inaccuracies with “equivalent prominence” (as opposed to “due prominence”) then it is very likely they would be more wary about publishing material they knew to be inaccurate or they thought could well be inaccurate.

7. Whether, in the light of recent court rulings, the balance between press freedom and personal privacy is the right one

There is a balance to be struck between the right to privacy and the public interest. Right now the courts are creating more precedents around personal privacy than around press freedom. More precedents need to be established around press freedom if it is to be safeguarded. But this should not mean removing the protection for personal privacy as defined in Article 8 of the Human Rights Act.

7.1 Recently the right to privacy has been determined by the courts—for various reasons outlined elsewhere.

7.2 It could equally be determined by a press regulator, to the extent that the system was sufficiently credible/effective to attract complainants. The public’s choice will be based on remedies, likely fairness, timing and cost.

7.3 In each of the cases brought under Article 8 of the ECHR the judges have acknowledged the need to balance Article 8 and Article 10.
7.4 The Editor-in-Chief of Associated Newspapers recently suggested that popular newspapers should be given license to intrude on people’s privacy in order to maintain sales: “if mass-circulation newspapers, which also devote considerable space to reporting and analysis of public affairs, don’t have the freedom to write about scandal, I doubt whether they will retain their mass circulations with the obvious worrying implications for the democratic process”. Yet that we should, as a society, compromise people’s right to privacy to enable popular newspapers to retain their circulations seems neither equitable or just.

7.5 There is currently no organisation whose primary responsibility is to protect press freedom. The PCC is constitutionally prevented from performing this role.

7.6 Without such a body there have been repeated encroachments of press freedom and an unwillingness by the government to acknowledge the quasi-constitutional role of the press in a democratic society.

7.7 For example, the Regulation of Investigatory Powers Act (2000) has no exemption for journalism. The Terrorism Act (2006) makes it an offence even to transmit the contents of a terrorist publication electronically. The Counter Terrorism Act 2008 created further offences related to information about the armed forces. The Racial and Religious Hatred Act (2006) makes it an offence to publish “written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred”.

7.8 The police have also used older laws to restrain freedom of the press, such as “aiding and abetting . . . misconduct in a public office”. Sally Murrer, a Milton Keynes Citizen journalist, was arrested and charged with this offence after publishing material that was clearly in the public interest, which she had been given by a contact in the police force.

7.9 We support greater promotion and protection of the freedom of the press based on defence of the public interest.

February 2009

Written evidence submitted by PAPYRUS

PAPYRUS, the national UK charity committed to the prevention of young suicide actively engages media to communicate suicide prevention messages to many audiences. Working within recommended guidelines, we view all communication with media as an opportunity to encourage sensitive reporting.

Since its inception in 1997 the charity has been concerned about some aspects of media reporting of suicide namely:

— the fear of imitative suicides; and
— the intolerable intrusion into privacy which can result from inappropriate reporting of suicide in the media.

Our concerns are based on:

— anecdotal evidence from PAPYRUS members;
— academic research and the views of academics;
— PAPYRUS press office experience dealing with media;
— evidence from other organisations; and
— the increasing use of the internet as a media outlet giving world-wide access for a greatly extended period of time.

These areas of concern were reinforced during the intense period of media communication during the publicity given to a number of suicides in the Bridgend area of South Wales in 2008. As media coverage gathered momentum there were increasing examples of irresponsible reporting that both sensationalised and romanticised suicide.

The media strategy put in place by the charity in the first three weeks following the disclosure included a call for cessation of media reporting, action by the press office to inform and educate journalists of the risks associated with inappropriate reporting and directing them to further guidance from within the industry.

The charity felt morally bound to call for a cessation of media reporting as there were real fears that further suicides would ensue. Similar calls were made by South Wales Police and the Deputy Children’s Commissioner for Wales. The phenomenon of suicidal contagion is well known and PAPYRUS felt that the cumulative effect of the ever escalating frenzy of reporting by all media—press and broadcast—could be counter productive to the prevention of suicide.

“BRIDGEN” EXPERIENCE

In a review of its experience following this period of dealing with media, PAPYRUS acknowledged that there were positive examples of responsible reporting. However:

— where cases of attractive young girls were reported, the size of published photographs was substantially increased;
— reporting became increasingly “tabloid” in style across many newspapers—national and regional;
— the “Bridgend” story maintained prominence day after day—front page, bold headlines, minute details of method, photographs of suicide sites;
— many newspapers kept the story “alive” over a period of days, even when there was no “new” news;
— photographs and details of young men who had died in the preceding months were published over and over again;
— often storylines were speculative, especially regarding a connection between all the suicides and the internet;
— the word “Bridgend” was associated with the apparent suicides even though some of the victims did not live in Bridgend itself; and
— further apparent suicides occurred shortly after a peak of media frenzy, bereaved parents and police suggesting a direct link between media coverage and these deaths.

In media discussions it was evident that:
— some journalists were unaware of the need to work within established media guidelines as recommended by the National Suicide Prevention Strategies for England, Scotland and Northern Ireland;
— several journalists said they had not considered the implications and expressed understanding and concern;
— in many media minds the interpretation of “excessive” detail was miles apart from what the charity believes is excessive;
— there was a lack of understanding that incessant coverage could contribute to more suicide attempts;
— the majority of journalists considered publication of photographs, method of suicide—and indeed location—essential to the story;
— judgement by many journalists was based on their personal reaction to news, revealing a lack of understanding that vulnerable young people could become severely distressed, suicidal even, by reading that another young person had killed themselves; and
— there was a lack of understanding by many of the importance of including sources of help for vulnerable readers, or those concerned about them.

COPYCAT SUICIDE

In 2006 the Press Complaints Commission Code of Practice Committee introduced a new sub-clause requiring that care be taken, when reporting suicide, “to avoid excessive detail about the method used”.

Whilst acknowledging that this was an important move in the right direction we do not believe it is sufficient. Copycat suicide does not happen solely as a result of publicising detail of method.

Following the “Bridgend” experience PAPYRUS met with both the PCC and the Secretary to the Code of Practice Committee. During these discussions we have called for the following to be considered and implemented.

That:
1. “reporting suicide” be an entirely separate and new clause in the Code of Practice as distinct from Intrusion into grief and shock;
2. the current wording be replaced by: When reporting suicide care should be taken to avoid any detail that may contribute to copycat suicide, such as detail of method or location;
3. this statement be supported by detailed guidance notes for editors on the reporting of suicide—guidance notes similar to those already in place on reporting mental health issues (2006); and
4. the word “excessive” should be removed from the current clause and not incorporated into any future clause.

We believe that a general statement—item 2 above—encompasses all the scenarios that may contribute to copycat suicide. The reference to “detail” in the statement could be defined/clarified in the guidance notes.

WHY REMOVE “EXCESSIVE”?

We do not believe it is possible to adjudicate on what may be considered “excessive” in this context. For example: what may not be deemed to be “excessive” in itself—for instance the single word “hanging”—can be considered excessive if it appears in a prominent front page position, repeatedly over successive days.

We also believe that members of the Code Committee and PCC would benefit from expert advice when adjudicating on “excessive” detail. This could take several forms: specific guidance notes, the availability of expert advice during an adjudication and/or a training/briefing session for members.
PAPYRUS has brought to the attention of the Code Committee two new areas of concern; namely a possible greater incidence of suicide in:

— children; and

— parents who murder their children before killing themselves.

To date we have only anecdotal evidence, but PAPYRUS is concerned that these may be further examples of copycat suicides.

Our proposed changes to the wording of the Code would ensure that these issues are covered.

Similarly there has been concern regarding potential reporting in the UK of the burning of barbecue charcoal as a suicide method. Reporting in the Far East—where it first occurred—resulted in a massive increase in suicide using this method. Simply mentioning the method would be giving “excessive” detail in this instance.

PAPYRUS Experience

PAPYRUS is in the unique position of representing parents and other family members who have lost a young person to suicide. Their stories are always tragic, often harrowing. Time and time again they speak of intrusive media behaviour both at the time of the death and/or when the inquest took place.

Often, caught off guard, they divulge details which, further into their bereavement journey, they would not have disclosed. Sometimes these surface again as journalists report further incidents. They are bewildered by the fact that their child’s photo is published—no permission has been sought. The photograph may appear at some future date attached to another story. Photographs of grieving parents, for example attending inquests, may compound the grieving process.

No-one who has not experienced the loss of someone to suicide can fully understand the repercussions to families of insensitive reporting.

In principle the Press Complaints Committee’s mission to encourage and educate journalists to report sensitively is commendable and it is effective to a degree.

However it is unrealistic to believe that self regulation within the industry alone can achieve the goal we all desire.

Written evidence submitted by Alan Dee

Evidence was given to the Select Committee on Tuesday, 24 February 2008 to the effect that my son, Robert Dee, employed a firm of solicitors to sue the Reuters News Agency on a “no win no fee” basis. This information is incorrect. The straight meaning of this comment is that there was no financial risk to Robert Dee, or his family, if he lost. That too is incorrect.

We instructed our lawyers, Addleshaw Goddard, to instigate proceedings against three news organisations at the same time. They were The Independent Newspaper, Associated Newspapers, (consisting of the Mail on Sunday, the Daily Mail and the Evening Standard) and Reuters Limited. All the articles had a similar thrust, appeared within a few days of each other and contained similar claims in respect of our son’s tennis results and status as a tennis professional. Once the actions had been commenced we were notified that Reynolds Porter Chamberlain (RPC) had been appointed to represent all three organisations.

Once the three actions had been commenced, The Independent immediately agreed to publish an apology and did so on 6 August 2008. As a result of this very quick resolution the costs they paid to our lawyers were negligible. Very soon afterwards, Associated Newspapers made an “Offer of Amends” in respect of the Daily Mail, the Mail on Sunday and the Evening Standard, effectively bringing that action to an end also. And after some negotiation on the wording, Associated published apologies in the Daily Mail and the Evening Standard and online in the Mail on Sunday on 22 December 2008. Associated also made a contribution to our costs.

Our actions were only partially funded with a 50% conditional fee arrangement, which meant that had we lost we would have been liable for at least 50% of our costs. At that time, we were given a very conservative indication as to our likely costs exposure in the event of losing these actions of somewhere in the region of £200,000 per case; potentially £600,000 in total had all three cases proceeded to trial and we lost. That did not of course include our additional liability for the media’s costs if we had lost.

We are very surprised that a representative from Reynolds, Porter Chamberlain (RPC), Mr Keith Mathieson, gave evidence to the Culture, Media and Sport Select Committee to the effect that Robert Dee was the beneficiary of a “no win no fee” CFA, as this is plainly wrong. Particularly as we are aware that RPC had been informed by Addleshaw Goddard some time before the Select Committee hearing that they do not operate on a “no win no fee” basis. It was never the case that we had nothing to lose by bringing the case.
Mr Mathieson also said that Reuters apologised only because of the level of costs, not because they felt the story was wrong. It is a matter of fact that a number of newspapers had already published apologies for printing very similar stories, including four titles represented by RPC. We are very surprised also that this was not mentioned to the Select Committee.

In our case, we are quite certain that without access to the facility of a 50% CFA and an ATE insurance policy to cover our potential liability for Reuters’ legal costs if we had lost at trial we would have found it almost impossible to fund our action against Reuters. An action that was regrettable but, we felt, unavoidable; an action which did eventually generate an apology.

Finally, it is worth comparing the stance taken by Reuters with that of the majority of newspapers which we complained to, many of which quickly recognised that their story was incorrect and damaging and agreed to apologise and pay our legal costs, which in those cases were generally around £2,000 to £3,000, without the need to start legal proceedings at all. Had Reuters been similarly reasonable at the outset, then they would not have faced the very much more substantial bill which they now face.

To that extent, media organisations which complain about having to pay the substantial legal costs of a successful claimant are the authors of their own misfortune.

If you wish to have more information on the media apologies published so far about Robert Dee they appear on his website at www.robertdee.co.uk. We shall be happy to provide you with any additional information you require and to appear before members of the committee to answer questions in person if you wish.

We would be grateful if all the members of the Select Committee have sight of this e-mail and that the record is set straight accordingly.

March 2009

Written evidence submitted by Martyn Jones MP

I understand that your Committee is looking into the effect on the media of the Conditional Fee Arrangements and that you had evidence from Mr Paul Dacre, Editor of the Mail on Sunday, in which he prayed in aid my case against his newspaper. Firstly, the idea that giving people who have very little money the ability to defend themselves against libels is wrong and is a travesty of the actual situation. To describe the very real benefits of the Human Rights Act and CFAs as having a ‘chilling effect on the media’ nothing short of risible.

Firstly, this “chilling effect” did not prevent them having many more cases against them before mine, but to refer to my case there are several inaccuracies in Mr Dacre’s evidence to the Committee. They did not have witnesses to the facts of the article in question in the plural, as Mr Dacre said. They had one witness and several other hear-say witnesses to his position. I had two material witnesses, one concerning the actual incident itself where I was supposed to have gesticulated and shouted at the security guard in question, and I had a witness to the fact that this was not the case. Also other allegations were made in the article concerning the disciplinary measures taken against me which were also incorrect. So, far from being “chilled” by the CFA in this case, the Mail on Sunday acted like the bullies they are and “upped the ante” at every stage, clearly hoping to push me into submission. A major example was the use of a senior counsel rather than a junior at a late stage, which increased the risk of costs to me when they rightly considered that I probably did not have enough insurance to cover that situation. So the fact that they then picked up extra costs for this when they lost is a matter for them, and not the fault of the legislation.

All I wanted initially was a retraction and an apology to prevent this lie being used against me at election time, and it is clear that without the CFA I would not have been able to obtain redress.

Incidentally, with the same paper but on a different issue, the Press Complaints Commission were entirely useless in my opinion.

I would be more than happy to appear before your Committee and put right the false picture created by Mr Dacre’s evidence to your Committee. I think it is also worth pointing out that there are other papers, for example The Sun, which are very rarely affected by the Conditional Fee Arrangement because they have no cases brought against them. This is probably due to their checking their facts and not relying on the inability of individuals without their access to resources being able to bring a case to protect their reputation.

April 2009
Written evidence submitted by the Joint Committee on Human Rights

Thank you for your letter of 19 March 2009 drawing the attention of the Joint Committee on Human Rights to your current inquiry on press standards, privacy and libel. I apologise that this response comes to you later than your deadline of 4 May 2009.

You asked for our view on the balance that must be struck between Article 8 and Article 10 ECHR, and the application of the Human Rights Act by our courts in cases involving the privacy of the individual and freedom of expression. We note that you plan to consider a number of specific issues, including costs and the comparative experience of other European jurisdictions in the application of the ECHR.

We have never undertaken a specific inquiry on the role of the press and the balance struck between the right to freedom of expression and the right to respect for privacy. This makes it difficult to comment in detail on the broad questions raised by your inquiry. However, we have a few comments on general principles, drawn from our previous work, which we hope that you might find helpful.

We comment on three broad areas: (a) freedom of expression and the role of the press; (b) the balance to be struck between freedom of expression and the right to respect for private life; and (c) the application of Section 12, Human Rights Act 1998. We raise one additional issue for consideration by your inquiry: the criminal offences of seditious libel and criminal defamation.

We note that in a recent evidence session, Mr Paul Dacre gave evidence to your Committee which included reference to his recent speech to the Society of Editors on the development of libel law. We commented briefly on this speech on our Annual Report:

Mr Dacre was wrong on a number of counts. The Human Rights Act—which was, of course, passed by Parliament—incorporated Articles 8 (right to a private life) and 10 (right to freedom of expression) of the European Convention on Human Rights into UK law. Parliament required the judiciary to balance these sometimes conflicting rights in making decisions in libel and privacy cases. Far from creating a privacy law to suit his own “moral sense”, Lord Justice Eady was implementing legislation passed by Parliament in deciding cases such as the recent action by Max Mosley against the News of the World. Indeed English courts have long protected confidential information, good reputation and aspects of personal privacy at common law and in equity, quite apart from Article 8 of the European Convention and the Human Rights Act.90

(a) Freedom of expression and the role of the press

The right to freedom of expression is a right which is guaranteed not only by a number of international legal standards,91 but is directly recognised by the common law in England and Wales. The House of Lords considers that the common law provides a similar degree of protection to freedom of expression as guaranteed by the European Convention on Human Rights (ECHR):

The starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not possible. Nevertheless, freedom of expression is not an absolute right. Sometimes it must yield to other cogent social interests… in the field of freedom of speech there [is] in principle no difference between English law on the subject and art 10 of the convention.92

However, both before and after the Human Rights Act 1998 came into force, the European Convention on Human Rights had a clear and positive influence in shaping the common law right to free expression, including the recognition of an important constitutional role for the press. Many early freedom of expression cases were brought to the European Court of Human Rights (ECtHR) by the UK press, which was dissatisfied with the operation of domestic law and helped to shape the fundamental rights guaranteed by the Convention.93

The ECtHR recognises the vital importance of the right of freedom of expression and the role of the press in supporting the democratic right of participation.94 Its case law traditionally places a high value on the operation of an effective and active press. However, this right is not unlimited, but subject to the obligation to act responsibly and with respect for the rights of others.95 The rights of others include the right to respect for reputation and private life, as guaranteed by Article 8 ECHR.96 The Court continues to emphasise that the press is a public watchdog on matters of public interest, and that close scrutiny of any interference with

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91 See for example, Article 19, ICCPR.
92 R (Simms) v Secretary of State for the Home Department, [2000] 2 AC 115 (Lord Steyn).
93 See for example, Sunday Times v UK (1970) 2 ECHR 245.
94 See for example, Lingens v Austria (1986) 8 ECHR 407; Bergens Tidende v Norway, App No 26132/95. On the duty to act responsibly, see Bladet Tromso and Stensaas v Norway, (2000) 29 ECHR 125, para 65.
95 See for example, Prager and Oberschlick v Austria (1995) 21 EHRR 1.
the right to freedom of expression on issues of public debate is required. However, in keeping with its approach to the hierarchy of protection offered to different types of speech, in privacy cases the Court has recently clarified that while press activities relating to political or important public debate will be given a significant degree of protection, not all types of press activity are the same. Significantly less weight will be given to the publication of information relating solely to the private lives of public figures and their families where that information is purely for the purposes of gossip or commercial advantage.

We recently summarised our views on the importance of the right to freedom of expression for the press in our inquiry on the treatment of asylum seekers. In that inquiry we also stressed the responsibilities and duties of the press under Article 10(2). In the course of that inquiry we took evidence from the Press Complaints Commission (PCC), editors and others on the appropriate balance to be struck between the rights of asylum seeking individuals to respect for their rights and the importance of press coverage of Government policy on immigration. We said:

The Article 10 ECHR right to freedom of expression carries certain duties and responsibilities, and may be subject to restrictions, including those required for the protection of the reputation or rights of others [. . .]

We cherish the fundamental right to free speech and the freedom of the press and support self regulation. As the editors who gave evidence to us recognise, the right to free speech and the freedom of the press are not absolute, but must be exercised in accordance with the duties and responsibilities of the media.

In that inquiry, we were not satisfied with the evidence of the PCC that its work was adequate to protect individual asylum seekers and asylum seekers as a group, from reports which were likely to endanger their rights. We were particularly concerned about the potential for inflammatory reporting to incite violence against asylum seekers or those in minority groups believed to be seeking asylum. We recommended that the PCC should adopt more robust guidance in respect of reporting on minority groups. I enclose our recommendations in that inquiry, for information.

We understand that a significant issue being considered by your Committee is the potential implications of the current operation of Conditional Fee Arrangements (CFA) in libel and privacy cases for freedom of expression.

Although the ECtHR will be slow to interfere with domestic procedural arrangements, it recognises that, in certain cases, the procedural arrangements in respect of libel and other hearings may have a chilling effect of freedom of expression. So, for example, in the McDonalds Libel case, the inability of the low-income defendants to access legal aid when facing a complex claim by a multi-national corporation was not only in breach of the right to a fair hearing, but also the right to free expression (Articles 6 and 10). In order to determine the proportionality of any interference in a particular set of circumstances, the ECtHR will consider the specific facts of the case. Whether the procedural arrangements in place entirely undermine the ability of an individual to raise a legitimate defence; whether an appropriate measure of procedural fairness and equality of arms is provided in the particular case; and whether the measures will have a “chilling” effect on others will all be relevant.

Equally, however, the ECtHR recognises that the right to a fair hearing includes the right of effective access to justice. In some complex cases, the right to representation will be protected by Article 6(1) ECHR. So, without access to legal aid, or any alternative system to allow claimants to access legal advice and representation in complex cases which seek to protect the individual right to respect for private life, access to justice may be inhibited. We note that the ECtHR is currently considering the issue of costs in the Naomi Campbell case and a hearing is expected later this year.

97 See for example, Times Newspapers (Nos 1 and 2) v United Kingdom, App No 3002/03 and 2676/03, Judgment, 10 March 2009, para 40.
98 See for example, Societe Prisma Presse v France, App No 71612/01, 1 July 2003. Where the court considered an article in a weekly “gossip” magazine, the publication of details about the alleged marital difficulties of a singer and his wife and concluded that there was a lack of support to be found in Article 10 for publications whose sole aim was to divulge the private lives of public personalities.
100 See Annex
101 Steel & Morris v United Kingdom, App No 68416/01, 15 February 2005. On compatibility of procedural arrangements with the right to a fair hearing, see also Tolstoy v United Kingdom (1995) 20 EHRR 445, where the court considered that there was no violation of Article 6, where the applicant had been required to pay £125,000 in security for costs in relation to an appeal against an award of £1.5 million for libel (despite the conclusion of the court that the sum damages awarded was disproportionate and in breach of Article 10 ECHR).
102 Airey v Ireland (1979) 2 EHRR 305, para 26. See also Stewart-Brady v United Kingdom App 277436/95; 90-A DR 45. Although the Commission in this latter case concluded that, in the circumstances, there was no breach of Article 6, since the potential public costs involved were disproportionate to any damages likely to be recovered, it did recognise that the inability of the applicant to secure legal aid created a “potential problem of access to court”.
103 MGN v United Kingdom, App No 39401/04. A number of parties have been granted permission to intervene in this case and their interventions were submitted in March 2009.
(b) The balance between freedom of expression and privacy

A significant proportion of the evidence presented to your inquiry has concerned the balance being struck by the UK courts in cases involving Articles 8 and 10. In each of these cases, we note that the balance has been considered by our domestic courts—often by the House of Lords—which will have considered whether the balance is appropriately struck after detailed submissions by both sides. Prior to the introduction of the Human Rights Act 1998, most of these cases would have been determined by the European Court of Human Rights in Strasbourg. Now, they are decided, at least in the first instance, by UK courts.

In determining whether the balance in recent cases has been struck appropriately, it is important to remember that the ECtHR will continue to supervise the application of the Convention in the UK. It remains open to any claimant or defendant to challenge the interpretation of the law adopted by the domestic courts at the court in Strasbourg. Should the domestic courts choose to strike a balance which is inconsistent with the requirements of the Convention and departs significantly from the case-law of the European Court of Human Rights, there will be an increased likelihood of judgments against the UK. The parties involved in any dispute may have to meet the additional costs and time involved in an application to Strasbourg to secure an effective remedy.

(c) The operation of the Human Rights Act 1998, including Section 12

The operation of Section 12 of the Human Rights Act 1998 has been addressed at length in the evidence which has been submitted to your inquiry. The principal effect of this provision is to impose a higher test for the purposes of securing an injunction in respect of a publication by the press (that an individual would be “likely” to succeed at trial in preventing the publication) and that the court should have “particular regard to the right of freedom of expression”. In considering freedom of expression, domestic courts are directed to have regard to journalistic, literary or artistic material, the public interest in publication and any relevant privacy code. During Committee stage debates on these provisions, the then Home Secretary, Jack Straw MP, explained that the Government’s intention in introducing these provisions was to emphasise the importance of self-regulation of the newspaper and broadcast media.

In its submission to your inquiry, the Media Lawyers Association submit that Section 12 has been narrowly interpreted by the UK courts and that this defeats the original intention of Parliament. We make no comment on their submission that courts should be encouraged to pay greater regard to compliance with the PCC Code. However, we note that Section 12 has introduced a higher standard for claimants who seek injunctions. We reiterate our view that if the balance struck by the domestic courts between Article 10 and Article 8 ECHR were to depart significantly from the balance struck by the ECtHR, this would increase the likelihood that significantly greater numbers of cases would go to Strasbourg and increase the risk of breaches of the Convention by the UK. This could undermine the intention of Parliament, in enacting the Human Rights Act 1998, to afford a legitimate, accessible and effective remedy in our domestic courts for breach of individual Convention rights.

(d) Seditious libel and criminal defamation

Criminal sanctions for expression must be subject to extremely close scrutiny and must be accompanied by strong justification in order to protect the right to freedom of expression. It is currently an offence to compose, publish or print anything which tends to “bring into hatred or contempt the person of his Majesty … or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or to excite his Majesty’s subjects to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means”. Similarly, it is a common law offence to say or do anything with a seditious tendency, with a seditious intention. Establishing truth is not a defence to either of these offences. Criminal defamation remains a common law offence. Establishing truth is only a partial defence to criminal defamation and a public interest in the statements made must be established.

While no recent prosecutions have been brought for these offences, they are directly targeted at the type of political speech which the European Convention on Human Rights provides the highest degree of protection. We consider that any conviction for seditious libel would be extremely difficult to justify and likely to be in breach of the right to freedom of expression guaranteed by Article 10 ECHR. Equally, although the courts have made clear that these offences cannot be used against free comment, censure or criticism, we consider that the offences are capable of having a chilling effect which could engage Article 10 ECHR.

105 HC Deb, 2 July 1998, col 541. See also Cols 538–539.
106 Cream Holdings v Banerjee and Others [2004] UKHL 44.
108 Criminal Libel Act 1819, Section 1.
110 R v Sullivan, R v Pigott (1868) 11 Cox CC 44 at 49.
Amendments have been proposed to the Coroners and Justice Bill by Dr Evan Harris, one of our members, to abolish these offences, but no time has yet been secured for debate on this issue. Your Committee may wish to consider whether the ongoing availability of the offences has any chilling effect on political expression by the press and whether it should be abolished.

We wish your Committee well with the remainder of your deliberations in the inquiry and look forward to reading your Report.

May 2009

Annex

CONCLUSIONS AND RECOMMENDATIONS—EXTRACT FROM 10TH REPORT BY THE JOINT COMMITTEE ON HUMAN RIGHTS, SESSION 2006–07

Treatment by the media

60. We are concerned about the negative impact of hostile reporting and in particular the effects that it can have on individual asylum seekers and the potential it has to influence the decision making of officials and Government policy. We are also concerned about the possibility of a link between hostile reporting by the media and physical attacks on asylum seekers. (Paragraph 349)

61. We therefore recommend that the PCC should reconsider its position with a view to providing practical guidance on how the profession of journalism should comply with its duties and responsibilities in reporting matters of legitimate public interest and concern. We emphasise that such guidance must not unduly restrict freedom of speech or freedom of the press any more than similar guidance does in the USA. (Paragraph 366)

62. We recommend that Ministers recognise their responsibility to use measured language so as not to give ammunition to those who seek to build up resentment against asylum seekers, nor to give the media the excuse to write inflammatory or misleading articles. (Paragraph 367)

63. We were pleased to learn about the positive impact of projects which aim to encourage more considered reporting of asylum seeker issues, and provide a voice for asylum seekers. We are encouraged to hear that newspaper editors would be prepared to publish more such stories, and suggest their willingness to do so should be supported by those working with asylum seekers, submitting positive stories for reporting by them. We support the recent recommendation from the Information Centre about Asylum and Refugees that the Home Office should encourage newspapers to act more responsibly, and we recommend that the Home Office lend its support to the networks and award schemes working in this area. (Paragraph 371)

Written evidence submitted by Tesco PLC

I have been following your inquiry into Press Standards, Privacy and Libel with interest.

Further to comments made during a recent session, I wanted to provide some background on our recent case against the Guardian.

The Guardian published a highly inaccurate and damaging article in February last year accusing Tesco of avoiding £1 billion of corporation tax on some sale and leaseback deals. This was despite our having explicitly told the Guardian five times prior to publication that these allegations were untrue.

The Guardian then refused to accept they had made a mistake and apologise for or retract the piece. We were therefore unfortunately left with little choice but to issue legal proceedings to protect our reputation and set the record straight. The matter was finally settled when the Guardian agreed to publish a full apology and front page notice in September last year, although it was a further six months before costs were settled.

I fully support free and open debate about the role and conduct of business, but as I am sure you agree it is vital that this debate is based on fact, not fiction.

May 2009

Supplementary written evidence submitted by the Media Lawyers Association

I am writing to you, on behalf of the Media Lawyers Association (MLA), following yesterday’s oral evidence session which I attended as a witness.

During the second session Mark Thomson, a Partner of Carter-Ruck Solicitors, told the Committee that “our fee at the moment is £400 per hour, which is about the standard rate in the industry”. Leaving to one side whether what Carter-Ruck’s charge is the “standard rate in the industry”—and I should mention that Keith Schilling (of Schillings) currently seeks to charge £650 per hour, that his other partners currently seek £475 per hour, and that Graham Shear, who is representing Ashley Cole on a CFA, and also represents other wealthy footballers, is seeking a rate of £580 per hour in the Cole case—I am writing to you, with some further evidence, so that the Committee is not misled by what Mr Thomson told you.
I should be grateful if you would distribute this letter to all of the members of the Committee.

The following are recent cases, involving Carter-Ruck and members of the MLA, where they have sought or mentioned that their firm’s basic fees are in excess of £400 per hour.

They are as follows:

1. *Tesco Stores Limited v Guardian News and Media Limited and Alan Rusbridger*
   
   In this case, from last year, the Senior Partner of Carter-Ruck, Nigel Tait, is seeking recovery of a rate of £500 per hour.

2. *Sienna Miller v Big Pictures and News Group Newspapers Limited*
   
   Carter-Ruck, in the shape of Mr Thomson himself, sought recovery of his fees from the defendants in December 2008 at an hourly rate of £450 per hour.

3. In a case involving a claim by a client of Carter-Ruck against MGN Limited, a subsidiary of Trinity Mirror Plc, Carter-Ruck said that prior to entering into the CFA their partner’s time had been charged at a rate of £450 per hour. That was in the spring of 2008.

Of course, the rates which solicitors seek to charge and seek recovery of can vary—and it is clearly the case that in basic hourly rates terms Carter-Ruck are not the most expensive firm—but the MLA is very concerned that the Committee is not misled by Mr Thomson’s answer into thinking that Carter-Ruck always charges a standard rate of £400 per hour, when the evidence clearly indicates otherwise.

February 2009

**Supplementary written evidence submitted by Carter-Ruck Solicitors**

I have received a copy of the letter from Marcus Partington dated 25 February 2009, the contents of which are somewhat surprising.

Point 4 of the Agenda, and nearly all of the oral submissions from the media lawyers, focused on costs under Conditional Fee Agreement (CFA) cases.

Specifically, in answer to a question about the figure for costs in a CFA case (in terms of the base costs, success fee and ATE insurance), I pointed out, correctly, that my firm’s CFA base rate is £400 per hour (which is, as Mr Partington knows well, a discounted rate). I also explained that the success fee and ATE insurance costs are staged, in the sense that they are triggered and then increase during the course of litigation in the event that it is not settled early, as the majority of cases are. This can be confirmed by the transcript of the evidence given yesterday.

Furthermore, the *Tesco* and *Sienna Miller* cases referred to were not CFA cases, as Mr Partington is well aware.

Mr Partington’s letter is therefore misconceived. However, it does illustrate the very point that I highlighted to the Committee that the media are not checking their facts first before publishing serious allegations.

In light of Mr Partington’s request, I would ask you to circulate this letter to all members of the Committee.

February 2009

**Supplementary written evidence submitted by the Media Lawyers Association**

Following my letter to you of 25 January, and the letter from Mark Thomson at Carter-Ruck of 26 February, I have received a letter from another partner at Carter-Ruck, Nigel Tait.

The reason we wrote the letter of 25 January was because we were concerned that Mark Thomson’s answer—“our fee at the moment is £400 an hour, which is about the standard rate in the industry”—could be understood by the Committee as being their standard rate in all cases when, as Mark Thomson’s letter to you of 26 February clarifies, the rate of £400 an hour is Carter-Ruck’s base rate in CFA cases.

Mr Tait is concerned that my letter to you alleges that Mark Thomson was guilty of deliberately misleading the Select Committee by giving a knowingly false answer. He asks us to withdraw that allegation.
There was no intention on the part of the MLA to suggest that Mark Thomson had deliberately misled the Select Committee by giving a knowingly false answer and if our letter has been read in that way then we withdraw that allegation.

March 2009

Written evidence submitted by Shane Morris

1. BRIEF INTRODUCTION

1.1 I am a member of the public, an Irish citizen and a publicly funded researcher in the area of biotechnology. The evidence supplied herein is my own and does not represent my past or present employers, colleagues or other organizations.

2. EXECUTIVE SUMMARY

2.1 My evidence regards what I consider the “chilling effect” of a print media organization, Mr Hislop, editor of Private Eye, in his evidence on 5 May 2009, waved around a letter claiming that legal threats were common by those “rich and powerful” people (Q852: 5 May 2009 evidence) seeking to prevent publication of claims against them.

2.2 However, my experience shows that Mr Hislop and his publication can induce their own “chill effect” by refusing a person a right to reply and printing stories containing falsehoods that counteracting in the court system would cost the average private person thousands of pounds and risk their family’s livelihood. I believe this “chill” tactic by Mr Hislop is possible as his publication has deep pockets due to “generous readers” (Q916: 5 May 2009 evidence) who will likely underwrite his court costs when it suits their agenda.

This legal support is not available to many other people (eg civil servants, etc.) and puts ordinary members of the public at a distinct disadvantage? This I believe should be considered by the Culture, Media and Sport Committee in its deliberations on the matter of press standards, privacy and libel.

3. INFORMATION

3.1 On 28 September 2007 an article appeared in Private Eye regarding my requests for a privately funded anti-GM food website to correct claims they made against me. The Private Eye article in question identified me as a Canadian civil servant and was near identical to the erroneous claims made by the owners of the anti-GM websites GMWATCH (previously funded by Zac Goldsmith’s JMG Foundation) and GMFREE Ireland. Both websites had finally removed the claims in question after numerous personal written requests and then finally, unfortunately, the indication that I would be forced to take legal action. The claims in question suggested I had committed fraud as I was involved in research that was “fraudulent”. Private Eye made no effort to contact me or any other member of the research team prior to publication of their first set of claims.

3.2 Due to the errors in the Private Eye article I wrote a letter to the editor (Appendix I)111 where I explained the supposed evidence relied upon by Private Eye was in fact based on a photograph of a research consumer display that Greenpeace representative Mr Michael Khoo had tampered with (and not simply standing “next” to as Private Eye had claimed).

3.3 In reply to my letter to the editor I was contacted by Private Eye employee Ms Heather Mills. Ms Mills is the author of Private Eye’s now infamous and widely condemned 2002 anti-MMR vaccine Private Eye article. Ms Mills is well known in scientific circles for the fact she carried out a “long-running campaign against MMR” (Brian Deer, 2002) and has had her “journalistic responsibility” called into question (Elliman, D. and Bedford, H., British Medical Journal, 2002).

3.4 Ms Mills surprisingly informed me that due to Private Eye’s libel fears the editor was refusing to publish my letter (which has since been published elsewhere without consequence). Private Eye declined my follow up requests to identify any segments of my letter they had concerns with so I could edit my right to reply to ensure it satisfied their legal concerns. Nevertheless, I was informed by Private Eye they do not fall under the remit of the Press Complaints Council (PCC) and would not, contrary to the PCC’s code of practice, be providing me a fair opportunity for reply to the inaccuracies in their first article which they has published without first putting the claims they made to the persons named. Instead, I was informed by Ms Mills that Private Eye would be doing a second story and would I answer 12 questions. I answered the majority of the questions, included additional information and furnished a detailed explanation of how I had caught Greenpeace tamping with signs in our consumer research display. This explanation read: “When Mr Khoo continued his actions it was decided to photograph these actions which show Mr Khoo moving an orange sign. I would note that it took time to turn on the camera, focus it and wait for his repeated actions”.

3.5 On 11 January 2008, based on a blatant lie made in a privileged Early Day Motion by Mr Michael Meacher MP, Private Eye published their second article which I consider to be as equally defamatory as their first. It contained none of the information I had provided in response to Ms Mills’ original 12 questions.

111 Ev not printed.
ignored the photographic evidence provided and allowed Mr Michael Khoo to lie. This left me in a situation to either enter an expensive and time consuming court action against Private Eye or ignore their one side biased articles. Due to the fact that I am not independently wealthy, had just had my first child and as a public servant I was not in a position to accept third party support for legal expenses, I was left with no choice but to let the matter rest.

3.6 As matter of record the research in question by has not been found to be fraudulent by the publishers and the award the research received for the research still remains.

4. Thank you for the opportunity to submit my evidence and I look forward to the outcomes of your work which I hope will prevent “rich and powerful” “generous readers” from bank rolling a “chill effect” against those members of the public wishing to counter inaccurate and damaging claims by certain publications in manner that will not risk their livelihoods.

REFERENCES


May 2009

Written evidence submitted by David Price of David Price Solicitors and Advocates

I understand that Mark Stephens told your committee words to the effect that no rational lawyer would do defendant CFA work (I hope that this accurate). As I mentioned to you previously we do a large amount of CFA work for defendants in defamation and privacy cases. Most of it is for individuals who would have no representation (and therefore no access to justice) at all if we were not acting for them. We also act for the Telegraph on CFAs. I hope that any reforms to CFA will not hinder representation to defendants. Mark is correct to the extent that it is commercially very risky to do defendant work. If your reforms make it both risky and unremunerative the result is likely that will we have to stop acting for defendants which will mean that many will have no access to justice (no doubt legal aid is out of the question) and in some cases will go bankrupt even though what they have said is true / comment or privileged, just because they cannot afford to fight. You can have the names of the many defendants we have helped. If you have interviewed claimants who have been represented on CFAs, why not defendants?

It does frustrate me when I am acting for a defendant where the claimant is represented by aggressive solicitors on a CFA with ATE, success fees and all the trimmings. It does make it much more of a risk to fight.

However, where access to justice is to be provided by private practice lawyers the only way that this will be achieved is if they have a financial incentive to do so. If the incentive is not there they will not take the risk and then we get back to the situation where only the rich can take on the media.

And as I have said, with defendant CFAs there has to be a strong financial motive to take on the case because of all the risks. So please be careful before you do anything that will inhibit us offering such a service to defendants. It is seriously unfair and unjust if a person who is sued does not have legal representation. Most of our defendant clients are not the very poor. They are ordinary people who find themselves dragged into a defamation claim over something that they have said or written, which may well be substantially true or privileged. They may have some equity in their home but in practical terms cannot justify the huge expense of funding the defence of a High Court defamation or privacy claim.

Cost caps are very difficult to work within when you are running a business. I think that there are some fundamental problems with the substantive law and procedure that cannot be rectified just by cost caps. I do not think Lord Justice Jackson can address it as he is only dealing with costs.

The law is too complicated and it is wrong that the defendant’s means should be irrelevant in terms of compensation and costs. Why should a small scale publication or an individual blogger be faced with the same compensation and costs regime as a wealthy national newspaper which has destroyed someone’s reputation?

June 2009

Written evidence submitted by the Crown Prosecution Service

I refer to your letter dated 9 July 2009 and your request for the Crown Prosecution Service to submit written evidence to the Committee on the inquiry into the prosecution of Clive Goodman.

I have today announced the results of my examination of the material that was supplied to the Crown Prosecution Service by the police in this case. I enclose for your information a copy of my detailed announcement.
I hope that this announcement will reassure you that the Crown Prosecution Service considers allegations of the unlawful interception of telephone systems as extremely serious, and will act accordingly when police investigations are brought to us to consider prosecution.

**DPP's findings in relation to “phone hacking”**

**A STATEMENT BY KEIR STARMER QC, DIRECTOR OF PUBLIC PROSECUTIONS**

On 9 July 2009 I issued a statement indicating that I had asked for an urgent examination of the material that was supplied to the Crown Prosecution Service (CPS) by the police in this case.

I made this statement not because I had any reason to consider that there was anything inappropriate in the prosecutions that were undertaken, but to satisfy myself and assure the public that the appropriate actions were taken in relation to that material.

That examination has now been completed by the Special Crime Division of CPS Headquarters (SCD).

**BACKGROUND**

Following a complaint by the Royal Household, the Metropolitan Police Service first contacted the CPS on 20 April 2006 seeking guidance about the alleged interception of mobile telephone voicemail messages. The potential victims were members of the Royal Household.

During April and May 2006 there followed a series of case conferences and exchanges between the CPS reviewing lawyer dealing with the case and the police in relation to these alleged interceptions. Advice was given about the nature of evidence to be obtained so that the police could make policy decisions about who ought to be treated as victims. Advice was also given about how to identify the individual(s) responsible for these alleged interceptions.

During June and July 2006 there were further discussions and conferences between the reviewing lawyer, the police and leading counsel instructed by the CPS. On 8 August 2006 the reviewing lawyer made a charging decision in respect of Clive Goodman and Glen Mulcaire. They were arrested the same day.

On 9 August 2006 Goodman and Mulcaire were charged with conspiracy to intercept communications, contrary to section 1 (1) of the Criminal Law Act 1977, and eight substantive offences of unlawful interception of communications, contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000. The charges related to accessing voice messages left on the mobile phones of members of the Royal Household. The two were bailed to appear at the City of London Magistrates’ Court on 16 August 2006 when they were sent to the Central Criminal Court for trial.

When Mulcaire’s business premises were searched on 8 August, in addition to finding evidence that supported the conspiracy between him and Goodman regarding the Royal Household allegations, the police also uncovered further evidence of interception and found a number of invoices. At that stage, it appeared these invoices were for payments that Mulcaire had received from the News of the World newspaper related to research that he had conducted in respect of a number of individuals, none of whom had any connection with the Royal Household. They included politicians, sports personalities and other well known individuals.

The prosecution team (CPS and Metropolitan Police Service) therefore had to decide how to address this aspect of the case against Mulcaire. At a case conference in August 2006, attended by the reviewing lawyer, the police and leading counsel, decisions were made in this respect and a prosecution approach devised.

From a prosecution point of view what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire. It was the collective view of the prosecution team that to select five or six potential victims would allow the prosecution properly to present the case to the court and in the event of convictions, ensure that the court had adequate sentencing powers.

To that end there was a focus on the potential victims where the evidence was strongest, where there was integrity in the data, corroboration was available and where any charges would be representative of the potential pool of victims. The willingness of the victims to give evidence was also taken into account. Any other approach would have made the case unmanageable and potentially much more difficult to prove.

This is an approach that is adopted routinely in cases where there is a large number of potential offences. For any potential victim not reflected in the charges actually brought, it was agreed that the police would inform them of the situation.

Adopting this approach, five further counts were added to the indictment against Mulcaire alone based on his unlawful interception of voicemail messages left for Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson.
In addition to obtaining evidence from these persons, the police also asked the reviewing lawyer to take a charging decision against one other suspect. On analysis, there was insufficient evidence to prosecute that suspect and a decision was made in November 2006 not to charge. So far as I am aware, this individual was neither a journalist on, nor an executive of, any national newspaper.

This progress in the case meant that its preparation was completed by the time Goodman and Mulcaire appeared at the Central Criminal Court on 29 November 2006 before Mr Justice Gross. When they did appear at court, Goodman and Mulcaire both pleaded guilty to one count of conspiracy to intercept communications—the voicemail messages left for members of the Royal Household. Mulcaire alone pleaded guilty to the five further substantive counts in respect of Max Clifford, Andrew Skyte, Gordon Taylor, Simon Hughes and Elle MacPherson. The case was then adjourned to obtain probation reports on the defendants.

On 26 January 2007 sentencing took place. Goodman was sentenced to four months’ imprisonment and Mulcaire to a total of six months’ imprisonment, with a confiscation order made against him in the sum of £12,300.

As part of my examination of the case, I have spoken to the then DPP Sir Ken Macdonald QC as he and the Attorney General at the time, Lord Goldsmith, were both regularly briefed—as would be expected with such a high profile case.

**Findings**

As a result of what I have been told I am satisfied that in the cases of Goodman and Mulcaire, the CPS was properly involved in providing advice both before and after charge; that the Metropolitan Police provided the CPS with all the relevant information and evidence upon which the charges were based; and that the prosecution approach in charging and prosecuting was proper and appropriate.

There has been much speculation about whether or not persons other than those identified above were the victims of unlawful interception of their mobile telephones. There has also been much speculation about whether other suspects were identified or investigated at the time. Having examined the material that was supplied to the CPS by the police in this case, I can confirm that no victims or suspects other than those referred to above were identified to the CPS at the time. I am not in a position to say whether the police had any information on any other victims or suspects that was not passed to the CPS.

In light of my findings, it would not be appropriate to re-open the cases against Goodman or Mulcaire, or to revisit the decisions taken in the course of investigating and prosecuting them.

However, if and insofar as there may now be further information relating to other possible victims and suspects, that should be reported to the police who have responsibility for deciding whether or not to conduct a criminal investigation. I have no power to direct the police to conduct any such investigation.

In conducting this review I have put a good deal of detailed information in the public domain. This demonstrates my commitment that the CPS should be visible, transparent and accountable. It should also assure the public about the integrity of the exercise I have undertaken.

*July 2009*

**Further written evidence submitted by the Crown Prosecution Service**

I refer to your letter dated 9 July 2009 and your request for the Crown Prosecution Service to submit written evidence to the Committee on the inquiry into the prosecution of Clive Goodman.

On 16 July 2009 I announced the results of my examination of the material that was supplied to the Crown Prosecution Service by the police in this case, and I sent you a copy of my detailed announcement.

I was conscious that despite my announcement there were still some concerns. These arose principally because of the nature of the two documents submitted by the *Guardian* newspaper to your Committee on 14 July. Additionally, since making my statement I have received further representations from the *Guardian* newspaper and Chris Huhne MP inviting me to consider additional prosecutions based principally on those two documents. It has been urged upon me that these documents provide strong evidence that other journalists above and beyond those already convicted must have been involved in criminal activity.

Although beyond the remit of my original examination, in accordance with my continuing desire to be assured that the appropriate actions were taken in the case and to ensure that the public can be satisfied with the actions taken by the prosecution team I have, since my announcement, met with leading counsel and senior police officers from the Metropolitan police to discuss the significance of the two documents. I thought it would be helpful if I set out in some detail what conclusions I have reached.
THE DOCUMENTS

The first document handed to the Select Committee was an email from a member of staff at the News of the World reporter to Mulcaire. In the email, the member of staff says: “Hello, this is the transcript for Neville.” The e-mail contained a typed-up transcript of thirty five messages to and from the telephone of Gordon Taylor, chief executive of the Professional Footballers’ Association.

Following the issuing of my statement on 16 July, I ascertained that the email was not in the possession of the CPS and so did not form part of the examination that I carried out. However I also ascertained, although not in the physical possession of the CPS, the e-mail was within the unused material held by the Metropolitan Police (that is the material not used to prove the case against Goodman and Mulcaire). As in every case, all the unused material was seen by prosecution Counsel at the time of the prosecution to determine whether or not it was capable of assisting the defence case or undermining the case for the prosecution in respect of Goodman and Mulcaire.

The second document handed to the Select Committee was a contract dated 4 February 2005 between the News of the World and Mulcaire—who was using an alias, Paul Williams.

A copy of the contract was in the possession of the CPS and was used in evidence as part of the prosecution case against Clive Goodman and Glen Mulcaire.

THE CHARGES


THE LAW

To prove the criminal offence of interception the prosecution must prove that the actual message was intercepted prior to it being accessed by the intended recipient.

THE INVESTIGATION

The searches and seizure of material all took place on the 8 August 2006. A number of premises relating to both Goodman and Mulcaire were searched. Hundreds of handwritten sheets showed research into many people in the public eye. There was also a quantity of electronic media recovered including recordings of some apparent voicemail conversations. It was reasonable to expect that some of the material, although classed as personal data, was in the legitimate possession of the defendants, due to their respective jobs. It is not necessarily correct to assume that their possession of all this material was for the purposes of interception alone and it is not known what their intentions were or how they intended to use it.

CONCLUSIONS ON THE MATERIAL

The e-mail dated 29 June 2005 was found as a paper copy at Mulcaire’s home address on 8 August 2006. This document was then at least 14 months old and the prosecution case was focused on activity against potential victims in 2006. There is nothing on the document to suggest when the alleged conversations in the document may have occurred, (save that they must have occurred on or before 29 June 2005).

The existence of transcripts alone does not prove that the messages transcribed were intercepted prior to their being accessed by the intended recipient (an essential element of the offence). Further technical evidence would be needed before such an assertion could properly be made. However, such technical evidence was not available in 2006 nor is it available now.

In addition, there was and is no clear evidence concerning the identity of “Neville” and there was and is no evidence to suggest that “Neville” had seen the document, and even if he had, that in itself would not have constituted an offence of unlawful interception. Therefore there was no evidence to link him to a conspiracy to intercept communications.

Mulcaire’s computers were seized and examined. Nothing in relation to Neville or Neville Thurlbeck was indicated.

I invited leading counsel to advise me on the issue of inviting the police to re-open the investigation. He has advised that although he cannot now recall whether the e-mail was the subject of specific advice at the time, based on his knowledge of the case in 2006 and the investigation and prosecution strategy it appears to him unlikely that he would have advised the Crown Prosecution Service that further investigations should be undertaken in relation to the email of 29 June 2005, and that it appeared to him unlikely that he would have formed the view that the police had sufficient grounds to arrest and/or interview either the sender of the email or Neville Thurlbeck. He has also advised me that, based on his current knowledge and understanding of the case, his advice would not be any different today.
In light of these findings, I confirm that it would not be appropriate for me to re-open the cases against Goodman or Mulcaire, nor to revisit the decisions taken in the course of investigating and prosecuting them. Nor would it be appropriate for me to invite the police to re-open the investigation into this case.

Keir Starmer QC
Director of Public Prosecutions

July 2009

Supplementary written evidence from Keir Starmer QC, Director of Public Prosecutions

Thank you for your letter of 20 October, in which you have asked, on behalf of the Culture, Media and Sport Committee, for a number of specific pieces of information. I will deal with them in the same order as your letter.

1. The prosecution document bundle given to Mr Justice Gross: The prosecution bundle contained a document entitled “Observations on Sentence” and authorities relevant to sentence. I attach a copy of the “Observations on Sentence” document.112

2. The defence bundles: I am sure you will understand when I say that it would not be appropriate for the prosecution to provide these. The solicitors representing Mr Goodman and Mr Mulcaire are Henri Brandman & Co, and Russell Jones and Walker, respectively. Requests for defence bundles should be addressed to them.

3. David Perry QC’s opinion to the CPS: There was no written legal opinion relating to the interpretation of section 1 of the Regulation of Investigatory Powers Act 2000 (RIPA). Counsel’s advice on the ambit of section 1 of RIPA was given to the CPS orally in conference. Advices given to the CPS by Counsel are not usually disclosed. Having said that, it may be helpful for you to know that the advice was based on: section 1(1) of RIPA, which requires the communication to be intercepted “in the course of its transmission”; section 2(7) of the same Act, an interpretive provision, which gives an extended meaning to the times when a communication is to be taken as being in transmission; and the observations of Lord Woolf CJ in R (on the application of NTL) v Ipswich Crown Court [2002] EWHC 1585 (Admin); [2002] 3 WLR 1173; [2002] QB 131, at paragraphs 18–19, in relation to the effect of section 2(7): “Subsection (7) has the effect of extending the time of communication until the intended recipient has collected it”. The CPS view was that the observations of Lord Woolf were correct, and accorded with the rationale of the prohibition in section 1 (1). Moreover, it was also our view that in this case there was nothing to be gained from seeking to contend for a wider interpretation of section 2 (7) than that contemplated by Lord Woolf.

4. Shortening of the charge period: The period of the conspiracy was shortened because, whilst it was possible to prove interceptions from February 2005, on the available evidence it was not possible to prove that these took place in pursuance of a conspiracy until the November date. However, although the pre-November interceptions were not part of the charge, they were opened as part of the prosecution case and, forming as they did part of the context of the conspiracy, they remained matters which the judge was entitled to take into account in the sentencing exercise when determining the seriousness of the offence and the level of culpability.

5. Helen Asprey’s voicemails

I am informed that in relation to Helen Asprey, in common with each of the victims, expert evidence was gathered relating to: (a) how voicemail messages were left, stored and accessed; and (b) how and when they were in fact accessed in this case.

I hope this is of help.

November 2009

Supplementary written evidence submitted by Tim Toulmin, Press Complaints Commission

Thank you for your letter of 12 October.

As requested, I am sending copies of my letters of 7 February and 20 April 2007 to Colin Myler.

As you are interested in the PCC’s action in the Bridgend case, I am also sending you a copy of a letter that Christopher Meyer sent to Madeleine Moon MP on 20 February 2008. This makes clear that we were prepared to go down there much earlier than May, when the events there eventually took place. As there were a number of different organisations and people to co-ordinate it did take some time for Ms Moon’s office and the PCC to make the necessary arrangements—but I thought you ought to be aware that the initiative itself was suggested by us relatively early in the sequence of suicides.

112 Not printed.
Letter from Tim Toulmin, Director, Press Complaints Commission to Colin Myler, Editor, News of the World

I am writing following the convictions of Clive Goodman and Glenn Mulcaire. As you may know, the board of the Press Complaints Commission has met and discussed the matter on two separate occasions. It has asked me to put a number of questions to you before launching a wider exercise aimed at ensuring that such phone message tapping does not happen again.

There are obviously several matters that are specific to the News of the World. The focus of our enquiries is on lessons to be learned. But clearly this requires some understanding of the situation which gave rise to the Goodman/Mulcaire case. It goes without saying that the Commission realises that you have no personal responsibility for what occurred.

We have been especially concerned whether the employment of Mr Mulcaire represented an attempt to circumvent the Code’s provisions by sub-contracting investigative work to a third party. We recognise that there is nothing inherently wrong with using third parties. But the Code says that “editors should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists”.

There are therefore no loopholes.

More specifically:

1. Were Mulcaire and any other external contributors aware that when using their material the newspaper had to work within the terms of the Code and the law?
2. To avoid a repetition of this episode, what new guidance has been or will be introduced for external contributors? Is it/will it be written into their contracts or otherwise made clear that material must be obtained in a manner consistent with the requirements of the Code of Practice and of the law, and that public interest exceptions may apply? What other steps are being or will be taken to ensure that material supplied by third parties complies with the Code?
3. What steps have been/will be taken to ensure that all staff journalists on the News of the World understand that the use of third parties to circumvent the Code is unacceptable, and may be illegal?
   As to Goodman, it seems from the evidence submitted to the court that he repeatedly breached the Code and the law. It will not surprise you to hear that the Commission requires reassurance that the newspaper makes its staff journalists fully aware of the requirements of the Code and the law in terms of subterfuge, including when it is justified. This, of course, embraces also the Data Protection Act, where there has been separate comment recently about the extent to which it is respected by journalists.

More specifically:

1. Has the paper’s guidance to staff journalists changed in light of Goodman’s conviction? If so, what does it say?
2. Are you satisfied that staff fully understand all clauses of the Code of Practice and the consequences of breaching the Code? There are occasions where exceptions to the rules may be made in the public interest—are these made clear?
3. Do you need the Commission’s assistance to help with internal training or anything else? As you may know, we run regular workshops on the Code and how it is enforced.
4. The Commission intends to widen its investigation after hearing from you, with a view to establishing whether controls across the industry are adequate. With this in mind, is there anything else that would be helpful to us from the newspaper’s experience in this case?

I look forward to hearing from you. I may have some further questions at a later stage.

With kind regards.

February 2007

Letter from Tim Toulmin, Director, Press Complaints Commission to Colin Myler, Editor, News of the World

Further to my letter of 18 April, I have two further questions.

I see from your letter to staff of 19 February that further controls on cash payments were being developed. May the Commission know what conclusions were reached in this regard?

Secondly, as you know, the Commission is looking at what lessons might be learned, and in particular it may wish to draw attention to examples of best practice. With that in mind, would you object if our report quoted from the revised contracts that have been drawn up for contributors and members of staff?
I look forward to hearing from you.

With kind regards.

20 April 2007

Annex C

Letter from Sir Christopher Meyer, Chairman of the Press Complaints Commission to Madeleine Moon MP

I thought you might like to see a copy of a statement I have made today,\(^{113}\) which I have sent to the local and regional press around Bridgend as well as to national newspapers. I am particularly eager to ensure that anyone affected by one of these tragedies is aware of what we can do to help minimise the impact of journalists’ inquiries at such a difficult time.

I am also very concerned about the suggestion that the media are somehow glamorising suicide. I understand that you are compiling a dossier to forward to us, and I look forward to receiving it. In addition, members of my staff would be very willing to come to Bridgend to see you, members of the public and anyone who has a professional interest in these matters to answer any questions.

Finally, I should just remind you that our responsibility is for newspapers and magazines in print or online, but not for television and radio, which fall to Ofcom and, where relevant, the BBC.

With kind regards

20 February 2008

Written evidence submitted by the Centre for Social Cohesion

I understand you are looking into the law-firm Carter-Ruck as part of a Culture, Media and Sport Committee report on Press Standards, Privacy and Libel. I hope the following information may be of interest.

The Centre for Social Cohesion (CSC) is a non-partisan think-tank that studies issues related to community cohesion in the UK. In May 2008 the CSC proposed to release “A Guide to British Muslim Organisations”, a handbook which intended to give the background, stated aims and current political attitudes of approximately 25 Muslim-run groups in the UK.

One of the groups we studied for this proposed report was Interpal, a Muslim charity that describes itself as a “non-political, non-profit making British charity that works with international funding partners and partners on the ground to provide relief and development aid to Palestinians in need, mainly in the West Bank, Gaza Strip and the refugee camps in Lebanon and Jordan”.

The report’s entry on Interpal covered a variety of the group’s activities, including its stated aims. However as part of an attempt to give a rounded picture, it also referred to its proscription by the US Government as a terrorist organisation in 2003: a BBC Panorama documentary outlining its alleged glorification of terrorism and alleged links to Hamas, a designated terrorist group in the US and the European Union; and three Charity Commission investigations launched to ascertain whether Interpal had fundraised for Hamas (in which the CSC specified that the Commission were yet to find any evidence of wrong-doing on Interpal’s part).

All the information in the report was a matter of public record. However in order to allow the opportunity to correct any inaccuracies, on 26 March 2008 the CSC sent all organisations featured in the report a draft version of those sections relevant to them.

On 2 April 2008 the CSC received a libel threat from Interpal, who were being represented by Carter-Ruck. The letter specified that the CSC’s work was “grossly defamatory” and “entirely untrue”, although did not highlight which extracts specifically were so. They also denied being a “Muslim organisation”, and therefore not eligible for inclusion in the report. This was despite accepting that all their trustees and staff, and most of the charity’s beneficiaries, were Muslim, and our draft document highlighting a quote from Interpal Chairman Ibrahim Hewitt in which he calls the group “Muslim-run”.

The CSC was at that stage an extremely young organisation, and the libel threat issued by Carter-Ruck was the primary reason we could not publish the report. However I feel that a small organisation such as the CSC being threatened with a lawsuit and potential bankruptcy simply for reproducing information already reported in numerous reputable sources is an unacceptable restriction on freedom of speech.

\(^{113}\) [http://www.pcc.org.uk/news/index.html?article=NDk1Ng](http://www.pcc.org.uk/news/index.html?article=NDk1Ng)
I have attached all relevant documentation. Please feel free to get in contact if you would like to discuss this matter further.

November 2009

Supplementary written evidence submitted by Carter-Ruck

We spoke briefly after the Freedom of Expression Round Table discussion held by the Joint Committee on Human Rights last week, when I promised that I would let you have my thoughts, in particular, on the Minister’s response to your question concerning the advice given by my firm and by the Guardian’s lawyers, and on the continued applicability of the Parliamentary Papers Act 1840.

ARTICLE 9 BILL OF RIGHTS 1688

Regrettably, it is apparent from statements made both within and outside Parliament that there has been misapprehension in certain quarters of the effect of the court Orders in the Trafigura case. This misapprehension does not arise from anything that my firm has either said or done. I suspect that it originates with the article published by the Guardian on 13 October 2009 “Guardian gagged from reporting Parliament” the opening paragraph of which states “the Guardian has been prevented from reporting parliamentary proceedings on legal grounds which appear to call into question privileges guaranteeing free speech established under the 1688 Bill of Rights” [My emphasis].

On reviewing the transcript of the debate “English Libel Law (Parliamentary Proceedings)” on 21 October 2009, I fear that you and the Minister may have been at cross-purposes. The Minister, picking up an issue you had raised earlier in the debate regarding two letters received by your Committee from solicitors, one of which apparently displayed an ignorance of Article 9 Bill of Rights 1688, said, “I am astonished that lawyers around the country are not aware that there is a difference between Article 9 and the European Convention, and so on. However, perhaps this will be an opportunity for them to be educated in that respect.”

In response, thereafter, to your question “Is it the Minister’s view that the advice given by Carter-Ruck and by the in-house lawyer of the Guardian was incorrect?” the Minister replied “It is most certainly my view that the advice given by both—no doubt eminent—lawyers was incorrect. I am happy to ensure that we send them a copy of Article 9, so that they can read and peruse it at their leisure.”

There is and never has been any suggestion on the part of my firm, nor, I am sure, have the Guardian’s lawyers ever been under the misapprehension, that the interim Orders made in the Trafigura case could or would have the effect of restraining debate within Parliament itself. Under Article 9 Bill of Rights 1688 no court order could have such an effect.

As my firm made clear in its letter to the Speaker dated 14 October 2009, in relation to proceedings in Parliament, because of Article 9 of the Bill of Rights, it is entirely within the discretion of the Speaker, for example under Parliament’s “self-denying” sub judice rules which provide that “matters awaiting adjudication in a court of law should not be brought forward in motions, debates, questions or supplementary questions . . .” whether to allow debate on any matter within Parliament. The court has no jurisdiction to intervene.

REPORTS OF PARLIAMENTARY PROCEEDINGS

The issue which arose in the Trafigura case, as I appreciate both you and the Minister understand, was not whether the court Order might have prevented debate in Parliament, but whether, as it stood, it had the effect of restraining the Guardian from publishing a report of a written parliamentary question tabled by Paul Farrelly MP, which is an entirely different matter, governed not by the Bill of Rights, but by subsequent statutes and by common law, and therefore subject to the jurisdiction of the courts. Our opinion, which the Guardian has since confirmed was also the opinion of its Leading Counsel, was (and remains) that the interim Orders required variation to allow the Guardian to report the terms of Mr Farrelly’s question.

The issue is not new, either to the courts or, for that matter, to Parliament. I have attached a copy of a note dated March 2005 submitted by the then Attorney-General, Rt Hon Lord Goldsmith QC, to the Select Committee on Procedure following oral evidence which he gave on 19 January 2005; the note refers briefly to a number of cases which you may find of interest. Previously, the 1999 First Report of the Joint Committee on Parliamentary Privilege addressed the position where a court at the conclusion of proceedings has made a “no publicity” order; I have attached a copy of the section of the Report headed “Breaches of Court Injunctions” and would draw your attention in particular to paragraph 204. I have also attached a copy of a Memorandum by the Newspaper Society to the Joint Committee dated 20 January 1998, which refers to the need which arose in the “Spycatcher” case for an injunction to be varied expressly to permit reporting of Parliamentary proceedings.

114 Ev not printed.
Lord Goldsmith in his note refers to the Contempt of Court Act 1981, which was passed following the conclusion of the Distillers case. The Act provides at Section 4 (1) that “a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith” and at section 5 that “A publication made as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion” there is no provision to exclude reports of Parliamentary proceedings. The Act further states at section 6 (c) that none of its provisions “restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.”

Under the Parliamentary Papers Act (1840) Section 1 any proceedings, criminal or civil, brought in respect of the publication of “any such report, paper, votes, or proceedings . . . by or under the authority of either House of Parliament”, will be stayed upon the production, with a verifying affidavit, of an official certificate from, for example, the Speaker of the House of Commons. This affords complete protection, for example, to Hansard. Section 2 applies to the publication of authenticated copies of such material. Section 3 provides a defence in proceedings, civil or criminal, brought in respect of the publication of “any extract from or abstract of” such material; however, under this section, the obligation rests with the defendant to show that “such extract or abstract was published bona fide and without malice.” The Act has been extended to cover the broadcast of parliamentary proceedings by radio television and the internet. Whilst it is the case that the Joint Committee on Parliamentary Privileges in 1999 recommended that it should be replaced with a modern statute, it remains in force.

CONCLUSION

As my firm has made clear in our letter to the Speaker dated 14 October 2009 at the time the interim Orders were made, none of the parties nor the Court had in contemplation the possibility of the matter being raised in the House of Commons. If they had, then the order may well have been formulated (as was done, it appears on the initiative of the Court of Appeal, in the Spycatcher litigation) to allow for such reporting.

However, on the wording of the Order as it then stood, it was clear to us that, absent a variation of its terms, it would amount to a breach and therefore a contempt for the Guardian to publish, as it proposed, information about Mr Farrelly’s parliamentary question, referring to the existence of the injunction.

With regard to the Parliamentary Papers Act 1840, the Guardian did not contend that the information which it proposed to publish would be confined to material within the scope of Section 3 of the Act; even had it been, it would still beg the question whether a newspaper which is subject to an injunction can claim to be acting “bona fide” within the definition of the Act if, rather than seek a variation, it chooses to publish material in breach of the injunction. Likewise, with regard to the Contempt of Court Act 1981, where a court has made an interim Order, restraining a newspaper from publishing material pending a full hearing, the question arises as to whether it may be considered “conduct intended to impede or prejudice the administration of justice” for that newspaper, absent a variation of the Order, to publish such material.

These questions, however, are moot. On Monday 12 October 2009, the Guardian drew our attention to Mr Farrelly’s parliamentary question and informed us that they proposed to publish information about it that night. The same day we wrote to them pointing out that publication of an article referring to the existence of the injunction would, absent a variation to the Orders, amount to a contempt. In response, the Guardian submitted to us (by fax timed at 17.52) its proposed wording for the variation of the Orders, to which we responded the same evening, stating that we would take instructions from our clients, and revert the next day (the Tuesday—Mr Farrelly’s written question being due to be answered on the Wednesday). On 13 October, the parties agreed a variation that nothing in the Orders should prevent the Guardian from reporting upon proceedings in Parliament. In the meantime, the Guardian published its article “Guardian gagged from reporting Parliament” to which I refer above.

If I can assist further, please let me know.

November 2009

Supplementary written evidence submitted by the Information Commissioner’s Office

When we spoke on the phone recently you asked if the ICO could supply the following:

— A sample of redacted information: Enclosed are two samples. The “hard redaction” sample is where we have simply removed any personally identifiable information. The “soft redaction” sample is where the personally identifiable information that has been removed has been replaced by a description of its nature. The pages of the samples should be read side by side as each line in a ledger runs across all three pages. In both soft and hard redacted cases the samples represent a one page extract from a Motorman ledger.

— Further explanation of the staff time involved in redaction: Producing the enclosed “soft redaction” sample took an experienced member of staff who is familiar with the details of the

118 Neither sample published here.
Motorman enquiry around 10 mins. Scaling this up to the approx 17,500 lines of text in the four ledgers accounts for something of the order of 100 hrs of staff time. We estimate that, on the same basis, similarly redacting the invoices and other documents in the spreadsheets would take a further 50 hours. Once time for organising the work, checking the output, staff breaks (given that this is intensive at screen work) etc is allowed for we are reaching something close to our original estimate of 30 days of staff time for “soft redaction”. We remain of the view that “hard redaction” would take roughly half as long.

A table showing the involvement of individual publications identified in the Motorman operation: This is enclosed. The table formed part of our report “What Price Privacy Now?” although the version attached was actually published as a correction to the original table that featured in the first edition of the report.

I hope this additional information is of assistance to your committee.

November 2009

Written evidence submitted by Professor Chris Frost

THE PCC AND PRIVACY

The PCC claims that it is a “modern, flexible organisation designed to keep the quality of UK journalism high in the digital age. It demonstrates using real cases, how we help put things right when the inevitable mistakes are made.” (PCC annual report 2007: P2)

The Press Complaints Commission, Britain’s press regulatory body, received 4,340 complaints in 2007. This number has increased steadily since 1991. Of these an average of 12.34% concern privacy.

However, whilst the majority of complaints concern accuracy, it is fair to say that the complaints that really concern society are about intrusion, discrimination, children and privacy. It is also fair to day that the PCC is not good at dealing with complaints on matters of fact or accuracy.

The PCC adjudicates only a tiny fraction of the complaints it receives—2.18% (52 per year on average) over its full 18 years of work, but only 0.83% (30.6) for the last five years. Not only does it adjudicate on very few, but this number is steadily reducing.

The PCC justifies this by saying it resolves a lot of cases and that this is a better approach.

However it is difficult to accept that when one looks at the type of cases resolved. Most should have been handled instantly by the editor concerned as they are the kind of factual errors that inevitably creep into a pressured newsroom and should be sorted out with a correction or apology almost as quickly.

The PCC resolves an average of 191 (6.28%) complaints a year, although this increases to 289 (10.4%) for the last five years thanks to two bumper years.

Resolutions, however, mainly concern accuracy, with 97.5% of all resolved cases including complaints about accuracy. 12.2% of resolved cases were about privacy, usually alongside accuracy. Whilst these were resolved it is likely that the complainant felt they had little option other than to accept the resolution offered. Adjudication—the only other option would have meant reminding people about the very invasion they had wanted to keep private.

Although the PCC says that privacy complaints represent 12.34% of all complaints made, the percentage of privacy cases amongst adjudicated cases rises to 32.9%. However, very few of these are upheld—only 21.8% of privacy adjudications were upheld—a total of 14. All the other complaints were rejected or resolved.

<table>
<thead>
<tr>
<th>Year</th>
<th>adjudicated privacy case</th>
<th>upheld</th>
<th>otherwise resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>18</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>2005</td>
<td>6</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>2006</td>
<td>14</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>2007</td>
<td>12</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>2008</td>
<td>14</td>
<td>3</td>
<td>11</td>
</tr>
</tbody>
</table>

Of course that might be appropriate; however, taking the PCC’s figures on the number of complaints made, an average of 408 complaints about privacy are made each year, yet only an average 48 are resolved and just 12 adjudicated with fewer than three of those adjudications being upheld.

119 Table not published here.
However despite the tiny numbers and the clear attempt to avoid setting precedents, the PCC has had to make some judgements and although all the attention has been on the courts, some of their judgements have been interesting.

Several cases of people whose homes were raided by the police with the press on hand, were found to have had their privacy invaded, especially when video was posted on the websites.

A businessman whose secret internet sex chat was exposed by his partner was also found to have suffered an intrusion into privacy.

The PCC found that a child’s video of her unruly maths class that was published on a paper’s website also constituted an intrusion.

Excessive published detail in several suicides was also condemned.

In another case, the PCC was concerned about the publication of pictures taken of a woman receiving medical treatment after a road accident, although it made no finding here.

However a Mosley-style expose about the sexual activities of a female ambulance officer in a Sunday tabloid was not upheld and was said to be in the public interest.

Very few cases of the sort that reach the High Court have come to the PCC and it is clear that as far as privacy is concerned, if your privacy has been invaded and you have money, you should go to court; if you are poor, then just try to forget all about it. All the PCC can do is ask the paper to print a reminder of your shame to any who have forgotten or perhaps did not see it in the first place.

March 2009

Written evidence submitted by News International

Thank you for your letter of 20 October. Like the Committee, we are very keen to bring this long-standing matter to a close and trust that the answers to the further questions you have raised, which we provide below, will now do that.

COMMITTEE QUESTION

“The grounds on which advice was given to settle the claims of both Clive Goodman and Glen Mulcaire, and the level of payments made (including the relation to salary and/or contractual payments if necessary).”

ANSWER

I have asked Jon Chapman, News International’s Director of Legal Affairs, to deal with this question directly and this is his response:

Clive Goodman

Clive Goodman’s employment with News Group Newspapers Limited was terminated in early February 2007. Subsequently, he engaged a City law firm with a view to bringing employment tribunal proceedings, the primary claim being that News Group Newspapers Limited failed to follow the statutory dismissal and disciplinary procedure in relation to termination of his employment. This procedure was introduced in October 2004 (it ceased to apply earlier this year) and contained minimum requirements to be met in relation to any dismissal. Failure to meet such requirements made a dismissal automatically unfair, entitling the affected employee to bring an unfair dismissal claim, with a potential compensatory award of (what was then) up to £60,600 (in addition to any contractual notice pay entitlement).

News Group Newspapers Limited had not followed the requirements of the statutory procedure, so the dismissal was undoubtedly unfair under the statutory dismissal and disciplinary procedure. In such circumstances, it is open to an employer to argue before the tribunal that, even if the statutory procedure had been followed to the letter, the outcome would have been the same and that the employee was not, thereby, prejudiced. The options were, thus, for News Group Newspapers Limited to defend the matter in tribunal relying on this defence (which, it has to be said, even in gross misconduct cases where correct procedure has not been followed, is by no means guaranteed to succeed) or to try to reach a settlement of the matter on reasonable terms. In all contentious employment cases in the News International group, a recommendation as to whether to defend or to try to settle is made by me to relevant senior management, based primarily on cost (to settle or legal and other costs to defend), the very significant internal time and resource required to deal with a defence, likelihood of success and publicity the matter may attract. I applied this analysis to the Goodman claim and recommended to Les Hinton, our then Executive Chairman, that we explore settlement on reasonable terms. After some discussion with Mr Goodman’s lawyers, a proposed settlement was reached which was approved by Les Hinton and Daniel Cloke, our Director of Human Resources. This was then embodied in a compromise agreement. This is a type of settlement agreement required to be used in employment cases and which complies with the specific requirements of section 203 of the Employment
Rights Act 1996. In this case, we used a standard-form News International compromise agreement and only minor changes were made to it. In particular, there was nothing tailored specifically to Mr Goodman’s possible future activities.

Pursuant to the agreement, Mr Goodman was paid his notice and an agreed settlement amount. It should be noted that, as a matter of policy, News International companies tend always to pay notice, even in cases of summary dismissal. As is normal under the terms of compromise agreements, Mr Goodman’s legal costs relating to his employment claims and their settlement by compromise agreement were paid by News Group Newspapers Limited.

I should conclude, in relation to Mr Goodman, by stating that, in my view, there was nothing at all underhand about this compromise agreement. It was achieved following negotiation with a senior employment lawyer from a City firm and was implemented through a standard-form News International precedent. It was entered into in July 2007, some time after Mr Goodman’s release from prison, and, in my view, far too late for any silence effectively to be “bought” (which I know has been the suggestion from some quarters).

Glenn Mulcaire

The News of the World treated Mr Mulcaire as a contractor at all times and his contract was simply terminated in January 2007. Subsequently, Mr Mulcaire instructed an employment lawyer and, in April 2007, employment tribunal proceedings were served on News Group Newspapers Limited. These alleged that Mr Mulcaire had full employment rights based on such factors as mutuality of obligation (ie he expected to be provided with work and the News of the World expected him to be available for work). As with Mr Goodman, he principally claimed unfair dismissal based on News Group Newspapers Limited’s failure to follow the statutory dismissal and disciplinary procedure. On consideration, we took the view that there was a significant risk a tribunal might find he had employment rights. A similar analysis to that carried out for Mr Goodman’s claim was then followed and a similar internal procedure was followed in relation to potential settlement. Again, we used a standard-form News International compromise agreement and only minor changes were made to it and there was nothing tailored specifically to Mr Mulcaire’s possible future activities.

Under the agreement, Mr Mulcaire was paid his notice and an agreed settlement amount. As is normal under the terms of compromise agreements, Mr Mulcaire’s legal costs relating to his employment claims and their settlement by compromise agreement were paid by News Group Newspapers Limited.

All my comments (in the final paragraph above relating to Mr Goodman) about the nature of Mr Goodman’s settlement apply equally to Mr Mulcaire (the compromise agreement with him was entered into in June 2007).

Committee Question 1

The letter of 4 August stated that the board of News International did not know about the settlement payment to Gordon Taylor. Which directors of News Group Newspapers Ltd a) knew about and b) authorised the settlement with and payments to Gordon Taylor and the two further litigants?

Was the settlement with Taylor, or the other two litigants, formally authorised by the board of News Group Newspapers Ltd, or a sub-committee of the board, or directors acting with the authority of the board, be it directly or under delegated powers? The Committee would also be grateful for the relevant minute of any such authorisation.

Answer

James Murdoch, Executive Chairman of News International Limited and a director of News Group Newspapers Limited, authorised the settlements and payments following discussions with Colin Myler and Tom Crone. No other directors of News Group Newspapers Limited knew about the settlements and payments at that time. There was no requirement (either as a matter of company law or under the constitution of News Group Newspapers Limited) for formal authorisation of these matters by the board of News Group Newspapers Limited. As Executive Chairman of News International Limited, Mr Murdoch had authority to address this type of matter both for News International Limited and for its subsidiaries. As there were no board proceedings, there is no minute of the authorisation.
COMMITTEE QUESTION 2

Colin's letter to us states that News International's Director of Legal Affairs and Director of Human Resources are responsible for all employment related claims at News International. We would be grateful for the names of the personnel in those posts at the time of the settlements made with Clive Goodman and Glenn Mulcaire after their conviction, whether they are still in those posts and/or employees of News International.

ANSWER

As stated above, Jon Chapman and Daniel Cloke, both of whom are still employees of News International.

COMMITTEE QUESTION 3

We would be grateful for a definitive list of which directors or other staff of News Group Newspapers, News International or News Corp a) knew about and b) authorised the settlement with and payments to Clive Goodman and Glenn Mulcaire following the termination of their respective contracts?

Were either of the settlements formally authorised by the board of News Group Newspapers, News International or News Corp or a sub-committee of any of their boards, or any of their directors acting with the authority of the board, be it directly or under delegated powers? If so the Committee would also be grateful for the relevant minute of any such authorisation.

ANSWER

Les Hinton, then Executive Chairman of News International Limited and a director of News Group Newspapers Limited, authorised the settlement with, and payment to, Clive Goodman, following discussions with Jon Chapman and Daniel Cloke. He also authorised the settlement with, and payment to, Glen Mulcaire, following discussions with Jon Chapman (Daniel Cloke was aware this matter was settled but not of the terms of settlement). Stephen Daintith, then Finance Director of News International Limited and a director of News Group Newspapers Limited, was also aware of these settlements. Tom Crone was aware the matters had been settled but was not aware of the terms of settlement. No other directors of News Group Newspapers Limited knew about the settlements and payments at that time. There was no requirement (either as a matter of company law or under the constitution of News Group Newspapers Limited) for formal authorisation by the board of News Group Newspapers Limited. As Executive Chairman of News International Limited, Mr Hinton had authority to address this type of matter both for News International Limited and for its subsidiaries. As there were no board proceedings, there is no minute of the authorisation.

COMMITTEE QUESTION 4

£12,400 was paid to Alexander aka Glenn Mulcaire. We would be grateful for the list of published stories which resulted from these payments (Q 1697 to Stuart Kuttner on 21 July refers).

ANSWER

Attached is a list of published articles which we are able to identify as resulting from the payments, and copies of those articles.120

COMMITTEE QUESTION 5

Were the cash payments made by your organisation to Glenn Mulcaire declared to the Inland Revenue?

ANSWER

The payments themselves would have been shown in News Group Newspapers Limited’s editorial accounts and thereby formed part of the company’s tax return.

COMMITTEE QUESTION 6

Who else apart from Clive Goodman was aware of or involved in authorising the cash payments being made to Glenn Mulcaire?

ANSWER

The Managing Editor and the Editorial Accounts personnel would have known that cash payments were being made to a confidential source called “Alexander” but they did not know the source’s identify.

COMMITTEE QUESTION 7

Did News Group Newspapers, News International or News Corp pay or contribute to the payment of the legal fees of either Goodman or Mulcaire (Q 2119 to Les Hinton on 15 September refers)?

ANSWER


121 Answer provided in confidence and redacted for publication.
COMMITTEE QUESTION 8

Are there any written reports, either internal or by the lawyers you appointed, of the investigations into the activities of Goodman and Mulcaire, or other inquiry agents? If so the Committee would be grateful for sight of these.

ANSWER

Any initial reporting on these matters was communicated orally.

In May 2007, as the Committee knows, all emails which were then on News International’s IT systems between Clive Goodman and Andy Coulson, Stuart Kuttner, Ian Edmondson, Neil Wallis and Jules Stenson were identified and copied from the systems and reviewed by Jon Chapman and Daniel Cloke, before being passed to Lawrence Abramson, Managing Partner of Harbottle & Lewis, an external law firm, for further review. A copy of a letter dated 29 May 2007 on this subject from Mr Abramson is below.122

COMMITTEE QUESTION 9

How many people called Neville did the News of the World employ on 29 June 2005?

ANSWER

One.

COMMITTEE QUESTION 10

Colin’s letter confirmed that he had reduced cash payments for stories at the News of the World by 89% since January 2007. We would be grateful for this information (on the same basis) in relation to all other UK newspapers operated by News International.

ANSWER

We believe we have made the position on this clear to the PCC. In any event, the Committee’s proceedings relate to the News of the World and the internal administration procedures of other newspaper titles which happen to be within the same group of companies, but which otherwise have no particular relationship with the News of the World, are not, in our view, relevant.

Once again, we trust that the answers given in this letter can now bring matters to a close.

Rebekah Brooks
Chief Executive Officer

Annex

Letter from Lawrence Abramson, Harbottle & Lewis LLP to Jon Chapman, News International Limited (dated 29 May 2007)

Re Clive Goodman

We have on your instructions reviewed the emails to which you have provided access from the accounts of:

Andy Coulson
Stuart Kuttner
Ian Edmondson
Clive Goodman
Neil Wallis
Jules Stenson

I can confirm that we did not find anything in those emails which appeared to us to be reasonable evidence that Clive Goodman’s illegal actions were known about and supported by both or either of Andy Coulson, the Editor, and Neil Wallis, the Deputy Editor, and/or that Ian Edmondson, the News Editor, and others were carrying out similar illegal procedures.

Please let me know if we can be of any further assistance

May 2007

122 See Annex.
Supplementary written evidence submitted by Metropolitan Police Service

In response to the further question from Culture, Media and Sport Committee, “When did the police first inform Jo Armstrong that her phone had been hacked?”, the Metropolitan Police Service (MPS) provide the following response:

Ms Armstrong was not one of the victims selected or named in the indictment to highlight the breadth and scale of those targeted by Mulcaire and Goodman and was therefore never spoken to by the MPS. The MPS have no knowledge of any legal proceedings or the outcome of any proceedings brought by Ms Armstrong against the News of the World.

December 2009

Supplementary written evidence submitted by Max Mosley

If it’s not too late, and without wishing to burden the Committee, may I make a quick final point?

The case for prior notification is simple, logical and irrefutable:
— By definition, something ceases to be private if it becomes public.
— The law requires certain things to be kept private.
— The court has a duty to enforce the law.
— The court can only enforce the law if informed.
— It can only be informed by the aggrieved party.
— He can only inform the court if he knows.
— Therefore he must be notified before publication.

December 2009

Supplementary written evidence submitted by the Information Commissioner

(To: Paul Farrelly MP)

I am writing in response to your email of 3 December to my Deputy Commissioner, David Smith. I do not want there to be any doubt about the Information Commissioner’s willingness to engage constructively with the Select Committee’s work.

I was concerned to see that you and your colleagues felt that the ICO might have been economical with the truth so far as the summary spreadsheets are concerned. It is important that I first put the role of the summary spreadsheets into context. These spreadsheets were prepared for the ICO at the time of the original Motorman inquiry to enable us to handle the mass of evidence that had been seized. They are not the evidence itself nor do they contain any additional information. I can assure you that I was not in any way trying to keep their existence from the Select Committee when I gave evidence myself and I have been told that the database in question was referred to when your chairman visited our offices. However on both occasions it was the actual evidence seized by our investigators that was the focus of attention rather than the arrangements the ICO had adopted for its management.

It is also important to bear in mind the position the Information Commissioner is in. It was my predecessor Richard Thomas who went as far as he believed he could in putting information about the activities of the media before Parliament when he published What Price Privacy? and What Price Privacy Now? It is the Information Commissioner who has been instrumental in exposing the activities of the media here. We are certainly not involved in any “cover up”, but we have to operate responsibly and within the law.

I suggest that it was no part of the Information Commissioner’s responsibility to publish further material from Operation Motorman once he had reported to Parliament in What Price Privacy? and What Price Privacy Now? It is the Information Commissioner who has been instrumental in exposing the activities of the media here. We are certainly not involved in any “cover up”, but we have to operate responsibly and within the law.

I suggest that it was no part of the Information Commissioner’s responsibility to publish further material from Operation Motorman once he had reported to Parliament in What Price Privacy? and What Price Privacy Now? Having named the press titles mentioned in the material recovered from the private investigators, it was our judgement that it would have been irresponsible, disproportionate and possibly illegal to have published the names of individual journalists involved—or notified the subjects of individual enquiries. We could not have done this without first establishing in each case whether or not evidence of a Sec 55 offence existed. To do so would have involved the investigation of each line of journalistic enquiry to establish whether or not a public interest defence might have been advanced. Such a speculative fishing expedition would have been wholly unjustified and a misapplication of limited regulatory resources at a time when there were and are very many concerns of greater prima facie priority competing for our attention in the data protection sphere. In the absence of such evidence, publication would have laid the Information Commission himself open to a charge of illegally disclosing without a lawful purpose information acquired in the course of an investigation, in breach of Sec 59 of the DPA.
In response to your specific questions, I can confirm the following. The ICO spreadsheet does contain 1,027 lines of data. Line 1 contains a description of the column contents and lines 2—1,028 contain data. In the light of this, our column 477 contains the information referred to in your column 476 and likewise our column 558 relates to your 557.

The significance of colour coding and abbreviations can be explained as follows. The colour identifies what information had been obtained and the abbreviation used by the ICO to identify that type of information obtained.

- Yellow—XD (ex directory telephone numbers)
- Grey—Veh Reg (registered keeper details)
- Lt Green—Mob Conv (mobile conversion, number to subscriber details)
- Orange—Area (search to identify if target lived in specific geographic location)
- Dk Blue—Dir (director search at companies’ house)
- Purple—conversion (BT conversion as in mobile)
- Dk Pink—F&F (BT friends and families)
- Purple—CCJ (county court judgements)
- Green—CRO (criminal record check)
- White—Misc (telephone billing information, company enquiries etc)
- Orange—HPI (HPI check on vehicle, outstanding finance, accidents etc)

As to any further steps, we stand by our estimate of the response implications of carrying out a proper line by line redaction. I can also confirm that we are still willing to carry this out if the Select Committee can assure us that such an exercise is necessary and consider that it would be an appropriate use of public resources. Alternatively, we would be able to carry out the simple column by column redaction that you have mentioned very much more quickly.

But, in the light of what I have already said, full redaction would result in a document which was almost meaningless while anything less would set hares running with consequences which might be either unfair or illegal or both.

Christopher Graham
Information Commissioner
December 2009

Supplementary written evidence submitted by News International Ltd

Committee question 1:
Are Ross Hindley and Ross Hall one and the same person?

Answer:
Yes

Committee question 2:
Can you confirm his birth name is in fact Ross Hall and his date of birth is 31 January 1981 (making him 28, not 20 as Tom Crone told us Q 1369).

Answer:
We have always understood his birth name to be Ross Hindley. Regarding his age, yes, that is his birthday. Mr Crone’s answer was given in response to what seemed to be a provocative and inaccurate comment and question from Paul Farrelly. The context, seen on the film and transcript (relevant pages enclosed) shows he was doing his best to correct Mr Farrelly’s inaccurate suggestion that Ross Hall “had to go to Peru” because he was “posted there” by News Group Newspapers Ltd Mr Crone did not know Ross Hall’s exact age but understood him to be significantly younger than 28. He was trying to convey to Mr Farrelly that he was a very young man who had taken off to see the world and the exact answer he gave was “. . . He’s 20 years old; he’s got . . . however old he is . . .”—Mr Farrelly then interrupted with another question. Had Mr Crone been allowed to finish the answer, it might have been clear that he was not sure of the exact age.
Committee question 3:

Can you confirm that he is the same Ross Hindley, who is the nephew of former NotW editor Phil Hall, worked up to 2005 with the Romford Recorder and Ilford Recorder and was named Essex Young Journalist of the Year in 2004.

Answer:

Yes, he is Phil Hall’s nephew. Since he was around 15–16 years of age he worked on the News of the World during school and college holidays and quite often on Saturdays. His role seemed to have been as a messenger or as the person who, late on Saturdays, stood in at the Editor’s PA’s desk to mind the phone after the Editor’s PA left the office. We have no records of his other previous employment but understand he trained and worked for the Archant Group of newspapers in Essex for a while before coming full-time to the News of the World in 2005. We have (through Google) found a record of him being “highly commended” for Essex Young Journalist 2004 but not winning that award.

Committee question 4:

Can you confirm when he joined the staff of the NotW, that prior to 2005 he freelanced for NotW (and from when), and what his current employment position is (Tom Crone told us Hindley was then “in Peru” (Q 1364) and “on holiday” (Q1368)).

Answer:

Please see the previous answer. Our understanding is that Ross Hall is still on his travels. We have no knowledge whether he is currently employed.

Committee question 5:

Can you explain why he changed his name for bylines from Hindley, which he appears to have used in NotW up to September 2006, to Hall?

Answer:

We believe he took his mother’s maiden name (Hall) after and because his parents separated.

December 2009

Written evidence submitted by the Guardian News and Media Ltd

I write in response to the “supplementary written evidence” supplied to you recently by Carter-Ruck Solicitors, in the form of a letter which has now been made available on the Parliamentary website with the reference “PS 143”.

In that letter, the writer (Andrew Stephenson) refers to a brief conversation he had with you after the “Freedom of Expression Round Table” held by the JCHR in November 2009. I was present during the latter part of that conversation (between you, Mr Stephenson and Alasdair Pepper, also of Carter-Ruck), during which the possible provision to you by Carter-Ruck of some further information was mentioned. I specifically requested of Mr Stephenson that, if any further information was to be presented in relation to this matter, this should be considered first in consultation with me, so that, hopefully, something could be submitted jointly by Carter-Ruck and Guardian News & Media (“GNM”). I understood my request to have been received positively. I regret, therefore, that a response should have been submitted by Carter-Ruck alone, with no prior consultation with me. The appearance of the letter on your website was the first I knew of it.

I hope it will assist you and your Committee to have a short response on behalf of GNM on matters arising from the Carter-Ruck letter.

The Order made on 11 September 2009

At the outset, it is worth recording what the relevant part of the order made by Maddison J said (emphasis added):

“UPON it appearing to the Court (i) that the action is one likely to attract publicity, (ii) that publicity revealing the identity of the Applicants is likely unfairly to damage the interests of the Applicants, and (iii) that accordingly publication of details revealing the Applicant’s identity ought to be prohibited AND pursuant to the Contempt of Court Act 1981, section 11, the CPR Rules 5.4 and 39.2(4), and the inherent jurisdiction of the Court until the 18 September 2009 or other order:

(a) The application hearing to which this Order relates was held in private and the publication of all information relating to these proceedings or of information describing them or the intended claim is expressly prohibited.
That part of the Order was made by the judge in precisely the form that had been requested by Carter-Ruck, on behalf of their clients (“Trafigura”). It was, plainly, draconian in its effect. It was vigorously opposed by GNM at the hearing on 11 September 2009, on the grounds that there was no necessity for any such order being made in the circumstances of the case.

It was and remains the position of GNM that this part of the Order should never have been made. The High Court has recently underlined the importance of open justice, making plain that orders restricting reporting should be made only where “necessary”: see G & G v Wikimedia Foundation Inc [2009] EWHC 3148 (QB) (Tugendhat J). This underlines the point made by the Court of Appeal in Browne v Associated Newspapers Ltd [2008] QB 103 at [3], that anonymity was a course to be avoided unless required by justice.

The Order was to be the subject of further argument at another hearing. At that time, the parties anticipated that a further hearing was likely to take place within a week. In the event, no further hearing had in fact taken place by the time the events of 12 October occurred.

The wording of this part of the Order was, as I have said, submitted by Carter-Ruck. As you will appreciate, it does not provide, in relation to the existence of the proceedings or the identity of the claimants, any “public domain” or other exemption that would have expressly permitted reporting of Parliament. I should point out that, by contrast, there was such an exemption in the undertaking given by GNM in relation to the content of the Minton Report. It was in order to protect the contents and existence of this Report that Trafigura applied for the interim injunction on 11 September. The temporary undertaking, given by GNM pending the further hearing, prevented the publication of information (or purported information) derived “solely” from the Minton Report. It was contemplated by the parties, at the time, that this wording would permit the reporting of matters in the public domain, including reports of courts or Parliament. It is clear, therefore, that in relation to the existence of the Minton Report and its contents, GNM would have been able to report proceedings in Parliament.

The Parliamentary Question

I do not need to set out Mr Farrelly’s Parliamentary Question (“PQ”) in this letter. Suffice to say that it was tabled on 12 October and referred both to the existence of the proceedings against GNM and to the identity of the claimants (Trafigura).

Reporting the PQ: the effect of the order

There is no doubt that Maddison J’s order of 11 September 2009 had the effect of preventing GNM from reporting Mr Farrelly’s PQ—that is, it had the effect of preventing the reporting of Parliament. The contents of the PQ fell squarely within the wording of the order. There was no exemption for “public domain” or the reporting of Parliament.

The order had been made against GNM and “persons unknown” (suspected of having “leaked” the Minton Report). However, as you may know, Carter-Ruck had served that order on third parties—we do not know upon which parties, since Carter-Ruck declined to answer our questions about this at the time—”but we are aware that the order was served on a number of media organisations, including the publishers of The Independent and The Financial Times.

It follows that reporting of the PQ would have put at risk of an application for contempt of court not only GNM but also others served with the order by Carter-Ruck. That potential liability is in accordance with well-established legal principle (often referred to as the “Spycatcher” principle).

Reporting Parliament: the attitude of Trafigura and Carter-Ruck

Mr Stephenson refers to correspondence between Trafigura and GNM on 12 October 2009. At 13.06 on Monday 12 October 2009, having learned about the publication of Mr Farrelly’s PQ on the order paper that morning, and as a matter of courtesy given the wording of the Order, GNM’s legal department wrote to Carter-Ruck, drawing the PQ to their attention, stating that existence of the Minton Report and the injunction were now in the public domain and indicating that The Guardian wished to publish information about the PQ “tonight”. There can have been no doubt that what was in issue was The Guardian’s ability to report, contemporaneously, Parliamentary proceedings. In our view, the fact that the written question was on the Parliamentary website placed the existence of the injunction into the public domain.

Had there been no intention by Carter-Ruck (or their clients) to seek to impose any inhibition upon the reporting of Parliament, then a positive response to that effect might have been expected to GNM’s letter. Instead, Carter-Ruck’s reply, timed at 14.23, was to very different effect.
As you can see from that letter, which I am enclosing along with all the correspondence of 12 and 13 October, it does not say or suggest that Carter-Ruck had not been able to take instructions and, indeed, at one point, it specifically refers to their clients having “no confidence” that any reporting by the Guardian would be fair. Carter-Ruck questioned whether the reporting of the PQ on the parliamentary website placed the existence of the injunction in the public domain (a somewhat surprising suggestion but one which they did not in fact concede until midday on 13 October) and said that that was a matter that they wished to consider and take instructions on. Carter-Ruck asserted that:

“the threatened publication referring to existence of the injunction would, absent a variation to the Order, place the Guardian in contempt of court”.

Carter-Ruck asked for an immediate confirmation that the publication mentioned in our letter—that is, reporting of Parliament in the Guardian—would not take place. They complained that the deadline mentioned by us did not allow them time to consider the terms of a variation to the order (again, a somewhat surprising suggestion). Moreover, they claimed that:

“there is no urgency to the reporting . . .”

The letter ended with a complaint about GNM’s conduct of this matter and about costs.

GNM’s legal department replied to that letter at approximately 17.52. The letter asked Carter-Ruck to confirm, by 18.30, that their clients would agree to a variation of the Order. Wording was enclosed, which was entirely clear and straightforward. Again, if there was never any intention to impede reporting of Parliament, it could have been agreed to at once.

Carter-Ruck did not address the principle or the wording proposed by GNM. Instead, in their response at 18.37, Carter-Ruck again claimed “there is no urgency to this matter”. They stated that they would take instructions and “revert tomorrow”.

In these circumstances, it cannot credibly be disputed that GNM was being prevented by Carter Ruck from reporting Parliament, on legal grounds. There is no reason to doubt that, in the circumstances, publication by the Guardian of the PQ would have resulted in an application by Carter-Ruck to commit GNM for contempt of court, for breach of the plain words of the order quoted above. At the very least, GNM was on notice of an express threat of such application.

That being the position, the Guardian reported on matters as they then stood, so far as was permitted by the order, and gave notice of its intention to seek an urgent variation of the order the following day. This appeared to us to be the appropriate course to take.

The Guardian article (“Guardian gagged from reporting Parliament”)  
Mr Stephenson refers to the Guardian article of 13 October 2009, “Guardian gagged from reporting Parliament”. It is unfortunate that Mr Stephenson, who was not involved in handling this matter for Trafigura at Carter-Ruck, should have chosen to make a gratuitous, unfair and unfounded assertion that GNM is responsible for any “misapprehension” of the true position on the part of the public or Parliament.

As I have said above, it cannot be disputed that the Guardian was being prevented from reporting Parliament on legal grounds. As far as the reference to the Bill of Rights 1688 is concerned, mentioned by Mr Stephenson if only to dismiss it, this lies at the heart of the matter. The Bill of Rights declared and asserted certain “ancient rights and liberties”. These included “That the freedom of speech and proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”. It continues “And they do claim, demand and insist upon . . . that no declarations, judgments, doings or proceedings to the prejudice of the people in any of the said premises ought in any wise to be drawn hereafter into consequence or example”.

It is from this that the freedom and right of the media to report parliamentary proceedings is derived. As the article reported:

“The right to report parliament was the subject of many struggles in the 18th century, with the MP and journalist John Wilkes fighting every authority—up to the king—over the right to keep the public informed. After Wilkes’s battle, wrote the historian Robert Hargreaves, “it gradually became accepted that the public had a constitutional right to know what their elected representatives were up to”.

As Lord Denning stated in the 1970s in the context of contempt of court in relation to reporting on Thalidomide (AG v Times Newspapers Ltd [1973] 1 QB 710 CA at 741), “whatever comments are made in parliament” can be reported in newspapers without fear of contempt (emphasis added).

It is our view, therefore, that the Bill of Rights does have a direct bearing on matters. It proclaims the right to freedom of expression within Parliament, on which the right freely to report parliament is founded.
Finally, Mr Stephenson asserts that there “has never been any suggestion” on the part of Carter-Ruck that any order in the Trafigura case “could or would have the effect of restraining debate within Parliament itself”. In this regard, I refer to Carter-Ruck’s letter of 14 October 2009, directed to The Speaker and issued with a press release by the firm (through another partner, Adam Tudor, who had conduct of the case), copies of which are available on the Carter Ruck web site at http://www.carter-ruck.com/Documents//Letter-Right_Hon_John_Bercow-141009.PDF and http://www.carter-ruck.com/Documents//Trafigura_Guardian-Press_Release-141009.pdf

While acknowledging that the effect of the “sub judice” rule was one for the Speaker’s “discretion”, Carter-Ruck asserted expressly that the proceedings between Trafigura and GNM were “active”, thereby suggesting plainly that, in their view, they should not be the subject of any discussion or debate in Parliament.

Conclusion

I do not propose to comment on the remainder of Mr Stephenson’s letter. Please let me know if there are any matters with which you would like GNM to deal or if you require any further information from us.

Gillian Phillips
Director of Editorial Legal Services
9 December 2009

Letter from the Guardian News and Media Ltd to Carter-Ruck Solicitors, dated 12 October 2009

(1) RJW and (2) SJW v (1) Guardian News and Media Limited and (2) Persons unknown

We attach a list of questions tabled for a written answer from the Secretary of State for Justice on 14 October 2009 which has been published on the www.parliament.co.uk website. It refers to the injunction obtained by your clients on 11 September 2009.

In light of this publication the existence of the injunction and the Minton report are now in the public domain. In view of this and the fact that our client agreed to accept the wording of the undertaking relying on your clients’ leading counsel Richard Spearman QC’s specific statement that the undertaking/injunction bound our client only insofar as any information derived “solely” from the Minton report and not from information published in some other way, our client believes it can now refer to these matters. Our client intends to publish information about this parliamentary question referring to the existence of the injunction obtained by your client tonight.

In light of the publication of this parliamentary question our client also believes that the anonymity order should now be discharged.

Isobel Griffiths
In-house lawyer

Letter from Carter-Ruck Solicitors to Guardian News and Media Ltd, dated 12 October 2009

(1) RJW and (2) SJW v (1) The Guardian (2) Persons unknown

We write in reply to your letter of today’s date, sent shortly after 1pm.

The Minton report

On one interpretation, at the beginning of the second paragraph of your letter, you appear to suggest that the question tabled by Mr Farrelly places the draft Minton report in the public domain. It does not, on any view.

The question contains no information concerning the nature or content of the report or any information derived from it. As such, the proviso to which you refer does not allow you (or any other party with notice of the Order of Maddison J of 11 September 2009) to publish any part of the draft Minton report or any information derived from it.

Any such publication by the Guardian would be a breach of the undertaking which the Guardian gave to the Court on 18 September 2008 and which is recorded in recital A to the Order of Sweeney J of that date. Such publication would, therefore, be a contempt of Court.

Any such publication by the Guardian or any other party on notice of the injunction would also be a contempt of Court by reason of paragraph 7A of the Order of Maddison J and the operation of the Spycatcher principle whereby interim injunctions in confidence bind third parties on notice of the terms of the injunction.
Please therefore confirm by immediate return that Guardian News and Media Limited does not intend to publish any part of the Minton report or any information derived from it.

The Injunction and these proceedings

On a separate but related matter, the proviso to which you refer in your letter does not, of course, apply to the anonymity provisions concerning the injunction and these proceedings.

The Guardian undertook to the Court on 18 September 2009 not to publish communicate or disclose “(i) the information that the Claimants have obtained an Injunction and/or (ii) the existence of these proceedings and/or (iii) the Claimants' interest in these proceedings” and not to cause or authorise any other person to do so. There is no public domain, or other similar, proviso to that undertaking.

Further, the court ordered on 18 September 2009 (with your consent) that the anonymity provisions in paragraphs 5(a)—(c) of the Order of Maddison J be extended until the determination of our clients’ application by the Application Notice dated 11 September 2009.

Paragraph 5(a) of the Order of Maddison J states “the application to which this Order relates was held in private and the publication of all information relating to these proceedings or of information describing them or the intended claim is prohibited”. Again there is no public domain, or other relevant, proviso to the Order either of Maddison J or of Sweeney J.

In the circumstances the threatened publication referring to the existence of the injunction would, absent a variation to the Orders, place the Guardian in contempt of Court.

Accordingly, please confirm by immediate return that the publications threatened will not take place.

Public domain—Anonymity

It is not obvious to us that the reporting of this written question on the Parliament website places the existence of the injunction in the public domain. That is a matter which we wish to consider and take instructions on. We have not been able to in the time since we received your letter.

Nor, given the matters previously referred to in correspondence—particularly the potential breaches of the order already effected by the Guardian—do our clients have any confident that any reporting by the Guardian of these proceedings is likely to reflect fairly the circumstances which led our client to obtain the Orders referred to.

If there is to be any relaxation of the anonymity provisions as a result of this written question, or as a result of other developments referred to in the discussions already taking place between us in other correspondence, then, given the presence of the persons unknown as parties to the Orders and these proceedings, that would have to be approved by the Court. The terms of any variation would need to be carefully considered.

The publication deadline which you threaten does not allow that. There is no urgency on the reporting which you threaten which requires the matter to be approached without due care or without proper consideration of the position of the other parties to the proceedings.

It is regrettable that once again, the Guardian’s reckless actions in this matter only serve to increase the costs which our client has had to incur. Finally, please inform us as to when Mr Leigh, any other Guardian journalist and/or your department first learned that this Parliamentary question was likely to be tabled. Please also confirm, by return, whether any such person provided Mr Farrelly with any of the information upon which he apparently bases his question.

Carter-Ruck

Letter from Guardian News & Media Ltd to Carter-Ruck, dated 12 October 2009

(1) RJW and (2) SJW v (1) Guardian News and Media Limited and (2) Persons unknown

Thank you for your letter of today’s date.

The Minton Report

For the avoidance of doubt it is not and has never been our client’s intention to publish any part of the Minton report or information derived from it today. Our client is aware of the terms of the undertaking that it entered into on 11 September 2009 and which it agreed it would continued to be bound by on 18 September 2009.
Anonymity order

In view of the fact that the written question on the Parliamentary website has placed the existence of the injunction into the public domain please can you indicate by 6.30pm if your clients will agree to a variation of the court order to include a public domain exception. Our client proposes that a public domain exception is added to the order in the following terms:

PROVIDING THAT the undertakings given by the First Defendant shall not prevent it from publishing, communicating or disclosing any material which after the date of this Order, and otherwise than as a result of a breach of (a) this Order; (b) the Order of Sweeney J of 18 September 2009 or (c) the Order of Maddison J of 11 September 2009, comes into the public domain, by way of

(a) publication in any United Kingdom or European national or regional newspaper or magazine (whether in hard copy form or on any website controlled by the publisher of any such newspaper or magazine);

(b) publication in any broadcast by a United Kingdom or European broadcaster (whether on air or on any website controlled by the broadcaster);

(c) publication or disclosure by or in proceedings in public of a legislature anywhere in the world;

(d) disclosure in or by any public inquiry;

(e) publication or disclosure to the public by any government or government department;

(f) publication or disclosure by or in the course of proceedings of any international organisation or international conference; or

(g) disclosure in or in relation to court proceedings in public anywhere in the world.

If your clients do not agree to the terms of this reasonable public domain exception our client will be forced to apply immediately to the court for a variation of the order.

Isobel Griffiths
In-house lawyer

Letter from Carter-Ruck to the Guardian News and Media Ltd, dated 12 October 2009

(1) RJW (2) SJW and—(1) The Guardian (2) Persons Unknown

We refer to your second letter of today’s date, received by fax at 17:52.

We find the contents of this letter bizarre; as we pointed out in our earlier letter of today, there is clearly no urgency to this matter.

As we also pointed out, any variation of the undertakings and Orders previously given clearly requires careful drafting. We do not consider that even your suggested variation would indeed allow you to publish the article you have proposed.

Furthermore, the Orders of Maddison J and Sweeney J of course bind not just Guardian News & Media Ltd but also persons unknown and for this reason (amongst others) it will be necessary for the Court to consider and approve the terms of any variation which may be proposed by either party.

We will take instructions on your request to vary the terms of the undertaking to which you previously consented, and will revert as soon as possible tomorrow.

In the meantime, we note that you have not answered any of the questions posed in the final paragraph of our first letter of today’s date, and would ask that you now do so.

Carter-Ruck

Letter from the Guardian News and Media Ltd to Carter-Ruck Solicitors, dated 13 October 2009

(1) RJW and (2) SJW v (1) Guardian News and Media Limited and (2) Persons unknown

Thank you for your second letter of 12 October 2009.

Our client is going to apply to court today to seek an amendment of the existing order to allow it to report Parliamentary proceedings. We hope, and hereby put you on notice to the effect, to be before the court at 2.00pm, or as soon as possible. Although, as previously advised, it also seeks a variation of the anonymity provisions of the order and the addition of a public domain exception those matters can be dealt with separately and save to the extent that the Parliamentary Question issue impacts on them our client does not intend to address those issues in its application today.
With a view to trying to agree the terms of a variation without the necessity of applying to court we attach a first draft of the wording below:

For the avoidance of doubt, nothing in the order of Maddison J of 11 September 2009 and/or Sweeney J of 18 September 2009 shall prevent Guardian News and Media Limited or any other person from reporting upon:

(a) any proceedings of the United Kingdom Parliament, including any information or matter published on the website www.parliament.uk

(b) any proceedings of the Scottish Parliament, including any information or matter published on the website www.scottish.parliament.uk

(c) any proceedings of the National Assembly for Wales including any information or matter published on the website www.assemblywales.org; or

(d) any proceedings of the Northern Ireland Assembly and any information or matter published on the website www.niassembly.gov.uk

We are willing to discuss reasonable amendments to this proposed wording.

Please can you state exactly what your clients are alleging about our client and the basis upon which your clients are making this allegation? Please can you also send us a list of all those on whom your clients have served a copy of the injunction of 11 September 2009.

Isobel Griffi

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In-house lawyer

Letter from the Guardian News and Media Ltd to Carter-Ruck Solicitors, dated 13 October 2009

(1) RJW and (2) SJW v (1) Guardian News and Media Limited and (2) Persons unknown

Further to our letter of today please see the attached copy of an article that has appeared in the latest issue of Private Eye (16—29 October 2009 Issue No 1247).

Please can we hear from you as soon as possible in response to our draft wording with a view to trying to agree a variation to the order without the necessity of a court hearing.

Isobel Griffi

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In-house lawyer

Letter from the Guardian News and Media Ltd to Carter-Ruck Solicitors, dated 13 October 2009

(1) RJW and (2) SJW v (1) Guardian News and Media Limited and (2) Persons unknown

Further to our letters of today’s date we have now become aware that information about Paul Farrelly MP’s parliamentary question has been published:

(1) by the Spectator on their website http://www.spectator.co.uk/alexmassie/5417651/british-press-banned-from-reporting-parliament-seriously.shtml

(2) by the blogger Guido Fawkes on his website http://order-order.com/

(3) by the Liberal Democrat leader Nick Clegg on his website http://www.libdemvoice.org/nick-clegg-tweets-about-trafigura-and-carterruck-16497.html

in addition to the article on page 8 of the latest edition of Private Eye (which we sent to you with our previous letter).

We understand that the Liberal Democrats this morning moved to table an urgent question to Jack Straw, Justice Secretary and Lord Chancellor. David Heath MP says that he wants ‘To ask the Lord Chancellor if he will make a statement on the prevention of reporting of parliamentary proceedings by means of legal injunction. Paul Burstow MP asked the Speaker to ‘give consideration to an urgent debate under Standing Order 24 on the freedom to report on Parliamentary proceedings.

In light of these developments please can you confirm by 12pm today to a variation of the order that will allow our client to publish information about this parliamentary question.

Isobel Griffi

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In-house lawyer

Letter from Carter Ruck Solicitors to the Guardian News and Media Ltd, dated 13 October 2009

(1) RJW (2) SJW—and—(1)The Guardian (2) Persons Unknown

We refer to your faxed letter received earlier this morning.

We were bemused to read the article published yesterday evening on the Guardian’s website and in the hard copy edition of today’s newspaper.

As you are aware, this article completely misrepresents the proceedings between our client and The Guardian.
You are well aware that, having notified us only yesterday afternoon of the proposed Parliamentary Question, we made clear to you the effect of the existing Order (we also remind you that The Guardian consented to the relevant provisions of that Order on 18 September). You clearly accepted our interpretation of the Order and, given the proposal you have made this morning, you also appear to have accepted that the formulation for dealing with the situation which had arisen and which you proposed in your fax of 17:52 last night, would not have assisted either.

More to the point we made clear to you last night that we would revert to you as soon as possible today. As we understand it, the Parliamentary Question has been tabled for tomorrow, which renders even more absurd the tone and implication of today’s article. It is clear that you anticipated that we would seek to resolve the matter today, but chose instead to rush out a highly misleading article.

We remind you that you first notified us of the impending Parliamentary Question shortly after 1pm yesterday. We repeat our request that you confirm when Mr Leigh, any other Guardian journalist and/or your department first learned that the Question was likely to be tabled.

Moving forward, we note the contents of your fax of this morning. As you know, when the Order of 11 September 2009 was approved by Maddison J and when the Guardian agreed to provide undertakings then and on 18 September, neither side (nor the Court) had in contemplation that the subject of these proceedings would be the focus of a Parliamentary Question. Had the parties so contemplated, no doubt the Order could and would have been formulated in such a way as to take account of that possibility. Now that such a Parliamentary Question has been put forward, we agree that it is appropriate that the terms of the Order are revisited.

We confirm our client’s consent to the draft wording which you have proposed.

Carter-Ruck

Carter-Ruck Solicitors—Press release

Date 14 October 2009

TRAFIGURA LIMITED AND TRAFIGURA BEHEER BV

Following comments in Parliament today and widespread media misreporting of this matter, Carter-Ruck (on Trafigura’s and its own behalf) has today written to the Speaker of the House of Commons.

Our letter, a copy of which is attached, is also being copied to all Members of Parliament, Members of the House of Lords and the Ministry of Justice.

Adam Tudor
Isabel Hudson

Letter from Carter-Ruck Solicitors to The Right Honourable John Bercow, Speaker of the House of Commons, dated 14 October 2009

Trafigura Limited and Trafigura Beheer BV

We represent Trafigura Limited and Trafigura Beheer BV ("Trafigura") and we write this letter on their and this firm’s joint behalves.

Trafigura is the subject of a question by Paul Farrelly, MP for Newcastle-under-Lyme, submitted on 12 October on the Parliament website, for written answer by the Ministry of Justice today:

Paul Farrelly (Newcastle-under-Lyme): To ask the Secretary of State for Justice, what assessment he has made of the effectiveness of legislation to protect (a) whistleblowers and (b) press freedom following the injunctions obtained in the High court by (i) Barclays and Freshfields solicitors on 19 March 2009 on the publication of internal Barclays reports documenting alleged tax avoidance schemes and (ii) Trafigura and Carter-Ruck solicitors on 11 September 2009 on the publication of the Minton report on the alleged dumping of toxic waste in the Ivory Coast, commissioned by Trafigura.

As you will be aware, Mr Farrelly’s question was then the subject of an article published on The Guardian’s website on the evening of 12 October and on the front page of the hard copy edition of yesterday’s newspaper under the headline “Guardian gagged from reporting Parliament”. As you are also aware, that in turn led to substantial further media coverage both in The Guardian and elsewhere. Furthermore, it was referred to by a number of Members in the Chamber yesterday afternoon and again today.

Unfortunately, much of the media coverage—both in The Guardian and elsewhere—has been highly misleading, and we are concerned that this has, in turn, led to Members of Parliament being misinformed. Accordingly, the purpose of this letter is to make clear the correct position, so that any future consideration of the matter by Parliament can take place on an informed basis.
The Injunction Order

It is the case that, since 11 September 2009 an Order has been in place against The Guardian and Person Unknown. It should also be stressed that, since 18 September 2009, The Guardian has consented to that Order remaining in place pending resolution of this matter.

Until that resolution, it is not appropriate to comment on the substance of the Order, other than to make clear that we and our clients are in no doubt that it was entirely appropriate for us to seek the injunctive relief in question; and that it was correctly consented to by The Guardian and granted by the High Court according to established legal principles.

Clearly, the question of whether this matter is sub judice is entirely a matter for your discretion, although we would observe that we believe the proceedings to have been and to remain “active” within the definition of House Resolution CJ (2001–02) 194-195 of 15 November 2001 in that arrangements have been made for the hearing of an application before the Court.

It is important to stress that, contrary to the clear impression given by The Guardian’s article, there has never been any question of Trafigura applying for an injunction that had as its purpose the prevention of publication of any matter arising in Parliament. No such application has ever been made.

Furthermore, when the Order was made (and endorsed by the High Court) none of the parties or the Court had in contemplation the possibility of this matter being raised in the UK Parliament. If they had, then the Order may well have been formulated in such a way as to allow for such reporting.

Be that as it may, as in fact formulated (and as The Guardian apparently accepted) reporting on the Parliamentary Question which had been tabled for answer today would have placed The Guardian in breach of the Order.

We should stress that the very first occasion upon which Mr Farrelly’s Written Question came to our attention was when The Guardian faxed it to us on the afternoon of 12 October, indicating (among other things) that they intended to publish information about Mr Farrelly’s Written Question that night.

In response we pointed out that the threatened publications would breach the terms of the injunction Order and indeed that, absent a variation to the Orders, would place The Guardian in contempt of Court. That being the case, we sought The Guardian’s confirmation that they would not so publish.

The correspondence culminated in us confirming, that evening, that we would take instructions from our clients on The Guardian’s request to vary the terms of the Undertakings/Order, and that we would revert “as soon as possible tomorrow” (Tuesday 13 October). Given that the Written Question was not due to be answered for another two days, and given that The Guardian had only raised the matter earlier that afternoon, we believe that response was entirely reasonable.

Despite (or perhaps because of) that response, later that evening The Guardian chose to publish their article online and subsequently on the front page of yesterday’s hard copy.

The following day, the parties duly agreed an appropriate amendment to the injunction Orders stating that nothing in those Orders would prevent reporting of UK Parliament Proceedings.

As is demonstrated by the subsequent media and Parliamentary reaction to it, the clear implication of The Guardian’s coverage is that an injunction had been obtained for the purpose of restricting publication of a report of proceedings in Parliament. As we hope is clear from what we say above, that is simply not correct. We trust that we have made the position clear; needless to say, please do not hesitate to contact us should you require any further information.

Carter-Ruck

Supplementary written evidence submitted by the Press Complaints Commission

The Committee asked if Baroness Buscombe would amplify her comment to the Independent on Sunday (22 November edition) that: “The remit of the PCC is set by PressBoF, and we have already stretched our remit through this whole process.”

The remit is set by the industry through the Press Standards Board of Finance). This is one of the basic features of self-regulation. The industry itself has to be, by definition, the starting point for a system of self-regulation.

However, while the industry decides what should be regulated (ie a general commitment to regulating “editorial content of newspapers and magazines in the UK”, coupled with the more specific requirements of the Editors’ Code of Practice), that should not suggest that it directs the day-to-day work of the PCC. The PCC takes the remit and then decides how it should be done, and has complete operational independence in doing so. For example, when the remit of the PCC needs changing (as happened a couple of years ago in relation to audio-visual material online), the PCC can initiate the discussion and argue in favour of a change, but the ultimate responsibility is one for PressBoF. The attached announcement, “PCC’s remit extended to include editorial audio-visual material on newspaper and magazine websites” makes this clear.
You will see that this is an announcement by PressBoF. Since then, the way in which the PCC has applied the terms of the Code in relation to audio-visual material has been a matter for it alone.

December 2009

Written evidence submitted by Sir David Eady: Speech on Privacy to TIPLO (The Intellectual Property Lawyers’ Association), House of Lords, 18 February 2009

Whenever I am asked to say a few words about privacy, it always seems to me that the natural starting-point has to be the era that we can now look back on as our nadir on the Article 8 front—namely the 1980s and early 90s.

This was a period in which there was such a level of tabloid intrusion into private lives that it gave rise to significant public disquiet. One example will suffice. There was the use of long distance photography to intrude through a hospital window upon the bed of a TV presenter called Russell Harty as he lay in extremis. Public concern was such that the government felt obliged to do something about it. As often happened in these circumstances, it was possible to kick the issue into the relatively long grass by appointing a committee.

And so Douglas Hurd, in July 1989, set up a committee under the chairmanship of the late David Calcutt QC, with its own premises and staff, to investigate the evidence. As it turned out, this took nearly a year and the report was presented to the then Home Secretary in June 1990.

In the midst of their deliberations, in January 1990, a team from the Sunday Sport burst in (as you know) on the actor Gordon Kaye, as he lay in his bed after brain surgery, took photographs of him and purported to conduct an interview. This gave rise to court proceedings in which such remedies were claimed as were then available, and it led to the Court of Appeal bewailing the absence of a law of privacy and expressing the hope that there might be legislative change following the committee’s report. The case was reported in FSR 1990.

The immediate recommendation contained in the report was not for legislation at that juncture, because not all the members were in favour of it. What was proposed was the abolition of the ailing Press Council and to give self-regulation a further (supposedly final) chance by setting up the Press Complaints Commission. Nevertheless, it was acknowledged that legislation for the protection of privacy by means of a statutory tort would be possible. The view was not taken, as many had been suggesting up to that time, that these values were too vague to reduce into legislative drafting.

The two lawyers on the committee (in addition to the Chairman) were John Spencer of Cambridge and myself. We worked out a possible statutory tort that would, if it proved necessary, be workable in practice. It obviously provided for a public interest defence, along similar lines to that contained in the draft PCC Code, attached to the report, which was broadly adopted by the PCC when it came into existence in January 1991.

The statutory tort would in some ways have been less restrictive of the media than the law of privacy as it has subsequently developed. For example, it would have excluded anything touching on the conduct of a business, trade or profession, and it would have been directed purely at the protection of personal life. It would also have excluded anything occurring in a public place. It now seems rather old-fashioned and simplistic. We were, rather naively perhaps, attempting to achieve certainty and predictability. Anyway, that was not adopted by the legislature. Instead, ministers were heard to say at the time, on more than one occasion, that it was best to trust an independent judiciary to develop the common law by reference to Articles 8 and 10 of the European Convention. That is not a view one hears much about these days, since in certain quarters the process is thought to have gone too far in the wrong direction. It has become fashionable to label judges, not as independent, but rather as “unaccountable”. Following measured representations from the Daily Mail, the Justice Secretary has recently announced that something called a statutory “nudge” may after all be required.

But back to 1990. What ministers meant, at the time, was of course that judges should develop the existing law of confidence as largely defined by Coco v Clark and, most recently, in the Spycatcher case in the House of Lords: Att Gen v Guardian (No 2), in which Lord Goff, in particular, had referred to what he called the “limiting principles”, whereby obligations of confidence could be overridden if, for example, the public interest required it, or the relevant information was so far into the public domain that there was nothing confidential left to protect, or where the information was so trivial as not to justify the intervention of the law.

For the next decade or so, any such development was rather confined by the traditional perception that duties of confidence could only be enforced in the context of a pre-existing relationship, recognized either in equity or in contract.

The law did extend so far as to acknowledge that, if confidential information was leaked to a journalist by someone who was subject to such a duty, then the journalist too could be regarded by extension as similarly constrained. But there were some who argued that, eg in a case like that of Gordon Kaye, a corresponding
duty should be imposed where it was obvious just from the intimate nature of the information itself, or from the circumstances in which it was purloined, that there should be such a duty. In other words, it was artificial to insist upon the requirement for a pre-existing relationship.

Some of you may recall, in August 1992, that the Duchess of York ran into a spot of bother while on a continental holiday with a Texan accountant, who was described as her “financial adviser”. Some photographs were obtained of them by the pool, from a distant hillside through a telephoto lens, while the adviser was taking a particularly close interest in her toes. I was instructed to go over to see the vacation judge, who happened to be David Latham, to seek an injunction. I argued that the information contained in the photographs was plainly so intimate and personal, and that the method by which it had been obtained so intrusive, that it must be obvious to any reasonable onlooker that it should be treated as confidential—just as much as if the photographs had been taken and supplied by a disloyal employee. That was rejected on the basis that I was behaving as though there was already a law of privacy in place. That there was not had been definitively stated recently by the Court of Appeal in the Gordon Kaye case.

So we remained at an impasse and any judicial development, as rather encouraged by ministers at the time, had at that point hit the buffers.

It is probably fair to say that little happened until after the Human Rights Act came into effect in 2000 and, in particular, until May 2004 when the House of Lords addressed the facts of the Naomi Campbell case (decided 3–2 on the actual result).

What proved to be of special significance was the recognition of two principles in particular. First, that the law might enforce a citizen’s reasonable expectation of privacy in respect simply of personal information (ie regardless of any pre-existing relationship of confidence). Second, such a right could be enforced horizontally by reference to Article 8, as between citizens. There was opened up the intriguing possibility of claims by an individual citizen against a newspaper or media group. That was clearly going to make a significant difference, although it was not necessarily spotted at the time by editors just how significant.

Their Lordships sanctioned in that case, and a year later in Re S (A Child), what was called the “new methodology” for resolving conflicts between Competing Convention rights. The scale of this innovation is now reflected in the outrage increasingly voiced in media commentaries.

The methodology has the following consequences:

1. No one Convention right can take automatic precedence over another (so that freedom of speech, for example, is not accorded the overwhelming priority that the common law had given it hitherto—as in the so-called rule in Bonnard v Perryman).

2. It is for judges to weigh up the competing interests, on the particular facts of the case, and to decide if there is a reasonable expectation on the part of the individual claimant in respect of the particular information, and, if there is, to carry out the “ultimate balancing exercise” to decide whether there is nonetheless an overriding public interest in according priority to someone else’s freedom of speech.

3. This obviously means that generalities will never provide a complete answer, eg that the particular claimant is a “public figure” or a “role model” and can therefore expect little or no privacy or, again, that he or she has sought publicity in the past and is therefore to be regarded as fair game by the media.

4. This will often involve the judge investigating the defendant’s motive for using the right of free speech and grading those motives (as between at one extreme eg “political speech” and at the other what has been called in the House of Lords “tittle tattle”). This is a fundamental shift in our approach to free speech.

5. The new methodology involved, and particularly at first, a degree of uncertainty in the law and in an editor’s ability to judge the likely lawfulness or otherwise of a proposed course of conduct.

6. To add insult to injury, it has been said several times in the Court of Appeal that the balancing exercise is one in which the Court of Appeal is unlikely to interfere if the judge has asked himself or herself the right questions—and, let us face it, the questions to be asked are so straightforward that it would be quite difficult to get them wrong.

7. So, there being little opportunity for an appeal, the media have nowhere to vent their frustrations other than by abusing the referee in the particular case. Some of you may know that certain judges have come under increasingly hysterical attack, in the media, simply because it is easier than going by way of appeal. One in particular has been accused of “moral and social nihilism”, “arrogance”, “immorality”, “amorality” and of favouring privacy because he is “painfully shy”: and of combining all that with being “a frozen haddock”. This is natural, if there is no other way of letting off steam. I think it simply has to be recognized as an inevitable consequence of adopting the balancing approach and the “intense focus” on the particular facts of the case.

It always seemed natural to me that if a law of individual privacy were to be adopted and enforced, that should be by way of the legislature. In fact it has happened at one remove as an inevitable consequence of the enactment of the Human Rights Act. Yet even if Parliament had legislated more specifically, whether for the protection of privacy or to give a “nudge” in the opposite direction, it could only be expressed in general
terms, such as contemplated in the Calcutt Report, or by simply setting Article 8 values alongside those of Article 10. It would be hopeless to try to get down to the level of micro-management and cater for every situation that is likely to come before the courts. One never ceases to be amazed by the extraordinary range of scenarios that present themselves. No legislator could possibly think them up in advance. So, however it is done, there is no other practical way of developing a means of protecting Article 8 rights than by leaving judges to weigh up the competing interests of the parties concerned.

It is true that there remain some important uncertainties of principle confronting courts and journalists at the moment. For example, will the rule in Bonnard v Perryman survive scrutiny in the light of the Strasbourg jurisprudence, given that its effect is to build in an automatic priority for Article 10? Again, what is the position in this jurisdiction about photographs taken of celebrities in public places? Is the Princess Caroline case to be taken at face value? Will it only be permitted if it makes a contribution to a public debate? The outcome could have far-reaching impact on paparazzi and tabloid culture following the Court of Appeal’s inevitably tentative pre-trial decision in Murray v Express Newspapers (the J K Rowling case).

On the other hand, in an amazingly short space of time, a whole raft of sub-principles has begun to emerge from the relatively few cases decided over the last three to four years. Such unusual situations have presented themselves to the courts, with so many facets in each, that quite a lot of uncertainties have already been ironed out. There is only time for a few examples:

(1) First, in the context of personal information, it will not necessarily be an answer to say that it is trivial, or that it would fail Sir Robert Megarry’s Coco v Clark test of having about it the “necessary quality of confidence”. If it is intimate and personal, it may still be protected, as the Court of Appeal has confirmed even in relation to the furnishing and domestic hygiene arrangements of Ms Loreena McKennitt in McKennitt v Ash.

(2) The fact that you have given interviews or otherwise gone public about aspects of your private life does not mean, in itself, that the relevant “zone” of your personal life is therefore up for grabs generally by others who may wish to explore it or speculate upon it. You can to an extent choose how far to lift the veil: see Douglas v Hello! and McKennitt v Ash, in which Richard Buxton said: “If information is my private property, it is for me to decide how much of it should be published”.

(3) It soon became established in McKennitt and in the Lord Browne of Madingley case, also in the Court of Appeal, that a remedy will lie in respect of intrusive information, whether it is true or false. It follows that a claimant is not forced to go through an article about (say) his or her sex life or his or her state of health, in order to reveal that some aspects are true and others false. That would defeat the object of the exercise. Any speculation or factual assertions on private matters, whether true or false, can give rise to a cause of action.

(4) Where the subject-matter is inherently private, such as sexual behaviour, it is not for judges to refuse a remedy on grounds of distaste or moral disapproval, or to accord protection on a graduated basis, according to how conventional or unconventional the sexual activity may be. There is no logic to the stance taken a few years ago (in A v B Plc) that marital relations are entitled to greater privacy protection than a footballer’s one night stand. (It was not only this that did for the Claimant, of course. One of the more curious findings was that he was a role model—because he played for Blackburn Rovers.)

(5) Another argument that succeeded in that case was that the two young women concerned should be allowed to tell their story (albeit “salacious”). The case of A v B Plc has subsequently been described in the Court of Appeal as in certain respects incompatible with the Princess Caroline case. It will not now necessarily avail a defendant to say “I am only recounting my own life story and so I can mention the claimant because he or she is part of it”. It was an argument that was tried and failed in McKennitt v Ash. In those circumstances, it is still necessary to carry out the balancing exercise between competing interests. One person’s life story cannot be uninhibitedly told if it encroaches, to an unacceptable degree, on another person’s reasonable expectation of privacy. This clearly has implications for kiss and tell stories.

(6) I just have time for one more example. I cite it simply because the name of the case is one of my favourites: X & Y v Persons Unknown [2007] HRLR 4. It has become quite common for celebrities to seek an injunction urgently of the John Doe variety—against persons unknown. Typically, they will have got wind from a journalist of a story in the offing, based on revelations by an unidentified friend or acquaintance. If his John Doe injunction is then served on any newspaper he suspects of involvement, that can be an effective way of spiking the plans of the unknown culprit. That is because of the Spycatcher doctrine, whereby even though the newspaper is not a party, it can still be liable for criminal contempt if it publishes the story knowing of the prohibition against the “persons unknown”. In X v Y a procedure was worked out of giving notice to potential media respondents to give them a chance to be heard on the scope of the order. That is appropriate because their Article 10 rights are potentially involved. They are notified of the information which is to be the subject of protection by means of a confidential schedule attached to the order or draft order. So far that seems to be working pretty well.
Things now seem to be settling down remarkably quickly after a period of minor upheaval. The commentator Roy Greenslade only three weeks ago claimed that he had seen one Sunday tabloid “turning the corner” and “cleaning up its act”. He thought the editor showed signs (for whatever reason) of moving away from sleazy stories originating in the bedroom. Whether he is right or not we shall see. From the coal face, however, it does seem that there are now very few privacy cases being contested. Often when there is the notification and the threat of an injunction, the journalists and in house lawyers will give an undertaking, because they are able to spot very quickly (especially in the light of the Strasbourg approach) what is and what is not within bounds. The rarity of contested claims is largely because there are so few stories where there is any hope of a public interest defence (as was argued, with at least partial success, in Lord Browne of Madingley).

So we have come, for good or for ill (and it is not for me to say which), a very long way in a short space of time. Gordon Kaye and Russell Harty would now obtain a remedy so easily that the newspapers would know that such conduct was out of bounds—without even having to ask a lawyer.

Memorandum from Rebekah Brooks, Chief Executive Officer, News International

Thank you for your letter of 15 December. You refer to three “broad areas” in which the Committee wishes to ask me questions. Though I always have been, and remain, wholly committed to assisting the Committee in its inquiry, I do not see how my attendance before the Committee can or will assist it in any way on these issues for the following reasons:

— On the supposed “incongruity” between the handling of the various employment matters to which your letter refers, I have no personal knowledge of these matters (or the internal decision-making process around them). The Matt Driscoll case was a News of the World matter and the initial events giving rise to it, I understand, predate Colin Myler’s editorship.

— On Ross Hindley, an email was sent by Fred Michel of News Corporation to Tracey Garratty on 8 December in answer to specific questions raised by the Committee. I cannot add anything to what was written in that email. Nor can I comment on Mr. Crone’s evidence which, as you know, was given when I was Editor of the Sun.

— You refer incorrectly to “inappropriate action by News International journalists”. The issues giving rise to the Committee’s examination of various current and former News International and News of the World employees are specific to the News of the World and do not relate (as far as I am aware) to the other News International national newspapers any more than they do to any other national newspapers.

Perhaps you could let me know whether the Committee intends to ask the chief executives of other national newspaper groups a similar question?

As the Committee knows, Colin Myler has previously informed the Committee in detail as to the particular measures taken by him at the News of the World to address such issues and I (having now been Chief Executive of News International for four months) will ensure that proper journalistic standards continue to be applied across all our titles. We will, of course, study in detail the Report the Committee makes to the House to see if we can improve still further our internal procedures in the light of any findings set out in the Report.

Given the above, I hope you and your colleagues agree that my attendance before the Committee to face questions on the three areas to which you refer would be pointless and a waste of the Committee’s time. As I have said before, if there are other matters being investigated by yourselves and on which you and your colleagues feel I may have direct knowledge, I remain very happy to be of assistance.

I should conclude by noting that, given my clear commitment to assisting the Committee, I am very surprised at the threat of coercion made in your letter which, I am sure you must agree, is inappropriate.

Rebekah Brooks
4 January 2010

Annex

Extract of the letter from the Culture, Media and Sport Committee to News International Ltd, dated 15 December 2009

You ask why your appearance before the Committee is relevant to its inquiry. The broad areas in which the Committee wishes to ask you questions as the newly appointed Chief Executive Officer of News International are:

— The incongruity between News International’s handling of the employment tribunal cases of Clive Goodman and Glenn Mulcaire, and the recent tribunal case with former sports reporter, Matt Driscoll.

123 See Annex.
The evidence we received from Tom Crone regarding Ross Hall/Hindley and News International’s subsequent correction of that evidence.
— What actions and procedures you as Chief Executive Officer have put in place and plan to put in place to prevent further instances of inappropriate action by News International journalists.

The Committee does not consider that these issues can be dealt with through written questions, it wishes to hold a formal and public oral evidence session to discuss them with you.

Written evidence submitted by Sense About Science

1. Sense About Science (www.senseaboutscience.org) is an independent charitable trust. We work with 4000 scientists to help the public with contentious issues in science and medicine.

2. Since June 2009 we have been highlighting the impact of libel laws on scientific and academic discussions. Following a pre-trial ruling in the case of the British Chiropractic Association v Simon Singh, we became aware that the libel laws were causing scientists to be reticent about writing and speaking on matters that we regard as in the public interest. Since then we have heard from scientists and academics fighting court cases, patient groups and website editors withdrawing comments and articles after legal threats, and writers and journal editors regularly paying for legal advice and avoiding subjects connected to any organisation or individual with a history of suing their critics.

1.1 I am writing to alert you to this little recognised impact of the libel laws and to draw attention to the four categories of effects that we have observed from examples sent to us:
— Legal proceedings brought against scientists and academics
— Legal threats leading to withdrawal of writing
— Editorial spiking
— Self Censorship

1.2 This is an amended version of our submission of 23 November 2009 and is for publication.

2. Legal Proceedings
— People writing about scientific and medical issues are being brought before the High Court. These have recently included:
— Peter Wilmshurst, a consultant cardiologist from Shrewsbury hospital and principle investigator on a clinical trial of a heart device, is being sued by the American manufacturer NMT. Wilmshurst expressed concern about the way that the clinical trial data was being interpreted by the manufacturer to an American journalist at an academic conference in Canada. NMT is suing Wilmshurst for libel in London. Note that if Peter Wilmshurst had not made public his concerns he would have been in breach of the Hippocratic Oath and may have faced a GMC investigation.

— The scientist and writer Simon Singh was sued for libel by the British Chiropractic Association following his comment piece in The Guardian about the lack of evidence for chiropractic for some childhood conditions, including asthma and colic. The BCA sued for libel and the article was withdrawn. The case is still at a preliminary stage and so far has cost Dr Singh more than £100,000 and taken 18 months.

— The doctor and comment writer Ben Goldacre was sued for libel along with The Guardian by a vitamin pill manufacturer after he expressed concern about vitamin pills being promoted for treatment of HIV in Africa. They successfully defended the case in 2008. It cost £500,000 but they will only ever recover 60% of those costs.

3. Legal Threats Leading to Withdrawal of Writing

With the cost of winning a libel case so high and the cost of losing catastrophic, the Committee will be aware that few cases reach court and most are settled.

Scientists have contacted us to report that they have withdrawn (or had editors or publishers withdraw) articles and sometimes apologised for material that they stand by but which they or publishers cannot afford to defend. An example of this is a scholarly review of lie detector technology written by two professors of linguistics at Swedish universities published in The International Journal of Speech Language and the Law in 2007. The article concluded that there is no reliable scientific evidence that lie detectors work. The authors and the journal’s publisher were threatened with legal action for defamation by a lie detector manufacturer and the publisher withdrew the article.

Even if scientists stand by their writing they may be powerless to protect it as illustrated by the online medical writer Andy Lewis who was threatened with a libel action through his webhosts following his blog on the failure of the Society of Homeopaths to enforce its own “code of practice” and to censure members who had made dangerous claims. His webhosts took the site down.
4. Editorial Spiking

It is difficult to gauge the extent of editorial spiking. People are surprised to learn that medical journals consult lawyers on a regular basis. Senior scientists have also reported removing references in the writing of colleagues that might open them up to legal action. We have received many calls about this.

It seems the legal advice is always to play safe. This is illustrated by Dr Fiona Godlee, editor-in-chief of the leading medical journal the BMJ, who told us the BMJ Group of medical journals has had to refuse to publish scholarly articles purely because of legal advice. As one example, the journal Archives of Disease in Childhood turned down a series of case reports illustrating clinical signs suggestive of child abuse. The editor was keen to publish, but the legal advice was that there was a small possibility that cases might be identifiable and thus a risk of libel action. The paper was later published in an American journal.

Even without legal advice to play it safe the uncertainty around the libel laws means editors err on the side of caution. This lack of confidence in free speech rights is demonstrated by people like Anna Lewcock, News Editor of Chemistry World magazine, who regularly pulls sections out of stories or delays their publication because she is not sure if she is putting the magazine at risk of a libel action they do not have the resources to fight.

The decision to publish or not seems directly related to the ability of the publication to withstand proceedings rather than the merits of the publication. This is illustrated by Dr Soren Holm, editor of the Journal of Medical Ethics, who turned down an article on the ethics of homeopathic practitioners even though he agreed the information in the article was important and worthwhile because a potential libel action would put the finances of the journal and his staff’s livelihood at risk.

5. Self Censorship

Examples of self-censorship are difficult to capture but we have heard from scientists and writers that there is a growing chill. Natasha Loder, science correspondent with The Economist and Chair of the Association of British Science Writers, told us that ‘Censorship doesn’t start in the courtroom, it doesn’t start with the editor, it starts in the brain’.

The potential cost of defending a libel action means big companies and rich individuals are increasingly unlikely to be criticised. This is illustrated by the editor of a consumer technology magazine who has not addressed the poor manufacturing standards of digital receiving equipment from large companies because of the fear of legal action despite expert evidence that these products are often unfit for purpose.

Uncertainty and confusion about the libel laws means journalists avoid entire subjects like the Australian journalist Nick Miller who does not write about some alternative medical treatments because he is unsure whether it would put him and his employers at risk of legal action from practitioners.

The current state of the libel laws means open scientific and medical debates are being stifled. These debates are vital in science and medicine. There is clearly a public interest in much of this material being available, including warnings about unproven medical therapies being offered, which have become especially prevalent on the internet. I also draw to the Committee’s attention the fact that systematic reviews of evidence include all available material (including case reports) and that missing material is likely to skew subsequent systematic reviews. This is particularly important in the case of medical therapies where the National Institute for Clinical Excellence reviews the scholarly literature to reach decisions about effective treatments recommended for use in the National Health Service.

February 2009

Supplementary written evidence submitted by Rebekah Brooks, Chief Executive Office, News International Ltd

Thank you for your letter of 2 February.

Before I respond to your questions, I should register my own disappointment that, in noting the Committee’s disappointment that I “felt that [my] attendance before it would be ‘pointless and a waste of the Committee’s time’”, you chose, for whatever reason, to take my words entirely out of context. You will recall that what I actually wrote, on 4 January, was “I hope you and your colleagues agree that my attendance before the Committee to face questions on the three areas to which you refer would be pointless and a waste of the Committee’s time”. Prior to those words, I had explained why I did not believe I could add anything to your Committee’s inquiry in relation to three areas which were detailed in your letter to me of 15 December. I concluded my letter, after the wording which you have quoted out of context, by stating that “if there are other matters being investigated by yourselves and on which you and your colleagues feel I may have direct knowledge, I remain very happy to be of assistance”. I trust you will agree that this makes it abundantly clear that I do not believe that any attendance by me before the Committee would be “pointless”. I also trust you will agree that, given the fact that correspondence between us ends up in the public domain, it is very important to avoid quoting statements out of context which would allow incorrect and potentially damaging inferences to be drawn by some third parties who are all too eager to draw such inferences.
I should note that most of the questions in your letter, for reasons I have already explained at length in previous correspondence with the Committee, are not within my direct knowledge.

Taking your questions in order:

1. **Please confirm the earliest date that Glenn Mulcaire was paid by News International.**

   I assume by the reference to “News International” that you mean *News of the World*, as I am not aware that Mr Mulcaire carried out work for other News International titles.

   Colin Myler has previously told you (letter of 4 August 2009) that the earliest payment *News of the World* can find on its records either to Glen Mulcaire or to Nine Consultancy is September 2001. I understand that there is a record of a payment to Global Intel Services Limited (see question 8 below) on 20 April 2000 and this is the earliest date that records show.

2. **Please explain the circumstances around the “mobile conversion” of telephone number 07769 834867 made by you (Rebekah Brooks) as part of the Information Commissioner’s inquiry. Was a public interest test applied and, if so, what were the grounds?**

   This was nine years ago and I cannot recall why I required this particular conversion. You should note that “conversion” (ie finding out name and address details for a mobile phone number) is often carried out through perfectly legitimate means such as a web search.

3. **Did you (Rebekah Brooks) ever meet Glenn Mulcaire?**

   I do not recall ever having met Mr Mulcaire.

4. **Was Glenn Mulcaire ever commissioned by News of the World whilst you (Rebekah Brooks) were Editor?**

   I became Editor in 2000 after the date on which the payment referred to in the response to question 1 above was made.

5. **Are you aware of any other payments made to Clive Goodman as part of an understanding that he maintains his silence over his involvement with the Mulcaire episode?**

   It was, I hope, made very clear to you, in my letter to you of 4 November, that the payment made to Mr Goodman following his trial and imprisonment (the only such payment) was a *bona fide* settlement of an employment-related claim, brokered between lawyers, and was not “part of an understanding that he maintains his silence over his involvement with the Mulcaire episode”.

6. **Which employees of News Group were aware that the police had evidence that Mulcaire was in possession of Pin Codes for the mobile phones of up to 91 people?**

   I understand that nobody was told this.

7. **When did they know that the police had evidence that more people were hacked?**

   I assume by “hacked” that you mean interception of voicemail messages.

   I understand that, at some stage between the arrests of Mr Mulcaire and Mr Goodman on 8 August 2006, and their first appearance in court on 29 November 2006, it became known, from information provided by the police, that Mr Mulcaire had accessed the voicemails of people other than Royal Household employees. It was not known how many.

8. **Are you aware of any payments to the following companies linked to Mulcaire:**

   C & E INTELLIGENCE SERVICES LIMITED—03521201
   C & E INTELLIGENCE SERVICES LIMITED—03905508
   GLOBAL INTEL SERVICES LIMITED—03906297
   NINE CONSULTANCY LIMITED—04884543
   NINE CONSULTANCY UK LIMITED—05245852
   EURO RESEARCH & INFORMATION SERVICES LIMITED—04265445
   EURINTELLIMITED—04814996
   KEW MARKET RESEARCH LIMITED—05165874 (PREVIOUS NAME TRENVILLE LIMITED)

   I understand that *News of the World* records show payments only to Global Intel Services Limited, Nine Consultancy Limited and Euro Research & Information Services Limited (apparently, the original name of Nine Consultancy Limited).

*February 2010*
Letter from the Culture, Media and Sport Committee to Mr John Yates, Assistant Commissioner, Metropolitan Police Service

Thank you for your continued assistance to the Culture, Media and Sport Committee’s inquiry in relation to its inquiry into Press standards, privacy and libel and for passing to me your response to a Freedom of Information request regarding the activities of Clive Goodman and Glenn Mulcaire.

The Committee discussed the information contained in the response to the request at its meeting this week, and its contents will be reflected in our Report. However, the Committee has asked me to pass on to you our disappointment that you did not share this information with us at the time you came before the Committee to give oral evidence in September 2009.

That the Metropolitan Police should reveal more precise information in answer to a Freedom of Information request than to a Select Committee of the House of Commons is in our view both regrettable and improper.

I would ask that you review your procedures to ensure that such a situation does not occur again.

February 2010

Supplementary written evidence submitted by Mr John Yates, Assistant Commissioner, Metropolitan Police Service

I refer to your letter of 4 February 2010. For the reasons that I have set out below, I hope you will understand my surprise that you have chosen to write in such strong terms about these matters before seeking any form of explanation.

At the time of giving evidence to the Committee in September 2009, I responded as fully as possible to all questions asked. I was not privy either then or now to the Committee’s mindset or direction but in response to questions, I did share as much information as I could to assist the Committee in its work. It would never be my intention to mislead the Committee and I am most concerned that you consider that to be the case.

The Metropolitan Police Service (MPS) have subsequently answered additional questions posed by the Committee as fully and comprehensively as possible. We have also received a number of requests for additional information from third parties. It was for this very reason that as soon as we had any additional information, it was supplied to you to ensure our complete openness and transparency. If these issues had been asked by the Committee at the time of my evidence session and if the information had been available, then it would have been quite rightly shared at that time.

The specific figure supplied in the FOIA request on 28 January 2010 was not available at the time I came before your Committee in September 2009. Since that appearance, and in accordance with my initial press statement, I have been attempting to ensure that police have taken all proper, reasonable and diligent steps to inform all those individuals where there is any evidence or suspicion that they may have been the subject of any form of interception. This has involved considerable and time consuming work, in particular the use of an IT process previously unavailable. Even now we cannot with any certainty answer questions relating to identifying individuals and whether or not they were a victim of interception. It was only after some extensive research that we were able to answer the specific FOIA request regarding pin code numbers. You will note that we also had to express some caution about that figure supplied, as it could not be stated with any certainty how accurate that was.

I will also take the opportunity in this letter to respond to the recent question from the Committee, which reads as follows:

“Please provide the number of victims for whom they have tape and transcript evidence of calls and who were subsequently not informed of the potential security breach”

It is not possible to determine with any degree of accuracy, an answer to the question in terms of “victim” on the recordings because for the majority of tape recordings there is either no mention of who is calling who or there is only a part name. Equally, some recordings are not “voicemails” for example, we believe some are of Mulcaire tape recording his own conversations.

To assist you with understanding our difficulty, the material seized as part of the criminal investigation is believed to include data of individuals that may be family, friends, acquaintances and/or contacts of Goodman and Mulcaire that have nothing to do with the offences for which the two men were prosecuted. Given the nature of their work, both men would have had data about individuals that was entirely reasonable and legitimate.

Furthermore, whenever a name in whatever context was identified it was captured and put onto an MPS system. The name could range from initials, single names right through to multiple variations and spellings of a host of fore and/or surnames. To even attempt to discern from the material to what extent this data refers to distinct individuals or for what purpose would have required extensive work beyond the scope of the criminal investigation and would not have been a proportionate use of police resources.
A similar process would then have had to be undertaken to link phone numbers and or voicemail messages to these individuals.

What we can say is that where information exists to suggest some form of interception of an individual’s phone was or may have been attempted by Goodman and Mulcaire, the MPS has been diligent and taken all proper steps to ensure those individuals have been informed.

I trust this sufficiently clarifies the circumstances that led to you being supplied with this further information and once you have had the opportunity to consider my response, I would be grateful if you could perhaps write to me anew with any additional points or observations you may wish to make.

*February 2010*