House of Commons
Home Affairs Committee

Unauthorised tapping into or hacking of mobile communications

Thirteenth Report of Session 2010–12

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The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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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.

Publication

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/homeaffairscom.

Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Joanna Dodd (Second Clerk), Sarah Petit (Committee Specialist), Eleanor Scarnell (Inquiry Manager), Darren Hackett (Senior Committee Assistant), Sheryl Dinsdale (Committee Assistant), Victoria Butt (Committee Assistant), John Graddon (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3276; the Committee’s email address is homeaffcom@parliament.uk.
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1 Introduction

Background

1. In 2005-06, the Metropolitan Police investigated claims that a private investigator, Mr Glenn Mulcaire, had been employed by News International to hack into the Voicemail accounts of certain prominent people, including members of the Royal Household, to obtain information on them. This case led to the prosecution and subsequent imprisonment of Mr Mulcaire and Mr Clive Goodman, the royal correspondent for the News of the World. The charges brought against Messrs Mulcaire and Goodman cited a limited number of people whose phones were alleged to have been hacked. However, papers taken from Mr Mulcaire in the course of the investigation indicated that journalists—not necessarily all from the same newspaper—had asked him to obtain information on a number of other people: it was not always clear who the subjects of the inquiries were (a number were identified only by initials or a forename), nor whether the request involved hacking or some other means of obtaining information.

2. In 2006 the Information Commissioner, who is responsible for overseeing the UK’s data protection laws, published two reports, What price privacy? and What price privacy now? which gave details of investigations conducted by his office and the police into “a widespread and organised undercover market in confidential personal information.” In one major case, known as Operation Motorman, the police and Information Commissioner’s Office found evidence that 305 journalists working for a range of newspapers had used a variety of techniques to obtain personal information for their stories (more details are provided in Appendix A). Some of the information could have been obtained only illegally; other pieces of information could be obtained legally (e.g. addresses via voter registration records) but this would have been very time-consuming and the prices paid to the private investigators obtaining the evidence were too low for such onerous work.¹

3. In 2009 it became known that one person who considered he had been a victim of hacking by Mr Mulcaire at the instigation of a News of the World journalist had launched a civil case against that paper’s owners, News International, and, it was reported, had received a large amount in damages in settlement whilst agreeing to be bound by a confidentiality clause. The successful litigant was Mr Gordon Taylor of the Professional Footballers Association. The media noted at the time that he was unlikely to have been of interest to the royal correspondent, so it was suspected that other News International journalists or editors might have been involved with similar activities.

4. The names of other successful litigants gradually leaked out. Over the next few months, a growing number of alleged victims of hacking brought civil actions against News International or sought judicial reviews of the handling of the original case by the police, and demanded that the police release documents seized from Mr Mulcaire relevant to their cases.

¹ The reports were published respectively in May and December 2006, and may be found at www.ico.gov.uk. The quotation is taken from What price privacy?, paragraph 1.7.
5. At the same time, the *Guardian* newspaper was continuing to investigate the relationship between Mr Mulcaire and News International journalists, focusing in particular on claims by some former journalists that practices like hacking were widespread in the *News of the World*. Because of the concerns raised by the new allegations, on 9 July 2009 the Commissioner of the Metropolitan Police asked Assistant Commissioner John Yates, QPM, to look into the case. We deal with both the 2005–06 investigation and Mr Yates’s role in 2009 later in this report.

6. We were aware that our sister committee, the Culture, Media and Sport Committee, had had a longstanding interest in the ethics of reporting and reporting methods, and were repeatedly taking evidence on this issue. Whilst the role of the media was clearly part of that Committee’s remit, questions were being asked about the response of the police to the original allegations in 2005–06, and there appeared to be some confusion about the interpretation of the legislation governing hacking which had the effect of making it unclear who precisely might be considered a victim of that crime. Accordingly, early in September 2010, we launched an inquiry into ‘Unauthorised tapping into or hacking of mobile communications’, with the following terms of reference:

- The definition of the offences relating to unauthorised tapping or hacking in the Regulation of Investigatory Powers Act, and the ease of prosecuting such offences;
- The police response to such offences, especially the treatment of those whose communications have been intercepted; and
- What the police are doing to control such offences.

During the course of the inquiry, it became clear that it was necessary to examine other aspects too:

- The scope of the police inquiry in 2005–07;
- The role of the mobile phone companies in providing security information to their customers and in relation to those whose phones may have been hacked into; and
- The relationship between the police and the media.

Our focus has remained on the police, the prosecutors, the victims and the legislation: in this Report we do not attempt to reach any conclusions and recommendations about the actions of specific newspapers or individual journalists.

7. We had invited Mr Yates to give oral evidence to us on 7 September 2010 as the head of the Metropolitan Police’s Specialist Operations Unit on the two main areas dealt with by his unit: Royal and diplomatic protection and Counter-terrorism. We took the opportunity of asking him about the 2005–06 investigation and subsequent developments. This evidence has already been published. We later took oral evidence again from Mr Yates, Mr Chris Bryant MP, the Director of Public Prosecutions, the Information Commissioner, representatives of three mobile phone companies (Telefonica O2, Vodafone, and the
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Orange UK and T-Mobile UK joint venture, Everything Everywhere), Lord Blair of Boughton QPM,3 Mr Peter Clarke CVO, OBE, QPM, and Mr Andy Hayman CBE, QPM, (the two senior police officers who oversaw the 2005–06 investigation) and Deputy Assistant Commissioner Sue Akers, QPM, who is in charge of the current investigation. In our final session, we took evidence from Sir Paul Stephenson, Metropolitan Police Commissioner, Mr Dick Fedorcio, the Director of Public Affairs and Internal Communication at the Metropolitan Police Service, Lord MacDonald of River Glaven QC and Mr Mark Lewis, solicitor. We received several pieces of written evidence, all of which have been published on our website and are printed with this Report, and we have corresponded on a number of occasions with our oral witnesses, and with Ms Rebekah Brooks, then Chief Executive Officer of News International, Assistant Commissioner Cressida Dick, the National Policing Improvement Agency, the Serious Organised Crime Agency and HM Chief Inspector of Constabulary (the last four on the question of rules governing the payment of police by the media and others). We would like to express our gratitude to all who have given evidence to us, and in particular to those who have repeatedly responded to our further questions as our inquiry developed.

Subsequent developments

8. Since we opened our inquiry, the following events have occurred. On 12 November 2010, after interviewing the former reporter the late Mr Sean Hoare and others, the Metropolitan Police said that it had uncovered further material about hacking and passed the file of evidence to the Crown Prosecution Service (‘CPS’) to consider whether there was strong enough evidence to bring criminal charges. The Head of the CPS Special Crime Division, Mr Simon Clements, decided on 10 December 2010 that there was no admissible evidence to support further criminal charges, as the witnesses interviewed had refused to comment, denied any knowledge of wrongdoing or had provided unhelpful statements.

9. On 5 January 2011, however, the News of the World suspended Mr Ian Edmondson from his post as assistant editor (news) following allegations that he was implicated in the hacking of Sienna Miller’s phone—Ms Miller’s lawyers had found notes among the documents released by the police indicating that Mr Mulcaire might have hacked into her phone on instructions from Mr Edmondson. Following the suspension, the Metropolitan Police wrote to News International requesting any new material it might have. Acting Commissioner Tim Godwin opened a new inquiry, led by Deputy Assistant Commissioner Sue Akers and codenamed ‘Operation Weeting’.

10. The media continued to pursue the story of the extent of ‘hacking’ by people employed by News International in the period from about 2003–06, and (subsequently) both before and after this period. On 5 April 2011, Mr Edmondson and Mr Neville Thurbeck, the chief reporter for News of the World, were arrested on suspicion of conspiring to intercept communications (contrary to Section 1(1) of the Criminal Law Act 1977) and unlawful interception of voicemail messages (contrary to Section 1 of the Regulation of Investigatory
Powers Act 2000). They were later released without charge on police bail until September 2011. Further arrests (including that of a royal reporter with the Press Association) have been made since then. The new police inquiry under DAC Sue Akers continues.

11. The story took a new turn when the media reported allegations that Mr Mulcaire may have hacked into the phone of Milly Dowler, a 13-year old murdered in 2002, and the phones of her family and friends. It was also alleged that the phones of the families of the Soham murder victims had been hacked into in 2002 and that the same had happened to the phones of victims of the 7th July bombings in London in 2005. An emergency debate in the House of Commons on 6 July 2011 showed strong support for a public inquiry into the phone hacking at the *News of the World* and the conduct of the Metropolitan Police between 2006 and 2011. The Prime Minister indicated that the Government agreed in principle to a public inquiry in two stages that would consider the conduct of the media generally and the history of the police investigations from 2005 onwards. Subsequently, the terms of reference have been announced, as has the fact that Lord Justice Leveson is to head the inquiry. It had initially been suggested that a public inquiry or judge-led inquiry could start work only once police investigations and any consequent prosecutions had been brought to a conclusion. MPs had argued strongly that the Inquiry should be established straight away so that the judge leading it could immediately secure any evidence that might otherwise be destroyed (although this would be a criminal offence), and so that a start could be made on issues not pertinent to ongoing investigations and prosecution. There was a clear understanding on all sides that nothing should be done that might prejudice the current police investigations. The timing and timescale of the inquiry remain to be determined. We welcome the fact that the Prime Minister consulted us on the terms of reference for this inquiry.

*Involvement of police witnesses in various inquiries*

12. It may be useful here to provide a brief indication of which of our witnesses (police officers and prosecutors) were involved in the various police inquiries and when. At the time of the first investigation, Mr Peter Clarke was Deputy Assistant Commissioner with the Specialist Operations Directorate (which had been formed from the merger of the Counter-Terrorist Command and the Royal and Diplomatic Protection group). Mr Clarke was the most senior officer with day-to-day responsibility for the 2005–06 police investigation into hacking. Mr Andy Hayman was at that time Assistant Commissioner for Specialist Operations, and Mr Clarke’s superior officer. Lord Blair of Boughton, then Sir Ian Blair, was Commissioner of the Metropolitan Police between 2005 and 2008. Mr Hayman resigned from the service in December 2007 and Mr Clarke retired in February 2008, so neither was still in post at the time when further allegations appeared to be emerging in the press in 2009. Lord Macdonald of River Glaven, QC, then Sir Ken Macdonald, was Director of Public Prosecutions between 2003 and 2008.

13. By July 2009, the Commissioner of Police of the Metropolis was Sir Paul Stephenson QPM, and Mr John Yates was Assistant Commissioner for Specialist Operations, having replaced Mr Hayman’s successor (Assistant Commissioner Bob Quick) in April 2009. Sir Paul asked Mr Yates to look into the stories emerging in the *Guardian* and subsequently

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4 HC Deb, 6 July 2011, col 1543 onwards
the *New York Times* alleging that the hacking of mobile phones was a widespread problem not confined to those investigated and prosecuted in 2005–07. Mr Keir Starmer, QC, had succeeded Sir Ken Macdonald as Director of Public Prosecutions. The members of the Crown Prosecution Service giving advice directly to the police at this time were not the same people as had advised the police in 2006–07.

14. In January 2010, the Metropolitan Police decided to open a new investigation. DAC Sue Akers was appointed to head the investigation, which is known as Operation Weeting. Subsequently, DAC Akers was also to head the investigation into allegations of payments by News International journalists to officers of the Metropolitan Police.

### Table 1: Timeline of events

<table>
<thead>
<tr>
<th>Date</th>
<th>Events</th>
<th>Police investigation</th>
<th>Commissioner</th>
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<tbody>
<tr>
<td>January 2003</td>
<td>Rebekah Brooks and Andy Coulson give evidence to the Culture, Media and Sport Committee. Brooks admits to paying police officers for stories.</td>
<td>Investigation led by (then) Deputy Assistant Commissioner Peter Clarke</td>
<td>Commissioner Sir Ian Blair</td>
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<td>November 2005</td>
<td>The <em>News of the World</em> publishes a story about Prince William's knee injury. This prompts a complaint to police that voicemail messages of royal officials have been intercepted.</td>
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<td>January 2007</td>
<td>Clive Goodman and Glenn Mulcaire convicted of conspiring to intercept communications. Goodman is sentenced to 4 months in prison, Mulcaire is sentenced to 6 months.</td>
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<td>March 2007</td>
<td>Les Hinton gives evidence to Culture, Media and Sport Committee. He tells the Committee that an internal investigation found no evidence of widespread hacking at <em>News of the World</em>.</td>
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<td>May 2007</td>
<td>The Press Complaints Commission, the newspaper regulation watchdog, published a report on hacking but said it found no evidence of</td>
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<table>
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<tr>
<th>Date</th>
<th>Event Description</th>
<th>Reconsideration of original investigation led by</th>
<th>Commissioner</th>
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<tr>
<td>July 2009</td>
<td>The <em>Guardian</em> newspaper publishes an article which details over £1 million in payments made by News International to settle court cases which focus on journalists alleged involvement in hacking. Scotland Yard announces that it has reviewed the evidence and no further investigation is required. The Crown Prosecution Service announces an urgent review of material provided by the police in 2006. Colin Myler and Andy Coulson give evidence to Culture, Media and Sport Committee.</td>
<td>Assistant Commissioner John Yates</td>
<td>Sir Paul Stephenson</td>
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<td>November 2009</td>
<td>The Press Complaints Commission publishes a second report on <em>News of the World</em>. It finds no new evidence to suggest that anyone at <em>News of the World</em> other than Mulcaire and Goodman was involved in phone hacking.</td>
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<td>February 2010</td>
<td>Culture, Media and Sport Committee publishes report on <em>Press standards, privacy and libel</em> which suggests that it is inconceivable that senior management at the paper were unaware of widespread hacking.</td>
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<td>September 2010</td>
<td><em>New York Times</em> publishes an article claiming that Andy Coulson was aware that his staff at <em>News of the World</em> were illegally hacking voicemail. It also questions whether the</td>
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<td>Date</td>
<td>Event</td>
<td>Investigation</td>
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<td>December 2010</td>
<td>The Crown Prosecution Service announces that no further charges will be brought over the News of the World phone hacking scandal because witnesses refused to co-operate with police.</td>
<td>Operation Weeting, led by Deputy Assistant Commissioner Sue Akers</td>
<td>Acting Commissioner Tim Godwin</td>
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<tr>
<td>January 2011</td>
<td>Metropolitan police open a new investigation into allegations of phone hacking.</td>
<td>Operation Elveden, led by Deputy Assistant Commissioner Sue Akers</td>
<td>Commissioner Sir Paul Stephenson</td>
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<td>June 2011</td>
<td>300 emails retrieved from law firm Harbottle &amp; Lewis handed to Metropolitan police by News International.</td>
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<td>July 2011</td>
<td>Metropolitan police announce operation Elveden to look at payments made to police by News International. Operation Elveden is subsequently taken over as an independent investigation by the Independent police Complaints Commission. Sir Paul Stephenson and John Yates resign.</td>
<td>Operation Elveden, led by Deputy Assistant Commissioner Sue Akers</td>
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2 The legislation covering interception of electronic communications

15. When Mr Clarke and Mr Hayman came to investigate the allegations of interference with the voicemails of members of the Royal Household in November 2005, the police were faced with various pieces of legislation that might be used against the perpetrators, each of which had advantages and disadvantages. The one on which, on advice from the Crown Prosecution Service, they chose to focus was section 1 of the Regulation of Investigatory Powers Act 2000. However, sections of the Data Protection Act 1999 and the Computer Misuse Act 1990 were also relevant.

16. We discuss these latter two Acts first and explain why the police and the CPS were disinclined to use them, before going on to set out the difficulties surrounding section 1 of the Regulation of Investigatory Powers Act.

**Computer Misuse Act and Data Protection Act**

17. The offence under section 1 of the Computer Misuse Act is committed where a person knowingly ‘causes a computer to perform any function’ with intent to secure unauthorised access to any program or data held in any computer, or to enable any such access to be secured. There has to be some interaction with the computer, so that merely reading confidential data displayed on a screen or reading the printed output from the computer would not constitute the offence. On the other hand, it can be argued that using the owner’s PIN number or password without his authority to access his e-mails or voicemails would fall within the scope of the offence, as it would cause the computer to perform a function.

18. Until 2008, the offence under s.1 of the 1990 Act was triable summarily, with a maximum penalty of only six months’ imprisonment. This was therefore the situation during the first investigation into hacking in 2005–06. The offence is now also triable on indictment with a maximum penalty of two years’ imprisonment, the same mode of trial and penalty as the interception offence under the Regulation of Investigatory Powers Act.

19. The Data Protection Act 1998 creates a number of offences, but the most relevant is the offence of unlawful obtaining of personal data. Section 55 of the 1998 Act makes it an offence knowingly or recklessly to obtain or disclose personal data without the consent of the data controller. The offence may be tried either summarily or on indictment. Section 77 of the Criminal Justice and Immigration Act 2008 confers an order-making power to provide for the imposition of a sentence of imprisonment, but this has not yet been brought into effect and currently, the penalty is limited to a fine.

20. It is very difficult to imagine a voicemail or other personal message which did not contain some personal data of either the sender or the intended recipient. However, section 55(2) provides for a number of defences which conceivably might inhibit a successful prosecution for ‘hacking’. Of most direct relevance to this case, it is a defence to show that

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obtaining or disclosing the information was justified as being in the public interest (s.55(2)(d)). This defence has been prospectively broadened by a new s.55(2)(ca) which makes it a defence to show that the person acted with a view to the publication by any person of any journalistic, literary or artistic material, and in the reasonable belief that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest. Journalists inquiring into public figures might seek to rely on the new defence but would need to show that they were acting in the public interest. The defence is unlikely to apply at all in relation to the alleged tampering with the voicemails of essentially private individuals unwittingly brought to public attention through their connection with victims of crime or with service personnel killed in battle; but the police and prosecutors claim not to have been aware of these cases at the time of the original investigation because they had not fully reviewed the other 11,000 pages from the Mulcaire case.

21. The current Director of Public Prosecutions, Mr Keir Stamer QC, in a letter to us recognised the disadvantages of using these two pieces of legislation in the circumstances of the time, saying: “So far, prosecutions have (rightly in my view) been brought under the Regulation of Investigatory Powers Act 2000 (RIPA), but, depending on the circumstances and available evidence, offences under the Computer Misuse Act 1990 and/or the Data Protection Act 1998 might also fall to be considered in on-going or future investigations.”

**Regulation of Investigatory Powers Act**

**Section 1 (Unlawful interception) of the Regulation of Investigatory Powers Act** says:

(1) It shall be an offence for a person intentionally and without lawful authority to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of—

(a) a public postal service; or

(b) a public telecommunication system.

(2) It shall be an offence for a person—

(a) intentionally and without lawful authority, and

(b) otherwise than in circumstances in which his conduct is excluded by subsection (6) from criminal liability under this subsection,

to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of a private telecommunication system.

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(7) A person who is guilty of an offence under subsection (1) or (2) shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two

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6 Inserted by s.78 of the Criminal Justice and Immigration Act 2008, which is not yet in force.

7 Ev126
years or to a fine, or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

Section 2 (Meaning and location of “interception” etc.)

[Subsection (1) defines “postal service”, “private telecommunication system”, “public postal service”, “public telecommunications service”, “public telecommunication system”, “telecommunications service” and “telecommunication system.”]

(2) For the purposes of this Act, but subject to the following provisions of this section, a person intercepts a communication in the course of its transmission by means of a telecommunication system if, and only if, he—

(a) so modifies or interferes with the system, or its operation,

(b) so monitors transmissions made by means of the system, or

(c) so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system,

as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.

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(7) For the purposes of this section the times while a communication is being transmitted by means of a telecommunication system shall be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it.

(8) For the purposes of this section the cases in which any contents of a communication are to be taken to be made available to a person while being transmitted shall include any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently.

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22. The offence under Regulation of Investigatory Powers Act 2000 section 1 is committed by a person who (intentionally and without lawful authority) intercepts any communication “in the course of its transmission” by a telecommunications system. The Director of Public Prosecutions told us: “Once the communication can no longer be said to be in the course of transmission by the means of the ‘system’ in question, then no interception offence is possible” and added: “Taking the ordinary meaning of those
expressions one would expect the transmission of a communication to occur between the moment of introduction of the communication into the system by the sender and the moment of its delivery to, or receipt by, the addressee."

23. That appears to have been the basis on which the Crown Prosecution Service advised the police in 2005-06. It was also the very clear view of the CPS in July 2009 when it gave written evidence to the Culture, Media and Sport Committee and stated:

**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.

24. However, Section 2(2) has to be read in conjunction with section 2(7) which provides that ‘in the course of transmission’ includes “any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it”. Whilst it is clear that any stored message not yet received and heard or read may be considered still “being transmitted”, what about messages already received and heard or read but left stored in the system? Again, as the Director of Public Prosecutions put it:

The difficulty of interpretation is this: Does the provision mean that the period of storage referred to comes to an end on first access or collection by the intended recipient, or does it continue beyond such first access for so long as the system is used to store the communication in a manner which enables the (intended) recipient to have subsequent, or even repeated, access to it?

25. One of the roles of the courts is to clarify the construction of statute where necessary. For reasons that are described below, however, as yet no court has been asked to consider this issue.

26. We have gone into detail in relation to this question because the interpretation of these sections of the Regulation of Investigatory Powers Act has formed a major source of contention in respect of the definition of who has been a ‘victim’ of hacking and the likelihood of achieving successful prosecutions, influenced the conduct of the 2005-06 police investigation and the subsequent approach of the police to hacking, and was the focus of much of the disagreement among our witnesses as to what ought to have been done.

**Impact of the interpretation of the legislation on the police investigations**

27. Considerable argument before the Committee has focused on the advice on the interpretation of RIPA given by the Crown Prosecution Service to the police in 2005–07, whether the police correctly understood the advice, and whether the advice has changed subsequently. The Mulcaire and Goodman cases were the first in which section 1 of RIPA was applied to the hacking of mobile phone voicemails.

28. In the course of his oral evidence to us in September 2010, Assistant Commissioner Yates was asked about the 91 people whose PIN numbers were allegedly listed in Mr
Mulcaire’s papers: the Chair referred to these people as ‘victims’ of hacking, and Mr Yates replied:

“Victims of hacking” is taking it a bit far because hacking is defined in a very prescriptive way by the Regulation of Investigatory Powers Act and it’s very, very prescriptive and it’s very difficult to prove. We’ve said that before and I think probably people in this room are aware of that. It is very, very difficult to prove. There are very few offences that we are able to actually prove that have been hacked. That is, intercepting the voicemail prior to the owner of that voicemail intercepting it him or herself.

Chairman: But there are 91 PIN numbers, is that right?

Mr Yates: There is a range of people and the figures vary between 91 and 120. We took steps last year, as I indicated last year, to say that even if there is the remotest possibility that someone may have been hacked, let’s look and see if there is another category. Bearing in mind that we’d already had a successful prosecution and two people have gone to jail, we wouldn’t normally do that, but because of the degree of concern I said we were to be extra cautious here and make sure we have established whether there is a possibility—and we put some criteria around that, which I won’t bore you with—they have been hacked. That is where that figure comes from. It is out of a spirit of abundance of caution to make sure that we were ensuring that those who may have been hacked were contacted by us.8

He added: “We can only prove a crime against a very small number of people and that number is about 10 to 12 people. That is very few people.”9

29. This interpretation followed the approach taken by the police in 2005–07 on the basis of their understanding of the advice being given to them by the Crown Prosecution Service. The current Director of Public Prosecutions, Mr Keir Starmer, noted:

In 2009, I gave written evidence to the Culture, Media and Sport Committee. In that evidence I set out the approach that had been taken to section 1(1) of RIPA in the prosecution of Clive Goodman and Glenn Mulcaire, namely that 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. I also set out the reasons why David Perry QC had approached the case on that basis at the time.

He went on to point out, however, that no distinction had been made in the terms of the charges against Messrs Mulcaire and Goodman between messages that had been accessed by the intended recipient and those that had not, and neither the prosecution nor the defence had raised this issue during the hearing, not least because both defendants in 2007

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8 Evidence taken before the Home Affairs Committee on 7 September 2011, Specialist Operations, HC 441-i, Q 5
9 Evidence taken before the Home Affairs Committee on 7 September 2011, Specialist Operations, HC 441-i, Q 9
pleaded guilty. Therefore the judge was not required to make any ruling on the legal definition of any aspect of RIPA.\footnote{Ev128}

30. Unfortunately, the construction of the statute, the interpretation of the CPS’s advice in 2005–07 and the interpretation of evidence given to both us and our sister committee, the Culture Media and Sport Committee, all became the subject of dispute between Mr Yates, Mr Starmer and Mr Chris Bryant MP, during the course of which there were allegations of selective quotation and deliberate misunderstanding of positions, and even, by implication, of misleading the Committees.\footnote{The dispute started with an Adjournment debate in the House of Commons initiated by Mr Chris Bryant MP on 10 March 2010 (HC Deb, 10 March 2010), continued through the letter columns of the Guardian during the next few days, and then each of the protagonists was enabled to give his views to Committees of the House. Mr Yates to the Culture, Media and Sport Committee on 24 March, Mr Bryant and Mr Yates to us on 29 March, and the Director of Public Prosecutions to us on 5 April.}
None of the participants had been present at the discussions of the cases of Messrs Mulcaire and Goodman, and all were relying on the recollections of those who were present and who could be asked for advice, together with the information supplied in any remaining documents, many of which had been drafted in the light of oral discussions and often to record a decision or position rather than to set out in detail every possible ramification of the discussions.

31. Whilst it is now impossible to know the exact course of the discussions between the police and the CPS at the time, Mr Peter Clarke, the witness who was closest to the original investigation as the senior officer in charge, made it clear to us that he understood the legal advice to be that they should proceed on a narrow construction of the statute. That is, that they should assume they could prosecute successfully only if they could prove that someone had accessed a voicemail message without authorisation before the intended recipient had heard it. The police were able to gather enough evidence to support this in one case involving Messrs Mulcaire and Goodman, and they were able to link five further cases to Mr Mulcaire on the basis of similarity of method—as Mr Yates described them to our sister committee, “inferential” cases.\footnote{Q 454} Because the two men pleaded guilty to all counts, the robustness of the inferential cases—and therefore the interpretation of section 1 of the Regulation of Investigatory Powers Act—was never tested.

32. The National Policing Improvement Agency (NPIA) provides advice to the police on their own operations. Ian Snelling, Covert Advice Team Manager in the NPIA Specialist Operation Centre, confirmed that their advice to police, which had been ‘essentially the same’ since 2003, was as follows.

> Ultimately it will be a matter for the courts to decide whether a stored communication, which has already been accessed, is capable of interception but until such time it remains my view that, on a strict interpretation of the law, the course of transmission of a communication, including those communications which are stored on the servers of the CSP such as voicemail messages, ends at the point at which the data leaves the telecommunication system by means of which it is being (or has been) transmitted and is no longer accessible, and not simply when the message has been listened to. Accessing such voicemails could therefore amount to a criminal interception of a communication, as well as a civil wrong, and should therefore be
conducted with the appropriate consents and/or lawful authority under e.g. RIPA s1(5)(c) or s3.\textsuperscript{13}

33. In a letter to us dated 24 March 2011, Mr Yates cited a number of examples where the CPS in 2006 appeared to have taken a narrow interpretation of the offence. According to Mr Yates, this remained the police’s understanding of how section 1 of RIPA should be interpreted until October 2010 when, in the context of the consideration of whether new evidence on the hacking issue was emerging, the new Director of Public Prosecutions addressed the construction of section 1. In his letter of 29 October 2010 to us, the DPP stated:

The role of the CPS is to advise the police on investigation and to bring prosecutions where it is appropriate to do so. In view of this, as I am sure you will appreciate, I need to take care not to appear to give a definitive statement of the law. For that reason, I will confine myself to explaining the legal approach that was taken in the prosecution of Clive Goodman and Glenn Mulcaire in 2006; and then indicate the general approach that I intend to take to on-going investigations and future investigations.\textsuperscript{14}

... I have given very careful thought to the approach that should be taken in relation to on-going investigations and future investigations.

Since the provisions of RIPA in issue are untested and a court in any future case could take one of two interpretations, there are obvious difficulties for investigators and prosecutors. However, in my view, a robust attitude needs to be taken to any unauthorised interception and investigations should not be inhibited by a narrow approach to the provisions in issue. The approach I intend to take is therefore to advise the police and CPS prosecutors to proceed on the assumption that a court might adopt a wide interpretation of sections 1 and 2 of RIPA. In other words, my advice to the police and to CPS prosecutors will be to assume that the provisions of RIPA mean that an offence may be committed if a communication is intercepted or looked into after it has been accessed by the intended recipient and for so long as the system in question is used to store the communication in a manner which enables the (intended) recipient to have subsequent, or even repeated, access to it.\textsuperscript{15}

34. We have been frustrated by the confusion which has arisen from the evidence given by the CPS to us and our sister Committee. It is difficult to understand what advice was given to whom, when. Only on the last day on which we took evidence did it become clear that there had been a significant conversation between the Director of Public Prosecutions and Assistant Commissioner Yates regarding the mention in the Mulcaire papers of the name Neville and whether this and Mr Mulcaire’s contract with News International were a sufficient basis on which to re-open the investigation. The fact that the CPS decided it was not, does not in any way exonerate the police from their actions during the inquiry.

\textsuperscript{13} Ev146
\textsuperscript{14} Ev128
\textsuperscript{15} Ev161
35. Section 2(7) of the Regulation of Investigatory Powers Act 2000 is particularly important and not enough attention has been paid to its significance.

Role of the Information Commissioner

36. Given the fact that the aim of hacking is to obtain personal information, we thought it worth considering the various regulatory regimes dealing with the acquisition and use of information. Section 57 of the Regulation of Investigatory Powers Act creates the role of Interception of Communications Commissioner, but this role is limited to overseeing those issuing warrants to the police and security services permitting interception, and those acting under warrant or assisting those acting under warrant. Generally, as its short title implies, the Act is concerned more with defining the powers of the state to intercept the communications of those present in the UK in the course of legal investigations than with private individuals or organisations attempting interception. This Commissioner has no duties in respect of private sector operators, and in particular has no remit or resources to advise individuals who believe they have been victims of unauthorised interception of their communications by the private sector. The Surveillance Commissioners also operate under the Regulation of Investigatory Powers Act and the Police Act 1997, but their job is to oversee the use by state officials of covert surveillance operations and covert human intelligence sources (otherwise known as undercover officers and informants), and not interception of communications.

37. We asked the Information Commissioner, Mr Christopher Graham, about his role in relation to telephone hacking. He replied that, although he and his office occasionally gave informal advice on the issues, he had no formal role under the Regulation of Investigatory Powers Act or the Misuse of Computers Act as he was not the prosecuting authority for either of these, and no one else had a regulatory role in respect of these Acts either: he was appointed to oversee the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003. He added:

Thus I have responsibility for taking action on the Data Protection Act s.55 offence that may arise from the unlawful 'blagging' of personal information from a data controller. But the Information Commissioner does not have any regulatory competence in the area of interception of communication—which would cover hacking and tapping, for example, of mobile phone communications. This latter activity is dealt with entirely under the Regulation of Investigatory Powers Act. This means that the regulatory regime that covers the use, disclosure and interception of communications related data is fragmented.

The problem is that whilst the Data Protection Act, the Privacy and Electronic Communications (EC Directive) Regulations and the Regulation of Investigatory Powers Act together form part of the framework of regulation that limits excessive surveillance and provides safeguards for individuals, it is only in relation to the Data

16 Qq 155–161
17 ‘Blagging’ is where an unauthorised person obtains personal information—addresses, telephone numbers, medical information, financial information, etc—from a source that legitimately hold the information by pretending to be either the individual whose information is held or someone else with a legitimate right to access the information.
18 Ev126
Protection Act and Privacy and Electronic Communications (EC Directive) Regulations that there is an organisation charged with promoting compliance with the legislation and with providing authoritative advice to those who need it.19

38. One missing part of this fragmented regime has been provided by the entry into force on 25 May 2011 of new Privacy and Electronic Communications Regulations which provide that any data controller who becomes aware of a breach of data security must inform not only the Information Commissioner but also the affected customers.20 Also, there was an attempt at a more joined-up approach to regulation in this area by bringing together the Information Commissioner with the three other regulators (the Surveillance and Interception of Communications Commissioners and the interim Closed Circuit Television Commissioner) to discuss any gaps in the regime.21 We are concerned that this meeting appeared to be a rarity, and that there is not enough linkage between the different Commissioners.

39. The lack of a regulatory authority under the Regulation of Investigatory Powers Act has a number of serious consequences. Although the Information Commissioner’s office provides some advice, there is no formal mechanism for either those who know they are in danger of breaking the law or those whose communications may be or have been intercepted to obtain information and advice. Moreover, the only avenue if anyone is suspected of unauthorised interception is to prosecute a criminal offence, which, as the Information Commissioner noted, is a high hurdle in terms of standard of proof as well as penalty.22 Especially given the apparent increase of hacking in areas such as child custody battles and matrimonial disputes,23 and the consequential danger of either the police being swamped or the law becoming unenforceable, there is a strong argument for introducing a more flexible approach to the regime, with the intention of allowing victims easier recourse to redress. We therefore recommend the extension of the Information Commissioner’s remit to cover the provision of advice and support in relation to chapter 1 of the Regulation of Investigatory Powers Act.

40. We also strongly recommend that the Government reviews how the Act must be amended to allow for a greater variety of penalties for offences of unlawful interception, including the option of providing for civil redress, whilst retaining the current penalty as a deterrent for serious breaches.

41. We note that most of our witnesses claimed to be unaware at the time of the Information Commissioner’s two 2006 reports, What price privacy? and What price privacy now?. We are disappointed that they did not attract more attention among the police, the media and in government, and hope that future such reports will be better attended to.

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19 Ev126
20 Q 156
21 Qq 147–149
22 Ev126
23 Q 133 and What Price Privacy Now?, December 2006
42. We are concerned about the number of Commissioners, each responsible for different aspects of privacy. We recommend that the government consider seriously appointing one overall Commissioner, with specialists leading on each separate area.

43. In relation to blagging, there were limits on the Information Commissioner’s powers:

> the Data Protection Act, insofar as it applies to this sort of thing, has a very broad exemption within it for what is called the special purposes, for literature, journalism and the arts. My investigatory powers can be very easily stymied by somebody telling me that what they are doing is for journalism, literature and the arts. All my powers of requiring information—information notices, investigation and the more dramatic stuff, kicking the door down—I can’t do if there is an exemption for the special purposes. So my role in this area is, frankly, pretty limited.\(^4\)

44. We questioned the Information Commissioner, Mr Christopher Graham, about the practical limits this placed on his investigations. He explained that, whereas in other situations any application by him to a court with reference to an information notice would be straightforward, it might not be worth spending the time and financial resources to challenge the recipient of the notice in court if he/she was or might be a journalist and the investigation that the person was carrying out might be in the public interest: “I am not sure I could make an information notice stick under these circumstances.”\(^2\) The Information Commissioner therefore considered that the legislation as currently drafted in practice seriously limited his ability to challenge the illegal obtaining of personal information by those who could legitimately claim to be journalists.

45. Furthermore, even where a case could be brought under section 55 of the Data Protection Act, the Information Commissioner considered that the penalties now available were inadequate, and he noted that magistrates were unwilling to impose even the maximum penalties currently available to them.\(^2\) The maximum penalty for blagging under section 55 of the Data Protection Act is a fine of up to £5,000 in the magistrates court, although the fine may be higher if the case is prosecuted in the Crown Court.\(^7\) He contrasted the situation with RIPA and the Misuse of Computers Act, which provide for a custodial sentence of up to two years as penalty for a breach. He noted that the Ministry of Justice was aware of the unsatisfactory situation in respect of the penalties attached to ‘blagging’ and that that department was exploring the possibility of bringing this activity within the ambit of legislation on restitution of the profits of crime\(^8\) and talking to the Sentencing Advisory Council about recommending tougher penalties in its guidelines to magistrates.\(^9\)

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24 Q 133
25 Qq 139–144
26 Qq 150–152
27 Section 60 of the Data Protection Act
28 The Information Commissioner estimated that the profits from the unlawful sale of personal information in the UK would amount to some millions of pounds per year: in one case alone, those selling the information were being paid £70,000 a week for the information: Qq 152–154
29 Q 151
3 The police response

Police response to hacking allegations

46. It would clearly be inappropriate for us to seek to interfere with the continuing police investigation into the News International hacking affair and the recently announced associated public inquiry, but it is necessary to undertake some examination of how the police responded to the allegations at various times.

The 2005–06 investigation and 2006-07 investigation

47. The hacking investigation began in December 2005 when the Head of Royalty Protection at the Metropolitan Police, Mr Dai Davies, told Mr Peter Clarke, then head of the Anti-Terrorist Branch, that members of the Royal Household were concerned that their voicemails were being accessed. Due to the potential security implications of, for example, the movements of members of the royal family becoming known, Mr Clarke said that the Anti-Terrorist Branch would investigate.30 (However, we note that the merger of the anti-terrorist and royal protection function of the Metropolitan Police is an alternative explanation for this decision.) We were surprised that the previous Metropolitan Police Commissioner, Lord Blair of Broughton, said he had only slight knowledge of these events.31

48. As Deputy Assistant Commissioner at the time, Mr Clarke was responsible for setting the parameters of the inquiry. He described how he did so as follows:

The parameters of the investigation, which I set with my colleagues, were very clear. They were to investigate the unauthorised interception of voicemails in the Royal Household, to prosecute those responsible if possible and to take all necessary steps to prevent this type of abuse of the telephone system in the future. The investigation would also attempt to find who else, other than Goodman and Mulcaire, was responsible for the interceptions. The reason I decided the parameters should be so tightly drawn was that a much wider investigation would inevitably take much longer to complete. This would carry, to my mind, two unacceptable risks. First, the investigation would be compromised and evidence lost and, second, that the much wider range of people, who we were learning were becoming victims of this activity, would continue to be victimised while the investigation took its course. This would probably go on for many months and to my mind this would be unacceptable.32

As previously laid out, we were told that the investigation was further limited by the understanding that the correct approach was to attempt a prosecution under section 1 of the Regulation of Investigatory Powers Act, assuming a narrow interpretation of the

30 Q 438
31 Evidence taken before the Home Affairs Committee on 12 July 2011, New landscape of policing, HC 939-I, Qq 43–75
32 Q 454 See also Qq 467-468
offence, meaning that the police would have to find evidence that the voicemail had not been accessed by the intended recipient before it was accessed by the hacker.33

49. When Messrs Mulcaire and Goodman were arrested, the investigatory team, led by Mr Peter Clarke under the oversight of Mr Andy Hayman, requested a large amount of material from News International, including details of who Mr Mulcaire reported to, whether he had worked for other editors or journalists at the News of the World, records of work provided by him and details of the telephone systems in the News of the World offices. The police received a letter from the newspaper’s solicitors saying that News International wished to assist, including with identifying any fellow conspirators, but the amount of relevant documentation was limited. In fact, very little material was produced. The police told us that they were unable to pursue the inquiry further with News International because of their refusal to co-operate.34

50. We pressed Mr Clarke on this issue, asking what prevented him from taking the matter further with News International despite the fact that he was, as he told us, “not only suspicious, I was as certain as I could be that they had something to hide.”35 Mr Clarke told us that what prevented him was the law: the police were advised by lawyers that, whilst News International through its lawyers was giving the impression of full co-operation, the police would not be able to obtain a ‘Schedule 1 production order’ to require disclosures of information as that might seem to amount to a ‘fishing expedition’.36 Mr Clarke said:

I think it has been explained many times before this Committee that there was correspondence entered into between us and News International. The letters that were sent from the Metropolitan Police were put together in consultation with the Crown Prosecution Service. The replies came back through the lawyers acting on behalf of News International and I know that the people, both from the CPS and from the Met, at the time who were looking at this were very frustrated at finding themselves in what they regarded as a legal impasse.37

51. We deplore the response of News International to the original investigation into hacking. It is almost impossible to escape the conclusion voiced by Mr Clarke that they were deliberately trying to thwart a criminal investigation. We are astounded at the length of time it has taken for News International to cooperate with the police but we are appalled that this is advanced as a reason for failing to mount a robust investigation. The failure of lawbreakers to cooperate with the police is a common state of affairs. Indeed, it might be argued that a failure to cooperate might offer good reason to intensify the investigations rather than being a reason for abandoning them. None of

33 Q 454
34 Q 457
35 Q 482
36 Qq 483–486 and Qq 332–334, 375. The law referred to is the Police and Criminal Evidence Act 1984, which provides a special regime for certain types of material which the police may wish to seize as evidence. Including material subject to legal privilege and journalistic material (sections 9, 11 and 13 of the Act). Under this regime, the police may obtain material acquired or created for the purposes of journalism only by means of a ‘Schedule 1 application’. Schedule 1 provides that judges may make orders permitting the police to remove or have access to material connected with a crime provided that a number of conditions are all met to the judge’s satisfaction. These include the condition that “other methods of obtaining the material have been tried without success”. (Schedule 1, paragraph 2(b)(i))
37 Q 484
the evidence given to us suggests that these problems were escalated for consideration by the Commissioner of the Metropolitan Police or by Ministers. The difficulties were offered to us as justifying a failure to investigate further and we saw nothing that suggested there was a real will to tackle and overcome those obstacles.

52. In this context, we draw attention to the fact that, when we asked her on 5 July 2011 to comment on the allegations that the phones of the Dowler family had been hacked into, Ms Rebekah Brooks said in a letter of reply:

I want to be absolutely clear that as editor of News of the World I had no knowledge whatsoever of phone hacking in the case of Milly Dowler and her family, or in any other cases during my tenure.

I also want to reassure you that the practice of phone hacking is not continuing at the News of the World. Also, for the avoidance of doubt, I should add that we have no reason to believe that any phone hacking occurred at any of our other titles.38

In an earlier letter, responding to our request for clarification of the evidence on payment of police officers that she gave to the Culture, Media and Sport Committee in 2003, she said:

My intention was simply to comment generally on the widely-held belief that payments had been made in the past to police officers.

If, in doing so, I gave the impression that I had knowledge of any specific cases, I can assure you that this was not my intention.39

Even this is not easy to reconcile with the record. We note that neither of these carefully-crafted responses is a categorical denial: Ms Brooks’s denial of knowledge of hacking is limited to her time as editor of News of the World; and on payments to police, she did not say that she had no knowledge of specific payments but that she had not intended to give the impression that she had knowledge of specific cases.

53. The refusal by News International to co-operate with the police inquiry in 2005–06 meant that the only significant evidence available to the police lay within the 11,000 pages of documents that had been seized from Mr Mulcaire at the time of his arrest. Mr Clarke and his colleagues decided that the time and resource required for an exhaustive analysis of these papers could not be justified, but instead a team of officers was detailed to go through that material with a range of objectives; firstly, to look for evidence relevant to the offences that had been charged; secondly, to make sure that the police’s obligations in terms of disclosure under the Criminal Procedure and Investigations Act were fulfilled; and thirdly, to look for potential victims where there were national security implications.40 When we asked whether every document had been read at that time, Mr Clarke said that he could not say for sure whether it had: the team was instructed to look through the papers with particular objectives in mind, not to do an exhaustive analysis of every name, phone

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38 Ev162
39 Ev152
40 Q 473
number and so on.\textsuperscript{41} However, Mr Clarke did say that the team did not carry out its task on the narrow business of looking only for links between Mr Mulcaire and Mr Goodman: in the course of trawling through the papers, they identified 28 possible victims.\textsuperscript{42}

54. We asked Mr Clarke why—given he was certain that the rot went wider—he had not followed the evidence by initiating a broader inquiry:

\textit{James Clappison:} In the normal course of policing, if an offence is discovered and it is discovered that there has been further offending associated with that offence, the police normally investigate the further offending, don’t they? If, for example, you stop somebody for driving while disqualified and you find they have been committing burglaries, you would investigate the burglaries as well, wouldn’t you?

Mr Clarke replied that the correct comparison was not with a crime such as burglary but with a complex fraud case where one would focus the investigation at an early stage, decide what the potential offences might be and then concentrate on trying to prove those offences.\textsuperscript{43}

55. The consequences of the decision to focus within the Mulcaire papers on the areas vital to the prosecution of Mulcaire and Goodman were extremely significant. A huge amount of material that could have identified other perpetrators and victims was in effect set to one side. Mr Clarke explained to us the reasons for taking this approach, starting with the context at the time. He reminded us of the increase in the terrorist threat since 2002, and the London bombings and attempted bombings in the summer of 2005. He said that by early 2006 the police were investigating the plot to blow up trans-Atlantic airliners in midflight and those responsible were arrested on 9 August 2006, the day after Messrs Goodman and Mulcaire. By the middle of 2006 the Anti-Terrorist Branch had more than 70 live operations relating to terrorist plots but some of these were not being investigated because there were not enough officers to do so. In this context, he had to decide on priorities, and the priority of protecting life by preventing terrorist attacks was higher than that of dealing with a criminal course of conduct that involved gross breaches of privacy but no apparent threat of physical harm to the public.\textsuperscript{44} Nevertheless we cannot overlook the fact that the decision taken not to properly investigate led to serious wrongdoing which the Commissioner himself now accepts was disreputable.

56. The second reason why the police decided not to do a full analysis of all the material was that they considered the original objectives of the investigation could be achieved through a number of other measures: the high-profile prosecution and imprisonment of a senior journalist from a national newspaper; collaboration with the mobile phone industry to prevent such invasions of privacy in the future;\textsuperscript{45} and briefings to Government,
including the Home Office and Cabinet Office, to alert them to this activity and to ensure that national security concerns could be addressed.46

57. We asked how many officers had been assigned to the investigation. We were told that the number varied but at the start of the investigation, because of the tight focus and the desire to limit the numbers with access to potentially sensitive information, the average was ten to twelve officers, and these formed the core during the investigation, with occasional support from analysts, intelligence officers and document readers. When it came to arrests and searches, officers were borrowed from elsewhere and maybe as many as 60 were involved.47 This compares with an average of 45 officers who have been involved throughout in trawling through the Mulcaire papers and dealing with disclosure requests for the current investigation.

58. We also asked, given that counter-terrorism had to be his officers’ priority, whether anyone had ever considered transferring responsibility for the non-terrorism related aspects of the case to other parts of the Metropolitan Police Service, such as the Specialist Crime Directorate:

Mr Clarke: I suppose you could say that this type of investigation was never core business for the Anti-Terrorist Branch. It came to us because of the national security issues at the beginning.

Alun Michael: That is rather my point.

Mr Clarke: Having got to that point, forgive me, is the point then that could I have tried to pass the investigation to somebody else? I think the realistic point—and I certainly thought about this at the time and it is reflected in the decision logs from the time—is that for the previous two years I had already been stripping out other parts of the Metropolitan Police to support the Anti-Terrorist Branch in a whole series of anti-terrorist operations. A lot of other serious crime had gone uninvestigated to the extent it should have done because of the demands I was placing on them. I took the view that it would be completely unrealistic, given that we were heading towards a prosecution of Goodman and Mulcaire, to then go to another department and say, “We’ve got a prosecution running. We have a huge amount of material here that needs analysing. We don’t know, given the uncertainties of the legal advice, whether there will be further offences coming from this or not. Would you like to devote 50, 60, 70 officers for a protracted period to do this?” I took the judgment that that would be an unreasonable request and so I didn’t make it.

Alun Michael: In your answer, you have indicated that other aspects were stripped out of the command in order to give you the maximum resource for dealing with terrorism. With the obvious benefit of hindsight, might it not have been better to shift this activity as well?

46 Q 458
47 Qq 513-515
Mr Clarke: I don’t honestly see where I could have shifted it to. It would have been more a case of trying to invite people, I think, to lend me more officers and, to be frank, I think I had tried their patience quite sufficiently over the past years. I don’t mean it to sound trite but it would have been a very difficult request to have made to colleagues.

Alun Michael: But it wasn’t pushed up the tree as a responsibility?

Mr Clarke: To be honest, there wasn’t much of a tree to push up above me. I know this is something I discussed not only with my own colleagues in the Anti-Terrorist Branch but of course with Andy Hayman as well.  

59. Mr Clarke also addressed the question of whether his team could have returned to the unassessed material in the months after Messrs Goodman and Mulcaire’s arrests. He said, “The answer quite simply is no. By December we were embroiled in the Litvinenko murder in London, and a few months later the attacks in Haymarket and Glasgow. Meanwhile, we had to service all the court cases that had been coming through the process for some years that in 2007 led to the conviction of dozens of people for terrorist-related crimes.” He added that it would not have been feasible to ask other departments to undertake the task using their own scarce resources in a case where there had already been convictions and there was no certainty of obtaining convictions for serious offences, given the untested nature of the legislation.  

60. We asked whether Mr Clarke personally had been aware of the serious concerns about media breaches of privacy raised in two roughly contemporary reports from the Information Commissioner, What price privacy?, and its follow-up six months later, What price privacy now? Mr Clarke said he had not been aware of them, probably because his focus was on terrorist issues, and if anyone else in the Metropolitan police had known of them they had not linked these reports with the Mulcaire investigation.  

61. When challenged on whether he stood by his decision to limit the investigation in 2006, Mr Clarke said that, despite all that had been revealed since, he believed the decision to have been correct, given the limited resources at his disposal and the absolute priority of dealing with threats to public safety. We note this position. However, its consequences have been serious and we are not convinced that the former Commissioner’s decision to merge anti-terrorist and royal protection functions on the basis that both involved firearms, or the decision to pursue this investigation within the command, were justified. It is also revealing about the nature of management within the Metropolitan Police Service that this issue does not appear to have been escalated to the Commissioner or Deputy Commissioner, or even the Assistant Commissioner, as an issue about which they ought to be aware and to which a solution needed to be found.  

62. Mr Clarke went further and said he considered that, in its own terms, the operation had been a success: the prosecutions had succeeded and the mobile phone industry had taken

48 Qq 521–523
49 Q 459
50 Qq 504–505
action to ensure that their customers were less vulnerable to the type of interception practised by Mr Mulcaire than before—so much so that “because of our work with the mobile phone companies in getting the protective security arrangements around voicemails changed, voicemail hacking no longer continues.” As we discuss in the next chapter, whilst it is true that mobile phone companies have now acted to provide much greater security for their customers’ communications, and whilst the 2005–07 inquiry succeeded on its own terms, we cannot say that inquiry was a success given the extent of the intrusion now becoming apparent and the fact that even now not all the victims of interception have been identified let alone contacted. Nor are we convinced that no hacking takes places or that it cannot take place. We do not have the technical competence to make such a judgement, and nor did we receive detailed evidence on that point.

63. Mr Clarke’s main regrets involved the consequences for victims of the decisions he had taken. One of the reasons why he thought a full trawl through the Mulcaire papers was not vital, was that he was putting in place a strategy for dealing with victims. As far as the people who had been identified by his officers were concerned, the strategy involved police officers informing certain categories of potential victim and the mobile phone companies identifying and informing others to see if they wanted to contact the police. As Mr Clarke acknowledged, he had since learned that this strategy did not work as intended. He also considered it “utterly regrettable” that the decision not to conduct a detailed analysis of all the material available had led to the failure to identify that victims of some of the most serious crimes were also among the victims of hacking—a category of people not previously considered to be potential targets.

64. We also questioned Mr Andy Hayman, who at the time had been Assistant Commissioner in charge of the Specialist Operations Group and Mr Peter Clarke’s immediate superior officer. We wanted to explore Mr Hayman’s role in the 2006 investigation, particularly in the light of the fact that he was known to have had a number of meals with senior News International figures at the time and had subsequently, shortly after his resignation from the Metropolitan Police in 2008, started to write a regular column for The Times.

65. Mr Hayman denied that anything improper or unprofessional had occurred, either in relation to his informal contacts with News International at the time or in relation to his subsequent employment by them. On the dinners, he said that he had not revealed anything about the hacking investigation, not least because Mr Clarke was, for security reasons, minimising the number of people kept informed about the investigation so Mr Hayman did not know the details himself. Mr Hayman said whilst he was accountable for what was done and had oversight of the investigation, the day-to-day responsibility was Mr Clarke’s and he was not even aware that Mr Clarke considered News International was being very obstructive in relation to the investigation. He stated that he had had no involvement in the decision to set narrow parameters for the inquiry, nor in the decision

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51 Q 467
52 Qq 458–459
53 Qq 528–532
54 Qq 534–536 and 544
not to comb through the 11,000 pages of the Mulcaire documents. Whilst he could not remember the detail of his daily briefings from Mr Clarke, he said that he had been aware of the CPS advice and had endorsed all Mr Clarke’s decisions about strategy and approach.55

66. Mr Hayman claims to have had little knowledge of the detail of the 2006 operation, and to have taken no part in scoping it or reviewing it; his role seems to have been merely to rubber-stamp what more junior officers did. Whilst we have no reason to question the ability and diligence of the officers on the investigation team, we do wonder what ‘oversight’, ‘responsibility’ and ‘accountability’—all of which words were used by Mr Hayman to describe his role—mean in this context.

67. Leaving aside the fact that his approach to our evidence session failed to demonstrate any sense of the public outrage at the role of the police in this scandal, we were very concerned about Mr Hayman’s apparently lackadaisical attitude towards contacts with those under investigation. Even if all his social contacts with News International personnel were entirely above board, no information was exchanged and no obligations considered to have been incurred, it seems to us extraordinary that he did not realise what the public perception of such contacts would be—or, if he did realise, he did not care that confidence in the impartiality of the police could be seriously undermined.

68. Mr Hayman was very vague about the number of dinners and other events that occurred during the time of the 2005–07 investigation, but he stated that he had always been accompanied by the Director of Communications of the Metropolitan Police.56 We have subsequently received evidence from the Director of Communications that, to the best of his recollection, he accompanied Mr Hayman only once to a social event with News International:

I first became aware of the investigation into phone hacking upon my return from a period of leave in August 2006.

To the best of my knowledge and recollection, the only dinner that I attended with Mr Hayman and News International staff was on 25 April 2006, some three months previously. The dinner was entered in the Specialist Operations Directorate Hospitality Register.

Therefore, I did not discuss with, or give advice to, Mr Hayman on any question relating to attending this dinner whilst the investigation was in progress. Furthermore, I did not have any conversation with Mr Hayman about phone hacking more generally at that time.57

We do not expressly accuse Mr Hayman of lying to us in his evidence, but it is difficult to escape the suspicion that he deliberately prevaricated in order to mislead us. This is very serious.

55 Qq 562–570
56 Qq 534–535
57 Ev160
69. Mr Hayman’s conduct during the investigation and during our evidence session was both unprofessional and inappropriate. The fact that even in hindsight Mr Hayman did not acknowledge this points to, at the very least, an attitude of complacency. We are very concerned that such an individual was placed in charge of anti-terrorism policing in the first place. We deplore the fact that Mr Hayman took a job with News International within two months of his resignation and less than two years after he was—purportedly—responsible for an investigation into employees of that company. It has been suggested that police officers should not be able to take employment with a company that they have been investigating, at least for a period of time. We recommend that Lord Justice Leveson explore this in his inquiry.

**Assistant Commissioner Yates’s role**

70. Following the conviction of Messrs Mulcaire and Goodman, the papers seized from Mr Mulcaire were stored in evidence bags and the police seem to have expected no further action would need to be taken. The case was considered closed.58 However, the Guardian newspaper continued to investigate whether other journalists and editorial staff from the News of the World had made use of Mr Mulcaire’s services to obtain information illegally. On 8 July 2009, the Guardian published a story that Mr Gordon Taylor, head of the Professional Footballers Association, had been paid a substantial sum by News International to stop him speaking about the alleged hacking of his mobile phone. The obvious inference was that other journalists must also have been involved in hacking since it was unlikely the royal correspondent of the News of the World would have been interested in Mr Taylor’s messages. As stated earlier, this and other stories led the Commissioner of the Metropolitan Police on 9 July 2009 to put Assistant Commissioner John Yates in charge of examining the allegations. This process has been frequently referred to as a ‘review’ of the earlier investigation, but Mr Yates told us: “From the beginning of my involvement in this matter in 2009, I have never conducted a ‘review’ of the original investigation and nor have I ever been asked to do so.” He told us that ‘review’ has a specific meaning for the police, “a review, in police parlance, involves considerable resources and can either be thematic in approach—such as a forensic review in an unsolved murder investigation—or involves a review of all relevant material.”59 Mr Yates told us that the Commissioner had asked him to “establish the facts around the case and to consider whether there was anything new arising in the Guardian article. This was specifically not a review. [Mr Yates’s emphasis]”60

71. The form of Mr Yates’s consideration of the hacking allegations appears to have been that he received detailed briefings from the Senior Investigative Officer for the 2005–06 investigation, including considering the CPS’s contemporaneous advice (he did not take fresh legal advice), and after discussing it with some of the officers involved in the investigation he came to the conclusion that the Guardian articles gave no new information unknown to the police in 2005–07 that would justify either re-opening or reviewing the investigation. The whole process took about eight hours.61 At that time, Mr

58 Ev158
59 Ibid.
60 Ibid.
61 Ibid. and Qq 327, 335–336, 364–369, 386–388, 390, 394–401, 406–408
Yates also took the decision that the material seized from Mr Mulcaire should be listed on a database so that it would in the future be easier to see whether new evidence could be linked to any existing evidence.62

72. At the same time, the Director of Public Prosecutions had ordered an urgent examination of the material supplied to the CPS. Such a review by the CPS “is always undertaken in relation to relevance in respect of the indictment”, although Mr Yates stresses that the CPS saw all material available to the police. It appears that the CPS review only reconsidered whether all the material relevant to the original indictment of Messrs Mulcaire and Goodman in relation to the six charges in 2007 had been dealt with thoroughly. However, in a written memorandum dated 14 July 2009, Counsel confirmed that the CPS had asked about the possibility of the then editor of the News of the World or other journalists being involved in the Goodman-Mulcaire offences, but had never seen any evidence of such involvement. We were told by the Director of Public Prosecutions that at this time, in July 2009, the police and CPS discussed the mention in the papers of the name ‘Neville’—which was taken possibly to refer to Mr Neville Thurlbeck, ex-chief reporter of the News of the World. The DPP, however, concluded that the name ‘Neville’ was not enough to warrant re-opening the investigation, and Mr Thurlbeck was not interviewed.63 At the end of the CPS review, the Director of Public Prosecutions said that “it would not be appropriate to re-open the cases against Goodman and Mulcaire or to revisit the decisions taken in the course of investigating and prosecuting them.”64

73. In short, the exercises conducted by the police and the CPS in July 2009 appear to have been limited to the consideration of whether or not, in the light of recent reports in the media, the 2005–07 investigation had been carried out thoroughly and correctly. Critically, because the 2005–07 investigation had focused on the joint roles of Messrs Mulcaire and Goodman, there was no progress in 2009 to consideration of the relationships that Mr Mulcaire might have had with other journalists, even though the Gordon Taylor story implied that such relationships had existed.

74. On 1 September 2010, just before AC Yates first gave oral evidence to us, the New York Times reported comments by the former News International journalist, Mr Sean Hoare, about the involvement of former colleagues in hacking. This led Mr Yates to undertake a scoping study—in other words, to appoint a Senior Investigating Officer to ascertain whether the new information published in the New York Times was sufficient to justify (re)opening an investigation.

75. On 7 September, we asked Mr Yates about his approach to the new allegations:

Q22 Alun Michael: Can I just clear up one simple point? You referred to speaking to and interviewing a number of people, and a letter that is going today to the New York Times and so on. Would I be right in interpreting what you have said as meaning there is now a live investigation taking place?

62 Q 372
63 Qq 399–401 By July 2009, Mr Keir Starmer QC was the DPP.
**Mr Yates:** I think it’s a semantic point. What constitutes a reopened investigation? If we are going to speak to somebody, some people will say that is a reopened investigation. I would say we are considering new material and then we will work with the CPS to see whether that constitutes potential lines of inquiry that can be followed up and would be likely to produce evidence and be a proper use of our resources.

**Q23 Alun Michael:** I suppose I would put it another way. Is it just a question of having some discussions or are you actively seeking to be able to say to the public that the issues have been fully investigated?

**Mr Yates:** Mr Hoare has made some very serious allegations both in print and on the radio, and clearly we need to go and speak to him to see what he has to say about that in the broader context.\(^{65}\)

Rather than being ‘a semantic point’, we consider the evidence given to us by Mr Yates to be totally unclear. There was considerable ambiguity about the status and depth of the police inquiries, and it was not clear whether the purpose was to respond to potential criticism of the earlier inquiries or to genuinely pursue the evidence to a clear conclusion. This is one reason that we kept our own inquiry open in the hope of obtaining greater clarity in due course.

76. Again, apparently because witnesses were unwilling to come forward, the CPS decided on 10 December 2010 that there was insufficient evidence to provide a realistic prospect of conviction against any of the people identified in the *New York Times*.\(^{66}\)

77. However, the situation changed completely very early in January 2011. As a result of the continuing civil proceedings being brought by people who believed themselves to have been victims of hacking, disclosure requirements were imposed on the police by the courts and—arguably in response to these disclosures—News International decided to suspend Mr Ian Edmondson on 5 January and thereafter to provide new information to the police about the scope of complicity by other employees in the hacking by Mr Mulcaire. On 14 January 2011 the Director of Public Prosecutions announced that the CPS would conduct a “comprehensive assessment of all material in the possession of the Metropolitan Police Service relating to phone hacking, following developments in the civil courts”, which would “involve an examination of all material considered as part of the original investigation into Clive Goodman and Glenn Mulcaire and any material that has subsequently come to light.”\(^{67}\) The assessment was to be carried out by the Principal Legal Advisor, Alison Levitt QC.

78. On 26 January 2011, the Metropolitan Police announced it was launching a new inquiry into alleged phone hacking as a result of receiving “significant new information from News International relating to allegations of phone hacking at the News of the World in 2005/06.” The new investigation was to be led by DAC Sue Akers and carried out by the

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\(^{65}\) Evidence taken before the Home Affairs Committee on 7 September 2011, *Specialist Operations*, HC 441-i

\(^{66}\) Ev159

Specialist Crime Directorate which had, according to the press notice announcing the inquiry, been investigating a related phone hacking allegation since September 2010. It was agreed with the CPS that Alison Levitt would continue her re-examination of the existing material.

79. We pressed Mr Yates repeatedly on why the scope of the exercises in 2009–10 had been so narrow, when he was aware of the earlier Operation Motorman which—though not related to hacking—revealed journalists’ widespread use of blagging and other illegal methods of obtaining information. He replied:

It is a very fair question, but you talked about command decision. What you have to do occasionally, you do take decisions, you base them on risk and you consider them fully about what are the other issues, and I have given you the levels of reassurance I had. There was simply no reason at that time. The ICO [Information Commissioner’s Office] is a completely different matter, it judges on a different standard of evidence against different offences. It was a decision taken. Now, in the light of what we now know, it was not a very good decision, but it is solely—I will repeat it—it is solely as a result of the new information provided by News International who clearly misled us. They clearly misled us.

Nicola Blackwood: Was there a feeling that you were going to do the minimum necessary in order to show that you had looked at the facts and that there was nothing new in this case because you have more important things to be getting on with?

AC Yates: There is probably an element of that but if there had been any new evidence there, if I had seen any new evidence there, then of course—

Nicola Blackwood: But you did not even take new legal advice, so you just looked at the documentation from before.

AC Yates: I was supported later by the DPP and by counsel.

80. We understand that, when Sir Paul announced in July 2009 that he was asking Mr Yates to look into any new information, this was an unprepared remark made as he was going into the ACPO conference rather than a carefully prepared statement. Unfortunately it left the public—and indeed Parliament—with the impression that a more detailed examination was to be held than was in fact the case.

81. We assume that Sir Paul left Mr Yates with a large amount of discretion as to how he should consider the evidence. Mr Yates has subsequently expressed his view that his reconsideration in 2009 of the material available from the earlier investigation was very

69 Qq 376–378, 381–385
70 Qq 382–384
71 Ev160
poor.\textsuperscript{72} We agree. Although what Mr Yates was tasked to do was not a review in the proper police use of the term, the public was allowed to form the impression that the material seized from Mr Mulcaire in 2006 was being re-examined to identify any other possible victims and perpetrators. Instead, the process was more in the nature of a check as to whether a narrowly-defined inquiry had been done properly and whether any new information was sufficient to lead to that inquiry being re-opened or a new one instigated. It is clear that the officers consulted about the earlier investigation were not asked the right questions, otherwise we assume it would have been obvious that there was the potential to identify far more possible perpetrators in the material seized from Mr Mulcaire. Whether or not this would have enabled the police to put more pressure on News International to release information, by making it clear that police inquiries were not merely a ‘fishing expedition’ but targeted at certain people, is an issue that may be addressed by the forthcoming public inquiry.

82. Mr Yates has apologised to the victims of hacking who may have been let down by his not delving more deeply into the material already held by the police. We welcomed that and agree that his decision not to conduct an effective assessment of the evidence in police possession was a serious misjudgement.

83. As we were finishing our inquiry, the news broke that Sir Paul Stephenson and Assistant Commissioner Yates had resigned, and that the Metropolitan Police Authority had referred to the Independent Police Complaints Commission (‘IPCC’) complaints about their conduct and the conduct of Mr Peter Clarke, Mr Andy Hayman and Mr Dick Fedorcio. The Deputy Chair of the IPCC had made a statement that the IPCC would carry out an independent investigation of the matters referred.\textsuperscript{73}

84. We asked Sir Paul, Mr Yates and Mr Dick Fedorcio, Director of Public Affairs at the Metropolitan Police, about the allegations being circulated in the media, about the employment by the Metropolitan Police of Mr Neil Wallis, former deputy editor of the News of the World. Assistant Commissioner Yates admitted to us that he was a friend, though not a close friend of Mr Wallis. In September 2009 Mr Wallis (who had resigned from his employment with News International) was employed on a ‘retainer contract’ to assist Mr Fedorcio during the illness of Mr Fedorcio’s deputy. The contract was on a rolling six-month basis and was renewed twice. Just after the second renewal, on 7 September 2010, stories in the New York Times about hacking by News International journalists led Mr Fedorcio and Mr Wallis to come to the conclusion that the relationship now might lead to embarrassment and that to continue the contract was inappropriate.

85. We examined the process for appointing Mr Wallis. We were told that three quotes were invited; Mr Wallis’s was by far the lowest. On the question of whether due diligence had been performed in relation to Mr Wallis, Mr Fedorcio said that he had consulted AC Yates. AC Yates said that he had asked Mr Wallis informally about whether anything in his past might be a source of embarrassment to him, the Metropolitan Police Service or Mr Wallis himself. Mr Wallis told him he need have no concerns. Mr Yates completely denied the suggestion that what he had done at all deserved the description of ‘due diligence’: he

\textsuperscript{72} Q 325

\textsuperscript{73} IPCC press notice dated 18 July 2011, ‘IPCC receives five referrals from the Metropolitan police Authority regarding the actions of current and former senior Met officers’.
argued he had sought informal assurances to satisfy himself, and this was completely separate from the objective process of assessment and awarding of contracts.

86. We are appalled at what we have learnt about the letting of the media support contract to Mr Wallis. We are particularly shocked by the approach taken by Mr Fedorcio: he said he could not remember who had suggested seeking a quote from Mr Wallis; he appears to have carried out no due diligence in any generally recognised sense of that term; he failed to answer when asked whether he knew that AC Yates was a friend of Mr Wallis; he entirely inappropriately asked Mr Yates to sound out Mr Wallis although he knew that Mr Yates had recently looked at the hacking investigation of 2005-06; and he attempted to deflect all blame on to Mr Yates when he himself was responsible for letting the contract.

The new investigation

87. As described by DAC Akers, the catalyst for the new investigation was the civil actions against News International brought by a number of people who suspected that they had been victims of hacking. These actions involved legal requests for a “vast amount” of disclosure from News International and, in the process of trawling through their e-mail and other records, News International found three key e-mails implicating an employee other than Mr Goodman in hacking. These were passed to the police in January 2011 and led to the launch of the new inquiry.

88. We asked DAC Sue Akers about progress in the new investigation. She said that in the six months since it had started, there had been eight arrests. Her team of 45 officers were still compiling lists of all the material seized in 2006 as the database started under AC Yates’s auspices had not worked properly. However, she assured us that the material would be examined thoroughly and, if it led to suspicions about journalists inside or outside the News International group, the investigation would follow that evidence.75 As for relations with News International, she explained that these had been difficult at first when most of the contact was with News International’s lawyers and it had taken two months to agree a protocol on journalistic privilege.76 However, following a meeting between News International executives and the police to discuss their “very different interpretations of the expression ‘full co-operation’”, relations had improved markedly.

89. In order to reassure the public and all those who feared that they might have been targets of hacking, she had adopted a different approach from her predecessors: instead of addressing only those who were definitely victims of crime, she had decided they should contact everyone whose name or phone number appeared in the Mulcaire papers and who could be identified from the information available. She said there were in the region of 3,870 full names of individuals in the evidence already held by the police, plus about 5,000 landline numbers and 4,000 mobile numbers. However, when we asked her how many of these people had been contacted so far, the figure she gave was 170. Many others—
approximately 500—had contacted her team asking whether their details were recorded in Mr Mulcaire’s papers; only 70 of these had been definitely identified as potential victims. She noted that her team also had the task of responding to disclosure requests in connection with the civil actions that were continuing; she indicated that this was very time-consuming and was significantly slowing down the investigation. It was therefore impossible to predict when the investigation would be complete, though she drew attention to the fact that those arrested had been bailed to appear in October, which gave an indication of the minimum timescale.78

90. We asked DAC Akers about the fact that some of the material recently handed over to the police by News International revealed that newspapers had made payments to some police officers, and that the Commissioner of the Metropolitan Police had put her in charge of investigating this. DAC Akers said that, as a result of having become aware of these allegations on 20 June with more material being supplied on 22 June, she had met the Independent Police Complaints Commission and it was agreed with them that she should continue to “scope” a possible investigation. On 7 July, the matter was formally referred to the IPCC by the Metropolitan Police. In technical terms, it was a ‘supervised investigation’ under the personal supervision of the Deputy Chair of the IPCC: this meant that, whilst DAC Akers retained direction and control of the investigation, the Deputy Chair of the IPCC was kept fully appraised of what was happening.79

91. From the point of view of victim support and of reassurance to the public, DAC Akers’s decision to contact all those who can be identified as of interest to Mr Mulcaire is the correct one. However, this is not the same as saying all these people were victims of hacking, let alone that they could be proved to be victims. Only 18 months’ worth of phone data from the relevant period still exist: unless Mr Mulcaire provides a list, no one will ever know whose phone may have been hacked into outside that period. Within the 18-months data held, about 400 unique voicemail numbers were rung by Messrs Mulcaire or Goodman or from News of the World hub phones, and these are the voicemails likely to have been hacked into. The total number of people who may eventually be identified as victims of Mr Mulcaire’s hacking is therefore much lower than the number of names in his papers.

92. DAC Akers gave us a guarantee that this further investigation would be carried out thoroughly. We were impressed by her determination to undertake a full and searching investigation. The Specialist Crime Directorate is clearly the correct place for an investigation of this sort, though we note that officers have had to be ‘borrowed’ from across the Metropolitan Police Service to meet the needs of this particularly labour-intensive inquiry.

93. We note with some alarm the fact that only 170 people have as yet been informed that they may have been victims of hacking. If one adds together those identified by name, the number of landlines and the number of mobile phone numbers identified (and we accept that there may be some overlap in these), that means up to 12,800 people may have been affected all of whom will have to be notified. We accept that there

78 Qq 608, 637, 611, 639 and 616–617
79 Qq 613–614
are a number of reasons why progress may have been slow so far, but at this rate it would be at least a decade before everyone was informed. This timeframe is clearly absurd, but it seems to us to underline the need for more resources to be made available to DAC Akers. We understand that in the current situation of significant budget and staff reductions, this is very difficult. However, we consider that the Government should consider making extra funds available specifically for this investigation, not least because any delay in completing it will seriously delay the start of the public inquiry announced by the Prime Minister.

94. We are seriously concerned about the allegations of payments being made to the police by the media, whether in cash, kind or the promise of future jobs. It is imperative that these are investigated as swiftly and thoroughly as possible, not only because this is the way that possible corruption should always be treated but also because of the suspicion that such payments may have had an impact on the way the Metropolitan Police may have approached the whole issue of hacking. The sooner it is established whether or not undue influence was brought to bear upon police investigations between December 2005 and January 2011, the better.

95. We are concerned about the level of social interaction which took place between senior Metropolitan Police officers and executives at News International while investigations were or should have been being undertaken into the allegations of phone hacking carried out on behalf of the News of the World. Whilst we fully accept the necessity of interaction between officers and reporters, regardless of any ongoing police investigations senior officers ought to be mindful of how their behaviour will appear if placed under scrutiny. Recent events have damaged the reputation of the Metropolitan Police and led to the resignation of two senior police officers at a time when the security of London is paramount.
The role of the mobile phone companies

96. To date in the various parliamentary, police and media inquiries into phone hacking, there has been little focus on the role of the mobile phone companies in advising customers on security, protecting the data of their customers, and in notifying customers of any suspected breaches of security or data protection.

97. We were aware that the few possible victims of hacking by Mr Mulcaire already firmly identified by April this year had been customers of three leading mobile phone companies: O2, Vodafone, and the joint venture between Orange UK and T-Mobile UK which is called ‘everything everywhere’ (because these names are more familiar, we use the form ‘Orange UK/T-Mobile UK’ for the joint venture in this Report). We also received some information from ‘Three’ describing its security procedures relating to voicemail, but since—as of 8 June 2011—it had had no indication that any of its customers had been victims of hacking, we did not pursue more detailed inquiries with that company.

How the hacking was done

98. Mobile phone companies have for some years offered the service to customers of being able to access their voicemails either from their own handsets or, using a PIN number, from another phone. In order to carry out his operations, Mr Mulcaire had to obtain the mobile phone numbers and the voicemail pin numbers of his quarry. In 2005–06, there were considerable variations between mobile phone companies in the ease of accessing voicemails. Handsets often came with a default PIN number for accessing voicemail and, it has been suggested, many of the victims may not have changed the standard default settings on their phones. Hackers knew that there were a limited number of default numbers and could at least try those first. O2 told us that before 2006 customers could use the default number for access and were not required to register a personal voicemail PIN; Vodafone’s system seems to have been similar as it said that prior to 2006 customers were “able to” (not ‘required to’) change their voicemail PIN to a number of their choosing; default PINs were removed on T-Mobile in 2002 and had never existed on Orange, so from 2002 onwards customers of both companies were unable to access voicemail remotely without a personal PIN.  

99. In oral evidence in September 2010, AC Yates said: “When the investigation started in 2006, it was a catalyst for the service providers to provide proper direct and more prescriptive security advice rather than what most people did in the past, which is leave their PIN number as the factory setting.”

100. In some circumstances, even when a customer had set a personal PIN number but forgotten this, it was possible to ask the phone company to reset the PIN to default or a temporary PIN number, if the person requesting it passed security checks such as the

80 Ev142; Ev143; and Ev144
81 Evidence taken before the Home Affairs Committee on 7 September 2011, Specialist Operations, HC 441-i, Q 26
provision of registered personal information.\textsuperscript{82} Unfortunately, this sort of information is often easy for a hacker to guess or ascertain if the customer is well known.

101. However, given DAC Akers’s evidence that about 400 unique voicemail numbers were rung from Mr Mulcaire’s, Mr Goodman’s or News of the World hub phones,\textsuperscript{83} it is possible that Mr Mulcaire obtained some of the information he needed for hacking from the mobile companies by either pretending to be someone with a legitimate right to the information or by bribing an employee for information. We therefore tried to discover whether phone company staff may have had access to personal PIN numbers, which they may have been either deceived or bribed into passing on.

102. O2 said that staff did not have access to customers’ personal voicemail PIN numbers even before 2006.\textsuperscript{84} Vodafone UK told us that personal PINs were held on an encrypted platform which had always been inaccessible to its staff.\textsuperscript{85} Orange UK/T-Mobile UK said that the voicemail PIN was not stored in any readable format within either T-Mobile or Orange UK “and therefore we do not consider it possible for anyone to obtain a customer’s unique PIN via our systems.”\textsuperscript{86} However, Orange UK/T-Mobile UK noted that Customer Service Advisers may change PIN numbers at the request of customers who have, for example, lost their phones. Whilst customers may subsequently change the number again through their own handset, unless and until they do so the Customer Service Adviser knows their PIN.\textsuperscript{87}

103. Of the three mobile companies which we knew had had customers identified as possible hacking victims of Mr Mulcaire, only one directly answered our question: Did you carry out any investigation to discover how Mr Mulcaire had obtained access to customers’ PIN numbers? Vodafone told us: “Yes. ... it appears that attempts may have been made by an individual/individuals to obtain certain customer voicemail box numbers and/or PIN resets from Vodafone personnel by falsely assuming the identity of someone with the requisite authority (such as the relevant customer).”

104. In his Adjournment Debate on Mobile Communications (Interception) on 10 March 2011, Mr Chris Bryant MP said: “There is clear evidence that in some cases rogue staff members [of mobile phone companies] sold information to investigators and reporters.”\textsuperscript{88} We attempted to discover whether that may have happened in this case. We asked: ‘Were any members of your staff disciplined followed the release of PIN numbers; and, if so, how many?’ Vodafone replied that, given it was not clear exactly how many and which of its customers had been affected by the Mulcaire case, and given the nature of the deception that may have been practised on its staff, it was not in a position to investigate the matter, let alone discipline anyone.\textsuperscript{89} O2 said: “We found no evidence to suggest that any of our

\textsuperscript{82} Ev142; and Ev140
\textsuperscript{83} Ev156
\textsuperscript{84} Ev142
\textsuperscript{85} Ev143
\textsuperscript{86} Ev140
\textsuperscript{87} Ev144
\textsuperscript{88} HC Debate, col 1171
\textsuperscript{89} Ev139
staff disclosed PIN numbers (which is consistent with our investigation that found that voicemails were accessed through use of the default PIN number). No employee, therefore, was disciplined.”  

Orange UK/T-Mobile UK said: “We have no evidence of any Orange UK or T-Mobile UK staff involvement related to this hacking incident therefore there was no requirement to take disciplinary action. Importantly, the systems we operate mean that individual staff members do not have access to a customer’s PIN number. They would only ever know the PIN number when a temporary PIN is issued ... and this would only be done when the customer had successfully passed through our security process to verify their identity.”

105. We note that, despite these protections, each of the companies had identified about 40 customers whose voicemails appeared to have been accessed by Mr Mulcaire. We also note that all three companies have disciplined or dismissed employees for unauthorised disclosure of customer information in the last ten years, though there is no indication that any of these employees was linked to this case.

Measures taken since to deter hacking

106. In his evidence to us, Mr Bryant was asked what mobile phone companies should do to protect their customers’ privacy better. He replied:

  I think they need stronger internal mechanisms to make sure that PIN numbers aren’t available to be handed out by somebody when ringing into a mobile phone company. I think all the phone companies should adopt the same processes as well because people do often change from one company to another. I think it would be a good idea if they always notified somebody when there was any doubt about whether their phone was being accessed illegally, which is not the policy of all the mobile companies at the moment. Some of them do it and some of them don’t, which is why, for instance, in my case I rang Orange and found out seven years after the occasion that my phone had been accessed back in 2003.

107. Very soon after the police began their inquiry into Mr Mulcaire, and arguably as a result of that investigation, the mobile phone companies reviewed and changed the way in which they allowed customers to access their voicemails remotely (ie not from their own handsets). Whereas previously Vodafone’s customers had been able to contact Customer Services to request that the PIN number be manually reset to a number of their choice, Vodafone tightened up the operation by providing that new PIN numbers could be issued only via SMS message direct to the customer’s own handset. Vodafone also subsequently installed a new, more secure voicemail platform, with additional procedures in place to warn customers in the event of unsuccessful remote attempts at access. O2 changed its
Unauthorised tapping into or hacking of mobile communications

voicemail service so that customers cannot access their voicemails remotely at all unless they have registered a personalised PIN number.  

108. When he was asked what more mobile phone companies should be doing to improve security, the Information Commissioner highlighted a lack of information for the public:

I wish they were a bit noisier about advising their customers on how they can keep their information secure. It is a general point, I think. There are responsibilities on communication service providers and internet service providers, and there are also things that individual consumers and citizens can do, but you kind of have to be told about them to know what it is you can do. We recently did some survey work and found that a very high proportion of people had no idea whether their home wi-fi was passworded or not. That is a pretty basic step. I wonder how many of us are very, very careful to password protect our mobile phones, not just the voicemail mailbox but also the machine itself, the device itself. I would like the mobile phone operators to be much louder in their advice to customers saying, “Look, your Smartphone, your iPhone, it’s a wonderful thing, you can do fantastic things on it but there’s a downside. Be careful, make sure you’ve set appropriate permissions, make sure you’ve set appropriate passwords.” That should not be in the small print of some agreement written in lawyer-speak that nobody can understand; it should up front, user-friendly advice.  

109. However, he considered that the situation was improving:

I have found that the mobile phone companies are getting much better at this. I have been invited to give presentations to global privacy conferences by two of our leading mobile providers recently. They really are interested. The reason they are interested is, I think, they have got that we are now beyond the stage of kiddies in the sweet shop bowled over by the wonders of what we can see; we are a bit more questioning. … There is a commercial reason for treating customers with respect.  

110. As mentioned above, the Information Commissioner also explained that, under the new Privacy and Electronic Communications Regulations which came into effect on 25 May 2011, from now on any data controller, including a mobile phone company, which becomes aware that data security has been breached must inform its customers of this.

111. We welcome the measures taken so far to increase the security of mobile communications. However, with hackers constantly developing new techniques and approaches, companies must remain alert. In particular, it is inevitable that companies will think it in their interest not to make using technology too difficult or fiddly for their customers, so do not give as much prominence to the need to make full use of all safety features as they should do. We would like to see security advice given as great prominence as information about new and special features in the information provided when customers purchase new mobile communication devices.

95 Ev142
96 Q 162
97 Ibid.
Notifying the victims

112. Mr Peter Clarke told us that he had established a strategy for informing the potential victims of Mr Mulcaire’s hacking, with the police contacting certain categories of potential victim and the mobile phone companies identifying and informing others to see if they wanted to contact the police. He had not been aware that this had not worked.

113. We were told that from an early stage the investigation team were in close contact with, and had co-operation from, all the main mobile phone service providers. This was supplemented by communication via the Mobile Industry Crime Action Forum and its Chair. However, whilst each of the companies was well aware of the investigation, only one of those from whom we took evidence (O2) actually took the step of contacting their customers at the time to inform them that their voicemail messages might have been intercepted. It is worth setting out their reasoning in full.

114. O2 said that, when they had checked with the police that this would not interfere with the investigation: “As soon as the above customers were identified, we contacted the vast majority by telephone to alert them that there may have been a breach of data. There were a small number of customers who were members of a concierge service that were contacted directly by that service rather than O2. There were also a small number of customers that the Police contacted directly for security reasons;” and “We informed the customers that they were potential targets for voicemail interception and changed their voicemail PIN numbers. We also offered to put them in touch with the Metropolitan police, if they wished to discuss this matter with the investigation team.”

115. Vodafone’s response to the investigation was less direct: “mindful of the need to avoid undermining the ongoing Police investigation and/or jeopardising any subsequent prosecutions, Vodafone sought to contact the above customers in August 2006 to remind them to be vigilant with their voicemail security.”

116. Orange UK and T-Mobile UK at first told us: “We have not had any cause to suspect that particular mailboxes have been unlawfully accessed, and accordingly we have not needed to notify the relevant customers.” They subsequently explained that they considered it inappropriate to take any action in respect of their customers: “as any direct contact with customers could jeopardise the ongoing Police investigation and prejudice any subsequent trial. This is our standard approach when assisting in police investigations.”

117. Clearly, Mr Clarke’s strategy for informing victims broke down completely and very early in the process. It seems impossible now to discover what went wrong in 2006. Some of the mobile companies blamed police inaction: both Vodafone and Orange UK/T-Mobile UK said that the police had not told them to contact their customers until November 2010. AC Yates accepted that some of the correspondence between the
police and the companies had not been followed up properly. However, the companies cannot escape criticism completely. Neither Vodafone nor Orange UK/T-Mobile UK showed the initiative of O2 in asking the police whether such contact would interfere with investigations (and O2 told us that they were given clearance to contact their customers only ten days or so after being informed of the existence of the investigation). Nor did either company check whether the investigation had been completed later. They handed over data to the police, Vodafone at least sent out generalised reminders about security (Orange UK/T-Mobile UK may not even have done that), they tightened their procedures, but they made no effort to contact the customers affected.

118. We find this failure of care to their customers astonishing, not least because all the companies told us that they had good working relationships with the police on the many occasions on which the police have to seek information from them to help in their inquiries.

119. The police appear to have been completely unaware that few of the potential victims of the crime had been alerted. When we asked AC Yates in September 2010 whether possible hacking victims had been notified, he replied: “Where we believe there is the possibility someone may have been hacked, we believe we have taken all reasonable steps with the service providers, because they have a responsibility here as well, and we think we have done all that is reasonable but we will continue to review it as we go along.” In response to the question “What are these reasonable steps?” he said: “Speaking to them or ensuring the phone company has spoken to them. It is those sort of steps.”

120. We are reassured now that DAC Akers’s investigation is setting this matter to rights by contacting all victims or potential victims. However, we were alarmed that Mr Chris Bryant MP told the House of Commons in March this year:

> When I asked Orange yesterday whether it would notify a client if their phone was hacked into now, it said it did not know. However, I understand that today it believes that in certain circumstances it might notify a client. I believe that in every such circumstance the client should be notified when there has been a problem. All that suggests a rather slapdash approach towards the security of mobile telephony.

121. We expect that this situation will be improved by the coming into force of the new Privacy and Electronic Communications Regulations, which provide that when companies discover a breach of data security, they have to notify not only the Information Commissioner but also their affected customers.

122. This inquiry has changed significantly in its remit and relevance as it has progressed, and further developments are occurring on a regular basis. We expect that further discoveries will go beyond our present state of knowledge. Our Report is based

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102 Q 433
103 Evidence taken before the Home Affairs Committee on 7 September 2011, Specialist Operations, HC 441-i, Qq 7–9
104 HC Deb, 10 March 2011, col 1171
105 Q 156
on the information currently available, but we accept that we may have to return to this issue in the near future.
Conclusions and recommendations

1. We have been frustrated by the confusion which has arisen from the evidence given by the CPS to us and our sister Committee. It is difficult to understand what advice was given to whom, when. Only on the last day on which we took evidence did it become clear that there had been a significant conversation between the Director of Public Prosecutions and Assistant Commissioner Yates regarding the mention in the Mulcaire papers of the name Neville and whether this and Mr Mulcaire’s contract with News International were a sufficient basis on which to re-open the investigation. The fact that the CPS decided it was not, does not in any way exonerate the police from their actions during the inquiry. (Paragraph 34)

The lack of a regulatory authority under the Regulation of Investigatory Powers Act has a number of serious consequences. Although the Information Commissioner’s office provides some advice, there is no formal mechanism for either those who know they are in danger of breaking the law or those whose communications may be or have been intercepted to obtain information and advice. Moreover, the only avenue if anyone is suspected of unauthorised interception is to prosecute a criminal offence, which, as the Information Commissioner noted, is a high hurdle in terms of standard of proof as well as penalty. Especially given the apparent increase of hacking in areas such as child custody battles and matrimonial disputes, and the consequential danger of either the police being swamped or the law becoming unenforceable, there is a strong argument for introducing a more flexible approach to the regime, with the intention of allowing victims easier recourse to redress. We therefore recommend the extension of the Information Commissioner’s remit to cover the provision of advice and support in relation to chapter 1 of the Regulation of Investigatory Powers Act. (Paragraph 39)

2. We also strongly recommend that the Government reviews how the Act must be amended to allow for a greater variety of penalties for offences of unlawful interception, including the option of providing for civil redress, whilst retaining the current penalty as a deterrent for serious breaches. (Paragraph 40)

3. We note that most of our witnesses claimed to be unaware at the time of the Information Commissioner’s two 2006 reports, What price privacy? and What price privacy now?. We are disappointed that they did not attract more attention among the police, the media and in government, and hope that future such reports will be better attended to. (Paragraph 41)

4. We are concerned about the number of Commissioners, each responsible for different aspects of privacy. We recommend that the government consider seriously appointing one overall Commissioner, with specialists leading on each separate area. (Paragraph 42)

5. We deplore the response of News International to the original investigation into hacking. It is almost impossible to escape the conclusion voiced by Mr Clarke that they were deliberately trying to thwart a criminal investigation. We are astounded at the length of time it has taken for News International to cooperate with the police
but we are appalled that this is advanced as a reason for failing to mount a robust investigation. The failure of lawbreakers to cooperate with the police is a common state of affairs. Indeed, it might be argued that a failure to cooperate might offer good reason to intensify the investigations rather than being a reason for abandoning them. None of the evidence given to us suggests that these problems were escalated for consideration by the Commissioner of the Metropolitan Police or by Ministers. The difficulties were offered to us as justifying a failure to investigate further and we saw nothing that suggested there was a real will to tackle and overcome those obstacles. We note that neither of these carefully-crafted responses is a categorical denial: Ms Brooks’s denial of knowledge of hacking is limited to her time as editor of News of the World; and on payments to police, she did not say that she had no knowledge of specific payments but that she had not intended to give the impression that she had knowledge of specific cases. (Paragraph 52)

6. The consequences of the decision to focus within the Mulcaire papers on the areas vital to the prosecution of Mulcaire and Goodman were extremely significant. A huge amount of material that could have identified other perpetrators and victims was in effect set to one side. Mr Clarke explained to us the reasons for taking this approach, starting with the context at the time. By the middle of 2006 the Anti-Terrorist Branch had more than 70 live operations relating to terrorist plots but some of these were not being investigated because there were not enough officers to do so. In this context, he had to decide on priorities, and the priority of protecting life by preventing terrorist attacks was higher than that of dealing with a criminal course of conduct that involved gross breaches of privacy but no apparent threat of physical harm to the public. Nevertheless we cannot overlook the fact that the decision taken not to properly investigate led to serious wrongdoing which the Commissioner himself now accepts was disreputable. (Paragraph 55)

7. When challenged on whether he stood by his decision to limit the investigation in 2006, Mr Clarke said that, despite all that had been revealed since, he believed the decision to have been correct, given the limited resources at his disposal and the absolute priority of dealing with threats to public safety. We note this position. However, its consequences have been serious and we are not convinced that the former Commissioner’s decision to merge anti-terrorist and royal protection functions on the basis that both involved firearms, or the decision to pursue this investigation within the command, were justified. It is also revealing about the nature of management within the Metropolitan Police Service that this issue does not appear to have been escalated to the Commissioner or Deputy Commissioner, or even the Assistant Commissioner, as an issue about which they ought to be aware and to which a solution needed to be found. (Paragraph 61)

8. whilst it is true that mobile phone companies have now acted to provide much greater security for their customers’ communications, and whilst the 2005–07 inquiry succeeded on its own terms, we cannot say that inquiry was a success given the extent of the intrusion now becoming apparent and the fact that even now not all the victims of interception have been identified let alone contacted. Nor are we convinced that no hacking takes places or that it cannot take place. We do not have the technical competence to make such a judgement, and nor did we receive detailed evidence on that point. (Paragraph 62)
9. Mr Hayman claims to have had little knowledge of the detail of the 2006 operation, and to have taken no part in scoping it or reviewing it; his role seems to have been merely to rubber-stamp what more junior officers did. Whilst we have no reason to question the ability and diligence of the officers on the investigation team, we do wonder what ‘oversight’, ‘responsibility’ and ‘accountability’—all of which words were used by Mr Hayman to describe his role—mean in this context. (Paragraph 66)

10. Leaving aside the fact that his approach to our evidence session failed to demonstrate any sense of the public outrage at the role of the police in this scandal, we were very concerned about Mr Hayman’s apparently lackadaisical attitude towards contacts with those under investigation. Even if all his social contacts with News International personnel were entirely above board, no information was exchanged and no obligations considered to have been incurred, it seems to us extraordinary that he did not realise what the public perception of such contacts would be—or, if he did realise, he did not care that confidence in the impartiality of the police could be seriously undermined. We do not expressly accuse Mr Hayman of lying to us in his evidence, but it is difficult to escape the suspicion that he deliberately prevaricated in order to mislead us. This is very serious. (Paragraph 67)

11. Mr Hayman’s conduct during the investigation and during our evidence session was both unprofessional and inappropriate. The fact that even in hindsight Mr Hayman did not acknowledge this points to, at the very least, an attitude of complacency. We are very concerned that such an individual was placed in charge of anti-terrorism policing in the first place. We deplore the fact that Mr Hayman took a job with News International within two months of his resignation and less than two years after he was—purportedly—responsible for an investigation into employees of that company. It has been suggested that police officers should not be able to take employment with a company that they have been investigating, at least for a period of time. We recommend that Lord Justice Leveson explore this in his inquiry. (Paragraph 69)

12. In short, the exercises conducted by the police and the CPS in July 2009 appear to have been limited to the consideration of whether or not, in the light of recent reports in the media, the 2005–07 investigation had been carried out thoroughly and correctly. Critically, because the 2005–07 investigation had focused only on the joint roles of Messrs Mulcaire and Goodman, there was no progress in 2009 to consideration of the relationships that Mr Mulcaire might have had with other journalists, even though the Gordon Taylor story implied that such relationships had existed. (Paragraph 73)

13. We understand that, when Sir Paul announced in July 2009 that he was asking Mr Yates to look into any new information, this was an unprepared remark made as he was going into the ACPO conference rather than a carefully prepared statement. Unfortunately it left the public—and indeed Parliament—with the impression that a more detailed examination was to be held than was in fact the case. (Paragraph 80)

14. We assume that Sir Paul left Mr Yates with a large amount of discretion as to how he should consider the evidence. Mr Yates has subsequently expressed his view that his reconsideration in 2009 of the material available from the earlier investigation was very poor. We agree. Although what Mr Yates was tasked to do was not a review in...
the proper police use of the term, the public was allowed to form the impression that the material seized from Mr Mulcaire in 2006 was being re-examined to identify any other possible victims and perpetrators. Instead, the process was more in the nature of a check as to whether a narrowly-defined inquiry had been done properly and whether any new information was sufficient to lead to that inquiry being re-opened or a new one instigated. It is clear that the officers consulted about the earlier investigation were not asked the right questions, otherwise we assume it would have been obvious that there was the potential to identify far more possible perpetrators in the material seized from Mr Mulcaire. Whether or not this would have enabled the police to put more pressure on News International to release information, by making it clear that police inquiries were not merely a ‘fishing expedition’ but targeted at certain people, is an issue that may be addressed by the forthcoming public inquiry. (Paragraph 81)

15. Mr Yates has apologised to the victims of hacking who may have been let down by his not delving more deeply into the material already held by the police. We welcomed that and agree that his decision not to conduct an effective assessment of the evidence in police possession was a serious misjudgement. (Paragraph 82)

16. We are appalled at what we have learnt about the letting of the media support contract to Mr Wallis. We are particularly shocked by the approach taken by Mr Fedorcio: he said he could not remember who had suggested seeking a quote from Mr Wallis; he appears to have carried out no due diligence in any generally recognised sense of that term; he failed to answer when asked whether he knew that AC Yates was a friend of Mr Wallis; he entirely inappropriately asked Mr Yates to sound out Mr Wallis although he knew that Mr Yates had recently looked at the hacking investigation of 2005-06; and he attempted to deflect all blame on to Mr Yates when he himself was responsible for letting the contract. (Paragraph 86)

17. From the point of view of victim support and of reassurance to the public, DAC Akers’s decision to contact all those who can be identified as of interest to Mr Mulcaire is the correct one. However, this is not the same as saying all these people were victims of hacking, let alone that they could be proved to be victims. Only 18 months’ worth of phone data from the relevant period still exist: unless Mr Mulcaire provides a list, no one will ever know whose phone may have been hacked into outside that period. Within the 18-months data held, about 400 unique voicemail numbers were rung by Messrs Mulcaire or Goodman or from News of the World hub phones, and these are the voicemails likely to have been hacked into. The total number of people who may eventually be identified as victims of Mr Mulcaire’s hacking is therefore much lower than the number of names in his papers. (Paragraph 91)

18. DAC Akers gave us a guarantee that this further investigation would be carried out thoroughly. We were impressed by her determination to undertake a full and searching investigation. The Specialist Crime Directorate is clearly the correct place for an investigation of this sort, though we note that officers have had to be ‘borrowed’ from across the Metropolitan Police Service to meet the needs of this particularly labour-intensive inquiry. (Paragraph 92)
19. We note with some alarm the fact that only 170 people have as yet been informed that they may have been victims of hacking. If one adds together those identified by name, the number of landlines and the number of mobile phone numbers identified (and we accept that there may be some overlap in these), that means up to 12,800 people may have been affected all of whom will have to be notified. We accept that there are a number of reasons why progress may have been slow so far, but at this rate it would be at least a decade before everyone was informed. This timeframe is clearly absurd, but it seems to us to underline the need for more resources to be made available to DAC Akers. We understand that in the current situation of significant budget and staff reductions, this is very difficult. However, we consider that the Government should consider making extra funds available specifically for this investigation, not least because any delay in completing it will seriously delay the start of the public inquiry announced by the Prime Minister. (Paragraph 93)

20. We are seriously concerned about the allegations of payments being made to the police by the media, whether in cash, kind or the promise of future jobs. It is imperative that these are investigated as swiftly and thoroughly as possible, not only because this is the way that possible corruption should always be treated but also because of the suspicion that such payments may have had an impact on the way the Metropolitan Police may have approached the whole issue of hacking. The sooner it is established whether or not undue influence was brought to bear upon police investigations between December 2005 and January 2011, the better. (Paragraph 94)

21. We are concerned about the level of social interaction which took place between senior Metropolitan Police officers and executives at News International while investigations were or should have been being undertaken into the allegations of phone hacking carried out on behalf of the News of the World. Whilst we fully accept the necessity of interaction between officers and reporters, regardless of any ongoing police investigations senior officers ought to be mindful of how their behaviour will appear if placed under scrutiny. Recent events have damaged the reputation of the Metropolitan Police and led to the resignation of two senior police officers at a time when the security of London is paramount. (Paragraph 95)

22. We note that, despite these protections, each of the companies had identified about 40 customers whose voicemails appeared to have been accessed by Mr Mulcaire. We also note that all three companies have disciplined or dismissed employees for unauthorised disclosure of customer information in the last ten years, though there is no indication that any of these employees was linked to this case. (Paragraph 105)

23. We welcome the measures taken so far to increase the security of mobile communications. However, with hackers constantly developing new techniques and approaches, companies must remain alert. In particular, it is inevitable that companies will think it in their interest not to make using technology too difficult or fiddly for their customers, so do not give as much prominence to the need to make full use of all safety features as they should do. We would like to see security advice given as great prominence as information about new and special features in the information provided when customers purchase new mobile communication devices. (Paragraph 111)
24. Clearly, Mr Clarke’s strategy for informing victims broke down completely and very early in the process. It seems impossible now to discover what went wrong in 2006. Some of the mobile companies blamed police inaction: both Vodafone and Orange UK/T-Mobile UK said that the police had not told them to contact their customers until November 2010. AC Yates accepted that some of the correspondence between the police and the companies had not been followed up properly. (Paragraph 117)

25. However, the companies cannot escape criticism completely. Neither Vodafone nor Orange UK/T-Mobile UK showed the initiative of O2 in asking the police whether such contact would interfere with investigations (and O2 told us that they were given clearance to contact their customers only ten days or so after being informed of the existence of the investigation). Nor did either company check whether the investigation had been completed later. They handed over data to the police, Vodafone at least sent out generalised reminders about security (Orange UK/T-Mobile UK may not even have done that), they tightened their procedures, but they made no effort to contact the customers affected. (Paragraph 117)

26. We find this failure of care to their customers astonishing, not least because all the companies told us that they had good working relationships with the police on the many occasions on which the police have to seek information from them to help in their inquiries. (Paragraph 118)

27. We expect that this situation will be improved by the coming into force of the new Privacy and Electronic Communications Regulations, which provide that when companies discover a breach of data security, they have to notify not only the Information Commissioner but also their affected customers. (Paragraph 121)

28. This inquiry has changed significantly in its remit and relevance as it has progressed, and further developments are occurring on a regular basis. We expect that further discoveries will go beyond our present state of knowledge. Our Report is based on the information currently available, but we accept that we may have to return to this issue in the near future. This inquiry has changed significantly in its remit and relevance as it has progressed, and further developments are occurring on a regular basis. We expect that further discoveries will go beyond our present state of knowledge. Our Report is based on the information currently available, but we accept that we may have to return to this issue in the near future. (Paragraph 122)
Appendix 1: Excerpt from *What price privacy now?* (ICO, 2006)

Publications identified from documents seized during Operation Motorman (see para 2).

<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>
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<td>The People</td>
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<td>19</td>
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<tr>
<td>Daily Express</td>
<td>36</td>
<td>7</td>
</tr>
<tr>
<td>Weekend Magazine (Daily Mail)</td>
<td>30</td>
<td>4</td>
</tr>
<tr>
<td>Sunday Express</td>
<td>29</td>
<td>8</td>
</tr>
<tr>
<td>The Sun</td>
<td>24</td>
<td>4</td>
</tr>
<tr>
<td>Closer Magazine</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td>Sunday Sport</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>Night and Day (Mail on Sunday)</td>
<td>9</td>
<td>2</td>
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<tr>
<td>Sunday Business News</td>
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<td>Daily Record</td>
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</tr>
<tr>
<td>Daily Mirror Magazine</td>
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</tr>
<tr>
<td>Mail in Ireland</td>
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<td>Daily Star</td>
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<tr>
<td>Sunday World</td>
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Formal Minutes

Tuesday 19 July 2011

Members present:

Rt Hon Keith Vaz, in the Chair

Nicola Blackwood
James Clappison
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert

Steve McCabe
Rt Hon Alun Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Draft Report (Unauthorised tapping or hacking of mobile communications), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraph 1 read, amended and agreed to.

A paragraph—(Nicola Blackwood)—brought up, read the first and second time, and inserted (now paragraph 2).

Paragraphs 2 and 3 (now paragraphs 3 and 4) read, amended and agreed to.

Paragraph 4 (now paragraph 5) read and agreed to.

Paragraphs 5 to 8 (now paragraphs 6 to 9) read, amended and agreed to.

Paragraph 9 (now paragraph 10) read and agreed to.

Paragraphs 10 and 11 (now paragraphs 11 and 12) read, amended and agreed to.

Paragraph 12 (now paragraph 13) read and agreed to.

Paragraphs 13 and 14 (now paragraphs 14 and 15) read, amended and agreed to.

Paragraph 15 (now paragraph 16) read and agreed to.

Paragraphs 16 to 19 (now paragraphs 17 to 20) read, amended and agreed to.

Paragraph 20 (now paragraph 21) read and agreed to.

Paragraph 21 (now paragraph 22) read, amended and agreed to.

A paragraph—(Mark Reckless)—brought up, read the first and second time, and inserted (now paragraph 23).

Paragraphs 22 to 24 (now paragraphs 24 to 26) read and agreed to.

Paragraphs 25 and 26 (now paragraphs 27 and 28) read, amended and agreed to.

Paragraphs 27 and 28 (now paragraphs 29 and 30) read and agreed to.

Paragraph 29 (now paragraph 31) read, amended and agreed to.
A paragraph—(*Mark Reckless*)—brought up, read the first and second time, and inserted (now paragraph 32).

Paragraph 30 (now paragraph 33) read and agreed to.

Paragraphs 31 to 33 read as follows:

We do not intend to become involved in the dispute over what exactly the CPS advised and when. It is clear to us that the police in 2006 were of the view that a narrow construction of the statute should be taken, and that in October 2010 the current Director of Public Prosecutions suggested a wider construction should be adopted for testing in the courts. In practice, these are the only two facts that matter because they have helped to determine—although, as we explain below, they have been far from the sole determinant of—the police approach to the hacking investigations.

More pertinently for the future, prosecutors and police are currently no more certain of the correct construction of section 1 of the Regulation of Investigatory Powers Act than they were in 2006: as the Director of Public Prosecutions has made very clear, he is merely suggesting a wider interpretation should be tested, not that it is the correct interpretation.

The Regulation of Investigatory Powers Act seems to have been drafted with certain means of communication in mind: letters by post, e-mails, telephone calls from landlines and mobile phones. Technological developments in the storage and retrieval of data by people ‘on the move’ quickly render legislation on communications out-of-date, and in particular pose problems of deciding exactly when communications are ‘in transmission’. At the very least, the legislation needs to be amended to end the uncertainty over whether messages already heard or read by the proper recipient are covered by the provisions; in our opinion, such messages should fall within the scope of the section 1 offence. Ideally, though it would be challenging to draft, Chapter 1 of the Regulation of Investigatory Powers Act requires a complete overhaul to adapt the provisions not only to the current state of communications technology but also as far as possible to make it easier to reflect future technological developments.

Paragraphs disagreed to.

A new paragraph (now paragraph 34)—(*Mark Reckless*)—brought up, read the first and second time, and inserted.

Another new paragraph (now paragraph 35)—(*Mark Reckless*)—brought up, read the first and second time, and inserted.

Paragraph 34 (now paragraph 36) read, amended and agreed to.

Paragraph 35 (now paragraph 37) read and agreed to.

Paragraphs 36 to 38 (now paragraph 38 to 40) read, amended and agreed to.

A new paragraph (now paragraph 41)—(*Dr Julian Huppert*)—brought up, read the first and second time, and inserted.

Another new paragraph (now paragraph 42)—(*Dr Julian Huppert*)—brought up, read the first and second time, and inserted.

Paragraphs 39 and 40 (now paragraphs 43 and 44) read and agreed to.

Paragraph 41 (now paragraph 45) read, amended and agreed to.

Paragraph 42 read and disagreed to.

Paragraphs 43 and 44 (now paragraphs 46 and 47) read, amended and agreed to.
Paragraph 45 (now paragraph 48) read and agreed to.
Paragraphs 46 to 52 (now paragraphs 49 to 55) read, amended and agreed to.
Paragraphs 53 and 54 (now paragraphs 56 and 57) read and agreed to.
Paragraph 55 (now paragraph 58) read, amended and agreed to.
Paragraphs 56 and 57 (now paragraph 59 and 60) read and agreed to.
Paragraphs 58 to 60 (now paragraphs 61 to 63) read, amended and agreed to.
Paragraphs 61 to 63 (now paragraphs 64 to 66) read and agreed to.
Paragraphs 64 to 69 (now paragraphs 67 to 72) read, amended and agreed to.
Paragraph 70 (now paragraph 73) read and agreed to.
Paragraphs 71 to 74 (now paragraphs 74 to 77) read, amended and agreed to.
Paragraphs 75 and 76 (now paragraphs 78 and 79) read and agreed to.
Paragraph 77 (now paragraph 80) read, amended and agreed to.
Paragraph 78 (now paragraph 81) read and agreed to.
Paragraph 79 (now paragraph 82) read, amended and agreed to.
A new paragraph (now paragraph 83)—(The Chair)—brought up, read the first and second time, and inserted.
Another new paragraph (now paragraph 84)—(The Chair)—brought up, read the first and second time, and inserted.
Another new paragraph (now paragraph 85)—(The Chair)—brought up, read the first and second time, and inserted.
Another new paragraph (now paragraph 86)—(The Chair)—brought up, read the first and second time, and inserted.
Paragraph 80 (now paragraph 87) read and agreed to.
Paragraphs 81 and 82 (now paragraphs 88 and 89) read, amended and agreed to.
Paragraphs 83 and 84 (now paragraph 90 and 91) read and agreed to.
Paragraphs 85 to 87 (now paragraphs 92 to 94) read, amended and agreed to.
A new paragraph (now paragraph 95)—(The Chair)—brought up, read the first and second time, and inserted.
Paragraph 88 (now paragraph 96) read and agreed to.
Paragraphs 89 and 90 (now paragraphs 97 and 98) read, amended and agreed to.
Paragraph 91 (now paragraph 99) read and agreed to.
Paragraph 92 (now paragraph 100) read, amended and agreed to.

Paragraph 93 (now paragraph 101) read and agreed to.

Paragraph 94 (now paragraph 102) read, amended and agreed to.

Paragraphs 95 to 101 (now paragraphs 103 to 109) read and agreed to.

Paragraphs 102 and 103 (now paragraphs 110 and 111) read, amended and agreed to.

Paragraphs 104 to 107 (now paragraphs 112 to 115) read and agreed to.

Paragraph 108 (now paragraph 116) read, amended and agreed to.

Paragraph 109 (now paragraph 117) read and agreed to.

Paragraph 110 (now paragraph 118) read, amended and agreed to.

Paragraphs 111 to 113 (now paragraphs 119 to 121) read and agreed to.

A new paragraph (now paragraph 122)—(Dr Julian Huppert)—brought up, read the first and second time, and added.

A paper was appended to the Report as Appendix 1.

Resolved, That the Report, as amended, be the Thirteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 6 September at 10.30 a.m.]
Witnesses

Tuesday 29 March 2011

Chris Bryant, MP

John Yates, Acting Deputy Commissioner, Metropolitan Police

Tuesday 5 April 2011

Mr Keir Starmer QC, Director of Public Prosecutions

Tuesday 26 April 2011

Christopher Graham, Information Commissioner

Tuesday 14 June 2011

Ms Julie Steele, Head of Fraud, Risk and Security, Vodafone UK; Mr Adrian Gorhan, Group Head of Fraud, Security and Business Continuity, Telefonica O2; and Mr James Blendis, Vice President Legal, Everything Everywhere (Orange UK and T-Mobile UK)

Tuesday 12 July 2011

John Yates, Acting Deputy Commissioner, Metropolitan Police

Mr Peter Clarke, Former Deputy Assistant Commissioner, Metropolitan Police

Mr Andy Hayman, Former Assistant Commissioner, Metropolitan Police

Sue Akers, QPM, Deputy Assistant Commissioner, Head of Operation Weeting, Metropolitan Police

Tuesday 19 July 2011

Sir Paul Stephenson, Commissioner, Metropolitan Police

Dick Fedorcio, OBE, Director of Public Affairs, Metropolitan Police

John Yates, Acting Deputy Commissioner, Metropolitan Police

Lord Macdonald of River Glaven, former Director of Public Prosecutions

Keir Starmer, QC, Director of Public Prosecutions

Mark Lewis, Solicitor advocate, Taylor Hampton Solicitors Limited
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Q1 Chair: This session deals with the Committee’s ongoing inquiry into phone hacking, and we have before us Mr Chris Bryant, Member of Parliament, who in the House a few weeks ago made a statement that one of our witnesses to the inquiry had misled the Committee. Thank you for coming to give evidence today, Mr Bryant. The Committee is most grateful. Would you like to comment on what the witness said to the Culture, Media and Sport Committee? Does it satisfy you that, in fact, the statement that you made was incorrect and that he did not, in fact, mislead this Committee?

Chris Bryant: I am very grateful, Mr Vaz, for the opportunity to be here today. If I might just read a brief statement in relation to the comments that were made by Mr Yates last week. Might I start by saying I warmly commend the new investigation that is being led by Sue Akers. I think that they are pursuing the evidence in the way that it should have been pursued in 2006, and I commend them for it.

Mr Yates has always maintained that there were very few victims of Glenn Mulcaire’s News of the World-sponsored phone hacking, yet a briefing paper written by Scotland Yard, dated 30 May 2006, said that, “A vast number of unique voicemail numbers belonging to high-profile individuals, politicians and celebrities have been identified as being accessed without authority”. Mr Yates also told this Committee on 7 September 2010 that there is no evidence that Members of Parliament had their phones tapped, and yet at least eight MPs that I am aware of have now been shown evidence that has been in police possession since 2006 that shows precisely that.

Mr Yates maintained that all victims have been notified. The words he used in September 2009 were 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 they were informed”, yet they failed to inform Jo Armstrong, Sienna Miller, Kelly Hoppen and John Prescott, in relation to all of whom there is now clear evidence that their phones were hacked.

Let me turn to the issue of what constitutes an offence. Mr Yates has always maintained that an offence has only been committed if someone listens to a voicemail message without authority before the person for whom it was intended and that that has been the consistent legal advice. It is true that in the very early days a lawyer at the Crown Prosecution Service may indeed have advised this. However, the Director of Public Prosecutions has made it clear that this point had no bearing—I am quoting—on the charges brought against the defendants Mulcaire and Goodman or the legal proceedings generally. The transcript of the sentencing hearing shows the prosecuting counsel in the Goodman and Mulcaire case, David Perry QC, never relied on this tight definition. Indeed, Perry expressly wrote to the Crown Prosecution Service on 3 October 2006 that all they had to prove was that the message had been listened to by Mulcaire, not that the message was—

Q2 Chair: May I stop you there, because I think Members of the Committee will be questioning you on these matters? This is a very narrow and short session dealing with one aspect of this case. The Committee is not going into great detail today about all aspects of the case. It is specifically about the issue of misleading because this Committee takes a very, very serious view indeed of anyone—

Chris Bryant: Well, I have two other areas where I think he has misled the Committee.

Q3 Chair: I am sure they will come out in questioning and, if not, when you come to answer the questions of Members of the Committee I am sure you can bring them in there. Can I just say this, that Mr Yates made it very clear that when he spoke to this Committee and gave evidence in September last year he was relying on the interpretation of the Crown Prosecution Service. The interpretation was subsequently changed by the CPS. Do you not accept that the advice that he was given did, in fact, change? Chris Bryant: I accept that there may have been an in-house lawyer at the CPS who advised in the very early days of the issue being looked at that the narrow interpretation should be adopted. However, the prosecuting counsel made it absolutely clear that that was not the interpretation that should be used. It was not what was used in the prosecution and I think that Mr Yates was somewhat disingenuous last week when he provided evidence to the Culture, Media and Sport Select Committee that suggested that—because he referred to all the evidence prior to—
Q4 Chair: Yes, just to narrow this down, you accept that the advice of the CPS did change in respect of interpretation?

Chris Bryant: Well, I think that is a matter for the—

Q5 Chair: It is just a yes or no: do you accept that it changed?

Chris Bryant: I think that is a matter for the Crown Prosecution Service.

Q6 Chair: No, I am asking you since you made these allegations in the House.

Chris Bryant: I have already said that I think that in the very early days a lawyer advised, the in-house lawyer, I think it might have been Carmen Dowd, advised on the narrow interpretation. However, my point is that it was not relied on in the court and it was disingenuous. Mr Vaz, if you would allow me just to—

Chair: Well, with the greatest of respect to you, Mr Bryant, this Committee is considering just one aspect. We have all had a chance to read your speech in the House and we need to pose our questions.

Q7 Mr Clappison: As a layman expressing a layman’s opinion, looking at this in the round, I am rather on your side on the interpretation of the regulation of investigation or whatever it is, the RIPA Act, with which this argument about interpretation is concerned, and that to give it the narrow interpretation as you have described would be to make a bit of a nonsense of the Bill and to create a self-inflicted handicap for those seeking to prosecute.

But on the question of what the interpretation of the law was at the time when John Yates gave his evidence to us, we have seen sight of what was said not by a junior official at the Crown Prosecution Service but by the DPP to whom we wrote. He says, and I quote from what we were told in his letter, “In 2009 I gave written evidence to the Culture, Media and Sport Committee. In that evidence I set out the approach that had been taken to section 1(1) of RIPA in the prosecution of Clive Goodman and Glenn Mulcaire, namely that 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. I also set out the reasons why David Perry QC had approached the case on that basis at the time”. That is not a junior official. That is the DPP saying what the interpretation was and that was the interpretation that was extant at the time when John Yates gave his evidence to this Committee.

Chris Bryant: But the Director of Public Prosecutions said in his evidence also, “First, the prosecution did not in its charges or presentation of the facts attach any legal significance to the distinction between messages which had been listened to and messages which had not. Secondly, the prosecution, not having made the distinction, the defence did not raise any legal arguments in respect of the issue and pleaded guilty”. Thirdly, not in relation to what he said, but Mr Perry, prosecuting counsel, his advice, which is after all the dates that Mr Yates refers to in his letter—which was sent to the Culture, Media and Sport Select Committee and I presume has also been sent to this Committee as well—provided quite contrary evidence.

Q8 Mr Clappison: Mr Bryant, you have much more detailed knowledge of this than I have because you have been crawling all over it, but you are talking about what happened in the trial. I am talking about the interpretation here, the interpretation of the law, which is what John Yates told this Committee. What he said and what the DPP said is on all fours together; it is the same. There was no misleading, was there?

Chris Bryant: But the interpretation of the law is precisely what is used for the prosecution of the case.

Q9 Mr Clappison: Your argument was about what the interpretation of the law was, not the way in which that was used in the case. You said about the interpretation of what he said to this Committee about the interpretation of the law was square with what the DPP said to us in his letter to us, so you cannot accuse him of misleading the Committee. You can pull a face but it is the same advice that the DPP gave us when we wrote to him.

Chris Bryant: Well, that is not the view of the DPP.

Mr Clappison: I quoted from the DPP.

Chair: We will hear evidence from him when he comes to give evidence to us in a few weeks time.

Chris Bryant: Fine.

Q10 Dr Huppert: Can I just ask about the role of the Surveillance Commissioner, because it seems to me that the Surveillance Commissioner would have some sense of interpretation of what would be interception and what wouldn’t be. Do you know if you or John Yates or anyone else has ever tried contacting the Surveillance Commissioner?

Chris Bryant: I have no knowledge of that at all.

Q11 Dr Huppert: Would you expect—

Chris Bryant: I am not aware of there being a Surveillance Commissioner, if I am honest.

Q12 Mark Reckless: Mr Bryant, I am trying to clarify, if I may, your remarks in the Adjournment debate, specifically at one point you said, “Yates misled the Committee, whether deliberately or inadvertently”. You then continued, “He used an argument that had never been relied on by the CPS or by his own officers so as to suggest that the number of victims was minuscule, whereas in fact we know and he knew that the number of potential victims is and was substantial”. Surely if Mr Yates knew at that time that there was a substantial number of victims, yet told us that there were very few, does that not imply that he deliberately misled the Committee? Are you making that allegation and, if not, what have I got wrong in what I have just said?

Chris Bryant: It goes back to the point that I made earlier that he has always maintained that there were very few victims, but there was a note written by Scotland Yard itself in 2006 that said a vast number of unique voicemail numbers belonging to high-profile individuals had been identified as being accessed without authority.
Q13 Mark Reckless: But if he knew there were a substantial number of victims, yet told us that there was only a few, how can that be inadvertent rather than deliberate?

Chris Bryant: Quite.

Q14 Mr Clappison: I was just going to say I have every sympathy with people whose phones have been hacked, but he told the Committee there is a range of people, and the figures vary between 91 and 120, on the question of PIN numbers. Was he right about that?

Chris Bryant: I do not know how many PIN numbers there are because I have not had access. I have heard the number 91 as well. My complaint, I suppose, is that the police gathered a vast amount of material in 2006. It was not until last week that there was any suggestion that that material had never been properly interrogated to see whether there was evidence that people had been hacked or not, which is why I think it was disingenuous in the extreme to suggest there were very few victims because he could not possibly have known whether that material had large numbers of victims because he had never bothered to look at it.

Q15 Chair: You welcomed the fact that there is a substantial number of victims, yet told us that there was only a few, how can that be inadvertent rather than deliberate?

Chris Bryant: I think the information was always there. If you take the instance of Ian Edmondson, his name came into play, and that is when the new investigation started, because his name appeared on some of the material that had been gathered by the police and had been sitting in the police vault since 2006. If the police had chosen to interrogate that evidence they would have pursued that line of investigation and this could have been dealt with at a time when more evidence would still have been able to have been gathered from mobile phone companies. Some of the cases that we are talking about go back to 2003, 2004, and indeed in Kelly Hoppen’s case—and this is fairly extraordinary in relation to Kelly Hoppen—her lawyer was told that they had absolutely no material on her at all and it was only when the new investigation took over that they admitted holding at least four incriminating documents relating to Mr Mulcaire.

Q16 Chair: Do you think there should have been better co-operation between the police and those who were the victims of hacking? Should that information have been provided to them more readily?

Chris Bryant: Well, my point is that I think everybody who was a potential victim should have been contacted. If you take a sheet of paper that has, for the sake of argument, 23 telephone numbers on it, which might mean absolutely nothing to a police officer but you take it to the person whose name is at the top of the piece of paper and show it to them, they might go, “Actually, yes, that is a list of people who left phone messages on my answer phone. All those numbers are numbers that I recognise because they are friends, relatives, whatever”. That is the process that I think Mr Yates tried to suggest had always happened and never did.

Q17 Chair: Is it now happening? Has someone contacted you and said, “This is the information about you. Would you like to confirm whether or not this has happened to you?” Has that happened yet?

Chris Bryant: Yes, that has now happened in relation to me, but when it was said that it had happened previously, it had not.

Q18 Chair: It had not happened?

Chris Bryant: No, and indeed the only reason that I know anything in relation to me—I am very careful because I do not want to harm the investigation that is going on—is because I wrote on the off chance. Following the Guardian article in July 2009, I wrote to the Met and asked, “Is there anything in relation to me?” I had have to go to court to try and make the police show it to me.

Q19 Mr Winnick: We are looking, as you know, as the Chair has said, Mr Bryant, at the narrow interpretation of matters but I just want to ask you this question: the essence of your complaint basically, am I not right, is that these allegations were made by you and others, and the police didn’t take those allegations seriously enough, didn’t investigate? That is the essence of it, isn’t it, the essence of your complaint at least?

Chris Bryant: I first raised the matter of my mobile phone directly with Mr Yates in February 2004, long before any of this became a big issue in the media. But leaving that to one side, the problem I think is that what has been suggested by the Met all along, until the new investigation, is that all the criminality at the News of the World was caught and that they had nothing else that they could possibly have done that would have exposed any more criminality and indeed that, because they had sent two people to prison, there was now a massive deterrent effect that had stopped all of this happening. Well, we know that Kelly Hoppen’s phone was being hacked only last year. We know that a senior Member of Parliament has been notified by her mobile phone company that people have been trying to hack into her phone in the last few months. So, no deterrent effect. Similarly, all the material that they gathered from Glenn Mulcaire in 2006, we know now from what Mr Yates said last week, was not interrogated properly until July 2010.

Q20 Mr Winnick: Can I ask you this question, Mr Bryant: if what you say is so, which I am sure the police will challenge, what motive would the police have? You and I and other members of the House of Commons in the main, I hope, don’t believe in conspiratorial theories, at least I hope not. So what would be the reason why the Metropolitan Police would have wished to do this?

Chris Bryant: It is difficult. I think the Metropolitan Police have not helped themselves by having regular meals with senior executives at the News of the World at the same time as they are meant to be investigating
the News of the World. I think, to be honest, that is a conflict of interest, and when Mr Yates said last week that all evidence of such meals is published on the Metropolitan Police website, unless I have this wrong, all that is published in the Met code is—I have it here—it just says, “Reception declined, dinner received”. It never says who it is with, and I think there is a real danger that the Met at least might be perceived to be in collusion with the newspapers that we are talking about.

Q21 Mr Winnick: That is a very serious allegation.

Chris Bryant: As I say, I think that they shouldn’t be. Mr Yates has defended the idea that senior police officers regularly have to dine with senior executives at newspapers and journalists, and all the rest of it. Personally, I think that that is a big mistake. I think if they are going to do that that should be in the public domain immediately but, as I understand it, Mr Yates had lunch in February of this year with Neil Wallis, who was formerly of the News of the World. I don’t know whether he checked with Sue Akers, who is running the new investigation, whether that was an appropriate thing to do. That knowledge is not public, I think, as yet. I just think that the Met would be very well advised not to be having these constant meals there.

Q22 Bridget Phillipson: Mr Winnick has already asked largely what I was going to ask. What baffles me is why the police wouldn’t follow these lines of inquiry, wouldn’t follow the evidence, and why they wouldn’t tell potential victims that they may have been victims of a crime?

Chris Bryant: Mr Yates has always said that the reason that he has not told some people is that they aren’t victims of crime, because he says that there is not a crime, which goes back to the issue of what constitutes a crime, even though RIPA section 2(vii) says very clearly that it is at any point in the transmission that the offence has taken place. When I am being in a very generous mood I think maybe it is just that they had more important things to be getting on with, but in the end I think what has happened is that a large amount of the criminality that was going on at the News of the World was never looked at and a large number of victims were not contacted.

Q23 Dr Huppert: Can I just come back to this idea of victims not being contacted because they may or may not be victims? Does it make sense to you that a police officer would look at a case like this and say, “On a technicality this person may just be outside the definition of a crime, so I’m not going to contact them”?

Chris Bryant: Yes, of course, but my point is if you look at the material that was gathered from Glenn Mulcaire it is extensive, as I understand it. I have only seen a small part of it, but as I understand it, it is very extensive. Let’s say, for sake of argument, there was a page that had your name on the top of it and your address and all the rest of it, and then a whole load of telephone numbers and transcriptions. That page wouldn’t make sense to a police officer unless they showed it to you, and you would be able to make sense of it and be able to say, “Yes, of course, that is provable. That is not provable”.

Q24 Dr Huppert: Perhaps I misphrased my question. What I meant was that if there was somebody who was just on the edge of a technicality, I would expect the police to be somewhat proactive about contacting them and taking these steps. I would be surprised if they were not. It seems odd to hide behind a technicality, when you know it is a close-run decision, not to communicate with people.

Chair: Quick answer.

Chris Bryant: Yes.

Q25 Mark Reckless: Mr Bryant, I am not entirely convinced by the suggestion that merely because the Met have dinner with executives at the News of the World or News International that that is conflict of interest or would of itself be a reason why they wouldn’t want to investigate the issue. Are you concerned there may be broader linkages, whether payment for information at any level or employment of senior figures in the Met relatively soon after they leave as columnists on particular News International papers?

Chris Bryant: If you put the charge sheet together because you are not wanting to be nice, then you end up with a list of Andy Hayman, who was in charge of the investigation, now working for News International. In 2003 I asked Rebekah Brooks and Andy Coulson whether they paid police officers for information and they said, “Yes”. They said that it was all within the law, but that was in a Select Committee hearing. The police have never investigated, so far as I am aware, anything in relation to that. They have never investigated Rebekah Brooks, and that seems extraordinary because she had effectively confessed to a crime.

You can put together a very closed charge sheet, which includes dinners. You are absolutely right, just because a police officer has had dinner with a journalist doesn’t mean that they are in collusion or they are corrupt or anything. I am not saying that. But during this process, when the police have been investigating the News of the World, I think it has been very odd that there have been quite so many occasions when senior police officers have done so.

Q26 Steve McCabe: You said in your Adjournment debate that there was clear evidence that rogue staff members of the mobile phone companies had supplied, in fact I think you said had sold, the information to reporters and investigators. Is it your view that is how these people mostly obtain the information? The details they need to hack, is that mostly obtained from staff at the mobile phone companies?

Chris Bryant: That was a reference to the report that was done by the Information Commissioner. There are lots of different ways in which somebody can hack into a phone, and the term “phone hacking” is a colloquial term that covers a multitude of different sins. In the most part, what we are talking about here is, I think, managing to gain access to a PIN without authority, using it so as to access voicemail messages.
Sometimes those voicemail messages might be very personal, they might be from a loved one or whatever, sometimes they might be of negligible personal value, but sometimes what they are trying to do is find the telephone number of another person who they then want to pursue.

**Q27 Steve McCabe:** What, in your judgment, should the mobile phone companies do to better protect their customers’ privacy?

**Chris Bryant:** I think they need stronger internal mechanisms to make sure that PIN numbers aren’t available to be handed out by somebody when ringing into a mobile phone company. I think all the phone companies should adopt the same processes as well because people do often change from one company to another. I think it would be a good idea if they always notified somebody when there was any doubt about whether their phone was being accessed illegally, which is not the policy of all the mobile companies at the moment. Some of them do it and some of them don’t, which is why, for instance, in my case I rang Orange and found out seven years after the occasion that my phone had been accessed back in 2003.

**Q28 Chair:** We have sought evidence from the mobile phone companies as part of our inquiry. I cut you short when you said there were two other areas you wanted to raise. We have dealt with the interpretation area of misleading, so could you very quickly, because we need to end this session shortly, cover the last two areas, or have you covered them in the answers you have given?

**Chris Bryant:** Chairman, you were absolutely right in saying that they would all be covered in the questioning. The two areas I was going to refer to was the issue of meals and so on. In the end, as Mr Winnick wisely pointed out, my complaint is all this evidence has sat there, the police didn’t interrogate it for whatever set of reasons, lots of people ended up having a completely false impression and the full criminality was not heard.

**Q29 Chair:** Have you now met Mr Yates? The last time he appeared before us he did say that he was going to contact all the victims. Have you now met him and have you been given all the information you require?

**Chris Bryant:** Mr Yates isn’t doing the investigation now, so it is—

**Q30 Chair:** So there is no need to meet him?

**Chris Bryant:** No, and indeed he said, I think last week, that he had offered to meet me. He wrote me a letter last year threatening to sue me and at the bottom said, “If you want to meet then that will be fine”. I didn’t take that as a very warm and friendly offer of a meeting, so I didn’t. But the difficulty is I am now in legal proceedings with the Met and with News Group.

**Chair:** Well you might bump into him in the corridor outside, you never know.

**Chris Bryant:** What joy, what bliss.

**Mr Winnick:** There are enough lawyers round this place.

**Q31 Chair:** One final point: you are satisfied with the conduct of the inquiry at the moment?

**Chris Bryant:** So far as I understand, certainly in relation to myself and in relation to others, I think it is being admirably pursued and I only wish that this is what had been done in 2006. All the dots were there to be joined up; I think the police refused to do so.

**Chair:** Mr Bryant, we are most grateful. Thank you so much for coming in. Could I call to the dais the Deputy Commissioner, John Yates.

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**Examination of Witness**

**Witness:** John Yates, Acting Deputy Commissioner, Metropolitan Police, gave evidence.

**Q32 Chair:** Thank you very much for coming in to give evidence. You in fact wrote to me last week and requested that you come and give evidence to the Select Committee following Mr Bryant’s parliamentary debate in which he said that you had misled this Committee.

**John Yates:** Thank you, sir, yes.

**Q33 Chair:** I know you said at the end of your evidence last week that you found it slightly odd that you were coming before us, but the fact is if someone of your eminence writes to the Committee and asks to give evidence and then the press releases the letter to the BBC the likelihood is that you will be given the chance, which is why you have been given the chance today. Did you deliberately or inadvertently mislead this Committee when you gave evidence to us in September 2010?

**John Yates:** No, most certainly not. You will have seen me sat in the back of the room while Mr Bryant was giving his evidence, and you will have seen him make a very, very important concession on the advice we received. I think it was a very important concession. It was central to the allegations he made that we did not at any time have any advice from the CPS about how we manage this case. That was not the case. You have a letter from me, clearly articulating that at a very senior level, as your colleague Mr Clappison has said. It was the head of Special Casework Division who provided that advice. That, as I said in the letter, permeated the entire inquiry. The whole investigative strategy was based upon, as would always be the case with matters of this nature, complex areas of law. We would seek advice from the CPS and shape our lines of inquiry in that way.

**Q34 Chair:** In fact, I think you made that clear when you came to give evidence, your constant contact with the CPS. Can we just get our dates right? You gave evidence to us in September 2010?

**John Yates:** Yes.
Q35 Chair: You were saying up until that time, even though you had been in regular contact with the CPS, at no time did the CPS tell you at director level or below that level that the interpretation ought to have been wider than the interpretation that you were following, leading you to the conclusion that only between 10 and 12 people were, in effect, the victims. Is that correct?

John Yates: That is correct. I, of course, relied upon the advice from 2006. I then relied upon the letters that the current DPP sent in about what the law was, which was prior to its interception. As I have said, from that point on, and I said last week, the director is quite entitled to revise his opinion about the law and to take different legal advice, and to take a different approach. That is not a problem at all, but when I gave evidence to your Committee that is what I relied on, those two letters and the previous advice, which are set out hopefully pretty clearly in the letter to you from last week.

Q36 Chair: For completeness can you tell us when that advice changed? Did you receive a letter from the DPP or was it a phone call? When, after September 2010, did they suddenly realise or decide to change their minds and go for the wider aspects?

John Yates: The word “changed mind” is not a great one, because they have just revised their view. It was in a conference in October, Friday 1 October, which again I think was referred to by Mr Bryant in his evidence at the Adjournment debate.

Q37 Chair: In a conference, meaning an open conference or a case conference?

John Yates: A case conference, post the New York Times article, when we scoped those matters. There was a case conference attended by I think it is the current head of Special Casework and some of my colleagues, where the fact that a different QC had provided some differing advice was raised and it sort of signalled, if you like, the intention to take the broader view for the future.

Q38 Chair: You must have been absolutely furious. There were you conducting this investigation for four years, you thought that you had good, proper advice from the top guy, the DPP, and then you attend this case conference and suddenly somebody says they have taken some advice from some other QC and the interpretation has changed. You must have been absolutely furious at this.

John Yates: Far from it. Firstly, the divisional investigation wasn’t mine, as you are aware. Secondly, we were looking at the New York Times issue, a different matter, to see if there was any further evidence there that warranted reopening the investigation. The law is revised, as you know, being a lawyer, Mr Vaz, all the time through either case law, appeals, or whatever. So it is not a surprise and—

Q39 Chair: So you weren’t even upset; you were quite happy with this? You just felt you should—

John Yates: It is a change of direction and this happens in policing in investigations all the time, so no.

Q40 Chair: You didn’t sort of think to yourself, “Oh my God, people are going to now say, ‘Why didn’t I look wider than the 10 to 12 people?’” You didn’t even think of the implications of this?

John Yates: I thought of the implications but it is not for me to be cross about it. It is a fact that a particular case in 2006 was framed under the guidance that I have set out to you, and four or five years later it has changed. That is not a problem. It is a matter of, look forward rather than look back.

Q41 Chair: I can see why you have your job, because if it was said to someone like me I would be pretty cross if someone like the DPP decided that the interpretation was wrong and actually there were hundreds of other people who could have been contacted.

John Yates: He didn’t say it was wrong; he signalled an intention to take a broader view. I think you would find several defence lawyers, very eminent, would argue completely for the 2006 view, but it has never been tested and that is the issue. It has never been tested.

Q42 Chair: Do you think, therefore, section I ought to be clarified, that the law is unclear? You were obviously following the advice of lawyers. The lawyers had revised their view. There is no clarity in this; it had not been tested in the courts. Is it time that we looked at this particular legislation and tightened it up?

John Yates: I could not agree more.

Q43 Mr Winnick: I simply want to put the point to you, Mr Yates, that you heard my parliamentary colleague a few moments ago complain that the Metropolitan Police had not, in fact, investigated at the time the complaints were made. What is your reaction to that?

John Yates: Well, I think the first investigation took an approach. Firstly, it was very much focused on the royal family, which is why officers from my current command were involved. They took an approach that where is the best place to get the best evidence and to show the full range of criminality so the court has the maximum sentencing power? So they focused on where they could get the best evidence. The CPS were with us throughout and that is where they advised us to go. That is the way the indictment was framed and that is the way the case was conducted by prosecuting counsel.

I said last week that I think we could have done more and we ought to do more around notifying victims, and that was my position from July 2009. When I took that view, I said if we haven’t done enough then we need to do more. Now, I don’t think we have been speedy enough on that, and again I have accepted that. I think the new investigation with considerable resources, I might add, are progressing that.

Can I just reiterate the context of 2006? These arrests took place the day before the multitude of arrests surrounding the airlines plot and probably the biggest counter-terrorist plot this country has ever seen. I am not at all surprised that people like Andy Hayman and Peter Clarke, in those days, said, “Right, we need to...
use our resources in the best way possible. We have this huge priority. There is this massive counter-terrorism operation", and they would have moved resources around, as I would have to if the same thing happened today. I think I used the example last week that the Chief of Defence Staff will be moving his resources around because of what was happening in Libya and in the Middle East. That is what happens and that is what happens in terms of managing priorities in these areas.

Q44 Mr Winnick: If Mr Bryant hadn’t high profiled this, raising it in the House in the Adjournment debate and on other occasions, would we be right in coming to the conclusion that there would be no ongoing investigation at the moment into these matters?

John Yates: I think people like Mr Bryant and many others to my left as well have raised the profile around these issues. There is a huge public concern and we have to accept that and recognise that and respond to it. I think that is what we are doing. That is what the new investigation is certainly doing. As I say, it has considerable resources attached to it to enable it to do that.

Q45 Mr Winnick: The allegation, Mr Yates—and of course it is only an allegation, but I think I should put it to you—is that there was a closeness between the Metropolitan Police, perhaps yourself, and News International; there was some hospitality given and so on and so forth. Inevitably when an investigation is taking place and this arises, it may be on other issues, questions are raised. Do you feel in all the circumstances if it did take place, if hospitality was given, that it was inappropriate?

John Yates: No, I don’t think it is. I think, as I said last week, we are duty bound to engage at a numbers level, be it politicians, businessmen, community leaders and the media. I think it is really important that we do that. If you look at the broad context of people I have dined with, you will probably see more dinners and more lunches with the Guardian than you will see with News International. There is a broad engagement that people at my level undertake and will do during the course of our duties, and I think that is quite proper.

As to the point made, as I heard previously, about engagement with News International, the fact of the matter was that up until only two or three months ago, there were two people who had been convicted in a large organisation. To say that we can’t engage with the rest of the organisation at senior level doesn’t make sense to me.

Q46 Dr Huppert: To go back to the issue of what the Director of Public Prosecutions said, essentially what you have told the Committee is you had one set of advice and you worked on that, and then a bit later it changed and you were fine with that, and had new advice. That is certainly the position you put in your letter to the Guardian. I think it was, where you quoted a sentence from what he said, “To prove a criminal offence of interception the prosecution must prove the actual message was intercepted prior to it being accessed by the intended recipient’’. You then said, “I’m not sure how much more unequivocal legal advice can be”. So that fits with what you have just said. But the DPP then wrote, I believe, to the Guardian in response to that saying that he regretted you had, and this is a quote, “Taken one sentence of my letter to the Culture, Media and Sport Committee out of context”. How does that fit with your story if the DPP is concerned that he doesn’t accept that he gave unequivocal legal advice?

John Yates: I am slightly mystified because I think that legal advice is very clear. I don’t think it is taken out of context.

Q47 Chair: Mystified by the question or mystified by the DPP?

John Yates: Mystified by the response from the DPP, but he can speak for himself and, as I said before—Chair: He will be coming to give evidence to us.

John Yates:—I have absolutely no desire to get into any public spat with the DPP. But that said, a letter saying that is the law, I don’t think it is taken out of context; I am happy to be advised and swayed around it, but it looks pretty clear to me.

Q48 Dr Huppert: His comment was about other sentences in the letter, that there was one sentence there but then there was a lot of other commentary. Selecting the sentence that is most helpful is something politicians do tend to do but is not something we should do.

John Yates: All I would say is that the consistent advice from April 2006, when we first engaged—I think it was April 2006—with the head of Special Casework, was that this was the interpretation that the prosecution was going to rely on in court. Now, as it happened, and as Mr Bryant said, David Perry didn’t have to rely on it in court because the defendants pleaded guilty, but I have known of no case in my investigative career when you would not prepare for court on the basis the hearing will be contested. You would always prepare a case on the basis it was going to be contested and if the defendant pleaded guilty all well and good, but you would never approach a case other than that way.

Q49 Bridget Phillipson: On that point, with the successful criminal prosecutions, the voicemails had been listened to prior to them being listened to by the people they were intended for. The point of law is that for it to be a criminal offence, the initial advice was that the voicemails had to have been accessed by a third party prior to being accessed by the person that the voicemails were intended for?

John Yates: Prior to being accessed, yes. That is absolutely right, and I think I said in my evidence last time that technically it is a complex thing to prove in terms of how do you prove it. There was only one case on that indictment that we could prove technically that had happened. The remaining cases were sort of proved on, we call it system and method, that due to the numbers of access to the voicemails it was highly probable beyond reasonable doubt, in our view, the evidential standard, that that was the case. There was only one case we could actually prove.
Q50 Bridget Phillipson: Why in other cases was it not possible? If it was possible in some cases to use other tests, why wasn’t it possible in others?

John Yates: It was something to do with the computer systems that the individual phone companies had. One particular company had the ability technically to prove it, the other companies could not at that stage. I don’t know whether they can now, but certainly at the time that was the case.

Q51 Bridget Phillipson: With the 91 or 120, however many people may have been potentially victims of phone hacking, are you confident that in those cases those voicemails hadn’t been accessed prior to the people they were intended for listening to them?

John Yates: I think I have to leave that to the new investigation. It will be reviewing all those matters and I have to leave that to them.

Q52 Mark Reckless: You appear to take a remarkably relaxed attitude towards the legal advice changing, and you mentioned one reason the legal advice may change is that a court decision leads to a different interpretation that changes the law as it is understood. I would understand in that situation that is perhaps unfortunate, but it is something one would professionally deal with. Are you talking about a situation here where the DPP changed its advice because of legal developments and what different judges ruled? When I was working as a solicitor, if we told the client there had been this judgment and therefore the law was now this, but if there hadn’t been a judgment and we had advised on one basis and they had acted on that basis and there had been great publicity around it all, and then we suddenly said, “Oh no, after all we think the law is now this”, even though nothing had changed, I would have expected them to get upset. Why haven’t you—

Chair: I think both Mr Reckless and I would have been upset if somebody had said that to us. We are amazed that you were not upset.

John Yates: As ever, our job is to uphold the law, not make the law. Therefore, we will follow the advice given. As I said, the DPP will answer for himself, as would the QC who provided the advice. They will be reflecting, I suspect, the public concern that arises out of this case and thinking, “Well, perhaps we ought to test it in a different way”. I don’t know, you would have to ask him. But, as I say, it is not for me to sort of rant and rave about changing the law.

Q53 Mark Reckless: I am just looking at the penultimate paragraph on the third page of your letter to our Chairman of 24 March. You refer to some newly commissioned legal advice and then you say, “For the purposes of any future investigations”. Could you just clarify who commissioned this legal advice and why, and why it only applies to future investigations and who it was who determined that should be the case?

John Yates: That is the case minutes I referred to from 1 October and commissioned advice via the CPS on that. Of course it would apply for future cases. Mulcaire and Goodman have been prosecuted, pleaded guilty and gone to prison, so it couldn’t apply to that case.

Q54 Mark Reckless: But you said just then 1 October. Mr Bryant said 1 October, but then you almost seem to suggest it is not 1 October, it was in late 2010, given the way you described the advice.

John Yates: I was aware that it was late 2010, I hadn’t got hold of the specific advice, which I now have, and it was 1 October.

Q55 Mark Reckless: So Mr Bryant was correct in his date of that?

John Yates: He was correct about the date—I don’t know how he had that date—but I am not sure he was entirely correct—

Q56 Chair: It is the same case conference, is it?

John Yates: Well, there was a case conference on 1 October, yes.

Q57 Mark Reckless: But the key point applies to future investigations and “future” is underlined. I think it is an important point. Obviously it doesn’t apply to Mulcaire, he has been convicted, but when you say “future” do you mean just if something new happens in a different area or does it include all this material that, according to Mr Bryant, you should have but had not interrogated?

John Yates: It would include all this material, I suspect. That is a matter for the new inquiry. But going back to what Mr Bryant said about 1 October, he said we were formally warned, which is very strong language when it absolutely wasn’t that at all, and I have made that pretty clear, hopefully, in the letter.

Q58 Mark Reckless: Yes. In the final paragraph on this page, you are saying the only reason the investigation was reopened was that News International provided new material. But from what you have said just then it seems to imply that the legal advice changed and future investigations would include all the stock of material that you already had that hadn’t interrogated previously.

John Yates: The only reason the new investigation was reopened was that News International provided us with new material. I think it was in January of this year. The legal advice then runs concurrently with that, but the only reason, and I have checked this with the current head of the investigation, the case was reopened was that—

Q59 Chair: You don’t accept Mr Bryant’s view that the information was there anyway for four years, you just didn’t find it?

John Yates: I accept there was information there that, in terms of victims and contact, we should have done more with, but the interpretation of the law only was revised in October of last year.

Q60 Mark Reckless: And that had nothing to do with the reopening of the investigation at all?

John Yates: No. It will run parallel with it in terms of the new investigation—again it is a matter for them
and how they are advised, but the new investigation will run with that interpretation of the law, I suspect, on the basis of the new evidence provided by News International. Sorry, it is a bit wordy.

**Q61 Steve McCabe:** I think you said earlier, Mr Yates, that the specialist operations counter-terrorism group were a bit overwhelmed by the strain that they were under following the airline terrorist plot and you understood why they had acted in the way they had, given that. Was I right to assume that, given your evidence to the Culture, Media and Sport Committee, you were saying that the only reason the specialist operations counter-terrorism group got involved in this investigation in the first place was the involvement of the royal family?

**John Yates:** Yes, that is right. Part of my remit is counter-terrorism and also protection of the royal residences and the royal family. We obviously have the closest contact with them and sensitive inquiries involving the residences or the family falls under my remit, and did then as well.

**Q62 Steve McCabe:** An inquiry of this nature wouldn’t normally be undertaken by this group, and this is a group that was under tremendous pressure. Who would normally investigate something like this?

**John Yates:** It would normally be the Specialist Crime Directorate, and in fact when a new allegation came in last year that is exactly where it went because they have both the expertise and the scope in terms of their—

**Q63 Steve McCabe:** I just want to be clear about this, Mr Yates. I don’t want to put words in your mouth, but you said that they would have the expertise. We have heard a lot this morning about the fact that there seems to have been some confusion, some uncertainty, changes of advice. Would it be reasonable to conclude that perhaps the specialist operations counter-terrorism group were not the best people to investigate this in the first place, and if it hadn’t been for the involvement of the royal family this would have gone straight to the group who had the expertise to deal with it and we might not be having this sort of session now?

**John Yates:** It is difficult looking in hindsight on these issues, but I think it is absolutely proper that my area, because of the involvement of the royal family and because of all the sensitivities around it, which were raised last time, should have taken the lead in this case. As some of the challenges broadened out, particularly on the resourcing, and given the huge expertise in the counter-terrorism command, whether it is best to use that command in these areas again is a moot point. As I said, last year when a new allegation came in, it went straight to the Specialist Crime Directorate. When this case was reopened, following the information from News International, it has gone to the Specialist Crime Directorate, absolutely right.

**Q64 Steve McCabe:** What is the additional expertise that the Specialist Crime Directorate have that would have made them more suitable to deal with this?

**John Yates:** I suspect, because I was there before myself, they are dealing with this type of case, difficult complex cases in terms of these issues, on a sort of regular basis. Therefore they are unlikely, of course, then to get moved should something appalling happen that means all the resources have to be reprioritised elsewhere. That is what they do, that is what their terms of reference are, and I think you are absolutely right in the sense that in the future that is where cases of this nature ought to be investigated.

**Q65 Steve McCabe:** Is it possible to give us any idea of how they would deal with it differently? You say they have much more experience because they deal with it all the time. It is an unusual kind of thing for the counterterrorism group. How do they use that expertise? Do they approach the investigation differently? Do they have a different style of mapping it? I am just trying to understand what the expertise is?

**John Yates:** I think it is a lot of where the experience lies of these types of difficult, complex, detailed investigations. It is something about horses for courses and the fact that the type of people who go into that area are the ones who like doing these cases and they experience these things—a similar case, I am not saying this type of case but similar types of cases—regularly. They all have the links into the CPS in terms of these types of cases. It is just better handled in that way, and of course they have the resources. That is what they are resourced for.

**Q66 Mr Clappison:** The Committee is concerned about the evidence you gave and what has been said about it subsequently, as the Chairman has said. You have told us about the interpretation point, as far as the evidence is concerned. You also mentioned the 91 to 120 PIN numbers which had come to light as a result of, I think, Mr Mulcaire’s activities or the evidence about his activities. Have you any reflections that you can give us on that figure? Is that your most up-to-date estimate of how many people’s PIN numbers were obtained?

**John Yates:** Without wishing to sort of duck it, I think that is a matter for the new investigation. I have completely conceded that we should have done more about some of those people. It was to do with the way the evidence was interpreted. I think I need to leave that bit for the new investigation to comment on.

**Q67 Mr Clappison:** Looking at this as a layman, perhaps not the best person in the world with technology, would you think that the mischief that Parliament was intending to get at in the RIPA Act was anybody who accessed or interfered with somebody else’s telephone communications in order to listen to them and invade their privacy, whether or not it was a conversation that was taking place at the time, whether or not it was a recorded message, whether or not the person concerned had listened to that recorded message? It is an interference with privacy and private communications, isn’t it?

**John Yates:** I strongly suspect it was, but we can only go—it is a complex area of law, as we have seen from the amount of debate it has generated.
Q68 Chair: Do you agree with Mr Clappison?
John Yates: I agree, that probably was the will of Parliament as well. But we went with the advice we were given. It is a very complex area of law.

Q69 Mr Clappison: Do you have any estimates—say if you don’t—looking at the original investigation, and taking that broad brush definition of interference with communications and listening in to communications, which I think what the public understand hacking to be, of how many people were the victims of hacking as a result of this? Do you have any idea in mind?
John Yates: I think that is a matter for the new investigation and they need to address that.

Q70 Chair: But when you had conduct of it I think you said 91, didn’t you?
John Yates: There are figures bandied around between 91 and 120, depending on who—
Chair: Yes, you told us that.
John Yates: I do think that is a matter for the new investigation.
Chair: Yes, but when you had it you said it was 91 to 120?
John Yates: Yes.

Q71 Mark Reckless: There was a report, I think a few weeks back, in Private Eye, which I wouldn’t usually necessarily raise at the Committee but I think it goes to a very sensitive issue, that suggests that the Metropolitan Police Service are taking legal action, or at least instructed solicitors who are exchanging letters, clearly proceedings have been issued. I won’t expect you to answer this but, short of that, when people comment on what a witness has said to a parliamentary Committee and report on that, is it appropriate for a public authority then to be seeking to deal with that through threatening libel proceedings?
John Yates: I think the comments made within the purview of the House and in Committees are clearly privileged, and I have no difficulty with that at all. It is when they are repeated outside or repeated in print as fact in other areas. This was before that. Mr Bryant, in the Adjournment debate, made some very serious allegations about my integrity, and I have seen some concessions from him today. Although he hasn’t gone as far as I would like in terms of apologising, he has clearly conceded that he was wrong around the issue of advice. He absolutely conceded that in his opening comments. That is the first time we have heard that. I think it is quite proper and in terms of—
Q72 Chair: We should say that Mr Bryant is behind you nodding his head, so I don’t necessarily accept that.
Dr Huppert: Shaking his head.
Chair: But we may have to have other sessions. We don’t want to go back to Mr Bryant’s evidence. On the specific point that has been raised by Mr Reckless about the use of public money in order to pursue legal action, that is the point, isn’t it?
John Yates: This is a matter for the Police Authority.

Q73 Chair: For those of us who haven’t read the Private Eye story, is it about you taking legal proceedings or somebody else?
John Yates: I am not taking legal proceedings at all, at the moment.

Q74 Chair: Who is it about? I think for the record we need to be clear who is suing?
John Yates: I have objected, and I think it is quite proper for me to do so, to some of the more colourful and untruthful reporting, so I don’t think I would expect to be a sort of Aunt Sally being bashed up all the time. I think I am entitled to defend my integrity.

Q75 Mark Reckless: But you drew a distinction between proceedings of this Committee and reports outside of proceedings of this Committee, suggesting that the one was privileged but the other wasn’t. Surely if someone is fairly commenting or reporting on something that has happened here then that also should be privileged.
John Yates: I am not a libel expert but I have taken the appropriate advice.
Chair: We will need to take legal advice from the DPP.

Q76 Mark Reckless: The fundamental difference is, first, public authorities have a duty to protect people’s freedom, uphold people’s freedoms of expression and, secondly, following the Derbyshire judgment in the House of Lords in 1993, public authorities do not have a cause of action in libel. So if you are coming to this Committee and saying something and that is reported on, and you are coming here as Assistant Commissioner, I believe at the time, why then is public money being used, by the MPS or the MPA, to threaten libel actions with respect to what you said in reports of that of this Committee?
John Yates: As I said, Mr Reckless, I am not a libel expert and there is absolutely no—
Q77 Chair: But he is not asking about the libel law, he is asking why.
John Yates: But there is fair comment and there is fair reporting, and then there is unfair comment and unfair reporting and there is interpretation that people put on it. All I said is I am protecting my position and I am not undertaking any legal proceedings against anybody at the moment.

Q78 Mark Reckless: Protecting your position as an individual person or protecting your position as Assistant Commissioner, as you then were?
John Yates: Both. I represent the Metropolitan Police here today. The investigation that took place in 2006 was not mine, so I am representing the corporate sole here today and I think I am quite entitled to do that.

Q79 Mark Reckless: Notwithstanding the judgment of the House of Lords in Derbyshire in 1993?
John Yates: I have to say I don’t know that judgment. Mr Reckless.
Chair: I think Mr Reckless will probably send you a copy. Did you have a quick point, because I want to end this session?
Q80 Steve McCabe: I am a bit lost with all this “protecting my position”, but I just wanted to be clear: you have asked that public funds be made available should you want to pursue a legal action. Is that accurate?
John Yates: I have sought authority in those areas, yes, but I am not doing so.

Q81 Mark Reckless: In the context where individuals have been trying to get information from the Metropolitan Police and have not been given that information, and have had to expend very significant personal funds in taking civil legal actions to get that information, don’t you think it is particularly indefensible that you are using public money potentially to defend what you are doing as a public servant? Isn’t that an inequality of arms?
John Yates: I think there are two completely different points you are raising there. The first point concerns whether we can provide information to potential civil action claimants. It is absolutely clear in law. You will know the case law, it is R v Marcel, that says we are unable to provide material gathered for one purpose for people for another purpose. That is a very clear position in law. If we moved away from that we would be in all sorts of difficulties about privacy and other matters. I just think the other point is completely separate.

Q82 Mr Clappison: One of the points Mr Bryant raised needs dealing with: have all the people who were thought to have been victims of this hacking in the first place been told about it?
John Yates: That is a very broad statement to make, and I can’t answer that in completeness because of the new investigation.

Q83 Chair: Should we address that to Ms Akers?
John Yates: I think that is one for the future, yes.

Q84 Chair: We will do that. Two points came out of the evidence today. In terms of payment of police officers and the comments that Rebekah Brooks made to Culture, Media and Sport, you have seen no evidence that any police officers—you have not heard of any circumstances—have been paid any money by the News of the World?
John Yates: No, I absolutely agree that that has happened in the past. It is very rare.
Chair: It has happened?
John Yates: Has happened in the past and people have been arrested for it and have gone to prison, and I can provide details to the Committee of the numbers. It is very few.

Q85 Chair: Thank you. But subsequent to that statement being made to Culture, Media and Sport, nobody has investigated what Ms Brooks has said?
John Yates: No, and my understanding is my colleagues in the Specialist Crime Directorate are doing some research on that to see exactly what happened. It was eight years ago.

Q86 Chair: Has somebody not just asked her? Research is one thing, but if she has made a statement that is the next thing.
John Yates: Always best to do the research first.

Q87 Dr Huppert: I am trying to understand—Chair: Don’t widen it, Dr Huppert.
Dr Huppert: I will say on this, you say it is very rare but you also say that no investigations have been done into it except for those few specific occasions. How could you know it was rare?
John Yates: Hopefully our intelligence is good enough to know that it is rare. Park Rebekah Brooks away for the moment; other cases that have involved corruptors or corrupt police officers over the past decade have taken place and people have been arrested, and they have gone through the process, whether it be a discipline or criminal proceedings; that has happened. That is what I am saying is pretty rare. It has happened, we accept it, and we have the processes in place to ensure that it hopefully doesn’t—

Q88 Chair: But subsequent to what she said at Culture, Media and Sport, nobody has asked her about this?
John Yates: That is what is being clarified at the moment by my colleagues.

Q89 Chair: By their research?
John Yates: By their research at the moment.
Chair: Deputy Commissioner, obviously when you write to the Chairman of the Home Affairs Committee and ask to give evidence, we have you before us, which is what we have done today. Thank you very much for giving evidence.
John Yates: Chair, I did have an opening statement, which was very similar to the one I gave to the CMS, which I am very happy to have—Chair: You can certainly leave it with us, and we will make sure it is in the record. Thank you very much for coming.
Tuesday 5 April 2011

Members present:

Mr James Clappison
Dr Julian Huppert
Steve McCabe
Alun Michael

Bridget Phillipson
Mark Reckless
Mr David Winnick

Members present:

Mr James Clappison
Dr Julian Huppert
Steve McCabe
Alun Michael

Ms Keir Starmer QC, Director of Public Prosecutions, gave evidence.

Q90 Chair: Mr Starmer, thank you very much for giving evidence to us today. I apologise for keeping you waiting. We were having a long discussion with the new Permanent Secretary of the Home Office, and inevitably these things overrun.

Mr Starmer: Your clerk kept me updated, thank you.

Chair: Excellent. Thank you very much, first of all, for the letter that you sent to us in response to my original letter to you in October last year, and for the latest letter that you have sent to the Chairman of the Culture, Media and Sport Committee, who sent us a copy on Friday. We are most grateful. We have just had a chance to absorb this. Can I take it that you are aware of the account that Mr Yates gave to us when he gave evidence to us last week?

Mr Starmer: Yes, I am. Could I just begin by highlighting the caution and caveats at the beginning of my letter on 1 April 2011?

Chair: Of course. You can certainly do that when we get onto the letter, but can I just set this background? We might put questions to you about other witnesses who have been before us. Are you aware of the evidence that he has given?

Mr Starmer: I am aware of the evidence that he has given. I have deliberately attempted to set out simply, in neutral, chronological order, a detailed account from beginning to end.

Q91 Chair: We are very grateful for it. Secondly, are you aware of what Mr Bryant has suggested in the evidence that he gave to us, or is that in a box that you are not aware of?

Mr Starmer: No, I am aware of all of that. I have resisted responding to Mr Yates or Mr Bryant. I thought it more helpful to the Committee to simply set it out in full, in detail and chronologically, so that you can see.

Q92 Chair: We are most grateful. Turning to your letter, which you have referred to already—this is the letter dated 1 April 2011—can I take you to almost the last paragraph? I know the danger is that we will do as you have suggested we shouldn’t do, which is ignore the caveats, but we have taken on board all the caveats that you have set out forward.

Mr Starmer: One further word on the caveats, if I may. One of the caveats is that, in addition to the review that I asked my principal legal adviser to conduct, which she is conducting and is not complete, there is a live investigation, and the Committee may not know—the news has just broken—that two individuals have been arrested this morning in relation to this operation and are currently in custody awaiting questioning, and therefore—

Chair: The timing is almost perfect for your appearance.

Mr Starmer: I will make no comment about that.

Chair: We are certainly grateful for that. I was not personally aware of that.

Mr Starmer: I have to be so careful on anything that falls within the remit of the live investigation, for obvious reasons that the Committee will understand.

Q93 Chair: We are not going to ask you about the live investigation, simply because this Committee—by way of background to you—are looking at RIPA. We are looking at the law. Obviously, what has happened in respect of the News of the World and Mr Yates’ examination of what has happened, and your advice, are relevant to our recommendations that we hope to make to Parliament after we have heard from the Information Commissioner as to whether the law is clear and whether the law should be changed. We are interested in that kind of abstract argument, so if you want to keep it at that, we are happy with that.

Mr Starmer: I will, and thank you for that indication.

Q94 Chair: Taking you to “e” of your letter, page 11, just on the basis of the legal advice, because this affects the open evidence given by Mr Yates, Mr Yates told this Committee that, in effect, on 1 October at a case conference, the advice that he was given by leading counsel from the CPS altered the scope of the investigation in that, prior to this, he felt that the advice given by the CPS limited the scope of the investigation—so we are in interested in scope here as opposed to anything else. So “e” in your letter, “In my view, the legal advice given by the CPS to the Metropolitan Police on the interpretation of the relevant offences did not limit the scope and extent of the criminal investigation”. That is what we are interested in. Was the original advice that was given in any way a limit to what the Metropolitan Police could do?

Mr Starmer: I understand.

Chair: What is the answer?

Mr Starmer: In my opinion, it wasn’t, and the conclusion at page 11 “e” is based on everything that goes before it in the previous 10 pages, where I have tried to set out the advice that was given from the start on a number of different offences. In summary, as far as RIPA is concerned, what I have termed “provisional
advice” was given on the interpretation of RIPA, which suggested that it might have to be interpreted narrowly, but no definitive view was taken on that. In fact, no definitive view was ever articulated on that.

As far as the Computer Misuse Act is concerned, advice was given in relation to offences under that Act almost from the beginning of the CPS involvement. Of course the significance of that is that, under that Act, it is not necessary to establish whether a message was intercepted before or after it was listened to by the intended recipient. A device was also given about conspiracy charges, which again do not necessarily require proof that a message was intercepted before it was listened to by the intended recipient.

That is why, putting it all together, my view is that nothing but a provisional view was given on the interpretation of RIPA. In any event, however, the advice that was given on the other two offences leads me to the conclusion that the legal advice given by the CPS, in this case, did not limit the scope or extent.

Chair: Yes. Mr Yates, of course, told the Committee that he believed it did limit his investigation. He was very clear on this when he gave evidence to us last Tuesday, and he then said that on 1 October, things changed. Your advice changed. I appreciate that you were not the DPP on the original occasion, but you have had a review of all the advice that has been given. Do you think that there was a change on 1 October?

Mr Starmer: I certainly accept that in October, when for the first time under my watch this became a live issue for the CPS—until then I had simply been looking back and trying to piece together what had gone before; this was the first time it became live on my watch—at that stage, I was concerned that clearer, more robust legal advice should be given to the Metropolitan Police. Looking at the history and the detailed analysis we have provided, I don’t for my part, think that that was a radical departure from the approach that had been taken before. I do accept that it was clearer and more robust, and insofar as—

Chair: But consistent.

Mr Starmer: But consistent. Insofar as counsel previously had been prepared to take a pragmatic view for the purpose of the particular prosecution, I think I was indicating that in future, I thought the clearer and more robust approach should be adopted. To that extent, I think it would probably not have adopted, looking forward, the pragmatic approach that was taken at the time.

Chair: Indeed. One final question on process: I am fascinated by all these calls that are being made to the Metropolitan Police. Looking at the history and the detailed narrative and chronology in as much detail as I have—I have set out the process—and to give the Committee may ask me whether there are differences between me and Mr Yates, is to provide him with an opportunity to see the draft before it was sent to the Committee, so that if there was a factual inaccuracy that was identified and I could deal with, I could deal with that in the body of the letter and ensure, whatever conclusions one draws or observations one makes, that at least the factual background is agreed. Now, as I have said in the—

Q97 Chair: W hic h happened on 1 October, “We need a robust set of advice. We are proceeding; tell us what to do. What is the law?” and so on. That is basically what you are saying?

Mr Starmer: Yes.

Q98 Dr Hup pert: Thank you, Mr Starmer, for coming before us, and also for writing one of the most compelling pieces of legal literature I have ever had the pleasure to read. It was fascinating. I am still trying to work out who did it at the end.

It is a helpful coincidence, in some sense, that we are meeting just after the former News Editor and current Chief Reporter at News of the World has been arrested. I don’t expect you to comment on that case at all. I think it is worth the Committee noting, though, that they were arrested on suspicion of conspiracy to tap into or hack mobile communications, which I think does relate to the breadth here. Can I just press you on your conclusion in “e”, and what you said at the end of your letter is that you shared this letter with Acting Deputy Commissioner Yates and invited him to identify any factual inaccuracies, and that he did not do so. Do you think that means that he now accepts that this version of events is what happened, and therefore what he told us about previously was clearly not what happened?

Mr Starmer: I am very clear about this. I am not here to give evidence of what Mr Yates may or may not think, and it is not a sensible thing for me to attempt and it is not a fair thing for me to attempt. What I was anxious to do, when the Committee asked me to give evidence, was to go through all of the records that we had—I have set out the process—and to give the detailed narrative and chronology in as much detail as I could, and far more than we normally would, so that the Committee could see the whole picture, full stop. What I also wanted to do, because I knew that the Committee may ask me whether there are differences between me and Mr Yates, is to provide him with an opportunity to see the draft before it was sent to the Committee, so that if there was a factual inaccuracy that was identified and I could deal with, I could deal with that in the body of the letter and ensure, whatever conclusions one draws or observations one makes, that at least the factual background is agreed. Now, as I have said in the—
**Chair:** Did he respond and say he was wrong?

**Mr Starmer:** He did respond and he did not identify factual inaccuracies, and that is why I have put in the penultimate paragraph, I think, that I had included that as part of the process. Beyond that, I don’t think it is for me to say.

**Dr Huppert:** We could conclude now that at least he accepts that this is the best factual description of what happens that exists anywhere, and that this is what we as a Committee should take as the basis for what actually happened?

**Mr Starmer:** I specifically asked him in terms to identify any factual inaccuracies, and he responded to me with a number of observations but with no factual inaccuracies. That was specifically what I was wanting.

**Chair:** I think what Dr Huppert is looking for is a definitive view. We know you can’t speak on behalf of Mr Yates. I think he does that very well himself, and indeed has written back to us on this matter.

**Dr Huppert:** So we should take it now as the agreed factual basis that the legal advice given by the CPS to the Metropolitan Police, at the early stage of the investigation, did not limit the scope of that criminal investigation—your conclusion at “e”?

**Mr Starmer:** I am trying to be careful. I am not trying to be unhelpful. I asked Mr Yates to indicate if there were any factual inaccuracies, and he dealt with that.

**Chair:** His answer was, no, there were none?

**Mr Starmer:** No factual inaccuracies. The conclusions at “a” to “e” are mine. They are what I draw from the facts set out in the previous 10 pages. I am clear enough about that; I don’t have any difficulty with that at all. What I don’t want to do is to put words into the mouth of Mr Yates. I think he does that very well himself, and indeed has written back to us on this matter.

**Dr Huppert:** Yes, I am absolutely clear about that. It has been checked with Mr Yates, but I have personally identified that that might be the case and, unsurprisingly, I therefore wrote on the 30th to try and deal with that.

**Chair:** Nor do you need to, because it is open to this Committee to send him a copy of your letter and to ask him what he thinks of that.

**Mr Starmer:** Precisely. Thank you.

**Dr Huppert:** We can certainly take it then as factually clear, as on page 5, that the advice formally given by the CPS to the Metropolitan Police, in July 2006 was that you could look at offences under the Computer Misuse Act, under RIPA and on conspiracy?

**Mr Starmer:** Yes. I am absolutely clear about that. It has been checked with Mr Yates, but I have personally looked at the documents and I have asked my principal legal adviser to look at much more than that. I am absolutely clear in my own mind about that.

**Dr Huppert:** My interpretation of that—and I can only speak of my own, because I have pieced it together—is this is provisional. It is flagging up a problem. It is undoubtedly indicating that that might be the case, and I can understand why it would be read in that way. I readily accept that. It is provisional, however, it is not definitive, and it is indicating, in a sense, “We are going to have to come back to this issue at some stage further down the line,” but I accept the terms of the advice that it is identifying that that might be the case and, evidently, that might have to be proven. I accept that.

**Dr Huppert:** Can I just explain the context of that letter, because that may help, and I dealt with it in the body of the letter that I sent on Friday? On 9 July, the Culture, Media and Sport Committee requested me to give written evidence. I did that on 16 July, giving them the conclusions of an internal review that we had done, and that was my response to the Committee. In the meantime—that is, between 9 and 16 July 2009—other witnesses had appeared before that Committee and two pieces of information had been given to that Committee. The one was an e-mail in the name of Neville. I knew that my evidence on 16 July had not dealt with that, but I then appreciated that the Committee had raised some questions about those two pieces of information—unsurprisingly. I therefore wrote on the 30th to try and deal with that.

The context of the letter of 30 July is to explain, first—which was a critical issue—was the e-mail in the physical possession of the CPS at the time, which would lead to the question: was any advice given at the time? I looked into that and the answer was, no, it wasn’t, but it was on a schedule of unused material, which would have been looked at by junior counsel, who would have gone normally to the police premises to look at the schedule of unused material. He had no recollection of seeing the specific e-mail, but accepted that, in principle, it was his task to look at the unused material and he probably would have seen it at some stage. I then engaged in the exercise, which in
retrospect may not have been as helpful as I wanted it to be, of asking leading counsel. "What approach would you have taken at the time had you known about the e-mail?" It was a hypothetical analysis, because I had already established we did not see it. That was what I was trying to convey in July 2009. Having discussed it with leading counsel, I then tried to summarise the position that I understood he had taken—the pragmatic view—because his view was, "The law is unclear. It is capable of being read either way but for pragmatic, sensible reasons, if it becomes an issue, I would prefer to take a narrow view." I was trying to summarise that. As I have said in the body of my more recent letter, looking at it again I accept that: one, perhaps it was not as helpful as I thought it would be in engaging in a hypothetical exercise at all; and, if I was going to engage in it, it would have been better to have made it clear that that was the pragmatic approach as I understood it from counsel.

To give some context to this, I was trying to reply fairly quickly to the Committee. I was talking to leading counsel, who did not have all his documents before him, and nobody at that stage went through the documents in detail. It has taken us days and weeks to go through all of these documents to get everything absolutely clear.

Q106 Chair: How many people are involved in this process at the CPS? It sounds as if an enormous number of people and resources are being used on this.

Mr Starmer: At the moment I have a small team working on this, headed up by the principal legal adviser. There is a live investigation and I don’t know at the moment what further resources we will need, but this issue of the interpretation having assumed the importance it has, we have done our best in the time available to go through all the documents to produce the detailed narrative that we have. That is the context of the letter.

Q107 Mark Reckless: Mr Starmer, there are all these investigations and the input from the CPS on what the interpretation might be, but to me it seems very clear, looking at the statutory provisions. You have the section 1(1) RIPA offence, which is to intercept a communication in the course of its transmission. You then go to section 2, which goes to the meaning of interception and transmission, and at section 2(7) it says, "Transmission includes storing a message in a manner that enables the intended recipient to collect it or otherwise to have access to it". So how on earth do you justify this suggested narrow interpretation of section 1(1) in the light of section 2(7)?

Mr Starmer: David Perry, leading counsel, thinks that it is not clear. Separately instructed leading counsel that I instructed thinks it is not entirely clear. It has never been settled by the court. It is capable of more than one reading. There are conflicting statutory canons of construction where you have any ambiguity in a statute. On the one hand, with a penal statute it is to be narrowly interpreted because it is a criminal provision; on the other hand, you have Article 8 of the European Convention, which requires protection, and therefore possibly a wider interpretation. Can I just add to that, the only case law that is of any assistance so far on this is some observations of Lord Woolf in the NTL v Ipswich case, and they do suggest a narrow reading.

So I accept the thrust of your point but, to be fair to everybody involved in the process, two times leading counsel think it is ambiguous and can be read two ways. Lord Woolf is suggesting—I accept in relation to e-mails, but if it is read in a particular way, it has to be read in a way that makes sense for any type of communication—and indicated there that it would be a narrow interpretation; and canons of construction go either way. My own view is that it is the wider interpretation, and I have made that absolutely clear but I don’t think it is right for me to criticise others for having formed the view that this provision is not clear.

Chair: You are the DPP, and if you feel the wider analysis should be followed—

Mr Starmer: My own view is it is the wider view and that is why I was very keen that, as soon as this arose as a live issue on my watch, there should be no ambiguity as to my position, and that is why I wrote in the terms I did.

Q108 Mark Reckless: I am glad that leading counsel are giving some protection to your position apparently. In light of section 2(7) and it saying, "To collect or otherwise have access to", I find it very difficult to understand this narrow interpretation point, which the CPS is saying is at least arguable. We are having great difficulties on this because you have written to us, on 1 April, saying the observations of Lord Woolf in NTL v Ipswich Crown Court 2002 pointed to a narrow view. I think that is in your letter to the CMS, copied to us. Yet on 29 October you said to us the exact opposite: you said that the company would have committed the section 1 offence, since diverting the content of the e-mails to storage—this was after they had been read—and so making them available would amount to interception.

Mr Starmer: No. What happened in NTL is: that was a production case and it was a question of what could lawfully be produced, so it was looking at a different statutory provision. The point Lord Woolf was making is that he did not consider that, after the e-mail was sent to storage, it was an interception for the purposes of RIPA. The whole point was—[Interruption.] I was summarising. The position is this: would the production order in NTL breach RIPA because you would be accessing a stored e-mail? Therefore, what Lord Woolf was trying to analyse is: is it a breach of RIPA to order production in the circumstances in which he was—

Mark Reckless: Unless you had the PACE authorisation.

Mr Starmer: In that context he made comments that suggested that it would not be an offence within RIPA because it had moved to the storage part. There is no inconsistency between that analysis—I have been over it many, many times—and any evidence I have given to this Committee or any other.

Chair: I do not think we are looking for inconsistencies. We are looking for clarity.
Q109 Mark Reckless: I am saying that you told us one thing on 29 October and the CMS another thing on 1 April.
Mr Starmer: Can you just take me to the particular passage in the letter. I have it at page 4.
Q110 Mark Reckless: It bears out what you said in your letter on 29 October, but contradicts what you say in your letter of 1 April.
Mr Starmer: I do not accept that.
Chair: You do not accept that. Anyway, that is Mr Reckless' view.
Q111 Mark Reckless: On page 4, "The court held that, subject to authorisation by the making of the order, the company would have committed the section 1 offence, since diverting the content of the mails to storage, and so making them available would amount to interception" and the case related to the e-mails having already been read, so the moving to storage is after that.
Mr Starmer: "Subject to the authorisation." Listen, the best I can do is to provide the Committee with a copy of the judgment. There has never been any ambiguity in my mind on this whatsoever.
Q112 Mark Reckless: It seems to me that there are two problems with what you say: first, that the indictment included cases where there was no evidence to suggest the interception was before it had been read, so you would have lost those if the narrow interpretation was correct. So that is a broad interpretation. What basis is there for CPS to have been pushing this narrower interpretation, given how clear the statutory language is there for CPS to have been pushing this narrower interpretation? The approach in this case of leading counsel was slightly different, which was to say, "I think it is ambiguous. I don't want to risk the whole case on this point of statutory construction, and therefore I am going to take a pragmatic view, if and when it arises." In fact it didn’t, but I accept, as a general proposition, that it sometimes happens that investigators and prosecutors decide that they feel sufficiently strongly about their argument that they will test the provision in legal proceedings.
Q113 Bridget Phillipson: Do you think it would make any difference if RIPA was clarified, for avoidance of any doubt in the future, so it is far clearer what is and is not an offence?
Mr Starmer: Certainly, I think clarity of the law is a good thing, particularly when we are dealing with criminal cases. There are two ways of achieving that: one would be to amend RIPA and make it clearer; the other would be to have a definitive court ruling. It may be that if there was a definitive court ruling, and it would probably have to be the High Court, Court of Appeal or above, that that would so clarify the position that there would be no need to amend RIPA, but they would be the two routes. I don’t think it is helpful to have ambiguity in the criminal law.
Q114 Chair: The problem is that the defendants on the last occasion pleaded guilty, so it really wasn’t tested.
Mr Starmer: They pleaded guilty, I think at a plea and case management hearing, back in October 2006, and therefore it never became an issue for determination.
Chair: Mr Reckless has one more bite.
Q115 Mark Reckless: Would it have made any difference if the Met had said to you, “Look, this is a major issue. We believe there are lots of victims. We think this should be tested and we should look at how the law operates”? In the relationship the CPS has with the Met, is it that you give the advice and they act on it, or they say, “We think there is a really strong case here. Can you say whether we can proceed?”
Mr Starmer: Yes. No, I take the point. There are some cases where that might well arise, where the law is not entirely certain, it looks as though, for example, there is criminal conduct and the investigators and prosecutors decide together, “We think we have a sufficiently strong argument to test this in the case.” The approach in this case of leading counsel was slightly different, which was to say, “I think it is ambiguous. I don’t want to risk the whole case on this point of statutory construction, and therefore I am going to take a pragmatic view, if and when it arises.” In fact it didn’t, but I accept, as a general proposition, that it sometimes happens that investigators and prosecutors decide that they feel sufficiently strongly about their argument that they will test the provision in legal proceedings.
Q116 Chair: I am sure it would be helpful to have ambiguity in the criminal law.
Chair: That would be extremely helpful.

Q119 Steve McCabe: Mr Starmer, it seems to me the big confusion in this is issue is how the Metropolitan Police, and possibly Commander Yates, came to be fixated on the idea that this narrow interpretation of RIPA was crucial to their investigation. Can I be clear: what you are saying is that they were certainly advised that they could have used the Computer Misuse Act 1990 and there could have been conspiracy charges, so there is no question that the Met were told, “There is only one route you can use here to pursue this investigation and to bring charges”?

Mr Starmer: They were advised of that from an early stage, as set out in the chronology. I accept from the e-mails, that it was certainly being suggested that provisionally there might be a narrow interpretation of RIPA. For the reasons I have set out it never became an issue but, alongside that, they were aware of, advised of, and were proceeding on the basis that the other offences were to be investigated and were available.

Q120 Steve McCabe: As Mr Reckless says, it is not absolutely clear that they were quite so fixated on the narrow interpretation when they brought the charges against Mulcaire and Goodman, because in fact they brought a mixture of charges where things had been listened to and had not been listened to, so it isn’t clear that what became central to their thinking subsequently was operating at that stage. Is that fair?

Mr Starmer: It is my interpretation, and leading counsel’s view, that the way the charges were set out provisionally there might be a narrow interpretation of RIPA was crucial to their investigation. Can I be clear: what you are saying is that they were certainly advised that they could have used the Computer Misuse Act, possible conspiracy charges, and the Data Protection Act? Do you have a current view on all of those and whether they are usable?

Mr Starmer: I do but, if you will permit me, I am not going to share them with the Committee. We have two people in custody; we may be making decisions in the reasonably near future. At some stage, in some helpful way to the Committee, at an appropriate point I will obviously share anything that is of assistance to the Committee, but at the moment I think the timing would be wrong.

Q121 Chair: Mr Starmer, you have been very clear and open and transparent with this Committee today and your letter is very clear. It is a most astonishing letter, in the sense of the evidence we have received previously from Mr Yates. For completeness I think, even though you have already sent it to him for comment, the Committee will probably want to send it to him just for him to have a look at.

Mr Starmer: Of course.

Chair: You are very, very clear about the evidence given and it does, in our view, contradict what was told to this Committee by Mr Yates last week, but we will be pursuing it in our own way. We are most grateful. We know you must be extraordinarily busy. Thank you very much for coming today.

Mr Starmer: My pleasure.

Q122 Chair: Before you go, just generally on your other functions as the DPP, how is it going with the CPS these days generally? No more lost files? Everything all efficient?

Mr Starmer: We are performing well. I think since we last discussed this— I remember a similar question last time we met—we have introduced core quality standards, which allow us to gauge how well we are doing on the preparation of files across the country and we are measuring that on a consistent basis. We do prosecute about a million defendants a year, so there will always be difficulties, but performance is good and the management of that performance is good as well.

Q123 Chair: And the quality of the people you are recruiting to the service—you are happy they are of the highest possible quality? It is now seen as a career structure?

Mr Starmer: I think the CPS is in a very good place in that respect. We have very good, committed staff. We have very good senior leaders. I think that is generally accepted. As to recruitment, at the moment, obviously, we are on a recruitment freeze, but I think that the CPS has built a very sound platform for itself.

Q124 Chair: Finally, as far as independence is concerned, you are very satisfied that you remain an independent service? Obviously, we have looked at the correspondence between you and the Metropolitan Police. They consult you, they ask your advice, but at the end of the day the public can still feel confident
that you are an independent service providing independent advice, and not part of the—

Mr Starmer: The public can have every confidence in the independence. It is written into everything we do. It is in the conduct of everything we do. I would not sit here as DPP if I thought independence was compromised. I would walk away. Secondly, one of the things I have done is to try and make us transparent so that people can hold us to account, and you will see much more by way of reasoning, much more put into the public domain by the CPS these days, so that everybody can look at the decisions we have made and question them. On our website, for all of our big decisions, I now insist that full reasons are given, so that people can see the basis upon which we have made our decisions and to give them confidence as to the independence by which those decisions are arrived at.

Q129 Chair: But as far as your relationship with the police is concerned, bearing in mind what you have told us today, perhaps fewer phone calls, more e-mails, more stuff in writing, so that people are clear? Mr Starmer: I would like to go away and reflect on that. Very often, in many cases, we are working in very fast time with the police. One can only imagine the situation with, for example, a counter-terrorism operation where things happen very, very swiftly. I will reflect on what you are saying, but I would not want to formalise things to a point where the real-time, fast-speed relationship does not work effectively. Chair: Mr Reckless has a final point. He is not going to open the discussion about interpretation. It is a quick point.

Q130 Mark Reckless: On a different matter. Given the difficulties we have seen here with the CPS working with the police, might it not be better to localise the CPS and have the various areas reporting in to the elected Commissioners we are going to have from next year?

Mr Starmer: I don’t personally think that that would be the right way forward. I think the independence is clear. The relationship works very well. I understand the issues that the Committee are looking into but, day in, day out, hundreds of thousands of cases in and out day in, day out, we have a good relationship and it works very well. That is a good position to be in.

Chair: Thank you very much, and the Committee will write to Mr Yates.
Tuesday 26 April 2011

Members present:
Keith Vaz (Chair)
Dr Julian Huppert
Alun Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: Christopher Graham, Information Commissioner, gave evidence.

Q131 Chair: I call the Committee to order and refer everyone present to the Register of Members' Interests, where the interests of all members of this Committee are noted. I welcome the Information Commissioner on his first appearance before this Committee. Welcome, Mr Graham.

Christopher Graham: Thank you.

Chair: This evidence session is related to the Committee's inquiry into the unauthorised tapping into or hacking for, or making communications for RIPA, but in any event the Committee like regularly to see the Information Commissioner to find out what is going on in respect of his activities.

Do you have an interest to declare, Dr Huppert?

Dr Huppert: I do, if I could, Chair. The Information Commissioner's sister lives in Cambridge and is well known to me.

Q132 Chair: Excellent. Let us proceed to the first set of questions, Mr Graham. The issue of resources, if I could just raise this at the start, was originally raised with a predecessor committee. Are you happy with the resources that you have at your disposal in the execution of the duties that you have to perform?

Christopher Graham: Mr Chairman, the Office of the Information Commissioner is funded by two streams of revenue. I have the proceeds from the notification fee that data controllers pay to operate under the Data Protection Act, and that raises about three-quarters of the income for the office, about £15 million, but that is solely to be used on data protection work. The problem arises on the freedom of information side of the house, where I am funded by grant in aid from the Ministry of Justice. Like all public authorities, we are having to take our slice of the cuts. We are responding to that constructively, trying to achieve better for less. But the fact is that if we are asked to do more and more under the transparency and accountability agenda, we will need the resources to do it.

Q133 Chair: In your evidence to this Committee you say that your office has experience of cases relating to the processing of data that has been obtained through interception. You made it very clear in your evidence what you are responsible for and what you are not responsible for. You are not responsible for RIPA, but you are for data protection breaches. What kinds of cases have come to your attention in respect of interception?

Christopher Graham: The major issue that my office has been concerned about in relation to the unauthorised disclosure of personal information relates to what we call blagging rather than interception or hacking. That is misrepresenting yourself over the phone, at the doctor's surgery or to the DVLA or to TV licensing in order to piece together information that you have no right to: where someone lives, what their phone number is, what their friends and family numbers are. That was the subject of a report by my predecessor What price privacy? followed up six months later with What price privacy now? But this is quite historic—this is 2006.

I think the concern about the behaviour of the press is less of a worry to us, though clearly it is before the courts at the moment in relation to hacking and interception that you have been investigating. Where I think we come in of relevance to your inquiry is where there may be unlawful and unfair processing of personal information that is the result of hacking. It is very difficult for us to know the origin of the material, but here again there is a restraint, which we have to bear in mind, that the Data Protection Act, insofar as it applies to this sort of thing, has a very broad exemption within it for what is called the special purposes, for literature, journalism and the arts. My investigatory powers can be very easily stymied by somebody telling me that what they are doing is for journalism, literature and the arts. All my powers of requiring information—information notices, investigation and the more dramatic stuff, kicking the door down—I can't do if there is an exemption for the special purposes. So my role in this area is, frankly, pretty limited.

Q134 Chair: In respect of what is in the public domain at the moment in terms of the evidence the Committee has received from the DPP and the Assistant Commissioner, you are not involved in any of those matters? You are a watchful observer rather than someone who has been asked to do anything in respect of unauthorised tapping?

Christopher Graham: We have, on occasion, been ordered by the court to provide material from our so-called Motorman file—the material we secured from a private investigator back in 2005. Celebrities who have been pursuing the cases that we are aware of are very interested to see whether information was being blagged about them. So it is a different offence, but we sometimes come in there; and we have certainly been involved in the case management conferences with Mr Justice Vos.

Q135 Chair: You have complied with all the orders of the court?
Christopher Graham: We have compiled with all the orders and certainly provided all the information. But we are very interested bystanders because, to the extent that there is a lack of clarity about how the law stands, obviously one is concerned that that clarity should be provided. After all, the Regulation of Investigatory Powers Act is not legislation that I enforce, but it is an observable fact that this was a law that was drawn up for another age and another circumstance.

Q136 Chair: We will come on to that in a second. In respect of the orders that you have been asked to comply with, how many people were affected? How much information have you supplied? We don’t need to know the names, but is it a handful of people or tens of people?

Christopher Graham: I would say tens of people. If the Committee wanted a precise number I would need to go back to the ranch and check.

Q137 Chair: Is it over 100?

Christopher Graham: In terms of court orders? No, less. Much fewer.

Q138 Chair: We will come on to that in a second. In respect of the orders that you have been asked to comply with, how many people were affected? How much information have you supplied? We don’t need to know the names, but is it a handful of people or tens of people?

Christopher Graham: I would say tens of people. If the Committee wanted a precise number I would need to go back to the ranch and check.

Q138 Chair: Less. But in terms of names of people who you have supplied information on?

Christopher Graham: I would say, from memory, there would have been fewer than a dozen cases where celebrities who were seeking redress against newspapers had got a court order to get information from the Information Commissioner about what we had in relation to blagging.

Q139 Alun Michael: Just on the point that you said there were a number of exemptions that would prevent you investigating a case, who decides that the exemption applies? Presumably somebody can’t just claim the exemption and that stops. You would have to be satisfied that the particular issue fell genuinely under one of the exemptions, wouldn’t you?

Christopher Graham: It is a bit of a catch-22, because I would be working entirely in the dark. In other situations, if I issue an information notice to a data controller or a public authority I would expect compliance and if I didn’t get compliance it would be a pretty straightforward application to the courts to get it. But if I don’t know whether a story that a journalist is working on, for example, is or isn’t in the public interest or, indeed, whether somebody blogging is or is not a journalist—where does journalism start and stop in the internet age?

Q140 Alun Michael: Clearly that is a matter of judgment, but wouldn’t they have to provide you with the evidence that they are pursuing that activity in order to satisfy you? Essentially, don’t you have to make a judgement and doesn’t the person that claims the exemption have to show evidence that the exemption does genuinely apply?

Christopher Graham: But it would purely be a fishing expedition on my part if I didn’t have—

Q141 Alun Michael: But you wouldn’t be asking the question in the first place unless you thought there was a question that should be answered.

Christopher Graham: But I am not sure I could make an information notice stick under these circumstances. As the Chairman has pointed out, there are issues of resources and like any good regulator following better regulation principles, your intervention has to be well directed and proportionate.

Q142 Alun Michael: Sorry, I will pursue this just one point further. The purpose of Parliament, in agreeing that exemption, is to exempt genuine cases; it is not to provide an excuse that makes it impossible for you to pursue cases. Surely you must have the authority to say, “Show me that this exemption is soundly based,” rather than having to accept it just because somebody claims it?

Christopher Graham: I would have to make a judgment on whether it was a good use of my resources—Alun Michael: That is a different point.

Christopher Graham: Well, it is a very material point because I have limited resources and a range of responsibilities given me by Parliament.

Q143 Alun Michael: But it is for the person who is claiming the exemption to show—it is they who have to do the work in order to satisfy you. You have got to the point of saying, “There is something I think I ought to pursue.”

Christopher Graham: But I still have to enforce the information notice in court. I have to brief counsel, go to court and so on. All I am saying is I would be operating in the dark, but really this is a sideshow: the main issue surely is that we have a law and a regime around hacking, blagging, interception that is very, very unclear, very, very uneven. I am trying to—

Q144 Alun Michael: But essentially you are saying to us, and you are saying to the wider public, “Well, claim the exemption because I won’t challenge it.” That can’t be right, surely.

Christopher Graham: I am implementing the law that Parliament has given me.

Q145 Chair: But you are worried about the lack of clarity that exists at the moment? This is something that other witnesses have talked about. Mr Michael has an important point in that you are put under a huge amount of pressure, and you are responding to say you really can’t do everything because you don’t have the resources to do it, but at the end of the day this comes from Parliament’s lack of clarity as far as RIPA is concerned.

Christopher Graham: I am only a small part of the solution. I am saying that perhaps the issue that the Committee will want to think about when they come
to report is the fact that there is a mosaic of regulation covering an area that is now very current, but perhaps in 2000 was not. RIPA was drafted for the wiretap age. We are now talking about the internet, we are now talking about deep packet inspection, we are now talking about online behavioural advertising, and yet there are a series of commissioners working away in different parts of the wood—

Q146 Chair: Yes, just remind the Committee, how many different commissioners and authorities are involved in this process? There is yourself—

Christopher Graham: I think four would be of relevance.

Q147 Chair: Who are the four?

Christopher Graham: The Information Commissioner. There is the Interception of Communications Commissioner, there is the Surveillance Commissioner and there is the Interim Closed Circuit Television Commissioner—who is about to morph into something else—and we are all operating different bits of legislation. It is very important that we operate in a joined-up way and I recently took an initiative to write to my colleagues and say we need to liaise very closely to make sure that business doesn’t fall through the gaps.

Q148 Chair: Until you did that, was there any mechanism by which the four commissioners perhaps met for lunch once a month or had a meeting once a month to discuss this? Before you wrote and did this, was there a process, is there a process that allows this to happen, other than your initiative when you brought them together?

Christopher Graham: My staff were working very closely with the staff of the Interim CCTV Commissioner—who is about to morph into something else—and we are all operating different bits of legislation. It is very important that we operate in a joined-up way and I recently took an initiative to write to my colleagues and say we need to liaise very closely to make sure that business doesn’t fall through the gaps.

Q149 Chair: Yes, we understand that, but did the four of you meet together?

Christopher Graham: No, the four of us have never met together in the same room at the same time. But over the next—

Chair: Ever?

Christopher Graham: I have only been in post since July 2009 so I am not perhaps—

Chair: So in the last two years there has been no meeting between the four commissioners?

Christopher Graham: Met individually but not the four of us. By the end of June we will have done that.

Chair: Thank you.

Q150 Dr Huppert: You seem to have made a strong case for perhaps unifying commissioners into some sort of structure. Can I ask about the difference between having a formal role in something and having a looser more advisory role, giving advice to people involved? Let me give you an example of what I mean. I recently contacted the National Policing Improvement Agency, who have a covert advice team that provides advice to police forces in terms of how to use interception, and asked them what advice they had given to police forces. They gave a detailed response, which I will circulate to members of the Committee and make sure is in the report, saying that they have been providing essentially the same advice from 2003 to 2010, which says inter alia that voicemail messages stored on the servers would still remain in the course of transmission irrespective of whether the message had already been read or listened to by the intended recipient, so we know that the police were being advised professionally by the NPIA about how to interpret this. That is not the same as the DPP who we have explored separately. I think this is something we should explore separately with the Met Police, but have you been asked to give advice in that sort of way? Do you have a track record of people contacting you asking for your opinion on things, even if they are not directly your responsibility?

Christopher Graham: We can’t give advice on legislation that we have no responsibility for, and the Regulation of Investigatory Powers Act, which is what you are referring to, is just not our piece of legislation. What I think, is that the NPIA also have RIPA and also the of Computer Misuse Act, where the penalty for a breach is very serious, up to two years in prison, and it is a very high hurdle—to take a case and to establish it is in the public interest is quite a rare event—but there is nothing below that very high hurdle of the sort of activity of a regulator, which is absolutely standard for the Data Protection Act. Most of my job, and my staff’s job, is about giving advice to data controllers and to members of the public and sorting out individual problems. The prosecutions under section 55 of the Data Protection Act are pretty rare. It is not the main thing of what we do.

What is interesting about this patchwork regime for hacking and blagging and interception is that there is no equivalent of the Information Commissioner giving very practical advice to Government agencies, to commercial organisations. You either get into serious trouble and are locked away for two years or nothing happens so far as I can see. There must be something in between.

Q151 Dr Huppert: Are you aware of any interception cases where section 55 of the Data Protection Act has been used?

Christopher Graham: I am not aware, and I am not surprised that I am not aware, because if the police after investigation have concluded that a prosecution isn’t in the public interest, it is very difficult for me to follow on behind and see whether I can make a lesser charge stick. Remember the maximum penalty for blagging under section 55 of the Data Protection Act is a fine of up to £5,000 in the magistrates court, unless it is prosecuted in the Crown Court, in which case it gets a bit more serious.

Very recently Government has woken up to the fact that this is a modern scourge—and it is not about newspapers, it is about dodgy private investigators and child custody battles and nasty matrimonial disputes—and the lack of a serious penalty is a real problem. The Ministry of Justice is exploring the
restitution of the profits of crime, they are talking to
the Sentencing Advisory Council about making clear
that section 55 offences are not just the equivalent of
pinching the office stationary, a crime against the
boss; these are crimes against citizens that need to be
properly prosecuted with a real deterrent penalty. We
have found that very limited fines in the magistrates
court don’t do the trick.

Christopher Graham: It is not a question of being
debarred; it is simply that the police have all the
resources to make a charge stick. I am labouring under
some difficulty with the special purposes in relation
to some of the activities of the press. I am on the
record as saying that I think section 55 offences under
the Data Protection Act should be on a par with
section 1 of RIPA and the Computer Misuse Act, and
there should be the availability of a custodial penalty
of up to two years. That would put everything on all
fours. I am very ready to see whether the Ministry of
Justice has any luck with persuading the courts to
impose more realistic fines and to go after the profits
of what is a very profitable business. The trade in
unlawful personal information is hugely profitable.

Q 154 Chair: So this would run to millions of pounds
a year?

Christopher Graham: Yes.

Q 155 Mark Reckless: Mr Graham, you say the police
have all the information, but to take this issue
of phone hacking, surely it is the mobile operator that
has a lot of this information and, although you say
that RIPA isn’t your field, you do say that it is your
role to give advice to data controllers. I wonder what
advice you would give to a data controller were they
to come to you and say, “We have evidence that a
mobile phone perhaps has been improperly accessed
and one of our clients would like the information.” Would you advise them to
come to you and say, “We have evidence that a
mobile phone perhaps has been improperly accessed
and one of our clients would like the information.”

Christopher Graham: Again, any advice that I give
under RIPA is purely going to be out of the goodness
of my heart. It is not official advice and it is not
something that anyone should rely on. You have to be
very clear. The Information Commissioner has no status
in relation to RIPA or the Computer Misuse Act.

Q 156 Mark Reckless: But you have status with
respect to data controllers, and the mobile phone
company is a data controller and they are holding this
data on what telephone numbers have attempted to
access one of their clients’ accounts. Should they be
prepared to give that data to that client?

Christopher Graham: Under the new Privacy and
Electronic Communications Regulations that are
coming into force on 25 May, there is provision for
compulsory breach notification. So that if a data
controller is aware of a breach of data security, they
have to tell not only me as the Information
Commissioner but also the affected customers, so that
might well be one solution.

Q 157 Mark Reckless: That was certainly helpful, but
in the meantime, under existing legislation, would you
be able to answer my question as to what advice you
would give to that data controller?

Chair: Unlimited or not?

Mark Reckless: Or otherwise.

Christopher Graham: The reason I am making the
point about whether it would be official advice or
merely helpful big society citizen advice is that there
is a real problem here of the division of responsibility
and legislation that doesn’t reflect the modern world.
I can help out—I will do my boy scout act for you if
you like—but that is not really the point. Parliament
has to focus on the fact that legislation that was passed
in 2000 to deal with wire tapping is now facing much
more contemporary problems, and we need a
contemporary solution to that because the issues that
are concerning people are about online behavioural
advertising or deep packet inspection of emails rather
than the circumstances that RIPA was designed for,
which is basically making sure that the official
community stick to the rules.

Q 158 Alun Michael: You said a few moments ago
that you have no role, if I understood you correctly,
in relation to the Computer Misuse Act. You talked
primarily about section 5 but do you have no role at
all in relation to the Act as a whole, is that what you
meant? And you have no role in relation to section 1
of the Act?

Christopher Graham: Of RIPA?


Christopher Graham: I am not the prosecuting
authority is the point I am making. So if there is
anything to be done under RIPA or the Computer
Misuse Act it has to be taken forward by the police
or the Director of Public Prosecutions. If Parliament
wants to do it a different way, fine. I am not here
pitching for a different mandate. I carry out statutory
duties given to me by Parliament. All I am saying is
there is a complicated situation and the legislation,
the regulation, doesn’t quite match the need.

Q 159 Alun Michael: Yes, I understand what you
have been saying up until now. I am trying to ask you
specifically about the Computer Misuse Act. Are you
saying that you have no role in relation to the
Computer Misuse Act? I wouldn’t want to
misinterpret it; I thought that was what you said.
Christopher Graham: The advice that I have had as the Information Commissioner since I came in in July 2009 is that, because we are not the prosecuting authority for the Computer Misuse Act, we are never going to get anywhere down that route.

Q160 Alun Michael: Does that mean that you are not able to provide advice formally, other than as a former member of the scouts, and that nobody else is either?

Christopher Graham: Nobody else is.

Alun Michael: So nobody has the role of advising people under the—

Christopher Graham: That is the point I am making, that most—

Q161 Alun Michael: Yes, we have that point. What I would ask you, though, is what your experience is of proceedings under section 1 of the Computer Misuse Act, and do you think there is a gap in the regulatory regime, other than the point of where do you go for advice, on which you have made it very clear that there is a gap?

Christopher Graham: It is because we are not the people who can do anything about it. People don’t really consult us about the Computer Misuse Act, so I can’t really say anything very useful there. What I will say is that the regulatory regime is a thing of shreds and patches and the Committee will no doubt want to address that.

Alun Michael: No, no, we have that point.

Q162 Mr Winnick: In all this controversy, Mr Graham, about phone hacking and the rest of it, the question has been touched on of the companies concerned, the mobile companies. Do you feel they should take more responsibility for misuse such as hacking?

Christopher Graham: I wish they were a bit noisier about advising their customers on how they can keep their information secure. It is a general point, I think. There are responsibilities on communication service providers and internet service providers, and there are also things that individual consumers and citizens can do, but you kind of have to be told about them to know what it is you can do. We recently did some survey work and found that a very high proportion of people had no idea whether their home wi-fi was passworded or not. That is a pretty basic step. I wonder how many of us are very, very careful to password protect our mobile phones, not just the voicemail mailbox but also the machine itself, the device itself. I would like the mobile phone operators to be much louder in their advice to customers saying, “Look, your Smartphone, your iPhone, it’s a wonderful thing, you can do fantastic things on it but there’s a downside. Be careful, make sure you’ve set appropriate permissions, make sure you’ve set appropriate passwords.” That should not be in the small print of some agreement written in lawyer-speak that nobody can understand; it should up front, user-friendly advice.

I have found that the mobile phone companies are getting much better at this. I have been invited to give presentations to global privacy conferences by two of our leading mobile providers recently. They really are interested. The reason they are interested is, I think, they have got that we are now beyond the stage of kiddies in the sweet shop bowled over by the wonders of what we can see; we are a bit more questioning.

Chair: We will be taking evidence from them.

Christopher Graham: There is a commercial reason for treating customers with respect.

Q163 Mr Winnick: I assume that no one would want to hack into your phone but presumably when you bought your own mobile— I take it you have one— such security advice was not given in your own individual case?

Christopher Graham: I can’t remember anyone making a great fuss when I bought a personal mobile. Any piece of equipment that is issued to me by the Information Commissioner’s Office is passworded to the nth degree. I can’t move for passwords.

Q164 Mr Winnick: Accepting that, of course, as I expected, you say you are meeting with some of the mobile companies. Have you written to these companies along the lines that you have just been telling us—that this should not be advice given in small print and the rest of it but very much otherwise, letting people know what needs to be done to safeguard their communications?

Christopher Graham: It is a very constant theme. Also, in our recent code of practice on personal information online, we made that point both to companies and to consumers, because the consumers need to take some initiatives themselves to make sure that they act responsibly about their personal information.

Q165 Mr Winnick: How can they do that then? How can the consumers do that unless—

Christopher Graham: They go to the ICO website and download the very useful consumer’s guide on personal information online. We are providing all sorts of help and guidance for those bits of legislation that we are responsible for. What we can’t do is to second-guess what the advice should be in relation to the Computer Misuse Act or the Investigatory Powers Act, because I don’t know that the regulators of those two pieces of legislation would take the same view.

Q166 Mr Winnick: In essence what you are saying, as I understand it, is it is up to the mobile companies to do much more than they have done up until now and to give every sort of advice about security?

Christopher Graham: I think there is a lot more they could do, a lot more they should do, and the clever ones realise that you maintain—

Mr Winnick: And you are telling them that?

Christopher Graham: Yes, I am telling them that and they also realise they maintain the confidence of their customers by treating them like grown-ups and helping them to keep safe online.

Q167 Chair: In the Mulcaire and Goodman case, are you satisfied that the mobile companies involved have now informed all the victims that their phones had
been hacked? Since you are giving them constant advice, since you are addressing their conferences, since it is a constant theme, you would have noted the fact that some of the mobile companies have not informed people, their customers, that they had been hacked. Are you now satisfied that all the people have been informed?

Christopher Graham: No, and I am sorry if I am boring the Committee—

Q168 Chair: No, you are not satisfied or, no, they have not been informed?

Christopher Graham: It is not an issue that I have raised. I have raised the general point about you have to give your customers better security information and, of course, as we implement the Privacy and Electronic Communications Regulations mark 2, where we are talking to the companies about statutory breach notification—

Q169 Chair: So do you not know in this specific case whether the victims of phone hacking have been informed? You have given good advice, it is a constant theme, you are meeting them, you are attending their conferences, but in this particular circumstance you don’t know whether the victims have been informed?

Christopher Graham: I don’t know, but as you will have gathered from my evidence I am not responsible for the Regulation of Investigatory Powers Act.

Q170 Chair: We understand. Who would need to tell them that then? If you are not responsible, which of the other commissioners?

Christopher Graham: At the moment you have a vacuum because there is no equivalent of the Information Commissioner acting as a regulator giving advice and guidance.

Q171 Chair: The Committee has just written to the Information Commissioner asking about your evidence. We have not been informed. It is not an issue that I have taken up. At the moment you have a vacuum because there is no equivalent of the Information Commissioner acting as a regulator giving advice and guidance.

Christopher Graham: The Committee has just written to the Information Commissioner acting as a regulator giving advice and guidance.

Q172 Chair: Excellent, that is very helpful because I have not received that. It is probably in the office due to the recess. You understand the point that we were making? These are people who entered the United Kingdom as the spouse of a British citizen. When the British citizen spouse writes to the Home Office to ask for information on whether or not the person has been removed, the Home Office writes back and says you are preventing them—you meaning the Information Commissioner, the data protection legislation—from giving that information out, even though it is the spouse that has brought those people into the country. This is a constant bugbear for the Committee over a number of years and this is the response that many Members of Parliament get—that there is no way in which this information can be forthcoming to the spouse. What is the situation on that?

Christopher Graham: In the two-page letter that I have sent to the Committee—

Chair: Maybe you can summarise.

Christopher Graham: To summarise, it is certainly true that data protection is very often given as a reason for not doing things that are perfectly reasonable. In this case, very often the matter in hand may be about the legitimacy of the marriage or issues relating to a divorce, and it is very important that information is shared in appropriate circumstances but appropriate circumstances only. I would expect the UK Border Agency to be pretty careful about establishing the identity of who they were speaking to and what their interest was.

Q173 Chair: Of course, absolutely. Once they have done that and identified that the person they are speaking to is the very person who brought the person into the country and maybe wanting to report a fraud that has been committed. It may be a forced marriage. It may be someone who is subjected to domestic abuse. Once they have established that identity—accept that establishment of the identity is pretty important—is that information protected?

Christopher Graham: It is horses for courses. You would have to look at individual circumstances. You mentioned forced marriages, particularly in the case of forced marriages, I would expect the UK Border Agency not to give out information particularly over the phone to somebody—

Q174 Chair: No, we understand all that. There is no question of giving out information over the phone. This is a request from the spouse of a person who is the subject of domestic abuse or a forced marriage as to whether or not the person they had married is still in the country or not.

Christopher Graham: But there might be very good reasons for not giving that information to a spouse. I think the Committee will appreciate that, if you are talking about domestic abuse or a forced marriage, the authorities have to be very careful and look at the circumstances. But there is a two-page letter that I sent on 19 April. If the Committee would like it photocopied and passed around—

Q175 Chair: No, it is all right. We have photocopying facilities. We don’t need to impinge on your resources, but thank you very much for offering. Mr Graham, your evidence has been extremely helpful. To summarise it: you find the law at the moment fragmented; you feel that RIPA was enacted at a time of a different age, things have changed since then; and you feel that greater clarity is required, not just in respect of RIPA but also as between the various commissioners. Is that your view?

Christopher Graham: Yes, it is certainly my view, but I do stress the fact that I have taken an initiative to get my colleagues together in order to make sure that we synchronise our swimming. This is not a land grab. I have quite enough to do, thank you very much.
Chair: We are quite sure that you are not trying to build your empire. We are extremely grateful. I am sorry it has taken you two years to get before us but we hope to see you again in the not too distant future. Thank you very much for giving evidence.

Christopher Graham: Thank you.
Tuesday 14 June 2011

Members present:
Keith Vaz (Chair)

Nicola Blackwood
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert
Steve McCabe

Ali M Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witnesses

Witnesses: Ms Julie Steele, Head of Fraud, Risk and Security, Vodafone UK, Mr Adrian Gorham, Group Head, Fraud, Security and Business Continuity, Telefonica O2, and Mr James Blendis, Vice President Legal, Everything Everywhere (Orange UK and T-Moble UK), gave evidence.

Q176 Chair: Our first session is a continuation of the Committee’s inquiry into phone hacking. May I welcome Ms Steele, Mr Gorham and Mr Blendis? For the purposes of the record, would you remind us each of your companies?

Ms Steele: I am from Vodafone UK.

Mr Gorham: O2.

Mr Blendis: Everything Everywhere, which is Orange and T-Mobile.

Chair: Mr Blendis, you may need to speak up a little louder.

Mr Blendis: Everything Everywhere, which is the former companies T-Mobile and Orange.

Q177 Chair: Excellent. You may find this unusual but we all have mobile phones, even in this day and age, and we all declare our interests because one or all of us are customers of your companies. We won’t say which to give you unnecessary publicity but we all have mobile phones, so take that as read. Also can I refer everyone present to the Register of Members’ Interests where the other interests of members of this Committee are noted?

May I start with this question to each of you? You have seen the evidence of John Yates to this Committee when he last appeared before us and the evidence that he gave to our predecessor Committee about the way in which mobile phone operators deal with the victims of phone hacking. Between you all—and you have answered specific questions in a letter that I sent to you earlier this year—you have over 100—I think it is 40, 40 and 46—customers who have had their phones hacked as part of the original investigation into the Mulcaire case, if we can call it that. At the time of you being notified of the police investigation, if we can call it that, obviously we are all working with memories now, and nobody who was involved in the case at the time has any recollection of us being asked to contact the victims. I would like to remind you that we actually do not know exactly who the victims are because we do not have all the evidence.

Q178 Chair: But you know that Mr Yates has told this Committee that he had assumed that you would have contacted the victims and told the 40—if we can call them the 40—that they had been hacked. Did you not do this?

Ms Steele: That is not the case, no. We worked closely with the Metropolitan Police and, as in all cases, so as not to jeopardise the police inquiry, we did not contact our customers directly. However—

Q179 Chair: So the police did not ask you to do it?

Ms Steele: They didn’t ask us to, no.

Q180 Chair: You are absolutely certain about that?

Ms Steele: Yes.

Q182 Chair: And there was no scope for misunderstanding?

Ms Steele: Obviously we are working with memories now, and nobody who was involved in the case at the time has any recollection of us being asked to contact victims. I would like to remind you that we actually do not know exactly who the victims are because we do not have all the evidence.
Chair: Exactly.
Ms Steele: But also there is nothing in writing.

Q183 Chair: Of the 40, how many have subsequently contacted you to ask, "Have my phones been hacked?"
Ms Steele: I don’t know that number; I am sorry.

Q184 Chair: Have any of them?
Ms Steele: Yes, some of them have. At the time, as we responded in our letter, we did go out to a number of customers to remind them of the importance of voicemail security.

Q185 Chair: We will come back to that in further questions. Mr Gorham, is that your recollection as well? How many of your customers have been hacked, as far as you are aware?
Mr Gorham: As far as we are aware from the investigation that we completed at the time, we had 40 customers that might have been affected by the voicemail incident. We made a decision that we would contact those customers and tell them the results of our investigation. We passed that information on—
Q186 Chair: So you did contact them?
Mr Gorham: We contacted all of them.

Q187 Chair: You knew who they were.
Mr Gorham: Yes.

Q188 Chair: How did you find out?
Mr Gorham: We did that by looking at call records on the network. We can see where calls are going and from that we can identify our customers who might have been affected. I cannot say that they were definitely affected, but they might have been affected.

Q189 Chair: So you did not wait for the police to say, "These are the 40"? You went through your own records and you were able, through your technology, to establish—
Mr Gorham: We identified 40 people who might have been affected.

Q190 Chair: And you contacted them.
Mr Gorham: We contacted them. We told the Metropolitan Police first that that was what we were going to do—

Q191 Chair: And what did they say?
Mr Gorham: They asked us to delay that contact for a short period of time because there was a criminal investigation that was ongoing that they didn’t want compromised—we would not want to compromise it. After that period of time—

Q192 Chair: What was the short period of time?
Mr Gorham: From memory, probably seven to 10 days.

Q193 Chair: Is that all? They asked you not to do anything for just 10 days?

Mr Gorham: Yes, because there was an ongoing investigation. We then contacted our customers and informed them what we—

Q194 Michael Ellis: How did you contact them?
Mr Gorham: We contacted them by phone, so we had a list of the customers and who they were. We then put together a team in my department and we actually contacted the customers—rang them and spoke to them—and said, "This is what we believe might have happened."

Q195 Chair: Did you subsequently find out that, in fact, they were hacked?
Mr Gorham: On none of the cases did I ever see any evidence that they were definitely hacked. Some of the conversations with the customers would lead you to believe that there were reasons why people might want to get their information, but I have not seen any hard evidence.

Q196 Chair: Thank you.
Mr Blendis, would you continue this theme for the moment? How many of your customers were hacked?
Mr Blendis: Sir, we understand that there were 45 customers who were identified as where the number that we were given by the police had contacted those customers’ voicemail and accessed it.

Q197 Chair: So like with the other cases, the police told you, did they? Or did you did you do what Mr Gorham has done?
Mr Blendis: No, no. We did not contact customers. We would never contact customers as part of a police investigation.

Q198 Chair: Yes, I understand that, but you see the different practice between the two companies. They went off and they checked for themselves, and they discovered who those customers were. You did not contact any customers in Orange and TalkTalk?
Mr Blendis: Orange and T-Mobile.
Chair: Sorry.
Mr Blendis: We did not contact those customers. Our understanding is that there is a serious risk of prejudicing an investigation if we take any action like that.

Q199 Chair: So the police did not say to you, as they said to Orange—sorry; I am mixing up my companies here. Mr Gorham you are?
Mr Gorham: O2.

Q200 Chair: So the police did not say to you, Mr Blendis, as they did to O2, "Don’t contact the customers for 10 days"?
Mr Blendis: No.

Q201 Chair: They did not tell you not to contact the customers?
Mr Blendis: We would always be under an assumption that we should not contact customers. There are a number of circumstances in which that could prejudice the investigation and we would never do that.
Q202 Chair: But why is that?
Mr Blendis: Well, there are a number of situations. You do not know, for example, that the person you are contacting is the owner of the phone. There could be people who are looking after the phones, particularly if they are celebrities and they have a number of PAs or different people who are holding their phones for them—

Q203 Chair: But isn’t this a bit of a complacent attitude? Here you find that your customers have been hacked—and your company does absolutely nothing.
Mr Blendis: I don’t think that we did nothing. We respond to our obligations to the police; we provide them with the records. It is up to the police to investigate—

Q204 Chair: All right, that is your obligations to the police, but what about to your customers?
Mr Blendis: Well, as I said, we have to be careful not to prejudice those investigations.

Q205 Chair: Did someone tell you not to do it because you were prejudicing the investigations, or did you just assume that you were?
Mr Blendis: No, we are always under an understanding that information requests to us are confidential, and we treat them confidentially.

Q206 Chair: Sorry, can I just pursue this? Nobody told you. Mr Yates did not tell you not to contact anybody. This was a decision that you made on your own.
Mr Blendis: No, it was a decision based on practice that contact from—

Q207 Chair: Yes, but your company’s practice?
Mr Blendis: Yes.
Chair: So in conclusion—
Mr Blendis: Which we understood was common to the industry—these investigations are highly confidential.

Q208 Chair: Yes, but of course we have already seen differences between the way in which companies have operated. Let us be clear, from all of you: is it your understanding that you had no instruction, as Ms Steele said at the start, not to contact your customers?
Mr Blendis: We had no instruction to contact customers. We had no permission to contact customers.

Q209 Chair: But nobody said, “Don’t contact your customers”?
Mr Blendis: We didn’t have that—
Ms Steele: In the early stages of the police inquiry, there was an instruction not to contact our customers. As I was going to mention earlier, we did contact a number of customers with generic advice about voicemail security, and we did so in the full knowledge of the Metropolitan Police.

Q210 Nicola Blackwood: Did you ask to be informed when it was possible to contact your customers to inform them of potential risks to their information security?
Ms Steele: We did not, but I would remind you that we still are not completely clear about who the victims of this crime are because, like O2, we did a number of searches on our own network, but that does not prove conclusively that those customers had been victims. It just tells us that the suspect number dialled those customers. It does not tell us that their voicemail was accessed.

Q211 Nicola Blackwood: What about Orange and T-Mobile? Did you ask the police at any point when you might be able to contact customers you thought might be at risk?
Mr Blendis: Yes, we did as part of the current new investigation.

Q212 Nicola Blackwood: What response did you receive?
Mr Blendis: We have not had a response from them.

Q213 Nicola Blackwood: When did you ask?
Mr Blendis: I believe that was October.

Q214 Nicola Blackwood: October of?
Mr Blendis: Last year. October of last year.

Q215 Nicola Blackwood: 2010, and you still have not received your response.
Mr Blendis: No.

Q216 Chair: How did you do this? Did you write to the Metropolitan Police and say, “Can we contact our customers?” and have they not replied to your letter?
Mr Blendis: We wrote to ask what the circumstances would be when we could contact customers, how we would do that and what we would say to those customers.

Q217 Chair: Who did you write to?
Mr Blendis: I have the letter here.

Q218 Chair: Would you show it to the Committee? Could one of the Clerks bring the letter to me? What is the date on that letter Mr Blendis?
Mr Blendis: It is 2 November. Sorry, could I just add, in response, that if you make contact, you could potentially be talking to the hacker.

Nicola Blackwood: I do understand that. What I am trying to ascertain is what response you have received from the police on this particular issue.

Q219 Dr Huppert: It is fairly alarming if the police are not responding to letters, but I find it intriguing that you have taken three very different approaches: at one end, essentially, not contacting customers at all; in the middle, I guess, giving them some generic advice without mentioning what is happening; and then actually being very, very direct about it, with the approval of the police. We can look at the history of why you all decided to make those decisions, but having heard from each other now about the other routes that were taken and the contact that was had with the police, what would you recommend if there
was something like this again? Which of these three models would you want to follow?

**Chair:** The one that you have chosen I suspect.

**Mr Gorham:** I suspect that that might be the answer.

**Q220 Chair:** I think the point that Dr Huppert is making is that there are three different approaches. There seems to be a bit of complacency and a bit of confusion about what has happened and what you should be doing. What Dr Huppert is asking is whether there should be one model that everyone follows in a circumstance like this.

**Mr Gorham:** My view would be that if a customer is a victim of crime, or we believe there is a crime being committed against them, we have an obligation to contact that customer, but what we must do is just keep sure that that does not compromise an investigation. There is always that check and balance, but we would always tell a customer if we think they have been a victim.

**Ms Steele:** A gain, as I said earlier, we would not want to prejudice an ongoing police inquiry or any future legal action. I think, as is the case here, if there is still legal action ongoing from a number of customers—whether it is civil or otherwise—we would still be in a position where, without having the definitive information from the police of who the victims are, we would not contact them.

**Q221 Chair:** But you now have the possibility of legal action from your own customers—the contract is with them, isn’t it? If you have not contacted them, they have a case against you, don’t they?

**Ms Steele:** Not as I understand it but I am not a legal expert. The police asked us. I think that your response letter, James, was to the same request that we had from the Metropolitan Police. They asked us to contact our customers—

**Q222 Chair:** In the new inquiry?

**Ms Steele:** In October of last year, and we did respond to them at the time and tell them that we would do that if they could tell us who the victims on Vodafone were.

**Q223 Chair:** Have they told you that yet?

**Ms Steele:** No.

**Q224 Chair:** So you also wrote to the Metropolitan Police and asked for the list of victims and you have not received it. What was the date of your letter?

**Ms Steele:** It was November 2010 as well.

**Q225 Chair:** And you have not received a reply to that either?

**Michael Ellis:** You received a reply but not with a list of names—is that right? Or you did not receive a reply at all?

**Ms Steele:** We have not received a reply specifically to that letter.

**Mr Blendis:** I would be very happy to contact the victims if we understood who victims were and what the terms of that contact should be—

**Q226 Chair:** You still do not know who they are because nobody has told you.

**Mr Blendis:** We know the details of the people whose voicemail was accessed.

**Q227 Chair:** So you know who they are.

**Mr Blendis:** We don’t know that they were the victims.

**Q228 Alun Michael:** I would like to ask you about the default position. I understand that if the police say, “We don’t want you to contact customers because that could compromise our investigations,” that would put you in a situation where you have specific responsibilities, but unless there has been that specific request, is not the default position that you should contact a customer whose account has been compromised? I think the question might be made clearer if I make a comparison with somebody’s bank account. If £1,000 had been stolen from an account, surely the default position would be that the bank would tell the customer that that had happened unless there was a specific request from the police—not an assumption—not to do so while an investigation took place? In particular, Mr Blendis, should that not be your default position?

**Mr Blendis:** I am not sure I agree. We deal with thousands of requests from the police every week and they are—

**Q229 Alun Michael:** Never mind about the police for a moment; I am talking about your customers. Unless there is a request from the police for you not to do something for a period of time, because there is an investigation that might be compromised, is it not your obligation to inform your customers if you know that their account has been compromised?

**Mr Blendis:** Our obligation is also to the police—

**Q230 Alun Michael:** No, I am sorry, but with the greatest of respect, I have dealt with the police situation. If the police ask you not to do something, of course you have to respect that request—

**Mr Blendis:** That is the common understanding. If something—

**Q231 Alun Michael:** No, no. If the police ask you something, that is a different situation. I am asking about your obligations to your customers as the default position, if there has not been a request by the police for you not to disclose to the customer. Surely you then have an obligation to disclose to the customer?

**Mr Blendis:** I don’t think it is that straightforward. If a customer’s records are subject to the police inquiry, we don’t know what the scope of that inquiry is. We do deal with thousands of requests—hundreds of thousands a year. They are part of all sorts of investigations into all sorts of criminal activities.

**Q232 Chair:** Mr Blendis, of course we understand that, but this is slightly different. We are talking about the phone hacking of a member of the royal family—

**Mr Blendis:** It is different knowing the very specific circumstances—
Chair: Can I just finish? We are talking about members of the royal family. This includes the head of the investigation team you have been dealing with, Mr Yates, senior politicians and others. Surely this is different in substance to the thousands of ordinary requests that you get, or do you not think it is?

Mr Blendis: I think it is different once you have identified and understood what the particular circumstances of the inquiry are. We do not always have that information. In fact, most of the time we do not have it.

Chair: And of course you do not have a reply as yet.

Q233 Mr Winnick: I am just wondering how responsible you feel, as the representatives of your mobile companies, for what has occurred. Whether it is royal family members, celebrities or the rest, what feeling of responsibility do any of the three of you have on behalf of your companies for what has occurred? That is responsibility in the sense of not informing your customers accordingly?

Ms Steele: Vodafone takes its responsibilities to keep customer data confidential absolutely seriously, and in this particular case, people accessed voicemail by using, essentially, the PIN that should have been known only to the customer. From a Vodafone perspective, clearly we have a duty to protect our customers' data—that is that we attempt to do. What we did, as soon as we learned that there might have been an opportunity for third parties operating illegally to exploit some of our processes, was to change our processes immediately, and since then we have made further technology changes.

Mr Gorham: The very same response from myself. We take the security of customer data on the privacy of their calls extremely seriously. We have measures in place to prevent misuse, and if at any stage we find that they have been compromised, we would put more measures in place to make it more secure.

Mr Blendis: Yes, we take our customer data security extremely seriously. We have a number of programmes running to protect that, and we have a number of initiatives coming through to add to those security features.

Q234 Mr Winnick: Given the quest of newspapers of a certain kind—and of those they employ for tittle-tattle and gossip about celebrities or perhaps those politicians in the news—to try to get a decent story, as they see it, does it come as any surprise that they think they are the victims but in fact by doing so we simply tip off the hackers, we would prejudice the investigation.

Q235 Dr Huppert: I do not have the letter in front of me any more.

Chair: As Dr Huppert said, this is of course completely different to what Mr Yates has told this Committee, which was that he expected you to contact your customers. That is what he said in evidence to this Committee.

Mr Blendis: No, it was never our understanding that we should contact customers—quite the contrary.

Chair: But where is that reflected because, as Dr Huppert says, you are not asking in this letter to contact your customers?

Mr Blendis: We said if you can confirm the owner-subscriber of the calling numbers and the reason you believe they were calling numbers potentially unlawfully accessed, we will attempt to make contact to explain that we have been requested to inform them.

Chair: Is that the paragraph you would have liked a reply to?

Dr Huppert: Yes, it does say, Chair, “I look forward to hearing from you” on the bottom.

Chair: But you have not heard from them since. Thank you.

Chair: Can I just finish? We are talking about members of the royal family. This includes the head of the investigation team you have been dealing with, Mr Yates, senior politicians and others. Surely this is different in substance to the thousands of ordinary requests that you get, or do you not think it is?

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Chair: And of course you do not have a reply as yet.

Q238 Lorraine Fullbrook: I would just like to do a quick follow-up on that before I ask my main question. Unlike Vodafone and O2, are you saying that you have no obligations to Orange and T-Mobile customers and that if you have not been advised by police not to contact them, you wouldn’t do so?

Mr Blendis: I think it is fair to say that we have a conflict. We have a conflict between what we would like our duties to our customers to be—to inform them and help them—and our duties to a confidential investigation.

Chair: Can I just finish? We are talking about members of the royal family. This includes the head of the investigation team you have been dealing with, Mr Yates, senior politicians and others. Surely this is different in substance to the thousands of ordinary requests that you get, or do you not think it is?

Mr Blendis: I think it is different once you have identified and understood what the particular circumstances of the inquiry are. We do not always have that information. In fact, most of the time we do not have it.

Chair: And of course you do not have a reply as yet.

Q239 Lorraine Fullbrook: But if you have not been advised by the police that you should not contact your customers, are not Orange and T-Mobile customers afforded the same courtesies and service as Vodafone and O2 customers?

Mr Blendis: But the customers could be the criminals—they could be the hackers. If we were to take it upon ourselves to make contact with the people who we think are the victims but in fact by doing so we simply tip off the hackers, we would prejudice the investigation.

Chair: Can I just finish? We are talking about members of the royal family. This includes the head of the investigation team you have been dealing with, Mr Yates, senior politicians and others. Surely this is different in substance to the thousands of ordinary requests that you get, or do you not think it is?

Mr Blendis: I think it is different once you have identified and understood what the particular circumstances of the inquiry are. We do not always have that information. In fact, most of the time we do not have it.

Chair: And of course you do not have a reply as yet.

Q240 Lorraine Fullbrook: Thank you.
I would like to ask a two-part question to all three witnesses. How do unauthorised people usually obtain phone numbers in order to use them for phone hacking?

Ms Steele: I don’t know how they would obtain the phone numbers to—

Mr Gorham: I think phone numbers are generally quite widely available because all the time in society we put our mobile phone numbers down if we get mail shots through the post box when you are out and about. I think people often do not keep their individual mobile phone numbers secure, so I believe that the numbers can circulate quite easily.

Mr Blendis: Do you mean phone numbers or PINs?

Q241 Lorraine Fullbrook: How do unauthorised people get hold of the phone numbers to use them for hacking people’s phones?

Mr Blendis: I don’t know, but they can hack into the voicemail only if they have the PIN for the voicemail.

Q242 Lorraine Fullbrook: Can I ask each of you how many of your employees have been disciplined, dismissed or prosecuted for unauthorised disclosure of information in the past 10 years?

Ms Steele: That is not something that we have publicised previously because of the obviously sensitive nature that it could lead to dismissal, but we do have a zero-tolerance policy to anybody who is—

Chair: This is a Committee in the House of Commons. We are asking you, as part of a parliamentary inquiry, how many people you have dismissed in the last 10 years?

Lorraine Fullbrook: Not only dismissed, Chair: disciplined, dismissed or prosecuted over the last 10 years.

Chair: Disciplined for giving out information.

Ms Steele: I don’t have the number.

Q244 Chair: Will you write to us to tell us?

Ms Steele: I will attempt to do that, yes. I don’t—

Q245 Chair: Attempt?

Ms Steele: Yes, I will. I will certainly respond to your questions to the best of my ability.

Chair: Thank you.

Q246 Dr Huppert: In the letter that you provided to us, you said “In the circumstances Vodafone takes a view that it would not be appropriate to discipline any personnel”, if that helps?

Ms Steele: Yes. No, certainly that is not the case. We have disciplined personnel for breaches of data. In this particular inquiry, as soon as we became aware of some of the methodologies that were being used by the third parties, we launched an inquiry internally, and that investigation did not find any evidence of any collusion or any wrongdoing by our employees.

Q247 Lorraine Fullbrook: But I am not talking about just this inquiry; I am asking about the past 10 years.

Ms Steele: Yes, I realise that that is your question, but I don’t know the answer to it.

Q248 Lorraine Fullbrook: But you will write to the Committee with that answer.

Ms Steele: I will write to the Committee.

Q249 Chair: Will you write to us by noon on Friday with that information? Thank you.

Mr Gorham?

Mr Gorham: Okay. In the past year, there were 14 cases of employees who had been disciplined or dismissed when it came to breaches of security—that is not to do with this particular case of voicemail hacking; that is in the much broader area. That, for instance, could be an employee who has maybe looked at a friend’s data on the system—

Q250 Chair: Sorry, is that 14 in the last 10 years?

Mr Gorham: No, that is in the last year.

Chair: Fourteen employees in the last year.

Mr Gorham: In the last year, for various levels, and that is from an official warning through to dismissal. Often that will be because it is something to do with a domestic dispute within their family and they may have looked at somebody else’s phone records. That is an offence. That is something they are not allowed to do and they would go through the disciplinary process.

Q251 Chair: So the 14 are related in some way to a kind of data breach.

Mr Gorham: Yes.

Chair: Right, thank you.

Q252 Lorraine Fullbrook: But how many would you to estimate in the past 10 years? Would it be 140 or—

Mr Gorham: I truly don’t know.

Chair: If you could write to us, Mr Gorham.

Q253 Lorraine Fullbrook: But how many would you to estimate in the past 10 years? Would it be 140 or—

Mr Blendis: We have had two employees who have been prosecuted in the past two years for disclosure of data—that is been widely publicised. In fact, we initiated the investigation and notified the Information Commissioner.

Q254 Lorraine Fullbrook: That is prosecuted. What about dismissed or disciplined?

Mr Blendis: Those are the only two that I know of.

Q255 Lorraine Fullbrook: What about in the past 10 years?

Mr Blendis: That is my knowledge in the past 10 years. There are other investigations going on. We have a fraud and security team—

Q256 Lorraine Fullbrook: Could you find out for sure and write to the Committee?

Mr Blendis: Yes, of course.

Chair: Thank you. Nicola Blackwood had a question on this.

Q257 Nicola Blackwood: It is just to go back a little bit. I am still very concerned about the confusion
about responsibility to contact customers and victims, and the fact that the police appear to think that the responsibility lies with phone companies but there seems to be a difference of opinion among phone companies about where responsibility lies. I can understand that that confusion would have existed under current circumstances.

My question is: are you going to change your practices going forward? In the future, when the police come to you with similar investigations, are you going to have a practice or a protocol in place to ensure that there is a clear decision about who should undertake responsibility to contact the customer in each individual case so that customers do not remain falling between the cracks with nobody taking responsibility?

Mr Blendis: In similar circumstances, I think that we would be keen to let victims and customers know. We would be keen to do that without prejudicing the inquiries, so we would have to have a discussion with the police as to what the circumstances were, who we could contact and what—

Q 258 Nicola Blackwood: In future, when the police come to you, will you ask directly, “Will you, in this case, be contacting the customer or shall we do it?”, and will you ask them for a time when you can do it?

Mr Blendis: I think we would ask them for permission to contact customers and for them to identify who the victims were so that we did not contact hackers.

Q 259 Michael Ellis: Mr Gorham, as far as your evidence is concerned, I think you said that your company, acting on data and information that were within your possession and control, researched how many customers may have been affected by this hacking and came up with a figure of about 40. Do I understand correctly that you did that by having the phone number of a suspicious individual with which you had been supplied with by the police and then by looking at that phone number’s calls out—outgoing calls—you saw who that person then called, and from that information you were able to look and see whose phones had been called? From that information, did you ascertain that they were celebrity-type individuals—you could see the identity—members of the royal family or other persons in the public eye?

Mr Gorham: Some of them were in those spheres, yes.

Q 260 Michael Ellis: I see. right. So you did not contact any of those people.

Mr Gorham: No, we did not contact them.

Q 261 Michael Ellis: You did contact them.

Mr Gorham: Yes, we told the police we were going to. As I said before, we then had a period of time when they said, “Could you hold off contacting them?” and then we contacted each of those people individually.

Michael Ellis: We may come back to that in a moment.

Q 262 Chair: Before we do, will Mr Gorham and Ms Steele respond to Nicola Blackwood’s question to Mr Blendis—we took one view but not the other two?

Mr Gorham: We would take exactly the same strategy that we did at the time. We would always tell our customers unless we were specifically told by the police that we could not, and then we would want to judge the reason, so there is no change from O2 on how we would handle this.

Ms Steele: From Vodafone, our response is similar to Mr Blendis’s. We would absolutely work with the police, as we do currently. We would ensure that we did not prejudice any ongoing legal proceedings. I think we would, given what we have now learned, have a point in time when we would make sure we had absolutely clarity with the police.

Q 263 Bridget Phillipson: I am clear that there still has not been a marrying-up of the information that you formed about the people you suspect may have been victims of phone hacking with the information held by the police about the people they believe have been victims of phone hacking. Those two pieces of information have not been—

Ms Steele: The police have all the information.

Q 264 Bridget Phillipson: Do the police have all the information now?

Ms Steele: Yes, they have had all of the information—

Q 265 Bridget Phillipson: Presumably for the police then to take whatever steps. You therefore do not believe that you would have a role at this point in contacting further customers.

Ms Steele: We have said that we would contact further customers if the police asked us to. However, at this stage, we have done a similar exercise to O2’s to identify approximately 40 customers who we think might have been victims, but without marrying that with the information that the Metropolitan Police hold, we can’t be sure.

Chair: Basically, in answer to Ms Phillipson’s question, the three of you still have not had a definitive list of people from the Metropolitan Police. No? All right; thank you.

Q 266 Lorraine Fullbrook: Chair, can I ask each of the three witnesses what are the names of the people who you know have been hacked into?

Ms Steele: I don’t have that list with me and, as I said, we don’t know absolutely that those people have been hacked into. We have done the same as O2 and run an exercise to look at who the suspect numbers dialled—

Q 267 Chair: So because you are still waiting for the list from the Metropolitan Police, this is still guesswork.

Ms Steele: We have identified approximately 40 people who we think might have been victims—

Q 268 Lorraine Fullbrook: Do you have names to those?

Ms Steele: I don’t have that list with me, no.
Mr Blendis: We no longer have a list of the 40 customers that might have been affected, although the data were given to the police. All I could do would be to use my memory to recall some of the names.

Mr Gorham: No, we don't have that.

Chair: It is most unsatisfactory, isn't it, if you still do not know which of your customers have actually been hacked?

Q269 Lorraine Fullbrook: Chair, can I ask that if Mr Gorham has given the list of names to the police, he should also give it to the Committee?

Chair: Will you send us that list, Mr Gorham?

Mr Gorham: The list of names? What we gave to the police was call data, so we gave them all the call records as part of the evidence. The police have all the call records—

Q270 Lorraine Fullbrook: But you must be able to identify a name of the customer to the number?

Mr Gorham: Yes, just to go back, we no longer hold the list of names that we produced. Given the space of time, I don't believe we gave that list to the police. What we gave the police were the call records.

Q271 Chair: You are saying we should go to the police and ask them.

Mr Gorham: They will still have the call records; we don’t have the call records.

Q272 Michael Ellis: Surely your normal data deletion protocols would be departed from in circumstances where there is a police investigation. You wouldn’t delete the information that might still be pertinent for an ongoing police investigation, would you?

Mr Gorham: No, but we actually give them the call records at the time, so the police hold all those call records from six years ago. We wouldn’t—

Q273 Chair: Mr Blendis, do you still have the records or have you deleted your records?

Mr Blendis: Those records are held by the police, we do not keep them.

Q274 Chair: The police have them. Ms Steele?

Ms Steele: We do hold some records of the investigation at the time, but all that input—

Q275 Lorraine Fullbrook: Chair, this doesn’t sound right. Are you saying, as a telecoms company, that you do not know the names of those people, that you have passed those records to the police, and that you are now leaving it to the police to find out who those people are? Is that what you are saying?

Ms Steele: That is not what I am saying.

Q276 Lorraine Fullbrook: So you do know the names of the people.

Ms Steele: We passed the evidence to the Metropolitan Police at the time, as I understand it, including the names of the people that we thought were victims potentially.

Q277 Lorraine Fullbrook: You said earlier you that did not have the names and that you had the records.

Ms Steele: I don’t have them with me—the names. That was O2, I think.

Q278 Chair: Okay, let us be clear what you have and you do not have, because I think members of the Committee are confused. What you do not have—is any of you—is a list of names from the Metropolitan Police of your customers who they say have been hacked. Is that right? Maybe a nod would be fine.

Lorraine Fullbrook: But they do have, Chair.

Chair: Secondly— I must move to the next section, Ms Fullbrook—you do have. Ms Steele, a list of names of people who you think might have been hacked, or who the police have asked you to provide further information about.

Ms Steele: Yes, we have our files from this time of the original investigation, and I believe that has been—

Q279 Chair: I think that is what Ms Fullbrook is after. If you could send us that list—

Ms Steele: I don’t have the list with me and—

Chair: No, we understand that. We don’t expect you to carry your filing cabinets with you.

Ms Steele: Is that something that the Metropolitan Police should disclose, though, rather than—

Q280 Chair: Right. We will discover whether it is best for you to give it to us or to the Metropolitan Police, but there is a list somewhere that has all these names.

Ms Steele: We have our case files from the time.

Q281 Chair: You have the case files. Mr Gorham, you don’t any case files left because you deleted everything.

Mr Gorham: Yes.

Q282 Chair: But you say the police have your list of 40 names.

Mr Gorham: The call records.

Chair: The records.

Mr Gorham: That make that up, yes.

Q283 Chair: They have had all the records. You sent that to whom?

Mr Gorham: That went to the police six years ago, so we gave them all the data.

Q284 Chair: Were they sent to Mr Yates or Mr Clarke?

Mr Gorham: No, that would have gone to the investigation team at the time.

Q285 Chair: Right. And, you, Mr Blendis; you know nothing?

Mr Blendis: I believe we are in the same position as O2.

Q286 Chair: Right, but you do not even know the names of the people.

Mr Blendis: We do not know the names.
Q287 Chair: Because they have some records but you have nothing.
Mr Blendis: I believe it is the same as O2. We supplied the records to the police and that was our exercise.

Q288 Chair: You can understand the concern of the Committee, can you not, as we listen to the answers of each of your colleagues, that there is a bit of confusion here?
Mr Blendis: I think you have to understand the context of the original investigation. We were just asked to supply them.

Q289 Michael Ellis: Mr Blendis, it is in relation to that context that I have this question. I asked before how it was that the companies—and particularly Mr Gorham’s company—knew to look, and was because the police provided the phone number of a suspicious person who was believed to have been responsible. It was from looking at that person’s outgoing calls that you were able to see a list of 40-odd people who might well have been subject to hacking. However, in the context of the type of people we are talking about—this is not Joe Bloggs from 52 Acacia Avenue; many of these names are famous names—are the three of you, and particularly Mr Gorham, saying that you have no recollection of or you cannot recall any of the names involved?
Mr Gorham: I can remember some of the names from the investigation. For obvious reasons, you can understand I might be slightly uncomfortable to start giving some of those names, so I will take the Chair’s advice.
Chair: We will pursue this. You do not have the records. They have gone to the police and you write to the police.

Q290 Alun Michael: Can we look at the way in which you serve your customers, in particular in relation to what information and advice you give them about protecting their calls, voicemails and e-transactions from hacking? How do you provide that advice?
Mr Gorham: Do you want me to go first? We have information on our website. If you go to our web portal, there is information there about voicemail—how you can use it, how you can secure it and advice about the use of PINs. Also, if you were to go into one of our stores, they will give you advice, and you can see one of our gurus who will give you advice on that. There are multiple channels through which we give customers advice.

Q291 Alun Michael: Can I ask you—then I will come to the others—whether people have to go looking for that advice as distinct from you proactively encouraging them to build the following of that advice into the day-to-day way in which they manage their affairs?
Mr Gorham: It is built into the day-to-day working because now if you now want to set up a voicemail, you have to set up a PIN. We have taken away the facility for you, as a customer, to decide to have a PIN not. In the old days, you would think, “Do I want a pin number?”

Q292 Alun Michael: When did you make that change?
Mr Gorham: We made that change immediately after this incident, so now—

Q293 Alun Michael: In other words, you have responded—
Mr Gorham: Yes, the customers have to now have their own individual PINs.

Q294 Alun Michael: And you are improving the way you try to help customers automatically to be able to look—
Mr Gorham: Yes, and we have taken that choice away from customers. They have to set a PIN.

Q295 Alun Michael: And the others?
Ms Steele: Information from Vodafone UK is available in written format in store, or from a business account manager, if you are that type of customer. We also have a lot of information online. For all new customers, when they join Vodafone, the first three times they dial into their voicemail they will be played a voicemail tutorial that will encourage them to set a PIN. If a customer chooses not to set a PIN, they will not have remote access to their voicemails.

Q296 Alun Michael: Fair enough, but is it built into what people come to automatically?
Ms Steele: Yes, it is.

Q297 Alun Michael: Thank you, Mr Blendis?
Mr Blendis: Yes, we have a similar position. You cannot use remote access to your voicemail unless you set up a PIN, and there is a tutorial to explain security breaches.

Q298 Alun Michael: Okay. Can I ask the second important question then: what proportion of your customers follow that advice and the opportunity that is offered to them, and what proportion do not?
Ms Steele: I am not sure that I understand the question, sorry.

Q299 Alun Michael: You offer the facility—let’s start with Mr Gorham first, as he kicked off—and you have said how you have changed it so that people essentially have to put in a PIN. Does that mean that they essentially have to use that facility?
Mr Gorham: They have to follow it now.

Q300 Alun Michael: They have no choice, in your case.
Mr Gorham: They have no choice. We have taken that choice away from customers.

Q301 Alun Michael: Are there other elements of protection that you advise them to undertake as well, or is that the key element?
Mr Gorham: That is the key element.
Q304 Alun Michael: Right. Ms Steele, I think you said that you offer advice to customers and that they have to—the first couple of times that they phone in—respond by taking that advice or not, so that is a slightly different situation.

Ms Steele: Yes. The first three times they call voicemail, they get a tutorial.

Q305 Alun Michael: What percentage of people take that advice by the third call?

Ms Steele: Sorry. For those customers who do not take that advice, there is no way they can access voicemail without using the handset. For the customers who do listen to that tutorial, there are two levels of security that they can select—standard and enhanced. I am afraid that I do not have the breakdown of which customers choose which options.

Q306 Michael Ellis: Just following on from Mr Michael, let us see if we can understand what happened previously and what is different now. Previously, if you bought a mobile phone and did not set up a new PIN to protect your voicemail, it was possible, was it not, for anyone who knew your phone number to access your voicemail using a default PIN. Is that right?

Mr Blendis: No, that is not the case. Our voicemail has always been locked to remote access. A customer has to set up a PIN to get access to it.

Q307 Michael Ellis: You always had to do that during the period in which we are interested in in this inquiry?

Mr Blendis: Yes.

Q308 Michael Ellis: It was not the case that there was some sort of default PIN setting that somebody could use—one, two, three, four or whatever—that would have allowed access.

Mr Blendis: Not for the period of this inquiry. We had a default PIN on T-Mobile back before 2002, but that was changed in 2002.

Q309 Bridget Phillipson: As a matter of routine—this investigation aside—if the police or a customer informed you that they believed a phone had been accessed illegally, how would you respond to that?

Ms Steele: The first thing that we would do would be to investigate whether or not there were any signs of their voicemail being accessed remotely. If there were any signs of voicemail being accessed remotely, we would obviously ask them to report that to the police, and we would share that evidence with the police. I am not aware of any cases of that happening for Vodafone UK since 2006.

Mr Gorham: Is this where a customer has contacted us?

Bridget Phillipson: Either a customer or the police.

Mr Gorham: If a customer contacts us, we will make investigations in exactly the same way as Vodafone on the networks to see whether there is any evidence to support it. We would then go back and talk to the customer about that.

Mr Blendis: Yes; we would suggest that we involve the police and assist in that investigation.

Q310 Bridget Phillipson: Is there a process whereby employees can alert you if they feel that suspicious activity is occurring on someone’s account, and how would that lead to action being taken?

Ms Steele: In Vodafone UK, we have a duty-to-report policy available to all our employees. They can alert through their line management, through the fraud, risk, and security team, or through an anonymous whistle-blowing hotline if they have any concerns.

Q311 Steve McCabe: You have all made some sort of changes to try to improve security since this happened. How safe is the information from would-be hackers now?

Ms Steele: For Vodafone UK, the changes include that if our customers forget their PIN, they are no longer able to contact customer services and ask us to set it to a number of their choosing. We can set it only to a randomly generated four-digit number, and then the customer can personalise their PIN. They were then, and they are now, held in an encrypted format and cannot be read by anybody within Vodafone UK. If they are reset, that is sent directly to the handset user. Similarly, any failed attempts to access voicemail by using the wrong PIN would generate a text message to the user.

Q312 Steve McCabe: Are you fairly confident that the information is protected now?

Ms Steele: Yes, the PINs and the voicemails themselves are held on separate platforms, both of which are encrypted and not available to anybody.

Mr Gorham: I am confident with the level of security we currently provide in this area. Unfortunately, however, it is a fact of life that the criminals are always keeping one step ahead, so we have to keep sure that we are close alongside them and then we will put more features in place if required. As we stand at the moment, however, I am confident that we have a good level of security in place.

Mr Blendis: We have similar features. We also brought in a new feature after the investigation that if a PIN is changed on the voicemail account, a text is sent to the handset to notify the owner that that has happened.
Q313 Steve McCabe: I noticed one of you said earlier that you did not feel that you necessarily had any direct responsibility for what had happened to the customer. In view of the security enhancements you now have in place, do you have any responsibility for your customers now if their private communications are being heard?

Mr Blendis: The things that we have brought in were to respond to hacking and the assumed attempts of social engineering and suchlike to get PINs, so they are added developments that we think will protect against—

Q314 Steve McCabe: I guess what I am asking is: if I am your customer and my phone gets hacked, do I have any redress in relation to you?

Mr Blendis: If you are talking about a criminal fraudulent action, I think it would depend on what that was and how the intrusion occurred.

Q315 Bridget Phillipson: Presumably, you are not always talking about criminal gangs. It could be, as you talked about earlier, family disputes where someone may be looking to act—they might have the necessary information to try to impersonate someone or guess their PIN, or have access to their mobile phone. It could be that kind of dispute rather than a kind of criminal enterprise. Is that fair, in general cases?

Mr Gorham: Yes, that is correct.

Nicola Blackwood: I just want to take you back to some comments you made to Bridget Phillipson about employees and customers alerting you with concerns about abuses or hacking into their phones. I doubt that you have the figures here, but I wondered if you could write to the Committee to provide us with figures from the past five years about investigations that you have conducted into suspected hacking based on reports from employees and customers. It would very helpful to show a trend. Thank you very much.

Q316 Chair: Thank you for giving evidence. I think what this has shown is there has been a different approach taken by the mobile companies, but you are all very clear that you have not received a letter or any instruction from the Metropolitan Police telling you to do anything with or without your customers. Is that right?

Ms Steele: Yes.

Q317 Chair: You are still awaiting a letter from them—from 2 November. Are you still awaiting a letter from them?

Ms Steele: Yes, I am.

Q318 Chair: You are. Mr Gorham, you passed everything over to them so you are not waiting for any—

Mr Gorham: Yes, and we contacted our customers, so we have had no need to clarify.

Chair: My Clerk will be in touch with you after the meeting to explain what information we will require further. We are most grateful to you. Thank you very much for coming today.
Tuesday 12 July 2011

Members present:
Keith Vaz (Chair)
Nicola Blackwood
Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert
Steve McCabe
Alan Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Witness: John Yates, Acting Deputy Commissioner, Metropolitan Police, gave evidence.

Q319 Chair: Could we now move on to the phone hacking inquiry and could we call Assistant Commissioner Yates, please? Mr Yates, do you have all your officials near you?
AC Yates: I think those that I need are close by, yes.
Dr Huppert: Chairman, a point of order.
Chair: Yes, Dr Huppert.

Q320 Dr Huppert: It has been alleged that witnesses on our phone hacking inquiry have misled this Select Committee and another that is also looking at this issue. Would it be possible for you to clarify for us what the procedures are for investigating such serious allegations and what sanctions are available?
Chair: Yes, Dr Huppert.

Q321 Chair: Assistant Commissioner, thank you very much for coming to give evidence. I am most grateful; you were not on our list of people for today, but I phoned you on Sunday and you readily agreed to come in, and I am most grateful for that.
AC Yates: I wonder whether you would indulge me and allow me to make a very, very short opening statement, Chair. It is very short.
Chair: Yes, I will indulge you.

AC Yates: Thank you. I am very grateful to you for the opportunity to appear before you again on these matters. But I know from reading and listening to the media that concerns have been voiced about the matter to the House. The House usually requires the witness’s attendance to explain him or herself. If the witness persists, the House may punish him or her for contempt. Does that satisfy you?
Dr Huppert: Yes.

Q322 Chair: Is it coming to an end?
AC Yates: It is coming to an end. Chair, I also reiterate, and it is a matter of great concern, that, for whatever reason, the News of the World appears to have failed to co-operate in the way that we now know they should have with the relevant police inquiries up until January of this year. They have only recently supplied information and evidence that would clearly have had a significant impact on the decisions that I took in 2009 had it been provided to us then.

Q323 Chair: I think we can stop there, and we will come on in a moment, because that is very helpful. Thank you very much for that. A rising directly out of that, Mr Yates, can I take you back to the evidence that you gave to this Committee the last time you appeared? You told me in answer to a question when I asked you about the 91 PIN numbers that had been supplied, that you went out of your way—I think the words you used were that even if there was the remotest possibility—I have the quote here: “I indicated last year to say that even if there was the remotest possibility—I have the quote here: “I indicated last year to say that even if there was the remotest possibility that someone may have been hacked, let’s look and see if there is another category.” You went on to tell me and this Committee, and therefore Parliament, “It is out of a spirit of abundance of caution to make sure that we were ensuring that those who may have been hacked were contacted by us”. It turns out that, of course, this did not happen.

AC Yates: I don’t want to get back into the debate about what constitutes a victim of hacking because I think that has been well aired in terms of the legal issues. But we went through a process and I have agreed it was tardy and it was not quick enough, but to the best of my intentions that is what we intended to do up until January this year, when that clearly stopped and has been handed over to the new inquiry.
But indeed that was my intention. We have had the debate, as I said, about the narrow focus of victims and what constitutes a victim of hacking. I have said before to this Committee and others in terms of I have always said that Glenn Mulcaire was a private investigator—

**Chair:** You have, but, Mr Yates—

**AC Yates:** Can I finish here?

**Q324 Chair:** We would like if we could to have very brief answers rather than long answers.

**AC Yates:** But these are complex matters.

**Q325 Chair:** They are complex matters, but I have looked at the transcript last time and I think there is a chance of misinterpretation unless we are strictly answering the question. You described the previous inquiry that you conducted in 2009 in the Telegraph as, and I quote your words, “It was crap”. Are those your words or they were the words of the Telegraph?

**AC Yates:** It was an unfortunate choice of word. “It was poor” is what I should have been quoted as, but I did actually use that phrase. But what I intended to say—

**Q326 Chair:** You said today that it was tardy, but we have just had a huge amount of information, for example, that the phone of Milly Dowler was hacked. Who is your apology being made for today? Is it for the victims of the hacking? Is it to the family of Milly Dowler? Is it to Parliament? Who are you apologising to?

**AC Yates:** I am regretting, I expressed regret, that we did not do enough about dealing with those who were potentially affected by phone hacking, potentially affected. I have held my hands up and I passionately believe in doing the right thing around these matters. If I am found out to be wrong or made an error, then I will hold my hands up, but please do not take that admission as in any way accepting that I accept responsibility for what News International have not done with regard to this case from 2005 through to 2006, through 2009, through 2010, and even up until yesterday, when you have read in the papers about what took place then. Please do not take that as an admission that I am accepting responsibility for that.

**Q327 Chair:** No, we understand that. You have been very clear. News International, you have told us today, did not co-operate with you, and we will come on to that in other questions. But specifically on what Sir Paul Stephenson asked you to do, and in your letter to this Committee you sent us a copy of the press release that he put out when he asked you to establish the facts. Now, you took a day to do this, is that right, from 10 in the morning to 5 in the afternoon?

**AC Yates:** No, it was to establish the facts about the article in the Guardian. The purpose of that was to say is there anything new in that article that we as the police or others are not aware of, and was there any new evidence in that article that needs addressing. The plain fact on that day was that there was not. There was not. You have seen from the letter I wrote to you the levels of assurance that I had both then and subsequently from the DPP, from counsel, saying there is nothing there that requires further investigation. Now, hindsight is a great issue—

**Chair:** It is a great gift.

**AC Yates:** It is a great science, and later it is clearly found that that is not the case. But in July 2009 to the best of my knowledge and belief and in good faith I made that decision.

**Q328 Chair:** But you still maintain that the inquiry that you conducted, even though it was not an inquiry in your words—

**AC Yates:** Not an inquiry.

**Chair:** Well, the look at the papers that you had was poor?

**AC Yates:** Hindsight says it was, of course, but we did not have the—

**Q329 Chair:** I am just going by your words to the Telegraph. You have said it was. Forget about hindsight. You have made this very clear. Haven’t you said that you regard it as being poor?

**AC Yates:** Regard it in hindsight. Had I known what I should have known, it is a poor decision. It is a poor decision, that is clearly the case. I cannot say anything more than that. But the fact of the matter was we did not have the information that we should have done, and that is very clear.

**Q330 Michael Ellis:** Assistant Commissioner Yates, you are a command level police officer, I find it extraordinary that you seek to divert the blame on to wrongdoers in this matter. In policing, you clearly have to investigate people for doing wrong things. You are now saying, “Well, it was because others did not co-operate with me that we didn’t get to the bottom of the matter.” You have responsibility, do you not?

**AC Yates:** I do.

**Q331 Michael Ellis:** For not investigating the matter fully?

**AC Yates:** No. Well, I accept some of that responsibility, but only in part. The fact of the matter was—

**Q332 Michael Ellis:** You expect wrongdoers to co-operate with police inquiries?

**AC Yates:** In terms of journalistic material, there is a tried and tested process designed by Parliament to the way you can actually gain that material. If the individual from whom you are seeking it co-operates to a certain extent, and I will give you an example if you like of letters we wrote to News International on 31 August, a reply from 31 August 2006. I quote, “that my clients intend to provide such material as you or your colleagues might reasonably require from them in connection with your inquiries”. I quote again—

**Q333 Chair:** Mr Yates, sorry, order. Mr Yates, we do not need lots of quotes from your letters to News International because we accept—

**AC Yates:** This is quotes from them, Mr Vaz. I am trying—
Q334 Chair: We accept what you have just said. We are talking about your conduct, not News International’s conduct. Mr Ellis has asked about your conduct.

AC Yates: In considering the question that I was posed, that I had failed in my responsibilities—Chair: Exactly.

AC Yates:—part of the issue was what are we able to do further with News International through their lawyers to gain additional material. The answer is there is nothing we could have done. We sought advice about getting a production order, how we can do that, but the fact of the matter was News International carefully crafted their letters to us to indicate they were prepared to co-operate.

Q335 Michael Ellis: No, Mr Yates, this was about you, this was about policing, not about what alleged wrongdoers were or were not doing. Why did you not properly review the evidence that was sitting in bags at Scotland Yard? Why did you not look at that property? We want to know.

AC Yates: Because there was nothing to indicate to me in July 2009 out of the article that was written in the Guardian that there was new material in there that would justify the investment of resources to go through all that material. Let me be clear here, that material may have been placed in bin bags, as is the common parlance, but it was all material in exhibits bags that were placed in bin bags. That material was gone through by counsel at the time in 2005–06. It was reviewed by counsel in the light of the indictment that they had framed, so it had been reviewed.

Q336 Michael Ellis: Forgive me, Mr Yates, you know that when counsel is focused on a particular indictment they are going to be focused on looking for evidence about that indictment. Your responsibility was to look for matters outside of the individual indictment in that case. You had thousands of pages of documents. Why did you not look at them?

AC Yates: Mr Ellis, the case had been finished. Two people had gone to court and had been sentenced. All the material—I appreciate the point about relevance—had been seen by counsel and reviewed by the CPS as well. I think it is accepted—I daren't say this—I think it is accepted—I don’t know—I don’t know about that, so what would possibly persuade me, in the absence of any new evidence, to make those choices in that sense?

Chair: Thank you, Mr Yates, that is very helpful. We are now going to move on. Can I say to colleagues I know you all have searching questions of the witness, but could we keep them as brief as possible?

Q337 Mark Reckless: Assistant Commissioner, I understand that you did not review this material on this date, 9 July, but you wrote to us on 8 July just now saying that the DPP ordered an urgent examination of all the material supplied to the CPS. Do you know what came out of that?

AC Yates: Yes, he came to the conclusion—did I not put it in the letter? His conclusion was—I think it is in the letter, isn’t it?

Q338 Mark Reckless: That it was the responsibility for the DPP to order a review of all that material rather than the police.

AC Yates: I think it is a joint responsibility. Prosecution is a collaborative effort. He clearly acts independently, and he took the choice, he took the view to have a look at it himself and he did it with counsel, and there are memorandums to that effect as to what the result was. But he came to the same conclusion as me then on the basis of what we knew then.

Q339 Mark Reckless: On this issue of the broad or narrow interpretation of the hacking offense and the DPP’s role in that, are you aware that the DPP wrote to me on 15 April this year and again appeared to adopt a narrow interpretation, stating, “I have given further thought to the matter. My view is that the CPS analysis is correct, namely the judgment of Lord Woolf appeared to suggest that once the intended recipient had collected the message the communication was no longer in the course of transmission and, therefore, there could be no interception and no offence committed under section 1."

AC Yates: I am not sure I can say a lot more. That is the view that I thought we were given in 2005–06. That is how— and Peter will speak for himself— I firmly believe and all the documentation shows how the inquiry was shaped. It is clearly still a confused picture and I have seen one of those letters but I have not seen—

Q340 Dr Huppert: Mr Yates, I am sorry to ask you this, but have you or anyone on your behalf ever been contacted by News of the World or anyone from News International about your private life and stories they might run about it?

AC Yates: No.

Q341 Dr Huppert: You will know there are allegations in the Evening Standard and elsewhere to suggest that?

AC Yates: I absolutely do know that, and you can see that the article was taken down at my request very, very swiftly, because it is clearly libellous.

Q342 Dr Huppert: Indeed. Now, in fact, that brings me to something I was going to ask you later. Last time we saw you, you hotly denied that you had ever misled this Committee and I think you threatened to sue Chris Bryant, who I think is over here, for suggesting that some of the things that you said were misleading. Now The Independent reported you were furious you had said things to Parliament that proved to be inaccurate. What were the things that you said that were inaccurate to us before?

AC Yates: In terms of what I knew about what News International have allegedly— because these matters are being investigated— been up to in terms of what I saw in January of this year prior to handing it over, it
is abundantly clear that if I had that relevant
documentation in 2009, or indeed if the first team had
had it in 2005, they would have made some very
different decisions about the scope and scale of the
investigation they conducted. But I need to be careful
in terms of saying more on that issue.
Every answer I have given to this Committee and
other Committees has been in good faith on the basis
of what I knew and what I had been briefed.

Q343 Chair: But you accept that some of them are
wrong?
AC Yates: It may well be the case. I have given
evidence on a number of occasions. I can't possibly
be expected to be able to recall each line. But in light
of what I have said and what we have been told, and
what I know now, having been provided with new
material, we always said we would reopen the
investigation. I always said we would reopen the
investigation if new material was provided. It is
exactly what we did in January.

Q344 Chair: So you would like to put on record your
apology to this Committee?
AC Yates: In the same way as I have written to the
Mayor and I have written to other people, yes, if I
have unwittingly misled this Committee on the basis
that I did not have the information at that time, then
that is a matter of regret; of course it is.

Q345 Mr Winnick: When you gave evidence last
time in March, Mr Yates, you were asked by me about
the closeness between the Metropolitan Police and
News International, and your reply was rather
dissmissive about that. You said that you probably
dined more with the Guardian than with News
International, although I am not aware that the
Guardian was under police investigation. Is it not the
fact that during the course of the investigation you
did, in fact, in your own words, engage with News
International at senior level and that not to do so
would not make any sense to you? Do you remember
your answer?
AC Yates: I am not sure which timeframes you are
suggesting, but I have never investigated these
matters, and that has been very clear. I was asked to
establish the facts in July 2009.

Chair: Sorry, could you speak up, Mr Yates?
AC Yates: Sorry. I have never investigated these
matters. They have come under my oversight in terms
of some of the issues that have arisen, but there has
never been an investigation that I have led in regard
to these matters. As soon as new information came,
new evidence came, in January 2011, I handed it over.
You have to be more precise about the dates you are
talking about, Mr Winnick.

Q346 Mr Winnick: During the course of the
investigation—
AC Yates: Which investigation, Mr Winnick?
Mr Winnick: The Metropolitan Police investigation.
Chair: I think Mr Winnick means your review of the
evidence in—
Mr Winnick: Were you in contact socially with the
most senior people in News International?

AC Yates: At some stage in the past two years, yes, I
have been. I have been absolutely open about that.
But it was not being investigated at that point. The
investigation was closed. In July 2009 I did not reopen
it, so I have not been in contact— during a live
investigation under my oversight, no, I have not.

Q347 Mr Winnick: What surprises a lot of people is
that an ongoing investigation by the Metropolitan
Police, whether or not you were yourself involved,
has a situation where a very senior police officer, like
yourself, socially engages with those who are being
investigated, and it would not happen if the Met
Police were investigating other people.
AC Yates: Let us be clear. There are corrupt people in
the Metropolitan Police, we know that as a matter of
fact. There always will be. But people will engage
with me on the basis of that. I had no idea. I had no
idea and, as I say, it is a matter for Sue how wide this
investigation is currently going, but as far as I was
concerned from July 2009, and even July 2005-06,
this affected two people. This affected a rogue
reporter. That was what we honestly believed to be
the case. Does that mean you can't then engage at any
number of levels with News International or other
people?

Q348 Chair: We will come back to this. In the New
York Times today there is an article, which seems to
confirm some of the points made by Dr Huppert; have
you seen this article on the News of the World?
AC Yates: No, I have not.

Q349 Chair: It makes allegations that it is because
of your personal life that you were put under pressure
by News International. Can you categorically say that
that was not the case?
AC Yates: I categorically state that that was not the
case to each and every one of you. I think it is
despicable; I think it is cowardly. This is not the case,
it is untrue, and can be proved to be untrue.

Q350 Chair: Can you confirm for the record that you
have not been hacked? Nobody has ever suggested to
you that your telephone number was in the numbers
that were in the documents?
AC Yates: It has been suggested to me that it might—
not in the current investigation.

Q351 Chair: Not in Operation Weeting?
AC Yates: Not in Operation Weeting, although that
is also—

Q352 Chair: What about Operation Yates, which
lasted a day?
AC Yates: Touché.

Q353 Chair: So who told you this, that you were
being hacked?
AC Yates: From the methods I know that are used and
the impact it has on your phone, your PIN number, I
am 99% certain my phone was hacked during a period
of 2005-06. Who by? I don’t know, the records don’t
exist any more, but from the modus operandi that I
know how it happens—
Chair: Your phone was hacked between—
AC Yates:—my phone was hacked, as have been a number of other people.

Q354 Chair: Did this come up as a result of Mr Hayman’s investigation?
AC Yates: No.

Q355 Chair: He did not see you and tell you you were being hacked?
AC Yates: No.

Q356 Chair: Where did it arrive then?
AC Yates: It arrived from my own knowledge, as in I know what has happened to my phone, and it was at a particularly difficult time for the Met, so I think it is more or less likely.

Q357 Lorraine Fullbrook: I have several questions. First of all, Assistant Commissioner Yates, I am frankly astounded at the incompetence that has been displayed here. I would like to ask you—
AC Yates: I missed the first bit.
Chair: Mrs Fullbrook is astounded by the incompetence that she has heard today.

Lorraine Fullbrook: I would like to firstly ask you; following your mass apology, why did you decide only to give an interview to the Telegraph?
AC Yates: These things are always a balance. I don’t think it would have been wise to give an interview to News International. I take advice from senior press officers. That was felt to be a fairly balanced—

Q358 Lorraine Fullbrook: And they advised you only to give it to the Telegraph, did they?
AC Yates: It is always a balance. That was considered to be the most sensible outlet for the type of interview it was. That is what happened.

Q359 Lorraine Fullbrook: If it was your way of apologising to the victims, to the Committee, to the people, why did you not issue a press release of apology to all news outlets?
AC Yates: Because it is trying to get it across in a way that people can understand the context of it, and a press release is interesting, but the advice that I get, and others will probably give you in terms of how you get your message across, is that sometimes an interview is better.

Q360 Lorraine Fullbrook: Let’s just go to the message that you are trying to get across then. You said that there was not enough evidence to review this inquiry. You had 11,000 pages and in eight hours of consideration, including consulting with the Crown Prosecution Service and investigating officers, you decided there was no investigation to be had; is that correct?
AC Yates: It is the same answer that I gave to Mr Ellis.

Q361 Lorraine Fullbrook: Is that correct?
Chair: I think she wants a yes or no answer.

AC Yates: But I want to give some context around it and I don’t want to take up your time with the Committee so I am not prepared to give—
Q362 Lorraine Fullbrook: Can we stop with the smokescreens and just answer yes or no?
AC Yates: It is not a smokescreen.

Q363 Lorraine Fullbrook: Your evidence to the Telegraph said that it took eight hours for you to decide that this inquiry did not need to be taken any further. It was 11,000 pages of material.
AC Yates: I will have to repeat a qualified yes, because I have explained in my previous answer—I will adopt my previous answer to Mr Ellis, if that helps, in terms of there was nothing new in the Guardian article, this was not a full-scale review, two people had gone to prison. I could go on, but I adopt my previous answer.

Q364 Lorraine Fullbrook: Who was the legal advice from that you took during that eight hours? Who did you take legal advice from?
AC Yates: It was looking at the previous legal advice we had got.

Q365 Lorraine Fullbrook: The people, who were the people that you took the legal advice from?
Chair: Sorry, you were looking at the previous legal advice?
AC Yates: The legal advice, all the legal advice—
Q366 Chair: So is the answer to Mrs Fullbrook’s question that you did not take fresh legal advice in the eight hours?
AC Yates: We had the legal advice.

Q367 Chair: So you did not take fresh legal advice?
AC Yates: No, we did not. No.

Q368 Chair: I think that is the answer she was asking for. The question she was asking is, “Did you take fresh legal advice?” and the answer is no.
AC Yates: But can we be clear on what I was asked to do? I was asked to establish the facts of, is there anything new in that regard, and we don’t know about it. Some very capable people in my department said, “We know all about that, that has been considered before, therefore—”

Q369 Lorraine Fullbrook: So you did not take fresh legal advice—
AC Yates: No, I did not.

Lorraine Fullbrook:—during that eight hours, and you decided that this needed no more investigation; is that correct?
AC Yates: Yes, and two or three days later the DPP did the same, and I think within about 10 days he came to exactly the same conclusion.

Q370 Chair: Can I just be clear—sorry, Mrs Fullbrook, because this goes directly to the next question I am sure you are going to ask—this is what Sir Paul Stephenson said, “As a result of that I have asked Assistant Commissioner John Yates to establish
the facts of that case and look into that detail, and I would anticipate making a statement later today.” So he asked you to look at the facts and the detail; is that right?

AC Yates: Yes.

Q371 Lorraine Fullbrook: On the 11,000 pages of evidence that you decided in eight hours was not sufficient to make a decision, can I ask you why it took three years before you decided to even put it on a computer database, let alone look at it?

AC Yates: That is not the case.

Q372 Lorraine Fullbrook: That is what you said in the Telegraph.

AC Yates: That is wrong then, because it was on 20 July, I think, 2009, and there is documentation to support this, which I can provide you. Mrs Fullbrook, that I asked—I gave some very clear instructions about what I wanted to happen with that material, and the whole purpose of that was the level of concern that we had: people were ringing in, writing in and concerned about were they on a system. I could not tell them, so I took the decision 11 days in—I think it was 20 July 2009—to put all those matters on a searchable system in which we could draw that information. It took a number of months.

Q373 Lorraine Fullbrook: Are you saying that the Telegraph, the article is incorrect?

AC Yates: I need to go and look at it myself to make sure the context—

Lorraine Fullbrook: I am sure we can get a copy for you. Can I ask—

Chair: Sorry, Mrs Fullbrook, can I stop you? I will come back to you. Could I take Bridget Phillipson now?

Q374 Bridget Phillipson: Mr Yates, as an experienced police officer do you find it surprising that people who may have committed criminal offences do not necessarily want to co-operate with the police?

AC Yates: No, I don’t, but I am going to get back into what production orders are about, and that may be a matter for Parliament to look at, because it is very clear that production orders, if there is a level of co-operation, and the lawyers among you will know this, provided by the person from whom who are seeking the information, you have to be absolutely certain they are obstructing you. There was no indication, and I have read those quotes out to you from letters from News International. They were very careful around that.

Q375 Bridget Phillipson: It is just people might find it surprising that there appears to be one rule for big corporations and another rule if anyone else was to be suspected of having committed criminal acts.

AC Yates: That is absolutely not the case. It is absolutely not the case. It is the law. It is a schedule 1 production order. It is the law about how you can go about that. It does not matter if you are a big corporation, whether it is journalistic material or whatever it is, that is the law as it stands at the moment.

Q376 Bridget Phillipson: You previously headed up the so-called cash-for-honours investigation and you rightly assumed a very thorough and robust investigation that followed the evidence. Can you explain the reasons for the difference there and the difference here?

AC Yates: Yes, I can, because it is simply a matter of following the evidence. The evidence that we should have had in 2005–06 and in 2009 has only recently been brought to light by News International. That has resulted in a huge investigation being commenced, which Sue will be speaking about, which is following the evidence. We simply were not provided with that material when we should have been.

Q377 Bridget Phillipson: How were you able to obtain the evidence in the so-called cash-for-honours scandal but you were not able to do so in this case?

AC Yates: It is a completely different investigation. There were a number of lines of inquiry. This is three or four years ago, so I am sure it is not relevant to this Committee now, but there were a number of lines of inquiry—

Q378 Chair: No, it is not relevant, except for the process, I think.

AC Yates: The process is follow the evidence, and the evidence there required to be followed. I know I have been criticised for that in a number of quarters, but that is the process.

Q379 Chair: I am going to call Nicola Blackwood, but I am going to hand you a list of names that has come off the Guardian blog, which sets out the number of people who have been warned by Operation Weeting concerning the fact that their phones have been hacked, and I want you to look at it while you are giving evidence to see whether or not you recognise any of those names. One of the names, of course, is Gordon Brown, the former Prime Minister. When you looked at the files, was there any mention of the former Prime Minister’s name, or the name of the Chancellor of the Exchequer, both of whose names appear on that list and both of whom have been warned by Operation Weeting that their phones had been hacked? Of course, Mr Hayman’s name is also on there. Is that the first time you have seen that list of names?

AC Yates: Yes, and my own name of course. It is the first time I have seen these names, and I am sure this is one for Sue to respond to, because this is Operation Weeting.

Q380 Chair: But you did not see that in the eight hours you looked at the review?

AC Yates: No.

Q381 Nicola Blackwood: One of the major concerns that we all have is the relatively low priority that was given to this investigation at the time. The excuse that appears to be given is other counterterror issues that were arising at the time, in particular the Al Qaeda
plot to blow up the trans-Atlantic airlines. While the Committee can understand that, I am a little concerned that when you sat at your desk in Scotland Yard in 2009 you did not perhaps consider this ICO report from 2006, which said, “Investigations by the ICO and the police uncovered evidence of widespread and organised undercover market of confidential personal information. Among the buyers are many journalists looking for a story. In one major case investigated by the ICO the evidence included records of information supplied to 305 named journalists working for a range of newspapers.” Were you aware of this report and the fact that there was this kind of industrial level hacking going on at the time?

AC Yates: Yes, I was aware of the report and it is an ICO investigation under a very narrow remit.

Nicola Blackwood: It says that there was ICO and police evidence.

Chair: He knows about the investigation. What is your question, Ms Blackwood?

Q382 Nicola Blackwood: In the light of that then, did you not think it might be appropriate to go back over the 11,000 documents, which were in bin bags, to look at them and see whether there was any additional evidence, which was not associated with the two indictments, which were covered by Mr Ellis’s questions, to see whether there might be additional avenues and additional leads that could be followed up in a manner similar to the cash-for-honours investigation.

AC Yates: It is a very fair question, but you talked about command decision. What you have to do occasionally, you do take decisions, you base them on risk and you consider them fully about what are the other issues, and I have given you the levels of reassurance I had. There was simply no reason at that time. The ICO is a completely different matter, it judges on a different standard of evidence against different offences. It was a decision taken. Now, in the light of what we now know, it was not a very good decision, but it is solely—I will repeat it—it is solely as a result of the new information provided by News International who clearly misled us. They clearly misled us.

Q383 Nicola Blackwood: Was there a feeling that you were going to do the minimum necessary in order to show that you had looked at the facts and that there was nothing new in this case because you have more important things to be getting on with?

AC Yates: There is probably an element of that but if there had been any new evidence there, if I had seen any new evidence there, then of course—

Q384 Nicola Blackwood: But you did not even take new legal advice, so you just looked at the documentation from before.

AC Yates: I was supported later by the DPP and by counsel.

Q385 Chair: After, it was supported by the DPP?

AC Yates: It was a short while later, yes. But it came to the same conclusion.

Q386 Chair: Just following the questioning of Ms Blackwood. On that day you did not take legal advice, did you speak to Mr Hayman and did you speak to Mr Clarke about their investigation?

AC Yates: No, I did not, because I spoke to the senior investigating officer.

Q387 Chair: Who was whom?

AC Yates: Who is Phil Williams. He has given evidence with me, I think, to this Committee.

Q388 Chair: And he said everything was fine?

AC Yates: We had a very detailed conversation about the structure of the investigation, I looked at the decision logs in terms of how it was managed. I think I have referred in the letter to a range of issues that I considered. I think I have read them to this Committee beforehand that I used before coming to my view.

Q389 Alun Michael: A new investigation will presumably arise either from new evidence, and you have covered that aspect, or from a general concern that would indicate the need to take a fresh look at the evidence. In September 2010, you were unable to tell me whether a live investigation was taking place at that time. Was there?

AC Yates: Well no, we were scoping the information that had been published in the New York Times, I think on 1 September last year. Again it is very interesting in terms of how that was managed in terms of the level of co-operation we had from News International—

Alun Michael: Forgive me; was there a live investigation?

AC Yates: There was not a live investigation, no. It was a scoping study, it went to the CPS for advice in terms of whether they thought that anything required further investigation. I think I referred to it in the last paragraph of my letter, so the CPS viewed then that it did not meet the evidential threshold.

Q390 Alun Michael: Looking at your letter, a lot of people were under the impression that your role in autumn 2009, and again in 2010, was to review the 2006 investigation. Your letter to us dated 8 July emphasises that you did not conduct a review of the 2006 evidence. Can you explain exactly what you and your team did do in 2009?

AC Yates: In 2009, yes. Again, I think to this Committee—it might have been Culture, Media and Sport—I made it very clear, and it is in the transcripts there, exactly what I did in terms of the approach that I took in terms of those matters. There was a range of points that I touched on, if you like, in terms of what I was looking at. I can provide that document to you because it was a contemporaneous document. But it was around the range and the scope of the original investigation. It was around the evidential advice we had received. There were about 10 or 12 points that I went through on that day, and that was the approach we took in May. In 2010 it was different; it was potentially new information within the New York Times and so we put a new team on it with a new investigating officer.
Chair: Let us be clear, so Mr Clappison will put his question again so that we are not at cross-purposes here.

Q399 Mr Clappison: Were police aware of any other victims of phone hacking or journalists suspected of involvement in phone hacking whose names have come to light within the material that was in your hands in 2006 that was not disclosed at trial?

AC Yates: The only aspect I was aware of, and this is the best of my memory, is the name Neville, and everyone has assumed that is Neville, the chief reporter, or the ex-chief reporter of the News of the World.

Q400 Mr Clappison: That is Mr Clive Goodman, is it?

AC Yates: No, Neville, as in Neville Thurlbeck, which has been raised in this forum before. That is the only other aspect—that is the only bit I can recall. That too is subject—the appearance of that name and its relevance to an evidential standard was also reviewed by the CPS and the DPP, and he gave a very clear and, I think, it was a written confirmation that just the name “Neville” would not meet a threshold required to pursue it further.

Q401 Mr Clappison: You were used, as police officers, to pursuing evidence. Had Mr Thurlbeck, or any other reporter on the News of the World, been interviewed at the time?

AC Yates: No, and I have accepted that he ought to have been and, again, others will talk about whether he has or has not now. I have accepted that he ought to have been.

Q402 Mr Clappison: Can I just take you from the point you made about Parliament, pushing this all back on to Parliament and production orders. Are you aware that in fact some people whose names turned up in that material in 2006 took out private civil justice litigation themselves and discovered through that that the police had their names in their possession? Are you aware that that happened?

AC Yates: I think that is a matter of public record, and there is a judicial review under way involving several people where that is being tested in the court, and we will have to wait for the outcome of that.

Q403 Steve McCabe: Assistant Commissioner, I guess one of the difficulties for everybody here is that you just do not sound like the dogged determined sleuth that we would expect. When you said to Mr Ellis earlier that one of the central problems was the lack of co-operation from News International, I just wondered how you reconciled that with your remarks in your interview where you said that most newspapers would have done the same if a cop turned up with a dodgy-looking warrant. That kind of implies that you were a bit dismissive at the outset. Is that a reasonable conclusion to draw?

AC Yates: No, it is my direct experience that if you go to newspaper offices with warrants you are not exactly—
Q404 Steve McCabe: Why did you use the term “dodgy-looking warrant”? That is what I am asking.

AC Yates: It is semantics. Perhaps another example of inappropriate—

Q405 Steve McCabe: When you reminded us of your rank and said that you were not going to go down and look at bin bags, was that just an unfortunate choice of words in view of what has happened?

AC Yates: No, I just don’t think—I have something like 4,500 people working underneath me—

Q406 Steve McCabe: You’d think one of them might have gone in and had a look.

AC Yates: I don’t think you would expect me, with the scale of command and responsibility I have around counterterrorism, protection, all those issues, to be utilising my time to go down examining every bit of paper in a bin bag or in exhibits bags. There is a command structure underneath that allows that to happen and 99% of the time it happens very successfully.

Q407 Steve McCabe: I most people would think in view of what has happened that maybe someone should have gone and looked at all the evidence.

AC Yates: I have looked at examples of the material, because it is—

Q408 Steve McCabe: If someone had looked, you would have known that there were 4,000 names, and that is something you did not know, because that would mean looking at fresh new evidence.

AC Yates: Mr McCabe, I have always said that there were potentially hundreds of people affected by Mulcaire, and that he is a private investigator and would have material—

Q409 Steve McCabe: Can I ask one last thing? When you said that this has damaged the police, did you mean in part your behaviour has damaged the Met, and is that what you meant by you should hold your hands up personally?

AC Yates: I think some of the decisions that I have taken in terms of if I had known now or I knew then what I know now, then they would have been different. I think it does look damaging. As I say, I am very happy to hold my hands up when things have not gone right, but don’t take that as an admission that I am responsible for what people have not done.

Q410 Steve McCabe: No, what I am asking is do you feel that your behaviour has, in part, damaged the Met? Is that what you are telling us?

AC Yates: No, I am not saying that. I think behaviour is a very pejorative term, so I do not think it is my behaviour—

Chair: Your conduct of the inquiry.

AC Yates: I think my oversight of the inquiry in terms of where—would I wish we could turn the clock back and have the material? Yes, I do.

Q411 Chair: We would all wish to turn the clock back, but specifically on this point, you mentioned in your article the trust that you felt was perhaps at risk because of what has happened in the way in which the Met had conducted these inquiries. Given what you have said and the apologies that you have made, have you considered your position as to whether or not you should continue in your present position, bearing in mind that you have accepted that this has been a fundamental error in the way in which this inquiry was conducted? Have you offered to resign?

AC Yates: No, I have not offered to resign. If you are suggesting that I should resign for what News of the World has done and my very small part in it then I think that is probably unfair.

Q412 Chair: I am just putting to you what we have been asked to put to you. You think you do not need to resign and you have not considered it?

AC Yates: I have given you a very fair reply.

Chair: Thank you. Now we are going to go to very quick questions from Committee members. We have other witnesses, and I am sure Mr Yates needs to be released to go and do his other work as the head of counterterrorism and cannot spend all morning with us, although we would like him to stay. Can I go through quick questions from each member?

Q413 Michael Ellis: Assistant Commissioner Yates, you said in an answer to a question put by several of my colleagues that you did not handle this investigation the same way as you have handled previous ones because you were just following the evidence in those. But here you had 11,000 pages and it was obvious, was it not, that there was more to it than the two people involved, so you did not follow the evidence in this case; is that right, isn’t it?

AC Yates: I felt the evidence had been followed and I felt that the case—

Q414 Michael Ellis: But you knew there were 11,000 pages sitting there and it was not just about the two people that you have repeatedly mentioned, because those two people involved who were later prosecuted were involved in matters pertaining to royal and therefore national security, so it was not a routine humdrum case. You had 11,000 pages. You knew dozens, if not hundreds, of other people were involved. It was national security implications. So you were still having dinner with journalists after that; is that right?

AC Yates: What is the question? I thought—

Q415 Chair: The question is were you still having dinner with News International despite the fact that you had not conducted a thorough inquiry into them?

AC Yates: Well, I believe I had done all that was required in July 2009.

Q416 Michael Ellis: I thought you said you were not happy with how you did it?

AC Yates: I am not happy now because I know things are very different now in light of the information that has been provided.

Q417 Lorraine Fullbrook: Can I ask, Assistant Commissioner, have you ever received a payment
from anybody relating to a news outlet for information that you have received?

AC Yates: No, that is an amazing question, and I have never, ever, ever received any payment of that sort.

Q418 Lorraine Fullbrook: Have any of your officers received payment that you know of in the last 10 years?

AC Yates: I think it’s highly probable, in the light of the allegations that are surfacing and are being investigated, so we have to be very careful what we say—that that has happened. We are an organisation of 50,000 people. We have always said from time to time that that has happened. We are an organisation that has an ongoing investigation that Sue is overseeing, which we don’t need to comment on now.

Q419 Dr Huppert: Assistant Commissioner, were you aware of or involved in any discussions with the Met media service or anyone else where there were concerns about upsetting or alienating News International socially, can I just put on record I don’t myself believe for one moment that you received any payment from that organisation. Last night Bob Milton, one of your former colleagues, a Metropolitan Police Commissioner, described you as a very, very competent officer and then he went on to say, when he was being questioned about your position, “He’ll have to make his own decision on whether he feels his position is untenable.” You replied to the Chair a few moments ago. Do you really feel, Mr Yates—and you are an honest man—and you believe you are an honest man—that you can continue in your position, and—

AC Yates: Yes, I believe I can.

Mr Winnick: —in view of all that has happened, there is confidence in you not only from the Met but from the public?

AC Yates: As I said earlier, I passionately believe in doing the right thing and the right thing in this case involved holding up my hands around the regret I feel, I do feel that, about the way those affected were treated, that does not, in my view, make it a resignation matter in this case.

Q420 Dr Huppert: And we will never find any record of such discussions in the Met Police?

AC Yates: You will never find any record of such discussions.

Q421 Nicola Blackwood: Given your statement that there are corrupt police officers within the Met and that you don’t know who they are and that one of the major casualties of this scandal will be public confidence in the Met and police more widely, do you think that vetting procedures need to be improved significantly?

AC Yates: The Met has invested an awful lot of time and effort in its anti-corruption strategies and has done so since 1996 and have been involved with them. So there is a very significant investment in that. Part of that is around vetting for sensitive posts. We will always accept that we can learn from different investigations and if there is corruption in the Met, as I have said is likely—I haven’t pointed a finger at anybody, as I said is likely in an organisation of this size—then of course we will investigate properly to ensure they are properly brought to book. If vetting becomes an issue around that in sensitive posts then of course that is something we will review.

Q422 Nicola Blackwood: What action are you going to be taking to try and restore public trust in the police?

AC Yates: I think regrets are always a good start.

Q423 Mr Clappison: You were the person who was brought in to do the review on this. You were not the initial investigating officer but looking at the scale of the wrongdoing that has been revealed and the spread of it and the Stasi-like approach that has been taken in some quarters, how do you think the public should feel about this?

AC Yates: I think they should be feeling extremely reassured that the Met has invested now in a new investigation.

Q424 Dr Huppert: Reassured?

AC Yates: In terms of how they should be feeling now, was the question, they should be reassured that a new investigation and a different command structure with significant resources attached to it is following the evidence, as they have now received from News International. I can’t repeat that often enough.

Q425 Mr Winnick: While I believe, Mr Yates, that you were wrong as regards the relationship with News International socially, can I just put on record I don’t myself believe for one moment that you received any payment from that organisation. Last night Bob Milton, one of your former colleagues, a Metropolitan Police Commissioner, described you as a very, very competent officer and then he went on to say, when he was being questioned about your position, “He’ll have to make his own decision on whether he feels his position is untenable.” You replied to the Chair a few moments ago. Do you really feel, Mr Yates—and you are an honest man—and you believe you are an honest man—that you can continue in your position, and—

AC Yates: Yes, I believe I can.

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AC Yates: As I said earlier, I passionately believe in doing the right thing and the right thing in this case involved holding up my hands around the regret I feel, I do feel that, about the way those affected were treated, that does not, in my view, make it a resignation matter in this case.

Q426 Mark Reckless: I note that the DPP who was consulted about the initial advice provided to the Met is now instructed by News International.

Chair: Lord M acdonald, the previous DPP.

Mark Reckless: On reflection, what share of responsibility do you think should be borne by the CPS for failing to fully investigate this issue at the time?

AC Yates: I think there is some collective responsibility because, as I have always said, and I will say it again, I know it is a matter of difficulties for others but this investigation is going to talk about it, it was framed on the legal advice. So there is some collective responsibility. Operational decisions, though, are for us and for the police alone, so we have to stand up and be counted around that, but the prosecution case is a collective responsibility.

Q427 Steve M cCabe: You said that the question of Rebekah B rooks’ future is a matter for her conscience. How is your conscience?

AC Yates: My conscience is clear in terms of I have accepted in those areas where we could have done better. So my conscience is clear in the sense that I have expressed regrets for that, and if you can’t be allowed to express regrets and make some mistakes occasionally during the course of your career, that is a pretty sad state of affairs.
Q428 Bridget Phillipson: With hindsight, do you think it was a mistake to talk about there being very few victims of hacking and a handful of people, given that you accept you didn’t carry out the review?

AC Yates: It goes back to the legal advice in terms of what we could prove and it is a really dull semantic point, understood by those that take a very close interest in it, but that is why I framed the response in that way.

Q429 Bridget Phillipson: Coming away from the semantics, do you think it was right to be so clear and so categorical when you couldn’t possibly have known because you hadn’t reviewed all of the evidence?

AC Yates: Well, as I say, I just went with the legal advice.

Q430 Chair: Your comment on the previous inquiry is what? If you thought your inquiry was poor, what about the previous inquiry? We will be hearing from witnesses shortly.

AC Yates: I think that is a matter for Peter to answer. All I would say is I can understand how an inquiry is shaped to make it manageable in the context of what was happening at the time.

Q431 Chair: But you have no views as to whether it was good, poor, thorough?

AC Yates: I think that is a matter for Peter to answer.

Q432 Chair: In terms of the victims, since the last time you were here, and specifically concerning Mr Bryant, have all the victims, as far as you are aware, been contacted?

AC Yates: The whole victim strategy is a matter for the new team, so I can’t answer that.

Q433 Chair: In respect of the evidence you gave us last time, you talked about the mobile phone companies being contacted. I am not sure whether you are aware they came to give evidence to us and they told us in fact they had received no instructions from the Metropolitan Police about that—not about the current operation, but when you were conducting it.

AC Yates: There is a range of correspondence between ourselves and the phone companies, which in retrospect may not have been followed through in the way it should have been, but certainly I know one company absolutely followed the instructions to the letter and others didn’t, so again it is a matter that needs to be reviewed.

Q434 Chair: Mr Yates, as usual we are most grateful. Whenever we ask you to come and give evidence you do turn up and give evidence. However, I think it is the view of the Committee that your evidence today is unconvincing, and there are more questions to be asked about what happened when you conducted this review. So you may well be hearing from us again. Please do not regard this as an end of the matter, but we are very grateful that you have come today.

AC Yates: That is right.

Chair: Thank you for coming. Could I call Mr Peter Clarke?

Examination of Witness

Witness: Mr Peter Clarke, Former Deputy Assistant Commissioner, Metropolitan Police, gave evidence.

Q435 Chair: Mr Clarke, thank you very much. My apologies to you for keeping you waiting half an hour, but you had the benefit of sitting within the Committee confines so you heard what was being said. Could you just explain to us your role in the investigation prior to the investigation that was done by Mr Yates?

Mr Clarke: Thank you, Chairman. I am delighted to have the opportunity to be here today. This is, of course, the first time that anyone, I believe, involved in the original investigation has had the opportunity to meet with the Committee, and indeed it is certainly the first time that I have had the opportunity to publicly express any of these issues.

Q436 Chair: Can I thank you for responding so readily to my invitation. Unlike other witnesses, you readily said you would come and give evidence, and I am most grateful.

Mr Clarke: I am, of course, to a large extent relying upon memory of events from five or six years ago and, of course, I did leave the police some three and a half years ago. If it would help the Committee, I could make some opening remarks to set out my role and indeed many of the issues that I know the Committee is interested to hear.

Q437 Chair: I think the Committee are appraised of this, but if you could just tell me in answer, rather than reading out a statement, what was your role and when did it begin and when did it end?

Mr Clarke: My role in this particular investigation began in December 2005 when I was the head of the Anti-Terrorist Branch of the Metropolitan Police and also carried out the role of National Co-ordinator of Terrorist Investigations, which meant that I was responsible for leading the investigation of terrorist offences in the UK and against British interests overseas. I was approached in December 2005 by the head of the Royalty Protection Department.

Q438 Chair: Who is—

Mr Clarke: Commander Peter Loughborough, and still is. He said that members of the Royal Household had expressed concerns that matters were finding their way into the press. They were trying to work out how
this had happened and one of the concerns was maybe that somehow voicemails were being accessed. Obviously to my mind that immediately posed some issues around potential security of members of the royal family. It could, for instance, be people trying to ascertain their movements and so, because of the sensitivity and the obvious national security implications, I said that my department, the Anti-Terrorist Branch, would take on this investigation.

Q439 Chair: What was your relationship at that point to Andy Hayman? Where did he fit into the overall investigation? Was it your investigation? Were you the top man?
Mr Clarke: In essence, yes. Obviously, ultimately the Commissioner is responsible for everything that happens in the Metropolitan Police.

Q440 Chair: Yes, we have heard from the previous Commissioner. Tell us about your role.
Mr Clarke: There are many layers in the police service. My role as head of the Anti-Terrorist Branch was to set the strategy for this investigation and to set its parameters. Andy Hayman was, if you like, my boss. He was the Assistant Commissioner. I was the Deputy Assistant Commissioner.

Q441 Chair: Yes. How often would you report back to him about the things that you were doing?
Mr Clarke: We would meet on a daily basis, talking about a whole range of things, most of them obviously connected to the terrorist threat and what was going on with that in the UK.

Q442 Chair: If we could leave the terrorist threat aside and concentrate on this issue, which you had conduct for. You have heard the evidence of Assistant Commissioner Yates, and you have heard the concern of this Committee, and indeed you have been reading the newspapers, I am sure. We can't understand how at some of the depths to which the media seem to have sunk in some of the activities that we have had. Is there a picture that I am part of this? I don't recall any previous reference to John Yates being hacked. Is that the first time you have heard this?
Mr Clarke: I think it is the first time I have heard it. I don't recall any previous reference to John Yates being hacked. I may have read it in the newspapers, I don't know.

Q447 Chair: Going back to the totality of it, you may not know about individual people but you had in your files a number of names. Is that right?
Mr Clarke: Not at the beginning of this investigation, no. Those names came in obviously in due course after the arrests and searches in August 2006.

Q448 Chair: But you have heard the concern of the Committee that what should have happened in that very first investigation is that all those names should have been thoroughly investigated and all circumstances should have been looked at so you were not in the position where Mr Yates had to do his review and subsequently to see this industrial scale of the number of victims of hacking. Are you amazed that all these names have come forward or not?
Mr Clarke: I am probably not amazed. I am not surprised by anything that certain parts of the media indulge in and we are learning things day by day. There is a process that I had hoped to describe in my opening statement to you that took us from the point of the original notification to me from Commander Loughborough through to the point of arrest and then subsequent action, which describes how the parameters were reached of the first investigation, which was strictly to investigate who it was who was potentially hacking into the voicemails of people in the Royal Household and how the decision was reached after the arrests not to conduct an exhaustive analysis of the huge amount of material.

Q449 Chair: That would be very helpful, but just concentrating for one moment on the evidence we have received from Mr Yates, of course he has said his review of the evidence in 2009 was poor. Do you, as a result of what you have seen in the newspapers—
Mr Clarke: I am sorry, sir, this is news to me.

Q450 Chair: No, I understand that. So you are a member of the public, you are completely shocked. Unlike Mr Yates who was absolutely shocked and in hindsight thinks his inquiry was not good, you are very satisfied with the inquiry that you conducted?
Mr Clarke: No, I didn't say that. I haven't said that at all. I think I share the shock of almost everybody at some of the depths to which the media seem to have sunk in some of the activities that we have
learned about. If we take the Milly Dowler case, for instance, I only learned about that last week. Like every decent person, I am utterly appalled by that. I hope that almost goes without saying.

Q451 Chair: Do you agree with the statement made by Mr Yates? When you tried to get information from News International, because we all understand what is in the public domain at the moment arose as a result of emails handed over from News International, were they co-operative with you when you were conducting the inquiry? Mr Yates is very clear they were not co-operative with him.

Mr Clarke: News International were not co-operative at the time. If there had been any meaningful co-operation at the time we would not be here today. It is as simple as that.

Q452 Chair: Thank you. Would you like to tell us the timeline that you were keen to share with us and then other members will ask you questions?

Mr Clarke: Do you want me to read parts of it or to try to memorise it? My only caveat is, of course, this is quite a long time ago. If I rely on memory—

Chair: It depends on how many pages you have, Mr Clarke.

Mr Clarke: If I say something that subsequently turns out to be not absolutely right and I am relying on memory, then of course I would not want to be accused of intentionally misleading this Committee.

Q453 Chair: Of course, and I wouldn’t want you to be in that position, but if you would just tell me how many pages do you have there?

Mr Clarke: Two.

Q454 Chair: Right. Read fast. Mr Clarke: I shall read very fast. I have covered already the fact that I was approached in December 2005 and began the investigation into the possible hacking in the Royal Household. Mobile phone companies were approached and as the inquiry progressed it became apparent that voicemails in the Royal Household were indeed being intercepted in a previously unknown way. Access to the voicemails was gained from the telephones of Clive Goodman, the royal editor of the News of the World, and Glenn Mulcaire, a private investigator.

Legal advice was sought from the Crown Prosecution Service in the person of the head of the Special Crime Division. So far as was known, the legislation was unstated in being applied to the kind of activity uncovered by our investigation. The advice stated that they were potentially offences under section 1 of the Regulation of Investigatory Powers Act and section 1 of the Computer Misuse Act. The latter was a summary only offence with limited powers of punishment and there were uncertainties as to how the specific requirements to prove the case might arise from the facts as presented in this case. The RIPA offence was triable on indictment with greater powers of punishment. We were advised that the offence could certainly be proved if the interception occurred before the intended recipient had accessed the message but beyond that the area was very much untested.

The parameters of the investigation, which I set with my colleagues, were very clear. They were to investigate the unauthorised interception of voicemails in the Royal Household, to prosecute those responsible if possible and to take all necessary steps to prevent this type of abuse of the telephone system in the future. The investigation would also attempt to find who else, other than Goodman and Mulcaire, was responsible for the interceptions. The reason I decided the parameters should be so tightly drawn was that a much wider investigation would inevitably take much longer to complete. This would carry, to my mind, two unacceptable risks. First, the investigation would be compromised and evidence lost and, second, that the much wider range of people, who we were learning were becoming victims of this activity, would continue to be victimised while the investigation took its course. This would probably go on for many months and to my mind this would be unacceptable.

After Goodman and Mulcaire were arrested and following consultation with the CPS, we entered into correspondence with BCL Burton Copeland Solicitors, acting for News Group Newspapers Ltd. We asked for a huge amount of material in connection with Mulcaire’s dealings with the News of the World, including details of who he reported to, whether he had worked for other editors or journalists at the News of the World, records of work provided by him, details of the telephone systems in the News of the World offices and much else besides. On 7 September 2006 a letter to Burton Copeland from the Metropolitan Police specifically stated the investigation is attempting to identify all persons that may be involved, including any fellow conspirators. We were assured by the solicitors that News Group Newspapers wished to assist our investigation, that we were in possession of all relevant documentation but that the material to which we were entitled was limited. In reality very little material was produced. Therefore, while we were able to prosecute the specific offences under investigation, we were unable to spread the inquiry further with News International because of their refusal to co-operate more broadly. I know you have heard conversations about the legal issues here. Following the arrest of Goodman and Mulcaire, a large amount of material in both paper and electronic formats was seized. I have been told that it amounted to some 11,000 pages. As News International were clearly not going to offer any co-operation, the only avenue into a wider investigation would have been through that material. We considered whether there should be an exhaustive analysis of this material and decided against it for the following reasons.

Q455 Chair: “We” being—

Mr Clarke: Me and my senior colleagues within the Anti-Terrorist Branch.

Q456 Chair: Including Mr Hayman?

Mr Clarke: The process was, I would brief Andy Hayman as to how the inquiry was going.

Q457 Chair: Who were these other people you were talking to?
Mr Clarke: Again, a hierarchical structure. I had a commander, Commander McDowell, Detective Chief Superintendent Tim White, and a range of other colleagues who were conducting the—

Q458 Chair: Okay, thank you. Proceed. Mr Clarke: First, given the wider context of counterterrorist operations against actions that posed an immediate threat to the British public, when set against the criminal course of conduct that involved gross breaches of privacy but no apparent threat of physical harm to the public, I could not justify the huge expenditure of resources this would entail over an inevitably protracted period. Instead, a team of officers were detailed to examine the documents for any further evidence and to identify potential victims where there might be security concerns. The second reason why we decided not to do a full analysis of all the material was that the original objectives of the investigation could be achieved through the following measures. First of all, the high-profile prosecution and imprisonment of a senior journalist from a national newspaper for these offences. Secondly, collaboration with the mobile phone industry to prevent such invasions of privacy in the future. Thirdly, briefings to Government, including the Home Office and Cabinet Office, designed to alert them to this activity and to ensure that national security concerns could be addressed. There was also, of course, at the time liaison with the Information Commissioner’s Office. In addition, there had been very close co-operation between my officers and the mobile phone industry throughout the investigation. After the arrests, a strategy for informing victims was put in place, which involved police officers informing certain categories of potential victim and the mobile phone companies identifying and informing others to see if they wanted to contact the police. I have since learned that this strategy did not work as intended.

Q459 Chair: Indeed, as the Committee has learned. Mr Clarke: Indeed, and as John Yates has indicated, that is a matter, of course, of profound regret. It is also, of course, utterly regrettable that as a result of the decision not to conduct a detailed analysis of all the material seized, a category of victim that I had no idea were the targets of the hackers did not receive the support that they deserved sooner. I refer there, of course, to the victims of crime. Finally, any account of the investigation would not be complete without reference to the counterterrorist context at the time. Since 2002 there had been a steady rise in the number and lethality of terrorist plots against the UK. London had, of course, been attacked twice in 2005 and this had given rise to the largest criminal investigation ever carried out in the UK. By early 2006 we were investigating the plot to blow up trans-Atlantic airliners in midflight and those responsible were arrested on 9 August 2006, the day after Goodman and Mulcaire’s arrests. The answer quite simply is no. By December we were embroiled in the Litvinenko murder in London, and a few months later the attacks in Haymarket and Glasgow. Meanwhile, we had to service all the court cases that had been coming through the process for some years that in 2007 led to the conviction of dozens of people for terrorist-related crimes. Neither would it have been feasible to ask other departments to undertake the task using their own scarce resources in a case where there had already been convictions and there was no certainty of obtaining convictions for serious offences, given the untested nature of the legislation in these circumstances.

I can no longer speak for the Metropolitan Police, of course, but I am confident in saying that I know the officers who were involved in the 2006 investigation are looking forward to the opportunity to set out in detail to the forthcoming judge-led inquiry, in a calm forensic environment, the integrity, objectivity and no little skill with which they went about their duties in 2006. I reiterate, if at any time News International had offered some meaningful co-operation instead of prevarication and what we now know to be lies we would not be here today. I hope that helps.

Q460 Chair: I am sure colleagues will have questions for you. Can I just ask, did you at any stage think of issuing a press statement or a release to the media saying that News International were not cooperating? Mr Clarke: At what stage? Chair: At any stage. Mr Clarke: Certainly I couldn’t possibly do that in advance of the court case coming to fruition in 2007. Q461 Chair: But after it was concluded? Mr Clarke: I don’t think I did, no.

Q462 Chair: The regret that you have expressed in your very helpful statement today is to whom? To whom are you regretting? Are you apologising to the victims? Are you just saying you regret that the strategy was not carried out? Who is the regret directed to? Mr Clarke: The primary focus has to be the victims of crime. It always is. In this case, because the victim strategy that we put in place in the last week of August 2006 hadn’t operated as intended, clearly there are people who have found that they have been the victims of hacking who deserved to know sooner, but obviously most importantly it is the victims of crime who have found some of the most distressing things about what has been happening to their private lives and invasion of their privacy in the past.

Q463 Chair: Thanks. Finally, for the record, you have had no hospitality given to you or any connection whatsoever with News International? Mr Clarke: No. During my time serving in the Metropolitan Police there were occasionally, organised by the Directorate of Public Affairs, meetings with the Crime Reporters Association,
which reaches right across the British media of course, print and broadcast, and there were occasions certainly on which I would meet groups of reporters, usually either perhaps one week the broadcast media, another time the broadsheet.

Q464 Chair: But not specifically private dinners with News International?
Mr Clarke: No, absolutely not.

Q465 Mr Clappison: Mr Clarke, you have been a very distinguished senior officer, particularly in the field of counterterrorism, but I have to say I find your evidence today hard to accept, particularly on what you have told us about the parameters that were set for this inquiry, which perhaps might explain one or two things. In the normal course of policing, if an offence is discovered and it is discovered that there has been further offending associated with that offence, the police normally investigate the further offending, don’t they? If, for example, you stop somebody for driving while disqualified and you find they have been committing burglaries, you would investigate the burglaries as well, wouldn’t you?

Mr Clarke: With respect, this is not about driving while disqualified or burglaries. This is an entirely different category. The only thing you could possibly align this to would be an enormous fraud where you focus the investigation at an early stage, you decide what the potential offences might be and then you focus on trying to prove those offences, and you do put parameters around investigations. It is a completely normal investigative process and in this case, if I may, the first indication was that there was something within the Royal Household and I said that is what we will investigate.

Q466 Mr Clappison: Did you suspect that there was other offending taking place in the News of the World newsroom involving other journalists?
Mr Clarke: Yes, which is why we pursued it as far as we could through the correspondence with the News of the World lawyers.

Q467 Mr Clappison: You have told us that one of the reasons why you didn’t choose to investigate further and set these parameters was that you were concerned that victims would continue to be victimised if the offences were investigated.

Mr Clarke: Yes. What I was trying to say there was that if we had tried to mount an investigation into every potential victim, which was beginning to emerge from our work with the phone companies, that could have taken months, or potentially even years, to bring it to the point where we would go to the Crown Prosecution with a file.

Q468 Mr Clappison: Do you think it is more or less likely that a victim would be victimised if the police investigate and find out who was doing the victimising?

Mr Clarke: I think, with respect, sir, you are missing the point here.

Mr Clappison: Well, I hope so.

Mr Clarke: We did not know the full scope of how many people were being victimised. It was clearly wider than just the initial parameters of the investigation. If we were to try to conduct a full investigation to find out the full breadth of this, this would take potentially months. We couldn’t possibly start going to victims in advance of an arrest phase because clearly that would become public knowledge sooner or later, particularly bearing in mind the nature of some of the victims. If we had done that and it had become public knowledge, clearly those who were responsible could well have lost or destroyed evidence. So what I am trying to say to you here is that if we had let this run on for months the completely unacceptable breach of individuals’ privacy would have continued and to my mind that was just simply not the right thing to do.

Q469 Mr Clappison: We can all have the benefit of hindsight but I think with the benefit of what has emerged since that was a catastrophic decision that you took, wasn’t it? It has allowed this network of spying and corruption to continue untouched.

Mr Clarke: I have to disagree with that because, as I said, the original objectives were to—

Q470 Chair: You disagree with Mr Clappison’s assertion that if you had done this earlier we would not have had this continuing?

Mr Clarke: I have to disagree that the web of spying and corruption has continued untouched. The evil we were trying to investigate and then to stop was the illicit access to people’s voicemails. So far as I am aware, by and large after 2006, and it may be completely since 2006 because of our work with the mobile phone companies in getting the protective security arrangements around voicemails changed, voicemail hacking no longer continues.

Q471 Chair: I have to tell you, Mr Clarke, when the mobile phone companies came to give evidence to us they were very critical of the Metropolitan Police. They were basically waiting to inform the victims and you never told them to inform the victims.

Mr Clarke: We are talking about two different things here, sir. If we are talking about the protective measures put in to try to stop the voicemail hacking then I believe that that was entirely successful.

Q472 Chair: In respect of your inquiry and to the victims of what has happened.

Mr Clarke: I have already conceded that the victim strategy did not work as intended and that is, of course, a matter of great regret.

Q473 Mr Clappison: You have told us that you decided not to undertake an exhaustive analysis of the material that was first seized in the inquiry from the limited search that took place of Mr Mulcaire. Does that mean it wasn’t read?

Mr Clarke: No. A team of officers were detailed to the limited search that took place of Mr Mulcaire. Does that mean it wasn’t read?

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obligations in terms of disclosure under the Criminal Procedure and Investigations Act are fulfilled. That is done, first by police officers and then as was done by counsel. Then third, to look for potential victims where there were national security implications.

Q474 Mr Clappison: So all the material was read?
Mr Clarke: I can’t say whether all the material was read. It was a manual search, because at that time we didn’t have the technical—I can’t be absolutely certain.

Q475 Chair: You don’t know?
Mr Clarke: I wasn’t there looking over people’s shoulders.

Q476 Mr Clappison: Did you ask people to look through all the material?
Chair: I thought you were running the inquiry.
Mr Clarke: Yes, I was running the inquiry.

Q477 Chair: The question Mr Clappison asked is surely a no-brainer. Wouldn’t you ask your team, “Have you read all the documents?” before you closed your files?
Mr Clarke: Not necessarily, no. The team was tasked to look with particular objectives in mind, not to do an exhaustive analysis of every name, phone number and so and on and so forth.

Q478 Chair: Even though some of those names were very important people?
Mr Clarke: Those people were notified, those who immediately jumped out of the page.
Chair: Mr Clappison will come back to you, unless this is the final question.

Q479 Mr Clappison: It is the question that I was putting to the previous witness that I think should really be put to you. In that study of the material, did you find the names of other people who had been the victims of hacking and other journalists who were involved in the hacking, apart from those who were subsequently on the indictment? Did they include, for example, the victims of crime, which you told us about? Did you find victims of crime had been subject to hacking, or anybody?
Mr Clarke: I was certainly not aware of any of the victims of crime that have been publicised in the last week.

Q480 Mr Clappison: Other names who had been the victims of hacking, other people, other individuals?
Mr Clarke: There were other people for whom there were indications that they probably had been. We could only tell if somebody had been the victim of hacking from the technical data from the mobile phone companies. If they told us that somebody’s voicemail had been accessed by Goodman or Mulcaire, then they were informed.

Q481 Chair: So the answer is yes, you did find other names of people?
Mr Clarke: Yes.

Q482 Bridget Phillipson: You have compared this issue to fraud. If, when dealing with a complex case such as fraud, you were faced with a business or an individual showing unwillingness to co-operate would that not make you somewhat suspicious that they perhaps had something to hide rather than to accept that you simply couldn’t pursue it any further?
Mr Clarke: I was not only suspicious, I was as certain as I could be that they had something to hide.

Q483 Bridget Phillipson: What prevented you from taking that further?
Mr Clarke: The law.

Q484 Bridget Phillipson: In what sense?
Mr Clarke: I think it has been explained many times before this Committee that there was correspondence entered into between us and News International. The letters that were sent from the Metropolitan Police were put together in consultation with the Crown Prosecution Service. The replies came back through the lawyers acting on behalf of News International and I know that the people, both from the CPS and from the Met, at the time who were looking at this were very frustrated at finding themselves in what they regarded as a legal impasse.

Q485 Bridget Phillipson: But had the material been subject to exhaustive analysis there may have been further grounds to pursue?
Mr Clarke: As I have said, given the complete lack of co-operation from News International, the only way to get into this would have been to do an exhaustive analysis of all that material. I have already explained that, because of the range of other life-threatening activity that was going on at the time in terms of terrorist offences, I took the decision that this didn’t justify it.

Q486 Bridget Phillipson: It is just disappointing that for whatever reason—I am sure you can appreciate—the unwillingness of potential criminals to co-operate with a criminal investigation meant that prosecutions didn’t happen.
Mr Clarke: I know it sounds a slightly sort of banal point; would you expect criminals to co-operate with the police? No, of course you don’t, but this is slightly different, and I don’t mean to be flippant here, from someone taking the lead off the church roof. This is a global organisation with access to the best legal advice, in my view deliberately trying to thwart a criminal investigation.

Q487 Mark Reckless: Do you believe that BCL Copeland, as well as News International, may have a case to answer in respect of what they wrote on behalf of their clients?
Mr Clarke: I couldn’t possibly say. I am sure they were acting on instructions.

Q488 Mark Reckless: Couldn’t you have looked through this 11,000 pages of material, not necessarily completely but at least enough to see if the names of any News International journalists were there, such
Chair: Who was that?
Mr Clarke: That would have been either Detective Chief Superintendent Williams or Detective Superintendent Surtees.

Michael Ellis: Would it not have disclosed further information that would have then given you legal grounds to obtain access?
Mr Clarke: I don’t know whether it would have.

Chair: You say, Mr Clarke, that the law does allow and what the law would have done because we didn’t carry out the exercise.
Mr Clarke: I made the decision and, as others have said recently, I stand by that decision not to have them reviewed at the time.

Michael Ellis: But if I may, Mr Clarke, we are dealing here with, according to the Guardian, members of the royal family, including the Prince of Wales, Prince Harry, Prince William, the Duchess of Cornwall. You were tasked with royalty protection, as far you knew it at the time of your investigation. Wouldn’t it have been an obvious thing to do to investigate the matter fully?
Mr Clarke: Sorry, you said, sir, that I was tasked with royalty protection ultimately.

Chair: Anyway, whatever your responsibility over royalty protection, did you, or did you not?
Mr Clarke: No, not in 2006.

Ellis has suggested?
Mr Clarke: I consider that the decision taken at the time was perfectly reasonable, and I had to weigh up the conflicting priorities of counterterrorism and invasion of privacy. I made the decision and, as others have said recently, I stand by that decision and people can make their judgments.

Chair: During your investigation, did you at any time speak to the DPP?
Mr Clarke: No, I didn’t.

Chair: So you had no contact with Lord Macdonald, or Sir Ken Macdonald as he then was?
Mr Clarke: No.

Chair: Who in your team sought the legal advice that was necessary for you to continue?
Mr Clarke: The legal advice was sought by the senior investigating officer, working with the head of the Special Casework Division.

Chair: Who was that?
Mr Clarke: That would have been either Detective Chief Superintendent Williams or Detective Superintendent Surtees.
Q503 Chair: Do you know for a fact that they did consult the DPP?
Mr Clarke: I know they consulted with the Crown Prosecution Service. I doubt the DPP was personally involved. I don’t know.
Chair: We have a letter from the DPP saying he had oversight of it.
Mr Clarke: In the same way that lots of people have oversight.

Q504 Dr Huppert: If I can say, Mr Clarke, I think you have been very straight with this Committee, and it is always nice to hear that. I think the error that was made was drawing the boundaries far too narrow to start with, too much of a focus on royal and high security, and I suspect you would agree that with hindsight it could have been broader. Certainly had I realised how big this was when I wrote to the Chairman of this Committee last year suggesting we look at this and we might have been able to do even more work.
Chair: And we have put on record we are very grateful you did.
Dr Huppert: Thank you, Chairman. My question is that, during 2006, the Information Commissioner laid not just one but two command papers to the House of Commons, to Parliament, what price privacy?, which I think Nicola Blackwood referred to earlier, and What price privacy now? a six-month follow-up, highlighting that, from his perspective at least, this was a major issue. In that it talks about finding that 305 journalists were identified during Operation Motorman as customers driving the illegal trade in confidential personal information. It goes on in the follow-up report—
Chair: Please don’t read it all out. Just ask your question.
Dr Huppert: I won’t. Chairman. It goes on to detail a huge range of newspapers. In fact the Daily Mail is at the top. News of the World is only fifth on the list. Did that not spark any alarms that you had evidence of trade in personal information. You knew this was a high priority for the Information Commissioner. Did that not then make you think, “Should we link these together?”
Mr Clarke: I have to confess that in 2006 I was not aware of those reports. I suppose my focus was on terrorist issues.

Q505 Dr Huppert: Should somebody else within the Met have been aware of them and put two and two together?
Mr Clarke: I think someone else probably was aware of them—
Dr Huppert: But didn’t put two and two together?
Mr Clarke: But clearly two and two were not put together, if they were there to be put together.

Q506 Mr Winnick: Was there a feeling at the most senior level of the Met, Mr Clarke, that it wouldn’t be wise to make an enemy of News International?
Mr Clarke: No, I just can’t agree with that. Mr Winnick.

Q507 Mr Winnick: Are you really saying that which you have already described as a huge global organisation, with all its media outlets and what it can do, made absolutely no difference whatsoever?
Mr Clarke: If there had been any feeling of the kind that you describe, Mr Winnick, I think it unlikely that my officers would have gone unannounced to the News International building and faced the sort of hostility and obstruction that they did when they went to conduct the search on the day of the arrests.
Chair: Sorry, could you speak up, Mr Clarke?
Mr Clarke: Yes, sorry.

Q508 Mr Winnick: But surely that hostility and obstruction, which surprises no one, even less now, if anything that would be a discouragement to probe further, knowing the dogs of war could be used without hesitation.
Mr Clarke: I understand what you are saying, Mr Winnick, but perhaps I am arrogant enough to think that I had a reputation as a fairly dogged investigator, and hostility and obstruction might make me more determined rather than less.

Q509 Mr Winnick: One more question, Mr Clarke. You said that, understandably, no criticism, you socialised, if that is the right word, with crime reporters. No one would have expected otherwise. That seems to be perfectly above board, but you didn’t have any socialising with the most senior people in News International. Would that be true of other colleagues, senior colleagues?
Mr Clarke: I can’t speak for what they did.

Q510 Mr Winnick: You weren’t aware one way or another?
Mr Clarke: No, absolutely not.

Q511 Nicola Blackwood: Mr Clarke, I think it would be helpful to understand the scale of your investigation and exactly where it ranked in your day-to-day work. Was this investigation the only investigation where there is a threat to the safety of any member of the public?
Mr Clarke: No. I think I’ve explained, under my oversight there were some 70 investigations within the Metropolitan Police Anti-Terrorist Branch and across the country as well.

Q512 Nicola Blackwood: Where would you say it ranked in terms of priority?
Mr Clarke: You can’t place a rank on it.
Nicola Blackwood: Well, just give us an assessment: bottom third, top third?
Mr Clarke: I couldn’t list. What I could say is that it certainly would not compete with any other investigation where there is a threat to the safety of the public.

Q513 Nicola Blackwood: How many officers were assigned to the investigation?
Mr Clarke: It varied according to what stage the investigation was at.
Chair: On average.
Mr Clarke: There is no such thing, I’m afraid. I am not being awkward, Mr Vaz, but there is no such thing.

Q514 Nicola Blackwood: At the beginning of the investigation?
Mr Clarke: At the beginning of the investigation, partly because of the sensitivity of it and partly because it was a very focused investigation, we kept it very tight and I would say perhaps there were 10 to a dozen. Then when it came to the arrests and searches, we borrowed officers from other parts, from Specialist Crime Directorate, and on the day of the searches and the arrests there were probably as many as 60 involved in it.

Q515 Nicola Blackwood: So about 10 to 11 officers working exclusively on the case and supplemented by additional officers at various times?
Mr Clarke: And other means of support such as analysts, intelligence officers, document readers.

Q516 Nicola Blackwood: What was the duration of that investigation from beginning to end?
Mr Clarke: The beginning would be December 2005 until the conviction of Goodman and Mulcaire, which I believe was in January 2007.

Q517 Nicola Blackwood: Do you feel that the message that you were getting from the command structure was that you should not be prioritising this investigation, particularly in the context of all the other terror-related activities you were involved in?
Mr Clarke: No, absolutely not. It was my decision.

Q518 Steve McCabe: Mr Clarke, I guess what troubles most of us is that this 11,000 pages of material now turns out to be a rich seam for any able-minded investigator. Was it the fact that your officers were asked to concentrate exclusively on looking for connections involving Goodman and Mulcaire and therefore to disregard any other connections they saw, or is there some technical way you can review the material only looking for Goodman and Mulcaire that officer going through that material couldn't have said, “Oh, there’s that name and again and again, and look it's connected to this.” I don’t understand that.

Mr Clarke: That is what was happening, and I think I am right in saying that in the initial stages about 28 people were informed that they had potentially been the victims of hacking as a result of the initial review of that. I agree, the analysis of the 11,000 pages was not comprehensive.

Chair: Yes, I think we have got that.

Q520 Steve McCabe: I am trying to figure out why that was. Were your officers supposed to disregard it when they saw someone else, or was there some process by which it was reviewed that meant they couldn’t see other people? I can’t figure out how if all these names are coming up an experienced police officer going through that material couldn’t have said, “Oh, there’s that name and again and again, and look it’s connected to this.” I don’t understand that.

Mr Clarke: That is what was happening, and I think I am right in saying that in the initial stages about 28 people were informed that they had potentially been the victims of hacking as a result of the initial review of that. I agree, the analysis of the 11,000 pages was not comprehensive.

Q521 Alun Michael: In that context, I can understand, and you made a very clear statement about, what your priorities were in terms of combating terrorism and the lower order of putting the big administrative task out. Was any consideration given to stripping out the non-terrorism-related aspects of your command and putting these sorts of responsibilities, which could be seen as a distraction in those terms, to other parts of the Met, the Specialist Crime Directorate or whatever?

Mr Clarke: I suppose you could say that this type of investigation was never core business for the Anti-Terrorist Branch. It came to us because of the national security issues at the beginning.

Q522 Alun Michael: That is rather my point.

Mr Clarke: Having got to that point, forgive me, is the point then that could I have tried to pass the investigation to somebody else? I think the realistic point—and I certainly thought about this at the time and it is reflected in the decision logs from the time—is that for the previous two years I had already been stripping out other parts of the Metropolitan Police to support the Anti-Terrorist Branch in a whole series of anti-terrorist operations. A lot of other serious crime that had gone uninvestigated to the extent it should have done because of the demands I was placing on them. I took the view that it would be completely unrealistic, given that we were heading towards a prosecution of Goodman and Mulcaire, to then go to another department and say, “We’ve got a prosecution running. We have a huge amount of material here that needs analysing. We don’t know, given the uncertainties of the legal advice, whether there will be further offences coming from this or not. Would you like to devote 50, 60, 70 officers for a protracted period to do this?” I took the judgment that that would be an unreasonable request and so I didn’t make it.
Mr Clarke: I don’t honestly see where I could have shifted it to. It would have been more a case of trying to invite people. I think, to lend me more officers and, to be frank, I think I had tried their patience quite sufficiently over the past years. I don’t mean it to sound trite but it would have been a very difficult request to have made to colleagues.

Q523 Alun Michael: But it wasn’t pushed up the tree as a responsibility?

Mr Clarke: To be honest, there wasn’t much of a tree to push up above me. I know this is something I discussed not only with my own colleagues in the Anti-Terrorist Branch but of course with Andy Hayman as well.

Q524 Chair: Mr Clarke, you have been very helpful to the Committee in giving evidence today but, although we accept the integrity of the way in which you presented your evidence, we remain puzzled that at the time of the investigation this information was not properly analysed, for whatever reasons, whether it is resources or judgments that you made. You came right at the start with your regret that certain things were not done. Could you remind the Committee, because you seem to be quite defensive of what you have done in saying that you have done the best you can, what was the reason for your regret that you mentioned in your original statement?

Mr Clarke: The regret is quite simply that people who have suffered enough already through being the victims of crime now find that because of the activities of basically the News of the World—and maybe others, who knows—their suffering has been increased.

Q525 Chair: As a result of something you didn’t do?

Mr Clarke: As a result, partly, of the fact that the victim strategy, which we set in place in August 2006, appears not to have worked as we had intended.

Q526 Chair: Had that worked you would have been very satisfied with your inquiry?

Mr Clarke: I would have been satisfied with the inquiry that we conducted. Obviously, as a former investigator I can’t be happy that there is material in our possession that subsequently turned out to contain important information, but I come back to the point if only News International had seen fit to co-operate at any early stage.

Chair: Yes, we have got that message. Thank you very much for coming, Mr Clarke. We are most grateful. Could we call our next witness, Andy Hayman? You are welcome to stay if you wish, Mr Clarke.

Examination of Witness

Witness: Mr Andy Hayman, Former Assistant Commissioner, Metropolitan Police, gave evidence.

Q527 Chair: Mr Hayman, can I start with an apology from me for keeping you waiting so long. As you see, these are very complicated and detailed matters. We are extremely grateful. I wrote to you on 21 June asking you a series of questions about your involvement in this matter. You have not replied to this letter so I will take this evidence as being your reply. We hope to cover some of the points that I put in that letter.

Mr Hayman: Can I just clarify that?

Chair: Yes.

Mr Hayman: Having got that letter, it gives the impression that I have just completely blanked it. That is not the case. I have spoken to your office and asked for some steers on that. I have copies of emails where I needed to contact the Met to get information to answer those questions, and of course we spoke on the phone only two weeks ago to clarify that. The last thing I asked you was whether you are happy that we haven’t corresponded and this would be evidence-in-chief, and you were content with that.

Q528 Chair: Yes. That is exactly what I said, in a shorter version.

Mr Hayman: I just wanted to clarify that.

Chair: We have accepted that, so we will cover the points in the letter. But could I start, because I know members of the Committee will ask this and I will just start to clear it out of the way, if I may, with your relationship with News International? It is no surprise that the Committee will want to ask you that question. When did you start your negotiations with News International that you would write a column and become an employee of them?

Mr Hayman: I retired in 2008 and I was approached by several newspapers to write, and that is something I have always wanted to do. It is a sort of boyhood aspiration. It was a choice of being a journalist or being a cop. It has turned out that both of them were probably funny choices. Having then considered approaches by several newspapers, I chose to go with The Times and I believe the final agreement was around—I retired on paper in April 2008 and I think I agreed in July 2008, so a couple of months after.

Q529 Chair: So two months after you retired. Did it not occur to you, were there no alarm bells ringing, to remind you that you had been investigating News International, albeit in an oversight role? We have heard the various roles that you had, that you knew exactly what was happening with regard to the investigation, you knew that there were items that had not been properly looked into. Did it not occur to you that this is perhaps not the best decision of your life in that you should go to the very people that you were investigating, especially as we have now heard from both Assistant Commissioner Yates and Peter Clarke that they were most unco-operative in respect of the investigation that was being conducted?

Mr Hayman: Yes, okay, Chairman. The Times, okay, it is part of News International. I knew no one at The Times at an editorial level. They had slaughtered me on their front page shortly before the Queen’s birthday honours list, so there was no love lost there at all. The
Chair: The Director of Communications for the Met. They were businesslike, no more than that.¹

Q535 Chair: Yes, but at any of those dinners, which you did regularly with them, did you raise the concerns that Mr Clarke has raised with the Committee today that they were being totally unco-operative with the very investigation that you had oversight of? Did you ever say to them, "Hang on, friends."

Mr Hayman: Well, colleagues, not friends.

Chair: Or colleagues. Between the starter and the main course, "Why are you not co-operating with Peter Clarke?"

Mr Hayman: I would have to check the dates of these, but one other thing, of course, is that if we had had regular contact, and we did, and to be honest with you, News International when we had the bombings were very co-operative and helped us, certainly around 21/7 and the images that were plastered across the front pages, and it helped us catch the culprits. It would be more suspicious if you cancelled contact and kept them at arm’s length, having had a relationship—not only them but other people as well—in which you were trying to engender good work relationships and support. So it was quite strange, because I would have been aware that they were being investigated. They had not shown, to my knowledge, any obstruction at all, and it was like either side of the table, "I know something you don't know and I'm not going to tell you."

Q536 Chair: So you do not accept what Mr Clarke has just said.

Mr Hayman: Sorry?

Chair: You do not accept that there was obstruction.

Mr Hayman: What I am saying is the timing. I am aware there was obstruction. My recollection, Chairman, is that—once of the meals, I am sure, was when it all going on and the bizarre—and it is professional, isn’t it? I am sitting one side of the table, "I know something you don’t know and I ain’t going to tell you" and I did not even know when the door went in on the News of the World so therefore I think, as Peter has already said, it was important for the integrity of the investigation he kept everything very tight.

¹ The witness later stated that, I do recall having a discussion about dining with a colleague who I thought was the Director of Communications who had accompanied me on the dinner. I understand he cannot recall any such conversation. What is not in dispute is that we both went to the dinner. Any confusion on who I discussed that with is not me trying to mislead the committee I was simply wrong in my recollection. So, in summary for the record I can't accurately recall who I discussed the issue with and in any event the decision to attend was mine.
Q537 Chair: Just to clear up the last issue, which is in the New York Times today, allegations that there was some kind of deal done because of your personal life, which is a matter of public record, why you resigned and so on, and that they basically would not attack you if you supported them in this investigation. Would you like to, on the record, clear this up?

Mr Hayman: These are all terribly grubby suggestions, and one has to say two things really. Firstly, in that article it suggested that my phone was hacked. That is news to me, and if they did hack it, all they would hear about is the shopping list and golf tee-off time. There was nothing more suspicious than that. The second point is—

Q538 Chair: So was your phone hacked or not?

Mr Hayman: I don’t have a clue.

Q539 Chair: Nobody has told you?

Mr Hayman: No, I don’t have a clue.

Q540 Chair: But you are on the list.

Mr Hayman: Am I?

Chair: Apparently.

Mr Hayman: I don’t know. I really don’t know, and if I am, so be it, because I have nothing to hide at all. As I say, the shopping list will be on there and golf tee-off time. On the second point around the motives and all that kind of deals in the background, we have already heard—even if I had a motive that was unethical, and I didn’t—how could I have ever stopped a line of investigation or driven one in any way, shape or form? I didn’t, I couldn’t. Peter would never let me, and if I had ever done that Peter or the SI0 would have been all over me like a rash saying, “What the hell are you doing?”

Q541 Chair: But all of this sounds more like Clouseau rather than Columbo.

Mr Hayman: I have to say—

Chair: You are having dinner with people you are investigating, you don’t know they are being investigated and you sign deals two months—

Mr Hayman: I know they are investigated, of course I do.

Q542 Chair: You don’t know they are being obstructive, because Peter did not tell you.

Mr Hayman: No, because I made the point, Chairman, going back to it, I don’t know the timeline. If those dinners went on after intervention being made, then fine, but my recollection is those dinners happened before the arrest occurred, and that is an important point to make.

Q543 Mark Reckless: Mr Hayman, setting aside the dinners, both you as the officer in charge and the then DPP, who we are told was consulted about the legal advice that apparently limited the scope of the investigation, are now working for News International. Have you any idea as to how that looks to the public?

Mr Hayman: It could look bad if there was some—Nicola Blackwood: It does look bad.

Mr Hayman: Does it?

Chair: We all think it looks bad.

Mr Hayman: All right, I will take that on the chin. What I am saying is that if there was something behind that could be evidence that as a result of that relationship things have been done unethically, then I will put my hands up. But you know what, I cannot think of anything, anything, in the background where the line has been crossed or I have done anything wrong as a result of being employed by The Times. If I go back in time, if I had jumped to another publication we probably would not all be here now. I jumped the other way and that is where we are.

Q544 Dr Huppert: I have to say some of your comments so far have been quite incredible. We have been trying to understand why, and Mr Clarke gave us very clear evidence that the scope of the initial investigation was simply too narrow, the decision was made, which I think we all think was incorrect, to make it very narrow. You were reporting to him and we are trying to understand why—

Mr Hayman: Reporting to who?

Dr Huppert: Sorry, he was reporting to you. What we are trying to understand is why there was not pressure to look at it broader, why nobody thought to look out, why in a higher role you did not suggest anything? We are trying to understand why this odd decision was made. We then find that you are a cop who wanted to be a journalist, you were having—

Mr Hayman: Absolutely, yes.

Dr Huppert:—regular interactions, you might be interested in the idea of having those connections. You clearly wanted to be a journalist for a long time, whether that was ever floated—do you understand why everybody is so concerned that somewhere along the line somebody failed to think, “This should be looked at a bit broader” and one of the people that could be then seems to have all these other connections?

Mr Hayman: Well, okay, but don’t beat me up for being upfront with you and honest. I am saying to you exactly what my aspirations have been and, therefore, when I retired I saw that as an opportunity for a second career. There is nothing more untoward than that. In terms of the decisions that were made by the investigation, you have heard from Peter as to what decisions he made and, because I was the boss of the Special Operations—although not involved on a day to day basis in understanding the decisions that were made in the decision log—I believe the responsibility and accountability stops at my door. Therefore I have always said, “What do you understand by ‘lead the investigation?’” Peter has been very clear about what, on a day to day basis, he was investigating. My command, along with lots of other things that were going on at the same time, were involving whatever investigations—

Chair: We know about the—

Mr Hayman: Right, and so I led that team, that is all.

Q545 Dr Huppert: In terms of the gratuity, as I understand it, the rules are very that any sort of gratuity, any meal, any drink, has to be recorded?

Mr Hayman: Sure, and it was, yes.
Q546 Dr Huppert: Every single interaction you had with any journalist was absolutely recorded?
Mr Hayman: Absolutely, yes.

Q547 Dr Huppert: We will find when that is exposed— it is kept for 10 years—that on no occasion whatsoever were you alone with these journalists?
Mr Hayman: Not to my knowledge, no.

Q548 Michael Ellis: Mr Hayman, you were having dinners with journalists. That in and of itself is not necessarily improper but you were having dinner with journalists, were you not, while they were being investigated by Scotland Yard? That is improper, is it not?
Mr Hayman: Put yourself in my shoes then, and we have to go back and see what the timeline was and what would happen when. I can’t remember that.

Q549 Chair: You cannot remember whether you had dinner with—
Mr Hayman: No, I can remember that. I can remember that.
Chair: Then the answer must be yes.
Mr Hayman: No, hang on, hang on, Chairman. I can’t remember the timing of when those dinners happened in relation to what was going on in that investigation, but I absolutely agree with what you are saying. I am sure there was an occasion when they were being investigated that may have happened. Now, the judgment is, firstly, there is no way that I am ever, ever going to disclose anything to anyone about what is going on.

Q550 Michael Ellis: Forgive me, Mr Hayman, you say that you would never disclose it—
Mr Hayman: No.
Michael Ellis— but you have made a judgment call to accept hospitality from people who you are investigating for criminal offences. That is correct, isn’t it?
Mr Hayman: Yes.

Q551 Michael Ellis: So you think that is an appropriate course of action to have taken?
Mr Hayman: Well, if you let me finish. The judgment, the alternative judgment, is to say, “No, let’s not do that,” and make some excuses. I discussed that with a senior colleague who was there at the time.
Chair: Which senior colleague?
Mr Hayman: This was the Director of Communications.

Q552 Chair: Who is this person? What is his name?
Mr Hayman: Hang on, it’s gone from me.
Chair: You have forgotten his name?
Mr Hayman: Dick Fedorcio.
Chair: Sorry, who?
Mr Hayman: Dick Fedorcio. Not to have that dinner, I think, would have been potentially more suspicious than to have it, and the most—

Q553 Chair: Suspicious?
Mr Hayman: I don’t know why you are laughing.

Chair: Because we are astonished, Mr Hayman, at the way in which you are answering these questions.
Mr Hayman: Well, I am sorry. I am very sorry but I am trying to be— I am trying to share with you the thinking at the time, and all I am sure I can say to you is this, that we never ever had a conversation that would have compromised an investigation.

Q554 Michael Ellis: Mr Hayman, you could also, can you not, during the course of a dinner discuss police tactics in general?
Mr Hayman: No. No.

Q555 Michael Ellis: It is possible for you to do that, though, isn’t it?
Mr Hayman: Not at all.

Q556 Michael Ellis: You are aware of police—
Mr Hayman: Absolutely not.
Michael Ellis: Of course it is possible, because you are aware of police tactics.
Mr Hayman: No, absolutely not, it is not possible at all, because you would be—
Michael Ellis: You are not aware of police tactics?
Mr Hayman: That is not what I said. All I am saying is there is absolutely no way that is the purpose of that meeting. There would be no way we would go into the operational stuff, that is just ridiculous.

Q557 Mr Winnick: The last witness, Mr Clarke, said that when he was looking into phone hacking matters the attitude of News International was hostile. Won’t people wonder, when you were in charge of the inquiry in 2006–07—
Mr Hayman: In charge of what inquiry, Mr Winnick?
Mr Winnick: The phone hacking inquiry.
Mr Hayman: What do you mean by “in charge’?
Chair: Well, you had oversight.
Mr Hayman: Oversight.

Q558 Mr Winnick: Oversight. I don’t know why you are splitting—
Mr Hayman: I am not splitting hairs, I am just making sure that I can understand—
Mr Winnick: Let’s get it quite clear, you were in overall charge of the inquiry into the News of the World phone hacking affair 2006–07. You are not disputing that?
Mr Hayman: Yes, it was in my command.

Q559 Mr Winnick: You are not disputing that?
Mr Hayman: No.
Mr Winnick: No, good, that is clear. But won’t people say, a general sort of public attitude, that if News International was so hostile originally, what sort of inquiry could you have undertaken overall responsibility for, when they offered you a job a year later, afterwards?
Mr Hayman: It was about two years later, and I must admit, weighing it up, they were a different part of the stable. The Times, as far as I was concerned, that wasn’t— it was part of News International as a big outfit, of course, but it was not the News of the World.
Q560 Mr Winnick: It was one organisation, and I don’t think that is in any way disputed. I must put it to you, Mr Hayman, that many people must come to the conclusion that your inquiry, for which you had overall responsibility, was not strong in any way, was not meant to be strong, and in fact you should apologise for what occurred.

Mr Hayman: I think you have heard from Peter that this was not the Sunday football team turning out in the Premiership, this was the best team that I ever had. Peter Clarke, his reputation as an investigator is tenacious, he got on with it, he kept his cards very close to his chest because he didn’t want any compromise, and his team below him, they imprisoned many terrible, dangerous men. You would always want him on your team sheet, you would not want him on the subs bench. So I am not quite sure who else I could have gone to. They performed, I believe, to the best of their ability.

Q561 Mr Winnick: You think it was adequate?

Mr Hayman: Well, you can make your own judgments on that. I believe they worked as hard as they could.

Mr Winnick: We have made our own judgment.

Mr Hayman: I know you have.

Q562 Nicola Blackwood: I feel a little bit like I have fallen through the rabbit hole, I have to say. Mr Hayman, you have said, and you are quoted in the Evening Standard saying that in the original investigation no stone was left unturned. Something that this Committee is rather unsure about is exactly why was there a decision not to have an exhaustive investigation no stone was left unturned. Something that this Committee is rather unsure about is exactly why there was a decision not to have an exhaustive analysis of the 11,000 documents, which were in the possession of the police from 2006.

Mr Hayman: Yes, sure.

Nicola Blackwood: And why there was no assessment of any additional victims who might have been identified within that, or additional perpetrators.

Mr Hayman: Yes.

Nicola Blackwood: Can you explain to the Committee your role in that decision and your assessment of that role?

Mr Hayman: Well, I sat at the back and I have to say, Mr Clarke? That is the point.

Q563 Chair: Did you ever discuss that decision with Mr Clarke? That is the point.

Mr Hayman: No, it wasn’t raised at all.

Q564 Chair: He made the decision himself without discussing it—

Mr Hayman: He has said that, hasn’t he, yes.

Q565 Nicola Blackwood: But he came to have meetings with you, at which point he would have discussed his portfolio of investigations, I assume, and would have discussed whether he was going to continue with this investigation or not at some point. You have no recollection of discussing the implications of widespread phone hacking within the media?

Mr Hayman: Yes, you are absolutely right, he would come to me on a regular basis and we would talk in very general terms about it. I think the structure—what was it, 7/7, Litvinenko, or anything like that—is that the SIO would be working very closely with the CPS, who obviously said the direction of the legal advice that was there, and so on the basis of his briefings there, yes, I would take his judgments and his decisions he made, and I have to say, having seen him give evidence here, he stood up and explained exactly what his thinking was, and—

Q566 Chair: What about your thinking? He met you on a daily basis, he said.

Mr Hayman: I guess so, yes.

Q567 Chair: You cannot remember meeting him daily?

Mr Hayman: Well, okay, yes, daily.

Q568 Nicola Blackwood: But you were aware he was conducting this investigation?

Mr Hayman: Of course, yes.

Q569 Nicola Blackwood: And you had no thinking about the priority level that should be assigned to this investigation?

Mr Hayman: Well, he would come to me with what he saw as the priority and the resources that were available, and without going back to what the decision log says, I would endorse it, yes.

Q570 Nicola Blackwood: But you had no thoughts of your own?

Mr Hayman: I can’t go back to what the discussions were at the time but the fact that we are where we are now, I would have endorsed what he said.

Chair: We need to hurry, colleagues, we have one final witness.

Q571 Steve McCabe: Two quick points. Firstly, why do you think further investigations into this affair could be a waste of public money?

Mr Hayman: Sorry, can you repeat that?

Steve McCabe: I was just looking at your quote. You said that you don’t believe, “that a judicial review will reveal anything more than has already been reviewed by my successor, the CPS and other bodies. It could actually end up being a waste of public money.” Is that still your view?

Mr Hayman: When did I say that?

Chair: When did he say it?

Steve McCabe: I am afraid I don’t have the date here but it’s a pretty—

Mr Hayman: I will be honest with you, if that is the case—

Q572 Steve McCabe: Well, let me ask you now, do you think it is a good idea to have the most detailed investigation of this matter now?
Mr Hayman: I will tell you what, when you look back now, what we know now, this is a horror story. This is absolutely awful. The people that are now going through the pain the second time around as victims, just appalling. The one thing I think publicly has been announced recently that Peter has already said, and I am up for this, is that we must— we must— have a judge-led public inquiry.

Q573 Steve McCabe: Fine, but you don’t recall that quote?
Mr Hayman: No.

Q574 Steve McCabe: Answer me one other question, why did you set out to ridicule Lord Prescott when he persisted with his allegations about phone hacking?
Chair: We do have a date for this.
Mr Hayman: Yes, I remember doing it. No, I remember.
Steve McCabe: I think we have got quite a number—
Mr Hayman: No, no, I remember it. I remember it.

Q575 Chair: Do you remember what you said? You said he was ranting. You said, “There is absolutely no evidence from that initial investigation of his phone being hacked.” You don’t believe a judicial review will reveal anything more. Do you regret saying that?
Mr Hayman: Well, the terms of it were pretty poor.

Q576 Chair: So you owe Lord Prescott an apology?
Mr Hayman: Yes, of course I do.

Q577 Steve McCabe: You said, “If I am proved to be wrong I will eat my words and face the music.”
Mr Hayman: Yes, well I think I am doing that now.
Chair: Shall we pass you a piece of paper? Thank you.

Q578 Lorraine Fullbrook: Mr Hayman, do you not understand that the public will just see you as a dodgy geezer who was in charge of a phone hacking inquiry conducted by the News of the World, who resigned from the force among allegations of expenses claims and allegations of improper conduct with two females, who has told this Committee today that you had no knowledge of editors or sub-editors of The Times while cosying up to the executive levels of News International, and amazingly received an award for this investigation?
Mr Hayman: Not for this investigation, no.
Chair: No, we would not have expected you to receive an award for this. A part from that last bit, can you answer Mrs Fullbrook?
Lorraine Fullbrook: But this is a disaster, this inquiry, an absolute disaster under your direction.
Mr Hayman: It is under my watch, it is in my command, absolutely.

Q579 Chair: Absolutely it was a disaster?
Mr Hayman: At the time, and I think Peter has made this point, everything possible that they were able to do given the resources and the parameters they set was done. I stand by that, and Peter has as well.

Q580 Chair: But now?
Mr Hayman: Well, what it looks like now, it looks very lame, and I think what has happened is that we have had more time to do it, more revelations have come out, the News of World have given us some material that we didn’t have at the time. Peter has gone through the detail of the correspondence he had and he decided— you know, he was frustrated at that correspondence, so that is where we are.

Q581 Lorraine Fullbrook: So it is a disaster?
Mr Hayman: No, it is not a disaster when two people plead guilty and went to prison.

Q582 Lorraine Fullbrook: You do not think this is a disaster, when 11,000 pages of material was cursorily scanned, and nothing came from it? That eight hours of investigation was given to this review, you do not think that is a disaster?
Mr Hayman: How do you mean eight hours of investigation?
Chair: The Yates review.
Mr Hayman: I don’t know about that.

Q583 Chair: You have never heard of the Yates review?
Mr Hayman: Of course I have, but it is not for me to comment on that.
Chair: No, but Mrs Fullbrook was trying to put it all in a round—
Mr Hayman: I think, given the parameters that were set and the reading that was done of the material, at that time it was proportionate and within those parameters that were set.

Q584 Chair: But now do you think you have reason to apologise?
Mr Hayman: Well, apologise— I want to be sure that when I stand there I am apologising for either something that I have done wrong—
Chair: On your watch.
Mr Hayman: Something that I am personally accountable for, or someone in my team has done. I want to know what it is that people have done wrong for us to apologise.

Q585 Mr Clappison: I am afraid I have one or two questions arising from what you have just said and from what we know about this. You have just said, and Mr Clarke said earlier, that you were under resource constraints, that you had other distractions at the time, and that you set yourself parameters for this. Can I ask you then about your new career as a journalist, because you have chosen to write about this for your new employer, News International, in an article that appeared in July 2009 under the heading— when your recollection was apparently better than it is now— “News of the World investigation was no half-hearted affair”. You wrote: “In the original inquiry my heart sank when I was told the accusations came from the Palace. This was not the time for a half-hearted investigation. We put our best detectives on the case and left no stone unturned as officials breathed down our necks. The Guardian has said” this was subsequently in 2009 “that it understands that the
police files show that between 2,000 and 3,000 individuals had their mobile phones hacked into, far more than was ever officially admitted during the investigation and prosecution of Clive Goodman, yet my recollection is different. As I recall the list of those targeted, which was put together from records kept by Glen Mulcaire, ran to several hundred names, of these a small number, perhaps a handful, where there is evidence that the phones had actually been tampered with. Had there been evidence of tampering in the other cases that would have been investigated as would the slightest hint that others were involved.\textsuperscript{12} *Mr Clappison:* Would you say that that article could stand some correction in the light of what we have seen in the last couple of weeks? *Mr Hayman:* When it was written it was on the basis—I think it was Commander John McDowell, he came into my office and came to me with a number of foolscap pages—I think A 4 or foolscap—and I think it was something in the region of eight or nine, and my recollection was that over his briefing to me there were handwritten groups of names. There was ostensibly a contact list, which, in itself, you wouldn't expect from anyone, it is like an address book of numbers of people. I believe that the second column or list was a shorter number where I think—my recollection was that they might have been PIN numbers that were known. My understanding is on the legal advice—there was a third category of people where I think they had technologically proved that they had used the PIN number and the telephone number to access the voicemail. So my understanding at that time of writing was that we had gone from a long list of contact numbers down into a list of people, of which some had PIN numbers, and there was a list that had been accessed and hacked. *Q586 Mr Clappison:* Could we just come to this a bit shorter, because that was what was written in 2009, and I want to ask you about what you knew at the time or had been told? *Mr Hayman:* That is what I knew. *Q587 Mr Clappison:* At the time were you told the name of other individuals who had been hacked into, related to the material that had been obtained from Glen Mulcaire and all the files? *Mr Hayman:* No. *Q588 Mr Clappison:* You were not given the names of any other individuals? *Mr Hayman:* No. *Q589 Mr Clappison:* To your knowledge there are no other names of individuals in the documents as people who have been effected? *Mr Hayman:* The only names—I can only remember a handful of names of people, and the briefing I was getting, was that there were numbers of people who were prosecutable and the CPS said were able to get...
you, but you have to then be able to show that someone can turn a motive into an outcome and has got the ability to do that.

Q596 Dr Huppert: So we have to show that somebody could get a well-paid job with News International? What is the opportunity we are looking for?
Mr Hayman: No, no, what I thought I got from your questions was that for all those motives you described there, what could I have done on a daily basis to either interfere or stop or influence, and I couldn’t. I had no ability to do it whatsoever. You have heard that from Peter.
Chair: Thank you, we have some very quick final points. Please make them very quick.

Q597 Nicola Blackwood: Mr Hayman, I am very conscious that this session will be watched by victims of hacking and I am also conscious that much of the evidence that you have given would sound more familiar coming from the mouth of a tabloid journalist than from a senior police officer. I wonder if you would accept the fact that the original police investigation failed those victims, and whether you would have something you would like to say to those victims now?
Mr Hayman: Peter and I would join—you have heard from Peter, and I would say that of course—you know, I have said already in evidence that it is absolutely appalling that victims of crime have then gone through that terrible experience, and then this, where we find ourselves now today, having all this pored over in their private lives. That is absolutely appalling. So that is a matter of absolute regret. Absolutely.

Q598 Nicola Blackwood: Would you like to take this opportunity to apologise to them now?
Mr Hayman: I think I just have. I do apologise, yes.

Q599 Lorraine Fullbrook: Mr Hayman, while a police officer did you receive payment from any news organisation?
Mr Hayman: Good God, absolutely not. I cannot believe you suggested that.
Dr Huppert: Lots of people did.
Mr Hayman: Hang on, I am not letting you get away with that. Absolutely no way. I can say to you—Chair: Mr H Hayman. Order.

Examination of Witness

Witness: Deputy Assistant Commissioner Sue Akers, QPM, Head of Operation Weeting, Metropolitan Police, gave evidence.

Q600 Chair: Order, order. Members of this Committee are allowed to ask any questions they wish. It is a fair question to put, because it is in the public domain at the moment about other police officers. She has put her question, you have given an answer. The answer is an unequivocal no.
Mr Hayman: Absolutely.
Chair: Thank you.

Q601 Mark Reckless: Mr Hayman, how many officers and staff did you have on this 2006 investigation?
Mr Hayman: I am going to have to rely on what Peter described.

Q602 Mark Reckless: How many was it? If necessary we can refer to Mr Clarke to answer that—Mr Hayman: Yes, I cannot remember what Peter said.
Mark Reckless:—because I think the Committee needs the answer to that.
Mr Hayman: Yes, whatever Peter said is what we had.

Q603 Chair: Mr Hayman, I normally sum up people’s evidence, but on this occasion I think your evidence speaks for itself. Thank you very much for coming.
Mr Hayman: Thank you very much. Pleasure. Thank you.
Chair: Can we have our final witness, the head of Operation Weeting, Sue Akers.
quoting as something that Operation Weeting has provided to the Guardian. Can I just set the record straight? I have seen, I think, the document that you are referring to that is on their website. I have only seen that because it was alerted to me by somebody that complained that we had leaked information that they did not want to be in the public domain. Since looking at that, I have now established that it is the work of a journalist who is putting matters together, some of which are because people have gone on public record as saying they are victims, some of which is just pure investigative journalism, some may be because matters have been leaked to them, but that document is a compilation of those various things and does not come from us and therefore it contains inaccuracy and I do not want you to rely on that.

**Q605 Chair:** That is extremely helpful, thank you. It is very kind of you to tell the Committee that, and we are most grateful. Going on to your current inquiry, please tell us why this inquiry was set up?

**DAC Akers:** I have to say I think the catalyst was the civil actions brought by various members. As a result of those civil actions brought by individuals there was a vast amount of disclosure that was requested from News International. In doing their trawl in connection with that disclosure to the civil actions they came across the three emails, and that is in the public domain, that were then passed to us in January where it showed that there was another member of their organisation that was under suspicion. That was the catalyst then for the new inquiry to be started in the Specialist Crime Directorate, which is where I am, and we set up an inquiry consisting of experienced detectives and people experienced in documentation and administration in association with a major inquiry.

**Q606 Chair:** Indeed. How many full-time officers do you have working on this?

**DAC Akers:** I think we have said 45, and I regularly review the resources and I will flex those, if we need more for an operational reason then I am happy to enlarge them. Equally, if we find that we do not need as many as that then I will be returning them to other parts of the organisation.

**Q607 Chair:** I am not sure whether you were present during the previous evidence session or whether you have just come in.

**DAC Akers:** I have been. No, I have heard it all.

**Chair:** We are not going to go back over everything that has happened but I think one of the concerns of this Committee is the documents that were originally seen by the first inquiry, reviewed by M R Yates, which you now have in your possession I assume. Do you have the documents in the bin bags, if I can call them that?

**DAC Akers:** We have all the original material that was gathered in the 2005-06 investigation known as Operation Caryatid plus additional material that we have gathered since we started our operation at the end of January.

**Q608 Chair:** You are reviewing that evidence and investigating it in a thorough and complete way?

**DAC Akers:** Yes. Would it be helpful if I kind of enlarge on our approach to the victim strategy?

**Chair:** Please, that would be very helpful.

**DAC Akers:** Obviously we thought very long and hard about this because you have heard of the difficulties that you get into when you are trying to use the criminal law to define what is a victim. I took a very pragmatic approach, which was to say that regardless of whether the criminal law said they were or they were not, there were a vast number of people who feel they have had their privacy invaded and have been violated. Intuitively it just seemed the right thing to treat them in exactly the same way as you would do somebody who strictly meets the criteria of a victim in accordance with the law. So, in other words, there are people who have had their messages listened to, that have been left. Under RIPA, that would not constitute an offence against them, it would constitute an offence against the person whose phone the message was left on, but the person whose messages they are feels equally violated.

So we have taken a very broad approach, we have also given a commitment that we get this and we identify the various people that are named in the material we will inform them that they are contained within that material. There are nearly, I think, 4,000 names, first names and second names, in the original Mulcaire documentation. We have undertaken to go and visit each one of these people and as we do that and we work our way through that, on the pages that they are shown, we are showing them the material because they can help with our investigation because they can make sense of numbers and connections that we can’t. As we show them that there are a range then of other people or numbers. They in turn belong to people who we have also said we will go and see.

**Q609 Chair:** Thank you for that. One of the issues that is of concern to this Committee, we took evidence from the mobile phone companies, and between them they had 120 victims on their books and they were waiting for communication from the Metropolitan Police as to what they should do. Should they inform their customers that they have been hacked or should they wait until you do so? Do you have a view as to what should happen?

**DAC Akers:** Yes, I will tell you what is happening. The mobile phone companies are helping us compile as comprehensive a list as we can of the victims. They all collect their data in different ways so one company only will have names, the others just have a vast number of telephone numbers. Between us—that is, our team and the mobile phone companies—we are coming to a definitive list so that we can go to them. So I think you may, Chair, have been under the impression that these lists were in existence. They weren’t, they are not in an easy format, but we are working, and we are nearly at the point where we will have compiled them. When we have done that, it is us and not the mobile telephone companies who are taking responsibility to get around to see all those people.

**Q610 Chair:** The names that are coming out into the public domain, for example a former Prime Minister’s
name was mentioned, also the fact that a number of Royal Protection officers may have indeed sold stories to journalists. Is that under your purview as well?

DAC Akers: All the victims that are in the 2005–06 investigation and any subsequent additions to that will be under my purview.

Q611 Chair: Mr Brown, for example, said he went to the police previously to ask whether he had been hacked, and nobody replied. When people think they are being hacked they write to you, do they, and you then say yes or no?

DAC Akers: They do. When we took over the job our legal department still had quite a lot of letters that they were still in the process of answering where people had made that inquiry. That was part of our prioritisation exercise really to get through and reply to people who had asked. Since the huge coverage in the media and since journalists have been calling potential victims we have now had, since last weekend, I think something in the region of about 500 people who have written to us asking if they were—

Q612 Chair: Can I finally just clarify the issue of resources, because we were concerned—and we have heard from Mr Clarke and others—about the issue of resources. Do you have all the resources that you need in order to do this work? Because we had the Commissioner before us last week and I did ask him about the amount of resources going into this and he would obviously prefer all these senior officers to be trying to catch burglars and others, I think he said. But you have the resources you need? You have no problem if you need more resources to get this matter complete once and for all?

DAC Akers: I think I do. It is something I keep constantly under review and, as I said earlier, I can get more resources if necessary. Similarly, if it looks like there are other priorities that need resourcing and our investigation does not require it, I can return people to those other duties. So it is constantly under review. In an organisation of 50,000 plus people I can reassure you that 45 people dealing with Operation Weeting is not going to derail us from dealing with all our other victims as well.

Chair: Sorry, you need to just speak up a little bit more because the acoustics are not very good.

Q613 Alun Michael: The issue of whether payments are being made to police officers by a newspaper or newspapers has been referred to the Independent Police Complaints Commission by the Metropolitan Commissioner, as we understood it, last week so that they will decide how those allegations should be investigated.

DAC Akers: Can I stop you there, because that is not quite as it happened. On 20 June we were alerted to the fact that there were allegations of payments being made to police officers that would require investigation. Some documentation was handed over by News International. Early in the morning on 22 June we had a follow up meeting where further documentation was released and as a consequence of that I and a colleague had a meeting with IPCC to tell them what we had and it was agreed at that stage that we would continue to scope and that is what we did. There came a point, I think, on 7 July when the Commissioner is talking about, when we made a formal referral to the IPCC and that now is under the personal supervision of the Deputy Chair Deborah Glass who is taking it as a supervised investigation. That means that direction and control remains with me but I keep her fully apprised of what is happening.

Q614 Alun Michael: I fully understand that. As I understand it, if there is an allegation, an investigation, of either illegal activity or improper behaviour it has to be referred to the IPCC and they can then decide that you continue with the investigation or otherwise.

DAC Akers: That is right.

Alun Michael: I understand that exactly, but my question to you was could you confirm that the referral had been made, and you can.

DAC Akers: Yes, and it was.

Q615 Alun Michael: Can I ask whether other issues have been or are under consideration for referral to the Independent Police Complaints Commission in relation to the failures in the early investigation, which have obviously been the subject of so many questions in this Committee?

DAC Akers: I am sorry, that is not within my area of knowledge.

Q616 Dr Huppert: Thank you, Deputy Assistant Commissioner Akers. Many of us are quite keen to see this judge-led inquiry get going as soon as possible, and one of the constraints is obviously not wishing to jeopardise your investigation. How quickly do you think such an inquiry could really get going to its full capacity?

DAC Akers: I think it has got going. I think you will see from the fact that we have made eight arrests—

Dr Huppert: Sorry, the judge-led inquiry.

DAC Akers: How soon could the public inquiry get going?

Dr Huppert: Yes.

DAC Akers: Sorry. It is difficult to put a time scale on my investigation. I think there is probably a limited amount of work that the public inquiry could do while my investigation was carried out. There is an awful lot of material that is in the public domain that I think the public inquiry could start to read in. I think where you get into difficulties is when you start to take evidence from witnesses, that is where I would ask—

Q617 Dr Huppert: Do you think the delay would have to be in the order of weeks, months, years? Obviously you can understand why we are keen to get going.

DAC Akers: I can tell you of the arrests we have made the bail date is for October so certainly if there were to be any charges it would not happen before then and then we will go through the court process so—
Chair: But there is nothing to stop the Prime Minister announcing the name of the head of the inquiry and the terms of reference? That would not interfere with your—

Mr Winnick: I think clearly a good deal of responsibility lies on you, Deputy Assistant Commissioner, to try and get to the bottom of this criminality as far as the police are concerned, leaving aside the inquiries that the Prime Minister announced last week. Can I just get clear in my own mind here, in your reply to Mr Michael, the previous police inquiries that we have been hearing and asking questions about today, you will not be dealing with that at all?

DAC Akers: I will not be dealing with any conduct matters that arise out of that. I am obviously dealing with material that was part of the previous inquiries.

Mr Winnick: So you will be looking at the previous inquiries, leaving aside the conduct of the people involved?

DAC Akers: The material that was used in the convictions of Goodwin and Mulcaire is the same material, plus additional material that we have uncovered, that we are using for our investigation.

Mr Winnick: In effect, looking at all the inquiries, investigations, since the allegations were made?

DAC Akers: Looking at all those as has been well publicised—the 11,000 pages that were contained in the Mulcaire material, yes.

Mr Winnick: My last question is, what level of support or otherwise are you getting from News International?

DAC Akers: I think it is fair to say that when we started and all our dealings were through lawyers, it was difficult. Forgive me if I am offending anybody in this room, but lawyers tend to put an immense amount of complexity around things that to me seem fairly uncomplicated.

Mr Winnick: Only the lawyers could be sensitive about it.

DAC Akers: So we spent some two months agreeing a protocol, and you have heard my colleagues talk about journalistic privilege and privileged material and how that can create problems for us, so we have developed a protocol. I had a meeting at which, for the first time, two News International executives attended to debate our very different interpretations of the expression “full co-operation”. Subsequent to that meeting, I can say that relationships have been much better. My team deal certainly weekly, if not more, directly with the executives and we are experiencing an altogether different feel.

Mr Winnick: Could we have names, or you would rather not?

DAC Akers: I am sure they would not mind, Will Lewis and Simon Greenberg are the people we are contacting.

Mr Winnick: So be it. When do you expect to finish?

DAC Akers: It depends on what we uncover along the way.

Mr Winnick: For example, if there are payments to police officers for leaking information to journalists, will you investigate those matters?

DAC Akers: I am investigating those matters under the operation.

Bridget Phillipson: In the comments you made at the start you talked about the civil action leading to your renewed investigation, I ask this as a genuine question, how is possible that civil action can uncover information that the police are unable to do so through criminal investigation, as a general principle?

DAC Akers: Because as part of the action they ask for disclosure and the lawyers will approach News International. They are obliged to supply them with what they have asked for. I know what you are saying that for five years it was the civil actions that prompted this, but that is the way it was. But there are people out there who felt so badly about this that they continued to pursue their actions until finally they have got their day in court and I have to say that—perhaps it is an appropriate time—there have been other journalists and other campaigners that have kept this on the agenda and we have reached a point now where one might think they have achieved their objective, a public inquiry, us all here giving evidence to committees and other things where you would think they have probably got what they wanted.

I am aware from the amount of reporting that goes on in various papers that there must be people sitting on a lot of material and I think now is the time for me to say please, if you have anything that would support my investigation—we are now six months down the line, and I just ask if anybody is holding that now would be a good time to get it on the table.

Chair: Are you in contact with our parliamentary colleagues, Mr Bryant and Mr Watson, who—
Q629 Chair: Presumably you would welcome any help that they or the Guardian or anyone else can give.

DAC Akers: Anybody that is holding material, which clearly people are from the amount of media coverage, and there has been some—

Q630 Chair: Are you surprised at any of these names that are coming out, or do you know these names? For example, the Gordon Brown issue.

DAC Akers: No, I am aware of that.

Chair: You are aware of them.

Q631 Mark Reckless: Mr Akers, you say that it is clear that people, presumably external to the matter, are holding material because of the stories coming out. Is it not at least another theoretical possibility that the stories are being sourced from with the Metropolitan Police?

DAC Akers: I am sorry, I don’t follow you.

Mark Reckless: Could it not be that officers are leaking, whether paid or otherwise, this information, rather than its necessarily being the case that media outlets already have it?

Chair: Basically the leaks are coming from within?

DAC Akers: We will always be accused of that. I can say with absolute confidence, because I know what has been there, for instance, when there was speculation around victims of 7/7 bombings, we did not know that they were contained within our material.

Q632 Mark Reckless: Thank you for that answer, I was not accusing, it was merely a question.

DAC Akers: Of course it is a natural thing for people to suspect.

Mark Reckless: You did say that the reopening of this had been prompted by the disclosure demands of the civil actions but I recall, I think, John Yates telling us that it was reopened because the News of the World had given further evidence. Which of those is it?

DAC Akers: It is both. They gave further evidence, because in knowing they were going to have to disclose that evidence in civil actions they presumably realised that it would have to come to us.

Q633 Mark Reckless: Can I ask you a question finally that Mr Clarke was not able to answer for me earlier because he had retired, but in 2009 when it became apparent that News of the World had given a very substantial payoff to Gordon Taylor, why did that not prompt the Met to reopen issues?

DAC Akers: I am sorry, I can’t answer that, I don’t know, I have not looked back. I am focusing on going forward with my new inquiry and I have not analysed what went on in the past.

Q634 Steve McCabe: I think I am right in saying that charges and arrests so far relate to section 1 of RIPA and section 1 of the Criminal Law Act. Is it possible in an inquiry of this kind that you could also be looking at section 79 of RIPA?

DAC Akers: As to any charges, we have a very good relationship with the CPS and we will work with them and they will do in due course, if it comes to that, what the most appropriate charges are. I am sure they will not confine themselves to one particular part of RIPA.

Q635 Nicola Blackwood: You mentioned that you had to spend the initial part of your investigation going through the evidence and assembling a list of victims because it was not in an accessible form, but the evidence that we have just received from Assistant Commissioner Yates was that on 20 July 2009 he had put all the names from the 11,000 documents that they had on to a searchable database. So was that not in a useable format?

DAC Akers: No, and I think that has been acknowledged. It was not complete and there were mistakes made. One of the decisions that I made when taking on this was that, laborious as it may be, if we were going to reply to people inquiring about whether they were victims, I had to be absolutely reassured that we had a complete and accurate picture. So we have completely gone through all the material again and put it on another database.

Q636 Nicola Blackwood: The database assembled in 2009 did not have a complete list of victims?

DAC Akers: It had some of the material that had not been entered on, yes.

Q637 Nicola Blackwood: You now have a complete list of all victims from the pre-January 11,000 documents and also the post-January documents?

DAC Akers: We have now put on to a searchable database all that material that was seized in 2005–06.

Q638 Nicola Blackwood: What about the recent disclosures from News International?

DAC Akers: That is constantly—

Nicola Blackwood: It is constantly coming forward.

Chair: Constantly updated. Just give us a figure, how many have been contacted, and how many are left to be contacted?

DAC Akers: When I started to describe the scale of the task we have, because I had made this commitment to see everybody, I think I said there were something like 3,870 names, first and second names, in the database, there are another 5,000 landline telephone numbers and about another 4,000 mobile phone numbers, so we have started. A gain, we had to prioritise the people who had written in, as well as other high-profile people we have seen, and I think I have how many we have seen, if you bear with me. Sorry to have to refer to the person who is dealing with this on a daily basis, but he tells me that 170 have been informed.

Q639 Chair: So out of 3,870 names, 5,000 landlines and 4,000 mobiles, 170 have been contacted? So there is a lot more work to be done?

DAC Akers: There is an awful lot more work to be done. I can see how that looks. I have explained first of all the months it took to make sure the database was right, and we are distracted by disclosure for civil
actions and other things. My commitment remains absolutely—

Chair: We certainly understand that. The Committee is not being critical at all, we are just making a point. Thank you.

Q640 Dr Huppert: Can I just ask about the breadth of the inquiry? As we discussed before, in the 2006 Information Commissioner’s review he identified a huge number of different publications that have found journalists using illegal services for information, the Daily Mail, Sunday People, Daily Mirror, Mail on Sunday and News of the World. Are you prepared to look beyond News of the World and News International if that is where the evidence takes you?

DAC Akers: If I have the evidence, I am absolutely prepared to look beyond on that.

Q641 Chair: With your hat on as one of the leaders of the Met, what damage has been done, how much damage has been done to the Met by all this?

DAC Akers: I think it is everybody’s analysis that confidence has been damaged, and I don’t doubt if we do not get this right it will continue to be damaged, but I am confident that we have got an excellent team who are working tirelessly to get this right, and I hope that I do not have to come back here in five years’ time to explain why we failed.

Q642 Chair: It is reported that the Commissioner may be making a statement tomorrow, at least it was reported in the Guardian. I have just received a letter from him confirming he has no intentions or plans to do so. Do you know anything about this?

DAC Akers: No, can I say we are finding an awful lot of things being reported in the press that we have no idea about, least of all our inquiry. I think it is fair to say I have not ever experienced an inquiry quite like this, where our every move is reported in the press before we make it, some of which is accurate, and some of which is completely speculative.

Q643 Chair: But you are confident that this will be a thorough inquiry and that it will help restore trust?

DAC Akers: I guarantee it will be a thorough inquiry.

Q644 Chair: And it will help restore trust in the Met?

DAC Akers: I hope so.

Mr Winnick: We accept your guarantee.

Chair: Thank you very much. Should we book the date in five years’ time? I am not sure. Thank you very much for coming in and apologies for keeping you waiting.
Tuesday 19 July 2011

Members present:
Keith Vaz (Chair)
Nicola Blackwood
Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert
Steve McCabe

Witness: Sir Paul Stephenson, Commissioner, Metropolitan Police, gave evidence.

Chair: Order. May I welcome Sir Paul Stephenson? Sir Paul, you are still the Commissioner of the Metropolitan Police.

Sir Paul Stephenson: That is my understanding, Chair.

Chair: Excellent. I refer everyone present to the Register of Members’ Financial Interests. In particular, for the purposes of this session, I declare that I met you, and we were both guests, at the police bravery awards, which were hosted by the Police Federation and sponsored by The Sun; that you and I both know Stephen Purdew, the owner of Champneys; and that I was invited to the News International summer party recently, but I did not attend. Are there any other interests that Members need to declare, directly or indirectly?

Alun Michael: Chair, I attended the police bravery event. I am not sure whether that is a declarable interest, but I did. For the avoidance of doubt, my son is the chief executive of the North Wales police authority.

Q645 Chair: Thank you very much, Sir Paul, thank you for coming. Can I place on record my appreciation to you? I know that these are difficult times, but when I spoke to you last Thursday and invited you to attend this Committee meeting, you did so readily, agreeing the time immediately. You said to me that if events progressed, you would have to make a statement during that time, but I appreciate the fact that you have always come to Parliament first and been prepared to answer questions from Members of this House, specifically members of this Committee. Can you tell the Committee why you resigned, bearing in mind—we have all read your statement very carefully—that there has been, in your words, no impropriety in what has happened; that you feel that you have done absolutely nothing wrong; and that you have had no direct involvement as far as the two investigations and the so-called review of the investigation are concerned? You felt that you should always be looking to that. That is the first thing. Clearly, there were significant stories about me. In the context of the job that I do, I might have considered it for a little while, but if we could first just concentrate further on the resignation. When I spoke to you at about 6 o’clock on Thursday, resignation did not seem to be in your mind. You had met the Mayor, and you had spoken, I assume, to the Home Secretary. Is it that they did not give you the support to stay on following the conversations with them? You did not sound as if you were in a resignation mood when you spoke to me. When did you make up your mind that you had to go?

Sir Paul Stephenson: There has been much speculation on whether I was supported or not. I have to say that I have received the full support of the Home Secretary, the Mayor, K. Malthouse, and, as far as I am aware, the Prime Minister. I have seen the comments that they have made since my resignation. I guess I became much clearer when I was contacted on Saturday about the Champneys story, for which I am not apologetic at all, by the way. When I became aware that Mr Wallis—I know you will understand this, Chair, but I have to remind everyone that while he has been arrested and bailed, I should say nothing...
Chair, we always live in a world where the media speculate and interpret, and this has been a particularly febrile time. I was taking no such swipe at the Prime Minister. I was trying to make something absolutely clear. I agree with the Prime Minister when he says that this was entirely different. Of course the employment of Mr Coulson and the employment by the Met of Mr Wallis are entirely different.

Can I correct an inaccuracy here? Mr Wallis was never employed to be my personal assistant or to provide personal advice to me—I know we will go into this later. It was a very minor matter; he was employed to provide advice to the head of DPA—you will see him later on. Through that, he would give me some occasional advice. He had a very part-time, minor role. That is one of the reasons it was different from Mr Coulson, and it certainly was not a public-facing role. What I was trying to get across was simply this: when Mr Coulson resigned—at that time, he said he resigned, and time will tell, to do the honourable thing and, if you will, be the leader and take responsibility—by definition, he associated his name with hacking. That is simply and blindingly obvious. I was trying to draw the contrast that I had no reason to doubt Mr Wallis's integrity. I had no reason at all to link him with hacking. I had no reason to associate his name and hacking together until—we will come on to this—January 2011, when I first saw his name in the public domain.

Chair: Indeed.

Sir Paul Stephenson: That is the difference. I meant not to impugn the Prime Minister, or anyone, by it; I was just trying to give an example to show that Mr Wallis's name never, ever came into hacking, and it was never a consideration for me.

Q650 Chair: Indeed. We will come on to your relationship with Mr Wallis, but for this part, if we can concentrate on your resignation statement, and we will then come on to the relationship with Mr Wallis.

Q651 Mark Reckless: Sir Paul, many of the public feel that people in senior positions too rarely take responsibility for leading the criminal investigation? Sir Paul Stephenson: All I can do is tell the truth, Mr Reckless, and I told the truth in my statement. I did it to the best of my ability. I cannot, as is plainly obvious, control the way in which the media spin or interpret things. I am just saying here and now that I made no personal attack on the Prime Minister.

Q652 Mark Reckless: Well, Sir Paul, that is certainly how I interpreted your statement. Isn’t one rather significant difference that you, as Commissioner of the Metropolitan Police, should have been responsible for leading the criminal investigation?

Sir Paul Stephenson: First, I would have to remind you of the evidence that Lord Blair gave to this Committee. I think he tried to describe the work of the Commissioner. If I might do that, that might put in context your question. We receive 6 million calls a year. We deal with over 800,000 crimes every year. I manage risk, and I look to the things that are most risky, as to wanting more briefings. I do not investigate crime, but I do make enquiries where it is high risk. When I took office as Commissioner, I did ask for a detailed briefing on the night stalker. That
man had committed hideous crimes, raping elderly people. It had gone on for many years and it was a stain on our professional reputation. Therefore, I wanted a detailed briefing. I instructed that more resources be put into it, and we had a success. I did ask, and continue to ask, for detailed briefings on the murder of Stephen Lawrence, because we still did not have a proper outcome to that. I did put in place weekly and daily briefings on counter-terrorism. I never for one moment asked a question about phone hacking. I had no reason to suspect it was not a successful operation. I had no reason to think it was not finished, and I had no reason to suspect—

Q653 Chair: We will come on to the investigation shortly, Mr Reckless, if we can stick with the resignation for the moment.

Q654 Mark Reckless: Sir Paul, a lot of other people did ask those questions. I personally would like to give credit to The Guardian newspaper and the role that it played in that, as well as a number of our colleagues.

Sir Paul Stephenson: I said the same thing in my resignation speech.

Q655 Mark Reckless: Good. You also, in your resignation speech, seemed to at least imply that the Prime Minister was in some way compromised and that you could not share what you were suggesting was operational information with him, but isn’t it also the case that you did not disclose the appointment of this PR consultant previously either to the public or to Labour Ministers?

Sir Paul Stephenson: I certainly did not imply at all that the Prime Minister could not be trusted. I think if you look at my speech, that is quite clear. Why did I not tell the Prime Minister before Wallis’s name was put into the frame, or at least become a suspect. I never for one moment asked a question about phone hacking. I had no reason to think it was not finished, and I had no reason to suspect—

Q656 Chair: That you should not tell him?

Sir Paul Stephenson: That is my understanding. Mr Yates might be able to answer that later on. My understanding is, and I think it’s a very sensible position, that a senior official in No. 10 guided us that we should not compromise the Prime Minister. That seems to me to be entirely sensible.

Q657 Chair: Sir Paul, were you not involved in the Damian Green issue? Did you not tell the Mayor on that occasion, before Mr Green was arrested, that he was going to be arrested? Was he not compromised, bearing in mind the fact that he knew Mr Green, and that he then spoke to the then Leader of the Opposition about it? How can you have done that in that case, but not in this?

Sir Paul Stephenson: I think there are a couple of obvious differences there. First, I might have told the Mayor, but I did not tell the Prime Minister. Secondly, quite frankly, we had a new relationship, and it has always been my practice that when something very significant is going to happen, at the time it is going to happen, to sight the chair of the police authority—that was the Mayor at that time—so that they are not taken by surprise when they are doorstep by reporters. I certainly didn’t tell him well in advance. I work very hard not to compromise anyone, and if I may say so, I make sure that my people do not compromise me.

With regard to Wallis, because there was this, if you like, contact, I made sure that they told me what I needed to know. It was only several weeks ago that I first became aware that Wallis was a suspect; it was only early last week that I was told that Wallis may be arrested; and it was only on Thursday morning that I was told that he was being arrested that day, and he was under arrest.

Q658 Keith Vaz: We will come on to this, but I thought you said that Operation Weeting was happening in a box, and that you were not being kept informed of what was happening in Operation Weeting. When you appeared before this Committee two weeks ago, you said that these were questions to be asked of Sue Akers. Are you being kept informed by Sue Akers of who is going to be arrested?

Sir Paul Stephenson: She would inform me of a key suspect like that, and she just told me that he became a suspect.

Q659 Chair: So you knew on Sunday, for example, that Rebekah Brooks was going to be arrested before she was arrested?

Sir Paul Stephenson: Yes.

Q660 Chair: How long before?

Sir Paul Stephenson: Maybe a day, maybe two days.

Q661 Chair: Two days before, you knew?

Sir Paul Stephenson: I really can’t remember, but a day or two days, and that is entirely proper.

Chair: I see. Can we stick to resignation for the moment? Michael Ellis?

Q662 Michael Ellis: Sir Paul, you didn’t feel you could tell the Home Secretary.
Sir Paul Stephenson: I am very aware of the political exchanges over the employment of Mr Coulson. Why would I want to risk anyone being accused of any compromise? I would not suggest for one moment that the Home Secretary or the Prime Minister would say anything, but why would I risk that compromise? As I say, my understanding is that that was the advice from a senior official in No. 10, and we would agree with that. It is very sensible not to compromise people, or not to leave people open to any suggestion of compromise when they don’t need to be.

Q 663 Michael Ellis: Was it not a question of keeping it secret from the Home Secretary and from the Prime Minister? With great respect, Sir Paul, as Commissioner of the Metropolitan Police, you’re on a very substantial salary, and you have very great responsibilities. You, and no doubt your predecessors, have had to tell Home Secretaries and Prime Ministers a lot of unpleasant things over many years. Why was this a matter that you felt you could not disclose? This has been interpreted negatively.

Sir Paul Stephenson: I am fully aware that it has been interpreted negatively; that has been brought home to me, but let me remind you that prior to Wallis becoming a name in connection with hacking, the first time, to my knowledge, that I ever heard his name in relation to hacking was in an article in January 2011 when I was still off sick. I had never heard him connected at all before, publicly or indeed—

Q 664 Keith Vaz: We understand. You have made that point. We will come on to Mr Wallis in a second; we are on the resignation at the moment.

Sir Paul Stephenson: I think it’s relevant, Sir. It is about the contract, and Mr Wallis is about the contract. Prior to that, I had absolutely no reason and no concern, so why would I raise with anyone a very minor contract? I don’t raise any other contracts; I had no concern about Mr Wallis. When there was some concern, albeit very light, why would I then compromise, or allow the Prime Minister any suggestion of compromise, even though I do not for one minute think he would? Why would I be so clumsy?

Q 665 Michael Ellis: But News International was being investigated by the Metropolitan police at that time, was it not?

Sir Paul Stephenson: At which time?

Michael Ellis: Well, at the time of Mr Wallis’s hiring. Was it not being investigated?

Sir Paul Stephenson: No. There was no investigation.

Q 666 Michael Ellis: The difference is that you were investigating News International at a later stage, were you not?

Sir Paul Stephenson: We started investigating News International in January 2011. The first investigation started, I think, in December ’05, and I think it ended in January ’07.

Chair: We will come on to the investigations and Mr Wallis’s employment in a moment. Bridget Phillipson?

Q 667 Bridget Phillipson: To continue that, do you think that you should have been alerted sooner about the conflict concerning Mr Wallis? If you do, who would have been responsible for sharing that with you?

Sir Paul Stephenson: I do not know that anybody could have alerted me sooner. As I have said, there was no suggestion from anywhere that Mr Wallis was involved. Don’t forget I heard senior News International people say that this was a tiny few; they said nobody senior was aware of this. I had no reason to suspect that the original investigation was not successful. I had no information from it or responsibility for it, so I am not sure that anybody was able to say that there was a potential conflict of interest—if indeed there was—apart, perhaps, from Mr Wallis himself.

Q 668 Bridget Phillipson: It just struck me when listening to your resignation that perhaps if the Metropolitan police had volunteered that information sooner—I appreciate that there was a criminal investigation ongoing—you resignation may not have been necessary. It gave the perception of there being a conflict, even if there was not necessarily a conflict. Should the Metropolitan have volunteered that sooner, and might that have made a difference to your resignation?

Sir Paul Stephenson: As I think I put in my letter to the Home Secretary, the contracting of Neil Wallis became of relevance only when his name became linked with the investigation. Prior to that, that was not the case. When it became part of the investigation, to go public without actually having the evidence would taint him, because why would we be doing it? When he became a suspect, it would tell him that he was a suspect, which would be bad for the operation. I know that it is very embarrassing for me, but I would prioritise the integrity of this operation over my personal embarrassment.

Chair: Indeed. We will come on to the integrity issue in a moment. Lorraine Fullbrook, a question on the resignation.

Q 669 Lorraine Fullbrook: Sir Paul, I find it very strange that the Prime Minister and Home Secretary said before your resignation that this case should be investigated as far as it should go, even if it goes right to the top. In your resignation statement, you said that you did not want to compromise the Prime Minister. You are a policeman first and foremost. Why would you not have told them prior to your resignation? The Home Secretary found out about Wallis only last Thursday.

Sir Paul Stephenson: Why wouldn’t I have told him what?

Lorraine Fullbrook: You are a policeman; it is your job.

Sir Paul Stephenson: Why wouldn’t I have told the Prime Minister what?

Lorraine Fullbrook: You said in your resignation statement that you did not want to compromise the Prime Minister in any way by revealing or discussing a potential suspect who clearly had a close relationship with Mr Coulson. You are a policeman—why wouldn’t you?
Sir Paul Stephenson: I think I have answered that—because I would not want to open the Prime Minister, or anybody else, to any such compromise. By the way, I do not recall sharing information about any other suspect, or any other operation, with the Prime Minister or the Home Secretary.

Q670 Lorraine Fullbrook: But is there anyone else with whom you do not wish to discuss suspects, and whom you may compromise?
Sir Paul Stephenson: I think I have given a pretty open and full answer. You might not like the answer, but I am simply saying that I would not—this seems to be in line with advice that we have received from senior officials—by discussing this particular operation, because of the unique circumstances and the exchange over Mr. Coulson’s employment at No. 10, want to open the Prime Minister, or anyone else, up to such compromise, or to any allegations, as fanciful as they might be.

Q671 Chair: So in respect of other suspects, when you were told, for example, that Rebekah Brooks was going to be arrested, and you did not tell the Mayor about that, or anyone else?
Sir Paul Stephenson: I most certainly did not.
Chair: I call Julian Huppert.
Sir Paul Stephenson: Sorry, may I make an important point? I would not want to tell the Mayor for exactly the same reason. I would not want to compromise the Mayor, and besides that, that is the difference between governance and operational independence.

Q672 Chair: I am still a bit puzzled, because you did tell the Mayor about Damian Green, but nobody else.
Sir Paul Stephenson: I do not think there is any puzzle there. It has been my practice, at the time of making a very significant arrest where they are likely to be doorstepped and surprised, to do that. I hardly think that people were that surprised, and I do not think the Mayor would have been so naïve.

Q673 Dr Huppert: Your resignation statement was long and full. It seems to me that one of the big issues that it raises is the question about the morale of the Met going forward. I was stopped last week by a Met police officer who described his embarrassment with senior police in the Met. There is a real concern about morale. A number of changes, such as the Winsor changes, are happening to the police, and they feel that there is one set of rules for them and a different set of rules for senior police. You are presumably not going to be the person to clear this mess up from the morale side, but is there something that you could have added to your statement, or that you should say to whoever takes over about what they can do to restore that morale in the Met?
Sir Paul Stephenson: Well, of course, my statement was for both public and private consumption. I have done several messages for my own people in the organisation, and I will do another message to them before I go. I have spoken to many police officers since my resignation, and they have spoken about their pride that somebody was willing to do something and, even though they did not feel that they had done anything wrong, was willing to walk away when it might interfere with the discharge of their duties in a very difficult year. In a funny old way, in many areas of the organisation, there is great pride. I would point to what we are doing in Operation Weeting, because we do have to restore some confidence.

Q674 Chair: We will come on to Operation Weeting.
Sir Paul Stephenson: No, but it is about morale, Sir. We have to ensure that Operation Weeting restores the public’s faith in us around the phone-hacking issue. That is what we need to do.
Chair: We will come on to that, I promise.

Q675 Nicola Blackwood: I wonder whether I could take you back to your resignation statement, where you stated that you had no reason to suspect “the alleged involvement of Mr Wallis in phone hacking”, and that you had “no knowledge of the extent of this disgraceful practice”, “the repugnant nature of the selection of victims”, or its “reach into senior levels.” However, in the year you met—or have been reported to have met—Mr Wallis, 2006, the ICO produced a report that said that “there are repeated allegations by the ICO and the police have uncovered evidence of a widespread and organised undercover market in confidential police information.” Among the “buyers” are many journalists looking for a story. In one major case investigated by the ICO... evidence included records of information supplied to 305 named journalists working for a range of newspapers.” In its follow up report, it listed the News of the World as one of those newspapers, 228 transactions of positively indentified phone hacking and 23 journalists. Do you not think that might have alerted you to the fact that Mr Wallis might have been involved in phone hacking at that time?
Sir Paul Stephenson: No, I do not. I have to take you back to what I said earlier. First, that report obviously mentioned the News of the World and many other newspaper publications.
Nicola Blackwood: Yes, it does.
Sir Paul Stephenson: Some newspaper publications with apparently.
Nicola Blackwood: 31 in a readily readable table.
Sir Paul Stephenson: But some newspaper organisations apparently had a worse problem. Mr Wallis was certainly not named in that.

Q676 Chair: We will move on to Mr Wallis. If you can just deal with your resignation statement.
Sir Paul Stephenson: I think that was the question—about Mr Wallis. Mr Wallis was not named in there. I come back to what I said when I took over as Prime Minister: I prioritise risk.
Chair: Commissioner. When you took over as Commissioner. There is no vacancy as yet.
Sir Paul Stephenson: There is no vacancy, and I am not yet prepared for that office. My goodness me, what am I saying?
When I became Commissioner, I looked at the risks, and I looked at those high-profile risks, and I have to say that of course it is regrettable with hindsight when we see the repugnant nature of this, and some of the victims who have been selected here. Of course I
support John Yates's statement about if he had known then what he knows now, but there was no reason for that to be on my desk. Even with that report, there was no reason to put that above the night stalker, who had not been caught after many years, the counter-terrorism operations, and the murder of Stephen Lawrence—major, major cases. They were priorities for me. Phone hacking was not, even with that report.

Q677 Steve McCabe: In the case of Mr Wallis, in your own words, he is an acquaintance of yours, and someone with whom you have had a relationship for professional purposes for over five years. He was a personal friend of Assistant Commissioner Yates, and Mr Fedorcio says that you and Mr Yates were both consulted on letting the contract at the Met to Mr Wallis. Is it not strange that when you accepted the hospitality at Champneys, you did not know that Mr Wallis also had a business contract with it, and that no one at the Met sought to provide you with that information?

Sir Paul Stephenson: First, I am completely baffled as to how anyone in the Met would have the information that he had a relationship with Champneys.

Q678 Steve McCabe: In pure business terms—let’s forget about what happened to Mr Wallis subsequently—the Commissioner of police is having free hospitality at this establishment; there is a business connection between the Metropolitan police and Mr Wallis; and Mr Wallis also has a clear business connection with Champneys. Isn’t it strange? I think you said in your resignation statement that you are “dependent to a great extent on others providing the information that he had a relationship with Champneys.”

Sir Paul Stephenson: The only way we would know that is if Mr Wallis declared it to someone. I know of no one who knew that Mr Wallis was actually connected with Champneys—absolutely no one.

Q679 Steve McCabe: Did you ask anyone at the Met, before you accepted the hospitality, if there was anything you should know?

Sir Paul Stephenson: About Mr Wallis and Champneys?

Q680 Steve McCabe: No, did you ask anyone at the Met, before you accepted the hospitality, if there was anything you should know that might suggest that it was not the smartest thing to do?

Sir Paul Stephenson: Absolutely not, and I don’t agree with you about “not the smartest thing to do”. Could I remind you, Sir, that I was recovering from a serious injury and a serious illness? I was wheelchair-bound and in pain, and my intention was to come back to work as soon as possible.

Q681 Steve McCabe: Sir Paul, I use that term given the fact that there was a connection between Mr Wallis and the place where you had your hospitality. He had a business connection with that establishment, and he was also being employed by your organisation. That is the point that I am making. I am not asking you to justify whether or not you went there to recuperate; I am asking whether it is appropriate to have accepted hospitality at an establishment where Mr Wallis had a business connection, while he was also under contract to your organisation. In normal circumstances, is that not the sort of thing you would expect your senior officers to know?

Sir Paul Stephenson: No, it would not, because we would have to go into it—

Q682 Steve McCabe: Even if one of them was a personal friend?

Sir Paul Stephenson: Personal friend of whom?

Q683 Steve McCabe: Mr Yates describes Mr Wallis as a personal friend.

Sir Paul Stephenson: Mr Yates will have to tell you whether he knew of his connection with Champneys. I am very confident that he would not have known that, but that is up to Mr Yates.

Q684 Mr Winnick: I have a couple of questions, Sir Paul. First, I just want to clarify matters regarding Mr Wallis, whom we are coming on to, as the Chair said. Mr Wallis was the deputy editor of the News of the World when Andy Coulson was the editor, was he not?

Sir Paul Stephenson: Yes, that is true.

Q685 Mr Winnick: So obviously, if Mr Wallis was involved in phone hacking and all the rest, clearly, his boss was Andy Coulson.

Sir Paul Stephenson: He was the deputy editor and Coulson was the editor.

Q686 Mr Winnick: I just wanted to get that on the record, because there seems to be some sensitivity on the part of a few members of this Committee. Can I come on to the question of the health spa? I am not questioning your integrity, Sir Paul—I want to make that quite clear. If I was, I would say so. Leaving aside Mr Yates, in the position of Mr Wallis and the rest of it, let me put it as clearly as possible: was there not a situation where it was inappropriate for any police officer—whether it was the most senior officer, like yourself, or a police constable or a sergeant, as the case may be—to receive such substantial hospitality?

Sir Paul Stephenson: In these circumstances, I do not think so, Sir. The owner of Champneys is a family friend connection. It was a generous offer. I paid for many treatments. It enabled me to get back to work very quickly. I do not think it was inappropriate in those circumstances. I think it was damnably unlucky, frankly, that it seems Wallis was connected with this. That was devastating news when I heard it.

Mr Winnick: Leaving aside Wallis, during your time as Commissioner, if it came to the notice of the Met, and then it came up to you, that a constable or sergeant had received free meals at a restaurant, as the case may be—nowhere near the sort of hospitality that
you received, which I understand amounted to some £12,000—wouldn’t there be some question marks about the person involved, a police officer, receiving such hospitality? Why was he being offered meals free of charge and the rest of it? Wouldn’t there be questions? Wouldn’t his superior ask him, “What’s the relationship with the person providing you with such free meals?”, or free hospitality, as the case may be?

**Chair:** Thank you, Mr Winnick. Sir Paul?

**Sir Paul Stephenson:** Mr Winnick, you and I would agree that there most certainly would be if, one, there wasn’t a good reason for doing it and two, it was done secretly. This was declared. Even though there was no need to do that against the policy, I put it in my hospitality register, and it was not a secret.

**Q687 Mr Clappison:** Paul, we have some questions to ask you, but before we do, can I put on record my appreciation of the work that you have done as Metropolitan Commissioner and the work of the officers who have served under you? As far as Champneys is concerned, I have absolutely no problem with what you have said about that, and I do not want to ask you any questions about it—I completely accept the explanation you have given—but there are some questions that you will understand we need to ask in the light of our inquiry, particularly about the relationship between the police and the press, which is going to be subject to Lord Leveson. One thing that strikes me, looking at this in the round, if I can talk in that way, is the extent of the connection between yourself and other Metropolitan officers and News International, and particularly the amount of times you met them and had lunches or dinners with them. I understand from the Metropolitan Police Authority that you had 18 lunches or dinners with the News of the World, and seven or eight dinners with Mr Wallis himself over about a five-year period. Can you explain to us why it was necessary to have that amount of lunching and dining with the News of the World and News International? Did the same thing happen with other newspaper groups?

**Q688 Chair:** Before you answer that, Mr Clappison is referring to this document, which I am sure you have seen. It is a freedom of information request. We will let you see it, so that you know what we are talking about.

**Sir Paul Stephenson:** I really do not need to see it, Sir. I accept whatever is in the document. I have declared all my contacts. I really do not need to see it, but thank you very much.

**Chair:** Indeed. That is what he is talking about.

**Sir Paul Stephenson:** First, let me go back to what I said previously. There is a reason why the Metropolitan Police Commissioner must meet with the media to try to promote and enhance the reputation of the Met, talk about the context of policing and, if you will, make sure there is a relationship there. What I would say, coming out of this matter, is that it is quite clear to me that we need to change the way we do it. Although I am right at the end of my term now, I have already put in place changes in the way that we have to do this, because I think we need to be much more transparent and explain what we are doing better. It was I who asked Elizabeth Filkin yesterday if she would come in and be the independent adviser—I told the Home Office about that—so that she can now advise us not just on transparency, but on the ethical underpinnings of why we do things with the media. When we talk about News of the World or News International, can I put it in a little context?

**Q689 Chair:** Is it going to be long?

**Sir Paul Stephenson:** No, it is not, Sir. Between 2005 and 2010, 17% of my contacts with the press involved News of the World. That is 17% of all my contacts. I understand that News of the World represents some 16% of press readership. In the same period, 30% of my contacts with the press involved News International. That sounds like an extraordinary percentage, but I am told News International represents 42% of press readership. If I am going to maintain a relationship with the media—I make no criticism here, but it was not my decision to allow News International to be so dominant in the market—and if I am going to talk to the media, and they have 42% of the readership in this country, who am I going to talk to?

**Q690 Mr Clappison:** Did you have lunches or dinners with other newspaper groups, such as The Daily Telegraph or the Daily Mail, which have significant readerships as well?

**Sir Paul Stephenson:** Yes. I think that is what it is indicating: 30% of my contacts were with News International. The other 70% were with other newspapers.

**Q691 Mr Clappison:** One of the meetings you did have was with The Guardian.

**Sir Paul Stephenson:** Twice.

**Q692 Mr Clappison:** Yes, twice. The Guardian carried a report a day or two ago that you had a meeting with them to try to persuade them that the coverage of phone hacking was exaggerated and incorrect, and that you had a meeting to that effect in December 2009. Is that right?

**Sir Paul Stephenson:** Yes.

**Q693 Mr Clappison:** So you are telling us that you had not looked into this particularly before January 2010, because it was only at that stage that alarm bells rang when you found that there might be a connection with Mr Wallis?

**Sir Paul Stephenson:** January 2011.

**Q694 Mr Clappison:** January 2011. This was in December 2009. Before going to see a newspaper such as The Guardian to try to persuade it that it was getting it wrong and that it was all exaggerated, I presume that you must have looked back over the evidence and over the case to be able to be in a position to give it that assurance?

**Sir Paul Stephenson:** No, I am the Commissioner of the Met; I have many people assisting me, and I have senior-grade chief constables such as Mr Yates. Mr Yates—I am quite sure that he will give this evidence—gave me assurances that there was nothing
new coming out of The Guardian article. I think that I have a right to rely on those assurances, and I had no reason at all to doubt the success of the first operation. I went to The Guardian because it continued to run the campaign. I think that I acknowledged in my speech that we should grateful for it for doing that. I went to it because I did not understand the claim.

**Chair:** Final question.

**Q695 Mr Claphison:** One of the things that has come out to us, and that came out during the course of the last hearing, was that in the meantime, since 2006, there have been a lot of homemade inquiries by individuals who thought that they had been hacked and who had taken individual legal action privately to obtain information about themselves from the News of the World and News International. That has all been coming to light. Were you aware of that when you went to see The Guardian in December 2009 and if you were, what did you think of it?

**Sir Paul Stephenson:** I cannot tell you whether I was aware of other people making claims. What I can tell you is that in going to The Guardian, I wanted to have an exchange with it. I wanted to understand what it was saying, I wanted to say, “I am receiving these assurances. I don’t understand why you don’t accept those assurances.” Coming out of that, it was quite clear to me that it did not accept those assurances, so I suggested to the editor of The Guardian that he see John Yates because I wanted to keep that dialogue going.

**Q696 Chair:** Thank you. Let us move on to your relationship with Mr Wallis and his employment, following on from the conflict of interest point. Does it not seem a little odd—you are a very distinguished police officer—that the News of the World seemed to have an ex-employee working for the Leader of the Opposition and that the News of the World had an ex-employee working for you? Did it not strike you as a little bit odd that whether by coincidence or deliberately the former editor of the News of the World ends up with the Leader of the Opposition and the deputy editor of the News of the World ends up with the Metropolitan Police Commissioner? I accept what you said about Mr Wallis—that there was no implication that he was involved in phone hacking when you took him on. We will come on to the circumstances of that. We accept what you said, Sir Paul, because it has not been recorded anywhere else. But is that not a little bit odd because at some stage you would have met the Leader of the Opposition, before he became Prime Minister, and Mr Coulson would have been with him, and Mr Wallis would have known, would he not, that Mr Wallis was working for you? It is inconceivable that Mr Coulson would not have known that Mr Wallis had a contract with the Metropolitan police.

**Sir Paul Stephenson:** My recollection is—I think that I am right in saying this—that I do not think I ever met Mr Coulson at all before Mr Cameron became Prime Minister.

**Q697 Chair:** Did you meet Mr Cameron before he became Prime Minister?

**Sir Paul Stephenson:** I think I did—yes, I did. I think that I had one meeting with him.

**Q698 Chair:** But it is inconceivable that Mr Coulson would not have known that one of the people working for you was his ex-mate at the News of the World. You knew that Andy Hayman had got another job because he writes a column for News International. This kind of thing must be discussed.

**Sir Paul Stephenson:** I am sure that if this was a close relationship between Mr Coulson and Mr Wallis they would discuss it. I think that I met Mr Coulson once. I certainly did not meet Mr Coulson and Mr Wallis at all and I had no discussions about it.

**Q699 Chair:** But is it conceivable that they would not have known about each other’s jobs?

**Sir Paul Stephenson:** It seems to me that if they were friends it is inconceivable that they would not talk.

**Chair:** Let us go on to the contract.

**Sir Paul Stephenson:** Sorry, may I make a point? It is a distortion to say that Mr Coulson worked for the Prime Minister—

**Chair:** The Leader of the Opposition.

**Sir Paul Stephenson:** —and that Mr Wallis is working for me. Mr Wallis was not working directly for me. This was a minor part-time role through which I received some occasional advice.

**Q700 Chair:** Excellent. Let us look at that role. Were you one of the people who were consulted when Mr Fedorcio offered him the contract to work as a consultant? You have 69 press officers in the Metropolitan police, but you needed another consultant.

**Sir Paul Stephenson:** I think it is 45.

**Q701 Chair:** Forty-five? Perhaps it is the cuts. Has the number gone down?

**Sir Paul Stephenson:** It is 45.

**Q702 Chair:** But you needed an extra consultant?

**Sir Paul Stephenson:** Were you consulted before he was appointed?

**Q703 Chair:** Yes, I was. Just let me say with the benefit of what we know now, I am quite happy to put it on the record that I regret that we went into that contract. I quite clearly regret it because it is embarrassing.

**Chair:** Indeed.

**Sir Paul Stephenson:** This was at a time when Mr Fedorcio’s deputy was long-term absent with a very serious illness.

**Q703 Chair:** You were consulted or asked whether this was a good idea.

**Sir Paul Stephenson:** I would take it further: I said to Mr Fedorcio, “I do think you need additional support here.” Neil Wallis would be someone known to me. When Neil Wallis’s name came up, I would have no concerns about that—he may well be a suitable person. Mr Fedorcio would have mentioned that name to me, but then I know that Mr Fedorcio would go away and go through a proper procurement process.
Q704 Chair: So you were consulted. You even suggested his name.
Sir Paul Stephenson: No.
Q705 Chair: You did not.
Sir Paul Stephenson: No. I do not think that I suggested his name.
Q706 Chair: You were consulted, but you did not make the final decision, or did you?
Sir Paul Stephenson: No. I was not involved in the procurement process, but I have to say that I would not be discomforted by the fact that Mr Wallis came out of that process because I knew nothing to his detriment, and he provided advice.
Q707 Chair: It is argued in the media that actually the Metropolitan police went out and asked Mr Wallis to do this job. Is that correct?
Sir Paul Stephenson: I think that you would have to ask Mr Federico of how he managed that procurement process.
Q708 Chair: We will very shortly. Did you know that Mr Wallis’ daughter was employed at the Met?
Sir Paul Stephenson: No. I do not think that I knew that until very recently— at the weekend.
Q709 Chair: When did you know?
Sir Paul Stephenson: I think that it was even the weekend or something like that.
Q710 Chair: Obviously, lots of people worked for the Met, so you do not know every single person. Is that what you are saying?
Sir Paul Stephenson: That may well be an accurate characterisation.
Q711 Dr Huppert: Coming back to the declarations and hospitality registers, what is in them is very interesting. There is no information about the value of various meals, which is a thing to look at for the future. A sandwich dinner is very different from a rather nice dinner. What I also cannot find is a declaration of hospitality at Champneys. We have already discussed to some extent whether that was appropriate or not to accept, but surely it should have been publicly declared. Can you point to where that would have been declared?
Sir Paul Stephenson: When I came back from being sick, I made sure that it was put in the hospitality register—the publication scheme for the previous quarter. It is in my hospitality register, and it will be published at the end of the next quarter.
Q712 Dr Huppert: When did you start and finish receiving that hospitality?
Sir Paul Stephenson: When I came back from being ill, is the relevant issue.
Q713 Dr Huppert: Which day was that?
Sir Paul Stephenson: I think that I came back on 15 April.
Q714 Dr Huppert: So we will see it when that is finally published.
Sir Paul Stephenson: In the next quarter’s publication, yes.
Q715 Michael Ellis: Commissioner, you are playing down the role of Mr Wallis. You said that it was a minor role. He was on £1,000 a day, was he not? Two days a month. Would you say it was a minor role?
Sir Paul Stephenson: I am told— I can certainly look at the process— he was the cheapest person available out of the three people contacted.
Q716 Michael Ellis: You said in an answer to an earlier question that you did meet with The Guardian— was it the editor-in-chief of The Guardian— with Mr Wallis?
Sir Paul Stephenson: I have to look at the dates. I know that I have met with Mr Rusbridger on two occasions.
Q717 Chair: He had a consultancy from 2009 to 2010.
Sir Paul Stephenson: Can you remind me of the dates? If it is there and it says that I met him at the same time, then I did.
Q718 Michael Ellis: December 10th 2009.
Sir Paul Stephenson: Fine.
Q719 Michael Ellis: Did you put pressure on Mr Rusbridger or anybody else at The Guardian to lay off the phone-hacking story?
Sir Paul Stephenson: I did not put pressure to lay off. They were continuing to run a series of articles, whilst I was getting assurances that there was nothing new in this. They seemed to disagree, so it seemed entirely appropriate— I could understand that— that I meet with them and represent to them what I was being told— that it was nothing new and I had no reason to doubt the first inquiry. They were clearly not going to listen to that, so I suggested that they meet with John Yates so we could further try to iron this out.
Q720 Michael Ellis: The Guardian understood from you that the phone-hacking story that they were working on was inaccurate, incorrect and wrongly implied that the force was party to a conspiracy, whereas, in fact, the story was correct.
Sir Paul Stephenson: To my knowledge then, and to my knowledge now, the force was not engaged in a conspiracy.
Q721 Michael Ellis: But the story was not inaccurate or incorrect.
Sir Paul Stephenson: If the suggestion was that the Metropolitan police were engaged in a conspiracy, I have no information to support that, and I do not believe that it is the case.
Q722 Lorraine Fullbrook: I want to continue in that vein if I can, Sir Paul. You met with the editor-in-chief of The Guardian on 10 December, complaining that you believed they were over-egging the investigation of phone hacking. You wrote to the
editor on February 2010 and, in it, you actually say, “Once again, it presents an inaccurate position of our perspective and continues to imply that the case has not been handled properly and that we are party to a conspiracy.” They are your words in a letter. Following that, Mr Yates had a meeting on 19 February. Was Mr Wallis, who was employed in October 2009, consulted about these meetings or letters before you went to see The Guardian?

Sir Paul Stephenson: Absolutely not. He did not work in my office or for me. I have never had a conversation with Mr Wallis about phone hacking. I have never been present where anyone else has had a conversation with Mr Wallis about phone hacking. I work in my office or for me. I have never had a conversation with Mr Wallis about phone hacking. He was not employed for anything to do with phone hacking.

Q723 Lorraine Fullbrook: You did not take advice from him prior to the meetings. Did you inform him of the discussions after the meetings?

Sir Paul Stephenson: I would not take advice from Mr Wallis at all about meetings or inform him about any meetings that I was having. That was not the purpose of the support that he was giving to Dick Fedorcio. My understanding is that he was employed to give media support to Mr Fedorcio, which is nothing to do with my administration, my meetings, or any investigations.

Q724 Lorraine Fullbrook: It is normal, when you take on a contractual person, to look at their background. Would it not be normal, when you are taking on someone to provide you with PR experience or consultancy, to ask who their other clients are?

Sir Paul Stephenson: You would have to ask Mr Fedorcio. You say that it would be normal. I have no role whatsoever in procurements for any contracts. I do not play any role in procurement. I think it is better that way, and I played no role in this procurement decision.

Q725 Mr Winnick: I believe that he was employed from September 2009 to October 2010, Commissioner. Was that not the period when the decision was taken not to pursue further the allegations of phone hacking?

Sir Paul Stephenson: I cannot tell you when the decision was taken; you have to ask Mr Yates. I think it came up in July 2009, and when it did, Mr Yates stated that there was nothing new.

Q726 Mr Winnick: Yes. He was employed, as I understand it, between October 2009 and September 2010.

Sir Paul Stephenson: So the decision not to go further was taken before that employment.

Q727 Mr Winnick: But obviously he was known to be a former deputy editor of the News of the World—was taken on by the Met? Do you not see any contradiction whatsoever?

Sir Paul Stephenson: I do not see any contradiction because, as I have already said, I had no reason whatsoever to think that there was anything wrong with the original investigation, which, for all intents and purposes, was successful. I had no knowledge of any other information that we held, and I received assurances that there was nothing new in the information coming from The Guardian in 2009. I had no reason to be concerned about Mr Wallis. I heard senior News International figures say that it was a rogue few and that senior people did not know about it. Why would I have any reason to have any suspicion about Mr Wallis?

Q728 Mr Winnick: Because phone hacking was a matter that the Met was supposed to be looking into. There have been serious allegations. There was a decision not to pursue the matter further in 2009, and yet the deputy editor of the News of the World, the very paper that was accused of phone hacking—rightly, as it turned out—was employed by the police, which was supposed to be investigating phone hacking. You see absolutely nothing wrong with that at all?

Sir Paul Stephenson: No. If I can remind you, Mr Winnick, the police were supposed to investigate phone hacking between December 2005 and, I think, January 2007, when two people were convicted. As far as I was aware, that was a successful investigation.

Q729 Chair: But on 9 July, you asked Mr Yates to look at it again. A few weeks later, Mr Wallis was given his job. We accept that there was no evidence, but you are a police officer with years of experience. Surely you would think to yourself, “It’s very odd that a former News International employee is working with the Leader of the Opposition and another is working with me.” It is almost like a fashion accessory—people leave the police force, come to work for the police or politicians, and your officers, such as Andy Hayman, leave the police force and go to work for News International. You must have read some of Mr Hayman’s columns in The Times at some stage. Did you not have any suspicions about this? I accept that there was no hard evidence, but you are a police officer. Surely you would have had suspicions.

Sir Paul Stephenson: Mr Vaz, there was no evidence available to me, not “no hard evidence”. Secondly, Mr Hayman was not in the Met when I was Commissioner; he was in the Met when I was Deputy Commissioner. And no, I do not read Mr Hayman’s columns.

Q730 Chair: You did not know that he worked for The Times.

Sir Paul Stephenson: I know he works for The Times, but you asked, “Don’t you read his columns?”—no, I do not.

Chair: I am sure he will be very upset to hear that.

Q731 Mr Winnick: No regrets?
Sir Paul Stephenson: Gosh. I have already said that now that the information has come out, of course I regret that the contract was taken on.

Q732 Nicola Blackwood: Sir Paul, we read that Mr Yates has been a close friend of Mr Wallis for about 12 years. One newspaper characterises that, “Yates thought Wallis was a fantastic guy... really one of the very best journalists around. The strange thing is that Wallis was regarded as a monster by lots of people in the newsrooms he worked in, but Yates had the utmost respect for him.” Do you feel that in some of the decisions that were made around the hacking inquiry, some of the personalities might have been blinded by friendship? Was some judgment clouded because of relationships with News International journalists?

Sir Paul Stephenson: I genuinely have no reason to believe that. Of course, you have asked questions, and you will be asking more questions of Mr Yates. I have genuinely no reason to believe that Mr Yates is a man of huge integrity. I have no reason to believe that that was not a successful investigation. I had no reason to doubt the assurances given by Mr Yates and I have no reason to believe that his judgment was impaired. You have to ask Mr Yates that, and I cannot characterise the nature of their friendship, or the nature of what other people believe of Mr Wallis. I am not that close to him.

Q733 Nicola Blackwood: But when we discussed Mr Yates’s assessment of the material in 2009, we asked him whether he felt a need to do the minimum in order to get the review off his desk as quickly as possible and focus on more important things. He answered that that probably was the case. To what extent is it possible that his judgment was impaired. You have to ask Mr Yates that, and I cannot characterise the nature of their friendship, or the nature of what other people believe of Mr Wallis. I am not that close to him.

Q734 Steve McCabe: Sir Paul, I apologise for dwelling on Mr Wallis, but you must see why it has become significant now. You told us that he was appointed because Mr Fedorcio needed some short-term support. But he was appointed to work in specialist operations with the directorate of public affairs and the Commissioner’s office to provide strategic communication advice and support. What was he there to do for you in your office?

Sir Paul Stephenson: He was not appointed to work in my office; he never worked in my office— I do not recall him ever coming into my office.

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Q735 Steve McCabe: But Mr Fedorcio says that was one of the roles that he was given—is that not true?

Sir Paul Stephenson: He was appointed to support Mr Fedorcio and to give me occasional advice on speeches.

Q736 Steve McCabe: Occasional advice on speeches.

Sir Paul Stephenson: Well, speeches was the main thing.

Q737 Steve McCabe: That was all.

Sir Paul Stephenson:— occasional advice on speeches, but it was very much about the media. And he did not work in my office or directly to me.

Chair: We will explore this with Mr Fedorcio.

Q738 Mr Clappison: You will appreciate that we have to ask you questions about what went wrong with the inquiry and the review. You have been giving us a full account of what you knew when but—

Sir Paul Stephenson: I suspect that is why I am here, sir.

Q739 Mr Clappison: Indeed. People looking at this in the round would see this as an obvious question. Knowing that Mr Yates was a great friend of Neil Wallis—he had known him for a long time—and that Neil Wallis had been the deputy editor of News of the World at the time of the original phone-hacking allegations, did you not think that there might appear to be a conflict of interests in asking Mr Yates to do the investigation at that point?

Sir Paul Stephenson: I think that you are conflating several things. First, I have to repeat: I had absolutely no reason to doubt Mr Wallis at all, so I cannot see how there was a conflict. I knew that Mr Yates was a friend of Wallis, but that was not relative to what I was asking him to do. The only reason I asked Mr Yates to do it was because he was in charge of the business group that originally did the investigation.

Q740 Mr Clappison: The review was to look at whether the original investigation had got it right and whether phone hacking was more extensive than had originally appeared, and you went on to give the Guardian assurances. Mr Wallis had been an employee of News International and had been in the News of the World newsroom at the same time as the deputy editor. Surely that created a conflict of interest, did it not, or the appearance of one? Members of the public will want to ask this.

Sir Paul Stephenson: I think that you are conflating several things. First, I have to repeat: I had absolutely no reason to doubt Mr Wallis at all, so I cannot see how there was a conflict. I knew that Mr Yates was a friend of Wallis, but that was not relative to what I was asking him to do. The only reason I asked Mr Yates to do it was because he was in charge of the business group that originally did the investigation.

Q741 Mr Clappison: On that basis, how did you feel confident, given that a very limited review had been carried out—that is what you knew—to go to The Guardian and tell it that it had got it all wrong, when it was said that its story was exaggerated?

Sir Paul Stephenson: Mr Clappison, there was absolutely no reason to think that the original investigation was not a success. There were people...
sent to prison because of it. Mr Yates looked at it. I asked a senior-grade chief constable to have a look at it, and he came to the view that there was nothing new in it.

**Q742 Chair:** Right. Sir Paul, let us just move on to those three investigations, because Members want to ask you about them. This is critical, of course, to the other reason why you resigned. In respect of the first investigation, with hindsight—you mentioned hindsight when you resigned on Sunday—do you accept now that the so-called Hayman-Clarke investigation was not as thorough as you would have expected, otherwise much of what we are seeing now would have come out then? Do you accept that now?

**Sir Paul Stephenson:** First, I would not characterise it as the Hayman-Clarke investigation. I heard the evidence given to this Committee; it is quite clear to me that the investigation was run by a man of great integrity, and that is Peter Clarke. Secondly, do I accept—

**Q743 Chair:** Are we assuming that Mr Hayman is not a man of great integrity?

**Sir Paul Stephenson:** I am not saying that; I am saying the man who ran the investigation had great integrity. Mr Hayman did not run that investigation. That was quite clear to me from the evidence he gave to you. Secondly, do I accept that there is material that is repugnant there, which, with hindsight, should have come into an investigation? Yes, I do. Thirdly, I have listened to Mr Clarke. Do I accept the reasons why he set the narrow parameters? I actually think that is for Mr Clarke to justify, and I do think it is a matter for the judicial review.

**Q744 Chair:** Let us go on, then, to the second review—Mr Michael will ask questions on this—and the reason why you asked John Yates to do a review. This was 9 July. We have had evidence from John Yates. He said he took eight hours to look at the evidence. What were your expectations? When you asked him to do this, how long did you expect him to take?

**Sir Paul Stephenson:** I had no expectations of how long. Again, I go back to my statement. Even in my letter to you, I missed out the last word in my statement, which was, “I would anticipate making a statement later today perhaps.” I anticipated that statement would be about letting people know where we were up to, but I had no anticipation of what the time scales would be. I asked a senior-grade chief constable, which is what an Assistant Commissioner is, to take another look—just take a look—and come to a conclusion.

**Chair:** Thank you. Mr Michael.

**Sir Paul Stephenson:** I made that statement to—

**Chair:** Mr Michael will pursue this.

**Q745 Alun Michael:** In July 2009, when you asked John Yates to take a fresh look at the material in respect of phone hacking, what did you expect that fresh look to involve?

**Sir Paul Stephenson:** I am sorry to say this again, Mr Michael—the Guardian article was a big story on Radio 4 as I was travelling to Manchester; I had no knowledge of it. I did not have a great deal of expectation, other than asking the person who was in charge of the old business group that investigated it to have a look at what was in that paper and say, “Is there any reason for us to do anything else?” It was that simple.

**Q746 Alun Michael:** Did you expect at that time, and would you have expected in retrospect, that the material would be reviewed?

**Sir Paul Stephenson:** No, I would not. Unless there was a reason to doubt the original investigation, and, regrettably, we did not have any reason to doubt the original investigation, I would have expected Mr Yates to look at the new information, if it was new information, coming to light and to come to a view—did it materially alter the position or open new lines of inquiry? Mr Yates came to a view that there was no new information in there.

**Q747 Alun Michael:** So, let me get this straight. Essentially, you did not think there was anything to be discovered?

**Sir Paul Stephenson:** Well, it was not whether I thought there was or not. I asked Mr Yates to look at it.

**Q748 Alun Michael:** But we now know that there was a mass of material—I underline the words “mass of material”—that was not reviewed at that time. Does that surprise you in retrospect?

**Sir Paul Stephenson:** In terms of Mr Yates’s explanation, it does not surprise me, but these are questions and matters—I know he has already spoken to you about it—that you have to put to Mr Yates. I am not surprised that he had no reason to suspect the original investigation was not successful. It is very regrettable that that information was there in police possession.

**Q749 Alun Michael:** Could you help us a little bit on how decisions are taken? In retrospect, we know that the original material was looked at to seek information for the potential prosecutions that were being pursued. We also know there was a mass of other material that, in consequence, led to serious investigations. We heard from Mr Clarke that the reason that there was not greater investigation of that mass of material was because—I accept this point—there was massive pressure on him and his officers to deal with a whole set of potential terrorist threats and investigations. In retrospect, do you think that the issue should have been accelerated or escalated to your attention, or that of your deputy, in order to review the decision not to go further into the examination of the mass of material that was there?

**Sir Paul Stephenson:** Unless what we are saying is dishonest, we had no reason to doubt the success of the original investigation.

**Q750 Alun Michael:** But the original investigation, as we have been told in this Committee, was a narrow one. As I indicated, we now know that there was a mass of material that may not have been relevant to
the individuals being investigated at that time, but was extremely relevant to the mass of concerns that have come out since. At some point, as we understand it, the decision was taken that the resources were not available to undertake that.

**Sir Paul Stephenson:** I was going to go on to say, to the second part of your question, that I would have no way of knowing what the parameters were of that original investigation, or indeed that it was so narrowly drawn— or, indeed, that it was a resourcing issue. I was not involved in that original investigation, and I had no knowledge.

**Q751 Alun Michael:** Don’t you think that that should have been escalated to your attention at that time?

**Sir Paul Stephenson:** I don’t see how it could have been, because I guess neither did anybody else currently have that knowledge.

**Q752 Alun Michael:** In September 2010, we were asking whether or not there was a fresh investigation. At that time, Mr Yates was not able to give a yes or a no. Did you believe that there was a new investigation going on at that stage?

**Sir Paul Stephenson:** From recollection—Mr Yates would have to confirm this—I think that Mr Yates was looking again, scoping it. I think that followed disclosures in The New York Times.

**Q753 Chair:** He did brief the Mayor of London, with a very heavy briefing, that there was no new evidence, which meant that the Mayor made his “codswallop” statement, in which he said that this was a politically motivated attempt to regenerate this issue. That is what Mr Yates said to the Mayor. Did he say that to you? What did he do? Did he ring you up and tell you the results?

**Sir Paul Stephenson:** First, I don’t think Mr Yates said to the Mayor, “This is a load of codswallop.”

**Q754 Chair:** But did Mr Yates brief you?

**Sir Paul Stephenson:** Did Mr Yates what?

**Q754 Chair:** Brief you at the end of the eight hours?

**Sir Paul Stephenson:** He gave me—

**Chair:** A verbal briefing?

**Sir Paul Stephenson:** I think it would have been a verbal briefing. I was in Manchester and he was in London.

**Q755 Chair:** So he rang you and told you, “I have tried to establish the facts”— that is what your press release says— “and this is my result.”

**Sir Paul Stephenson:** From memory, I don’t know whether he told me the result before he announced it, but that would not be a problem to me. I gave him the job to do, and he did the job.

**Q756 Chair:** Did he mention the bin bags? In his article in The Sunday Telegraph last week and to this Committee, he mentioned evidence being put in bin bags.

**Sir Paul Stephenson:** I don’t recall.

**Q757 Chair:** When did you find out that massive evidence was being kept?

**Sir Paul Stephenson:** The only way I could have found out was when the investigation was reopened, and Weeting started in January 2011. Of course, I returned to work in April.

**Q758 Chair:** So you have never heard of the fact that there were all these documents in bin bags until now— or have you heard?

**Sir Paul Stephenson:** Well, I think I heard of it before today.

**Q759 Chair:** Nicola Blackwood: Sir Paul, you have repeatedly said that you had no reason to think that the first investigation had not been completely successful, and that there were no further leads to follow up. Peter Clarke, when he gave us evidence, likened the original investigation to a complex fraud, in that there were over 11,000 documents, and it was necessary to set very narrow parameters in order to be able to use the evidence effectively and gain prosecutions; necessarily, a lot of the evidence had to be not examined for possible additional indictments. Due to the fact that there were problems of resources and a very high terror threat level at the time, there was the decision not to have an exhaustive analysis following immediately afterwards in 2005–06. Was that not disclosed to you in 2009, giving you the sense that perhaps it would be necessary in 2009 to do more than one day’s review in order to assess those 11,000 documents?

**Sir Paul Stephenson:** No, absolutely not. Phone hacking did not become a priority to me in 2009.

**Q760 Chair:** Nicola Blackwood: Sir Paul, you have repeatedly said that you had no reason to think that the first investigation had not been completely successful, and that there were no further leads to follow up. Peter Clarke, when he gave us evidence, likened the original investigation to a complex fraud, in that there were over 11,000 documents, and it was necessary to set very narrow parameters in order to be able to use the evidence effectively and gain prosecutions; necessarily, a lot of the evidence had to not be examined for possible additional indictments. Due to the fact that there were problems of resources and a very high terror threat level at the time, there was the decision not to have an exhaustive analysis following immediately afterwards in 2005–06. Was that not disclosed to you in 2009, giving you the sense that perhaps it would be necessary in 2009 to do more than one day’s review in order to assess those 11,000 documents?

**Sir Paul Stephenson:** No, absolutely not. Phone hacking did not become a priority to me in 2009.

**Q762 Nicola Blackwood:** I understand that phone hacking did not, but the nature of the evidence that was in your possession was not revealed to you by your officers?

**Sir Paul Stephenson:** No.

**Chair:** Julian Huppert. Could we have brief questions, because we have other witnesses?

**Q763 Dr Huppert:** I will do my best. Chair. The Evening Standard is reporting that the Neville whose name appeared in some of that information was a source, and was providing information to the Met— code name George, I think, source 281—and that in exchange he was given confidential information from
Q764 Bridget Phillipson: Sir Paul, we are aware of the comments you made publicly that day regarding asking Mr Yates to establish the facts of the case, but what discussions did you actually have with Mr Yates when you rang him up? Presumably you instructed him to do this above and beyond making a statement publicly. He would not have been aware to do something just from a public statement.

Sir Paul Stephenson: Yes, I told him could he have a look at it.

Q765 Bridget Phillipson: Did you advise him as to what practical steps that might involve?

Sir Paul Stephenson: No, I would not advise a man of Mr Yates’s experience and a senior-grade chief constable on the practical steps of how to decide whether there was more in this or not.

Q766 Bridget Phillipson: At what point were you aware of the ongoing civil action, taken by a number of individuals, that was drawing out further information?

Sir Paul Stephenson: I really could not help you with that. I do not know at what point I was aware, but I do have to say that against the other priorities on my desk, that still would not have made it a priority. What would have made it a priority was if I had known about the hideous nature of some of those.

Q767 Bridget Phillipson: Just one final question. Returning to the comments that you made at the start regarding not wanting to compromise the Prime Minister—correct me if I am wrong—you said that you spoke to a No. 10 official who told you not to share that information with Mr Cameron. Is that correct?

Sir Paul Stephenson: First, let me make it quite clear that I do not believe that the Prime Minister would be compromised. All I was trying to do was guard him against any accusations that he might. It was simply that. Secondly, I did not say that a senior official told me. It is my understanding that that is consistent with the advice from a senior official, but I think Mr Yates might be able to say more.

Q768 Bridget Phillipson: Who was that senior official? Do you know?

Sir Paul Stephenson: I do not have the identity.

Q769 Bridget Phillipson: Who had that conversation?

Sir Paul Stephenson: Can I suggest that you might want to ask Mr Yates?

Chair: We will ask Mr Yates.

Q770 Mark Reckless: To the extent that Mr Yates felt that he was perhaps expected to do only the minimum with this review, or whatever it is to be described as, is that not understandable? I know, Sir Paul, that you are now saying that the reference to a statement was a technical one—it was just something formal that might happen later that day—but do you understand why it might be that Mr Yates could have felt under pressure to produce quick results, when you had told your colleagues at the ACPO conference: “I have asked Assistant Commissioner John Yates to establish the facts of that case and look into that detail, and I would anticipate making a statement later today”?

Sir Paul Stephenson: If I could finish that, “later today, perhaps” is what I said. No, I do not think that that would put pressure on. I think it does make a difference, because it might be that Mr Yates could not make a statement later that day. There was a big story in the headlines, and lots of people were asking questions about it, and I was trying to indicate that we would say something more about it. I do not think that that put pressure on Mr Yates, and I do not think that Mr Yates would accept such pressure.

Q771 Mark Reckless: Well, we will ask him. Do you not think that because you said that the statement would be made later that day—whether “perhaps” or not—John Yates was going to be under pressure to produce a result, and that the public might well think that the decision at the Met not to reopen this investigation was made at the top?

Sir Paul Stephenson: The first part of your question I have just answered: I do not think that would put pressure on somebody of Mr Yates’s experience. I cannot answer as to what the public might think on that. It is something that we would do. If a big story is running early in the morning on Radio 4, we would generally try to put something out as soon as possible as to what we were doing about that big story.

Q772 Chair: And that would come from your press office?

Sir Paul Stephenson: It might come from the senior investigating officer. It might come from a senior officer. It might come from whoever was relevant to make such a statement.

Chair: Thank you. Michael Ellis has a quick supplementary question. We have other witnesses.

Q773 Michael Ellis: Yes. You told Yates to take another look. It was a cursory look, and you knew it to be a cursory look, because he gave you a report on it only later in the day. Is that right?

Sir Paul Stephenson: Well, I was aware that, later on in the day, he said he didn’t think there was anything new.
Q774 Michael Ellis: Had The Guardian told you that there was more to it than had, at that time, been in the public domain?

Sir Paul Stephenson: All I can do is take you back to the fact that Mr Yates looked at it, and he did not think there was anything new. I would expect him to look at it and make that decision.

Chair: We will ask Mr Yates. Nicola Blackwood?

Q775 Nicola Blackwood: Sir Paul, we know what your formal request to Mr Yates was regarding the review. I wonder whether you had any off-the-record discussions that might have given him a suggestion as to the parameters that you would prefer him to use for his review. Were there any discussions or any informal remarks that you might have made to him that would have suggested that he do the minimum of work on this particular issue?

Sir Paul Stephenson: Sorry, any what?

Q776 Nicola Blackwood: Any informal remarks that you might remember having with him about this investigation.

Sir Paul Stephenson: No, I don’t think I had any. We would have had a discussion on the telephone. I would have asked him to pick it up and do his job.

Chair: Alun Michael. Final question.

Q777 Alun Michael: You have referred on a number of occasions now to senior members of your team as—I think I quote you correctly—senior chief constables. A chief constable is the chief police officer in charge of a police force—a role you have occupied in the past in Lancashire. These are members of your team; they are not independent chief officers of police in that sense, are they? They are accountable to you. The implication of what you said seems to suggest that the Met operates as a series of baronial empires, almost. Would you like to clarify that?

Sir Paul Stephenson: I certainly would. Some might say that might have been the case in the past, but it is certainly not the case now. All I am trying to do is set the context, and the context is, when people are asking me, “Did you supervise John Yates?” Did you give him guidelines? I think John Yates would accept that he is a senior grade equivalent to chief constable. He is one of the most senior grades in the land. He has extraordinary experience. It is that context that I am trying to set.

Q778 Alun Michael: That is a helpful clarification, but it is in that context, I think, that we are expressing some surprise, as you were the chief officer responsible, with a deputy to stand in if you were otherwise occupied, that some of these matters were not escalated for consideration at that level by these very experienced senior members of the Metropolitan police team.

Sir Paul Stephenson: I think I have given as full an answer as I possibly can as to why this would not be seen as a priority, until such time as we had what we thought was new and additional information. My understanding is that new and additional information came in January ‘11—of course, I was away at the time—and it was that that started Operation Weeting.

Q779 Alun Michael: But questions were already being asked the previous year. We were already asking whether there was a fresh investigation, so outside the Met, there does seem to have been a belief that there was material to be examined.

Sir Paul Stephenson: When you ask those questions, my understanding is Mr Yates was saying that there was a scoping exercise based on The New York Times information. You would have to ask Mr Yates or perhaps Mr Godwin, who was standing in for me; they reopened the investigation. My understanding is it was on the basis of the new disclosures from News International, but I cannot be sure about that; I was not there.

Q780 Chair: May I ask two questions, in conclusion, that are in the public domain? Alex Marunchak—a name that probably you were not familiar with, but you became familiar with yesterday—was an ex-News of the World journalist who was employed as a translator. Did you know that before yesterday?

Sir Paul Stephenson: I have over 50,000 employees.

Q781 Chair: Do you know of anyone else who is a former employee of the News of the World who now works for the Met, or is this a question we should put to others?

Sir Paul Stephenson: It was in the letter that you sent to me last week.

Chair: It was.

Sir Paul Stephenson: I will try to be as helpful as possible. Without providing information that would unfairly identify individuals, I understand there are 10 members of the DPA staff who have worked for News International in some capacity in the past, in some cases as journalists, and in some cases undertaking work experience with the organisation. I can't help you beyond that. If you want to make further inquiries, I guess you will have to—

Q782 Chair: Ten in the press department?

Sir Paul Stephenson: Ten members of DPA staff—Mr Fedorcio is giving evidence—

Q783 Chair: What is DPA?

Sir Paul Stephenson: The Department of Public Affairs, which includes media.

Q784 Chair: So in his staff, there are 10 out of 45? Sir Paul Stephenson: Yes. That is the information I have got.

Q785 Chair: We will ask him in a moment, but you have just given us this information—presumably you have just discovered this.

Sir Paul Stephenson: You asked the question, so I tried to do you the courtesy of an answer.

Q786 Chair: We are most grateful. In respect of Sean Hoare, do you have any information other than what we have seen in the public domain?

Sir Paul Stephenson: None whatsoever.

Q787 Chair: You have nothing to tell us?
Commissioner, this might be the last time you appear before the Select Committee as Commissioner. May I ask you where you think your resignation—and the resignation of John Yates—which I think we accept was a shock, leaves the service that you have been involved with for so many years? You have had many years of distinguished service. Every person who has spoken about you since your resignation refers to you as an honourable man and as a person of integrity. I am still a little bit puzzled why you have resigned, bearing in mind that you have had no involvement in the investigation or in Mr Wallis’s appointment, other than being consulted, and Mr Wallis did not do very much for you. Given that you have resigned, which is now a fact, where does this leave the Met?

**Sir Paul Stephenson:** There are two issues here: where it leaves the Met; and you are still a little bit puzzled as to why I resigned. Let me say where it leaves the Met. Clearly, these are huge events—regrettable events—and I would say that I sincerely regret that Mr Yates has gone. I think that the work that he has done, particularly in counter-terrorism in this country, is splendid. We are the poorer for his leaving because he was not taking matters further. Why did you employ Mr Wallis, whom are decent, honest, hard-working professionals who will actually be well led. The interim arrangements have been put in place and I am very confident that they will work very well. I sincerely regret going, but I am confident that the Met will maintain and grow—

**Q788 Chair:** Has the Met been damaged by all this very badly?

**Sir Paul Stephenson:** It has certainly not been helpful. Having a Commissioner resign cannot be helpful, however good, bad or indifferent the Commissioner is.

**Q789 Chair:** But do you think that trust can be restored, in respect of what can happen in the future?

**Sir Paul Stephenson:** I most certainly do. I think we need to make changes in how we handle the media. Some of those changes have already been made, and that is why I appointed Elizabeth Filkin yesterday, with her approval, to come in and give us independent advice. I do think that we need to handle the media differently in the future—much more transparently—and we have already put those arrangements in place, and more will be done in the Met.

You still thought it a little bit odd, why I resigned. I think that I gave you a very fair and full answer, and that I gave a very fair and full statement. You mentioned that this might be the last time I appear before you. Well, this is almost certainly my final professional engagement after 36 years of policing. To try to assist you, I am not going to add to my resignation speech—I think it was rather lengthy, and it is now a matter of public record—but it is safe to say that, contrary to much ill-informed media speculation, I am not leaving because I was pushed, just to confirm what I said earlier, and I am not leaving because I have anything to fear or am threatened. I am not leaving because of any lack of support from the Mayor, the Prime Minister or indeed the Home Secretary. Until the point of informing them of my resignation, their support was very strong, and afterwards their comments were most generous. I am going because I am a leader. Leadership is not about popularity, the press or spinning: it is about making decisions that put your organisation, your mission and the people you lead first. It is about doing things that will make them proud of their leaders, and that is very different from being popular with them. It is about making decisions that might be difficult and personally painful; that is leadership, and that is why I am going.

**Chair:** Sir Paul, as always, you have been very courteous to this Committee. You have answered questions for more than an hour and a half. On behalf of the Committee, may I wish you the best of luck for the future? Thank you for coming in.

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**Examination of Witness**

Witness: **Dick Fedorcio**, Director of Public Affairs and Internal Communication, Metropolitan Police, gave evidence.

**Q790 Chair:** Mr Fedorcio, you have heard most, if not all, of the evidence, so I think we will go straight into it without long introductions. I will go straight to the questions, if I may? Can you tell us the position that you hold in the Metropolitan Police Service? What is the job that you do?

**Dick Fedorcio:** I am the Director of Public Affairs, which means that I am responsible for the Met’s media relations. I am responsible for corporate internal communication; I am responsible for marketing and I am responsible for communications.

**Q791 Chair:** And in respect of these matters—we specifically want to talk about these matters—were you the person who signed off the contract to employ Mr Wallis?

**Dick Fedorcio:** Yes.

**Q792 Chair:** Why did you employ Mr Wallis, knowing full well that during your tenure as Director of Public Affairs, there had been many, many questions about the News of the World—the phone hacking allegations? You knew, obviously, about the Peter Clarke investigation. You even knew about the Yates investigation because I think that you organised the press to be outside Scotland Yard—your Department did—when he made his statement saying that he was not taking matters further. Why did you employ him knowing this?

**Dick Fedorcio:** Can I say, Chairman, I am keen to be as open and helpful as I can to the Committee today,
but as you will be aware, only a couple of hours ago I was informed that I had been referred to the Independent Police Complaints Commission for investigation? I have not been able to take legal advice in that time, so I hope that you will bear with me and perhaps guide me if you feel I am straying into areas that may cause me problems in the future.

Q 793 Chair: All our witnesses have been referred to the Independent Police Complaints Commission and that did not stop the Commissioner, so you can take your guidance from him. This is a Committee of Parliament, which is sovereign. We can take evidence from whomever we want until someone is charged with a criminal offence. There is no risk of you being charged with anything, is there?
Dick Fedorcio: I don’t believe so.

Q 794 Chair: Excellent. So feel free to answer our questions.
Dick Fedorcio: The point that I was making is that I have not had the opportunity to take independent legal advice, whereas others may have done.

Q 795 Chair: Specifically, if you could answer our questions. We are not keen on long statements. We know the facts, or the background anyway. You can give us the facts. You took the decision to employ Mr Wallis. You have 45 people working in your press office, but you needed another consultant. Why Mr Wallis, bearing in mind that Mr Clarke had just completed an investigation in 2006 and Mr Yates had conducted a review at the express request of the Commissioner. Why did you give this to the man who was the deputy editor of the News of the World?
Dick Fedorcio: Where shall I start? The need that I had for external advice and support came about, as the Commissioner explained earlier, because my deputy was undergoing recuperation and recovery from a quite serious illness. Even today, he is yet to return to full work. This meant that I was working—effectively doing two jobs—at the top of the Department. It was the strategic level of work that I was working on. I was under great pressure, working long hours and I felt that I needed some help and assistance. In fact, the Commissioner suggested that I should look and find such help.

Q 796 Chair: We understand that, so tell us why you found him.
Dick Fedorcio: I had been looking for some time to find someone who I felt had the right experience, background and knowledge to provide that assistance to me. Over a period of time I spoke to a number of colleagues—the professionals outside the organisation whom I know—to seek their views on how I could go about this. I came to the view in the end that what I needed was what I call a retainer contract. It was a contract that would give me access at short notice to someone as an adviser and that—

Q 797 Chair: We understand all that, but why him?
Dick Fedorcio: I am coming to that.

Q 798 Chair: Why Mr Wallis?

Dick Fedorcio: I needed that contract in place to enable me to move quickly if or when I needed to get advice. One of the names that was put to me was Neil Wallis following his departure from the News of the World.

Q 799 Chair: Who put that name to you?
Dick Fedorcio: I was aware of it. I cannot remember who, to be honest. But I was made aware that he, having left the News of the World, was available for consultancy work. He was setting up on his own and was therefore available. I saw Mr Wallis—

Q 800 Chair: Whom you had never met before?
Dick Fedorcio: No. I had met Mr Wallis on a number of occasions. I should say that I know Mr Wallis as a business colleague. I have known him since 1997.

Q 801 Chair: As a business colleague?
Dick Fedorcio: As a business colleague. By that I mean that I am at the Metropolitan police as the Director of Public Affairs. At that stage he was deputy editor of The Sun.
Chair: Right.
Dick Fedorcio: That is when I first met him and I have known him through his various—

Q 802 Chair: Isn’t he a professional person, not a colleague, but someone you dealt with regularly?
Dick Fedorcio: A professional colleague, yes.

Q 803 Chair: When you say business colleague we thought you were in business together.
Dick Fedorcio: Sorry, yes, I should have said a professional colleague.

Q 804 Chair: So you had known of him.
Dick Fedorcio: I know him, but he is not a personal friend whom I socialise with out of work. I want to make that clear. I have seen him on a number of occasions over those years. I have known him in the various senior roles that he has fulfilled.

Q 805 Chair: But you were aware of the background of all the phone hacking investigations. You were aware of that on 9 July, just a few months after he was appointed. When did you actually give him the contract?
Dick Fedorcio: The contract was awarded at the end of September 2009.

Q 806 Chair: And Mr Yates finished his review on 9 July.
Dick Fedorcio: Two months earlier, yes.

Q 807 Chair: Eight weeks after the review was completed you gave him a contract.
Dick Fedorcio: Yes.

Q 808 Mr Winnick: So you knew all about phone hacking allegations before Mr Wallis was appointed. That is quite clear.
Dick Fedorcio: What I knew was that the Metropolitan police investigation had taken place. I knew the decisions of the Metropolitan police around
that and all the statements that had been made by the Metropolitan police. I was aware of the media coverage that had taken place. It was in that context that I made that decision.

Q809 Mr Winnick: And two people had been convicted and sent to prison over phone hacking.

Dick Fedorcio: In 2006—2007, I think—when that took place, some two and half years earlier.

Q810 Mr Winnick: I speak as a layman not a journalist, but wouldn’t the first question one would ask of Mr Wallis be, “Since you were the deputy journalist, but wouldn’t the first question one would ask Mr Wallis for the information, or the question I assumed would be put, because he had been asked by Mr Yates. Is that right?

Dick Fedorcio: Yes. Mr Yates made me aware of that.

Q811 Mr Winnick: As I understand it, you did not ask Mr Wallis for the information, or the question I assumed would be put, because he had been asked by Mr Yates. Is that right?

Dick Fedorcio: You are head of public affairs and you say that your responsibilities include marketing, and that you needed Mr Wallis as another PR consultant. I may be naive, but would it not be better if the Met concentrated on catching criminals?

Dick Fedorcio: The Met is concentrating on catching criminals.

Q812 Mark Reckless: Could at least some savings be made in your department?

Dick Fedorcio: There are always savings to be made, and my department has contributed to savings over the past 10 years, every year.

Chair: Dr Huppert. Could we make it quick, please?

Q813 Dr Huppert: But it seems rather bizarre that there would be this January-March window. It does nothing that could embarrass any of us in that meeting.

Dick Fedorcio: Nothing that could embarrass any of us in that meeting.

Q814 Mr Winnick: How long have you been involved in public relations?

Dick Fedorcio: 40 years this year.

Q815 Mr Winnick: And it would not have occurred to you, with all your vast experience, to put the question yourself to Mr Wallis, bearing in mind how much phone hacking, even then, had been in the news, with court convictions and people being sent to prison due to phone hacking connected with the News of the World?

Dick Fedorcio: I can’t remember the actual words or the conversation.

Q816 Mark Reckless: You are head of public affairs, and you say that your responsibilities include marketing, and that you needed Mr Wallis as another PR consultant. I may be naive, but would it not be better if the Met concentrated on catching criminals?

Dick Fedorcio: I do not believe so. Like it or not, the media have a strong interest in policing. They put significant demands on the Met, wanting information out of the police officers doing their investigations. If we were not in place, the police officers would be spending their time trying to deal with that approach. By having press officers in place, we are able to take the pressure off the investigating officers, so that they can get on with their jobs. In the main, press officers cost less than police officers, so we are a cheaper option as well.

Q817 Mark Reckless: Why do have these 50-odd— or whatever it is— people in PR? Has that not just grown too big? Why not just concentrate on the basics?

Dick Fedorcio: I do not believe so. Like it or not, the media have a strong interest in policing. They put significant demands on the Met, wanting information out of the police officers doing their investigations. If we were not in place, the police officers would be spending their time trying to deal with that approach. By having press officers in place, we are able to take the pressure off the investigating officers, so that they can get on with their jobs. In the main, press officers cost less than police officers, so we are a cheaper option as well.

Q818 Mark Reckless: Could at least some savings be made in your department?

Dick Fedorcio: There are always savings to be made, and my department has contributed to savings over the past 10 years, every year.

Chair: Dr Huppert. Could we make it quick, please?

Q819 Dr Huppert: Indeed. Mr Fedorcio, you are clearly the main contact at the Met with some of these journalists. Freedom of information requests from Dee Doocoy revealed your name all over meetings with people from News International. It is important to be transparent about these things, and the Met has a publication scheme about hospitality, as we have already discussed. When I look online, however, the entire directorate of public affairs has apparently received no gifts or hospitality since March 2009. Even back then, only 12 lunches or breakfasts are declared for the entire directorate, and tickets to Wembley but not to Twickenham. What is going on? Were you trying not to tell the public about those meetings, and why were they not declared openly and transparently as the rules say you ought to have been doing?

Dick Fedorcio: Until recently, only the Commissioner and the Deputy Commissioner’s hospitality registers were published on the website. Work is now being done to backdate all the rest of the organisation’s hospitality registers at a senior level for the last three or four years, and I anticipate those being published shortly. That was not my responsibility; that was a recent decision taken to expand the publication of hospitality.

Q820 Dr Huppert: But it seems rather bizarre that there would be this January-March window. It does...
not say anything about who received a gift, who it was from or what the value was. Do you at least accept, particularly given current public concern, that it is simply outrageous that there is not a record of key contacts between senior people at the Met like yourself, and these journalists? It is not recorded in any way publicly and that should have been a priority to look at once you realised that there was a key issue.

Dick Fedorcio: I think you will find that my hospitality is connected with the Commissioner, or whoever I had been with. It may not be on the DPA site—

Dr Huppert: It is not on the Commissioner’s site either. I have all of that printed out here as well, and your name is not listed.

Dick Fedorcio: Sorry. Okay—within the books, within the Met.

Q821 Chair: Will you supply us with a list? That would be very helpful. Lorraine Fullbrook, on the employment of Mr Wallis.

Lorraine Fullbrook: Mr Fedorcio, specifically on the employment of Mr Wallis, did you go out to tender for this contract?

Dick Fedorcio: Initially, my understanding at the time of the procurement boards was that the option of a single tender was in place. I asked and inquired about that, and was then given advice by the procurement department that this would require three quotes because of its size and scale. At that stage, I went and got three quotes, and of those three quotes, Mr Wallis was by far the cheapest.

Q822 Lorraine Fullbrook: You said that you employed Mr Wallis because you needed to beef-up your department, but you said your deputy was so good. Why then would you feel the need to employ Mr Wallis for two days a month?

Dick Fedorcio: My deputy was off sick.

Q823 Lorraine Fullbrook: So two days a month would help that would it? There was nobody else; the number three in your department was not good enough to take that position.

Dick Fedorcio: The person at the next level was still relatively new in post. My professional assessment was that I needed external help that was not available internally.

Q824 Lorraine Fullbrook: So out of the 45 people in your department, you felt that there was nobody available to give the kind of expertise that Mr Wallis would give you?

Dick Fedorcio: Not at the senior level that I was looking for.

Q825 Lorraine Fullbrook: Is it not the case that you employed Mr Wallis to help you with the fall-out from the News of the World phone hacking scandal?

Dick Fedorcio: Not at all. If I may be very clear, the work that I employed Mr Wallis to assist with, and the sort of work that I was involved in, would have been about corporate policy matters. Issues of investigation and of operational activity are dealt with by the press officers and the 45 staff. I do not get involved in operational or investigative matters.

Q826 Lorraine Fullbrook: You never discussed the phone hacking scandal with Mr Wallis. Is that what you are saying?

Dick Fedorcio: No. Never.

Q827 Chair: But as the Director of Public Affairs, you sit on a management team you must know lines to take. Surely you could not possibly do your job if you did not know about what was happening in the Metropolitan police, and on a daily basis someone would give you a complete set of cuttings as to where the Metropolitan police was involved.

Dick Fedorcio: I didn’t say that I didn’t know; I said that I didn’t have a discussion with Mr Wallis.

Q828 Chair: So you did know about the phone hacking. You did know that investigations were going on.

Dick Fedorcio: I knew that the initial investigation had taken place and that that had closed. I knew that Mr Yates had conducted that work in July, and I know that in January this year the investigation reopened.

Q829 Chair: We understand what happened in 2009, but you knew what happened on 9 July and the eight weeks that led to the issuing of the contract.

Dick Fedorcio: Yes. I was aware of that.

Chair: You knew that Mr Yates was conducting that so-called review, and you knew that Mr Yates was a personal friend of Mr Wallis, but you still relied on Mr Yates to give you the all-clear to employ Mr Wallis.

Dick Fedorcio: I accept the integrity of Mr Yates. He is a senior officer in the organisation.

Q830 Chair: But what about your integrity as someone who needed to show due diligence when you signed off this contract?

Dick Fedorcio: I was satisfied that the advice given to me by Mr Yates was reliable.

Q831 Steve McCabe: On the question of the contract, you say that, of the three people who tendered, Mr Wallis’s company was the cheapest. Are the contract specification and the details of how it was advertised available? Could they be made available to the Committee so that we can see what he was being judged against? Have you retained that?

Dick Fedorcio: Yes, indeed. A contract of that size could be let by obtaining three quotes from potential suppliers within the Met rules. It was not advertised externally.

Q832 Steve McCabe: How did you obtain these three quotes? Did you phone up a couple of other people that you knew or did you write it down? I am just trying to figure out how he won the contract.

Dick Fedorcio: I prepared a short specification, which I e-mailed to the three people asking them to provide a costing for the work that I was looking for on a retainer basis, based on an assessment of around two days a month.
Q833 Steve McCabe: And that documentation is available? You could make it available to the Committee?
Dick Fedorcio: Well, that documentation is with the Independent Police Complaints Commission now.

Q834 Steve McCabe: One other thing. When you employ people on this or indeed any other basis, are they normally required to provide any disclosures of their other business details or connections?
Dick Fedorcio: There is a contract, but I cannot recall the details of the contract.

Q835 Steve McCabe: If you want somebody to work at the Met, you would not want someone who perhaps had connections to the criminal fraternity, so there must be some way that you ask people to provide a disclosure of their business connections. Is that right?
Dick Fedorcio: I know that in this case Mr Wallis had just left the News of the World and he was setting up on his own. At that stage, he was looking to obtain new contracts. As far as I was concerned—

Q836 Steve McCabe: So you made no attempt to find out what other business interests he might have had?
Dick Fedorcio: I asked who he was working with and at that stage he said, "I've just set up on my own. I am just starting my business."

Q837 Steve McCabe: And is this recorded?
Dick Fedorcio: I doubt it.

Q838 Nicola Blackwood: Mr Fedorcio, when you asked Mr Yates to conduct the due diligence, was that a normal process? Would you normally have asked Mr Yates to conduct that due diligence? How did you select Mr Yates for that?
Dick Fedorcio: I was talking to Mr Yates for two reasons. One, I knew that he, being new in post in the specialist operations department, would particularly need some assistance at a senior level. Part of this work would assist him in doing it, so I spoke to him about specifically because of his involvement in phone hacking. I was aware of the investigation or, in his case—

Q839 Nicola Blackwood: You thought it was a good idea for Mr Yates to do due diligence on a new employee from News of the World, because he had been investigating News of the World employees?
Dick Fedorcio: Mr Yates is a senior police officer in the Metropolitan police. I have no reason to doubt his integrity.

Q840 Nicola Blackwood: That is not what I asked. I asked why did you select Mr Yates to do due diligence on a new employee who you were considering a contract with?
Dick Fedorcio: Because in this case he was aware, or he had been leading the work on phone hacking—whatever was going on at the time—and I thought that was an appropriate place to do it.

Q841 Nicola Blackwood: When you selected him, were you aware that Mr Yates had been a close friend of Mr Wallis since 1998?

Q842 Nicola Blackwood: Did Mr Yates inform you that he had been a close friend of Mr Wallis since 1998?
Dick Fedorcio: I have only in the last few years picked that up.

Q843 Chair: In the last few years? Sorry, Mr Fedorcio, in answer to Nicola Blackwood, could we have a precise answer? You said to me previously that you knew he was a friend of Mr Yates.
Dick Fedorcio: I knew he was a friend, but I did not know they went back to 1998.

Q844 Chair: But you knew he was a friend.
Dick Fedorcio: I knew he was a friend.

Q845 Nicola Blackwood: At the time when you asked him to do due diligence, did you know that he was a close friend of Mr Wallis?
Dick Fedorcio: I knew he had contact with Mr Wallis. I could not say that he was a close friend, but I knew he was a contact.

Q846 Nicola Blackwood: Did you not think that it might not be appropriate for someone who was a close friend of a potential employee to do the due diligence exercise on that potential employee?
Dick Fedorcio: I had no reason to doubt Mr Yates's judgment.

Q847 Nicola Blackwood: Despite his integrity, it might have put him in a difficult position if he had discovered something?
Dick Fedorcio: I have no reason to doubt Mr Yates's integrity.

Q848 Nicola Blackwood: It is not about his integrity; it is about the position which he might have been put in.
Dick Fedorcio: I do not believe he was put in a position like that.

Q849 Chair: Mr Fedorcio, it is about your integrity and how you appoint people, not about Mr Yates's integrity. We will make our own conclusions on that. Miss Blackwood is asking you whether you think in hindsight you did the right thing.
Dick Fedorcio: With hindsight, as I know a number of my colleagues from the Met over the last week have said to you, lots of things would have been done differently, if we had known then what we know now.

Q850 Chair: But in respect of the appointment of Mr Wallis, would you reappoint him knowing what you now know?
Dick Fedorcio: Certainly not.

Q851 Michael Ellis: Who recommended Mr Wallis to you? You say you had a recommendation before you took him on.
Dick Fedorcio: I had been out; I am trying to think. In mid-August, I discovered that he was down working independently.

Q852 Michael Ellis: Was it someone from the News of the World or from News International?
Dick Fedorcio: I honestly cannot recall who said it. I speak to a lot of people.

Q853 Michael Ellis: Despite the scrutiny on this matter and despite obviously having given it some careful consideration, you cannot recall who suggested that you hire Mr Wallis.
Dick Fedorcio: At the end of the day—

Q854 Michael Ellis: Was it Rebekah Brooks?
Dick Fedorcio: Certainly not.

Q855 Michael Ellis: Was it anybody else at News International?
Dick Fedorcio: Not to my knowledge.

Q856 Chair: In answer to Mr Ellis’s question, it could have been someone at News International, because you said you cannot remember.
Dick Fedorcio: I cannot remember, but I do not believe it was.

Q857 Michael Ellis: Were you particularly close to the News of the World and News International? Did your closeness, if you were close to them, cause friction with press officers under your control?
Dick Fedorcio: I read that suggestion in today’s paper, which I am dismayed about, to be honest. The comments that they make suggest that I was placing stories with them. I must admit I have placed stories with all sorts of papers and all sorts of journalists.

Q858 Michael Ellis: Were you giving preference to the News of the World in placing stories?
Dick Fedorcio: Certainly not. You would know that different papers have different interests in different subjects, and you seek to operate within those.

Q859 Chair: Did you know that Mr Wallis’s daughter worked at the Met?
Dick Fedorcio: I did not until yesterday.

Q860 Chair: That was the first time.
Dick Fedorcio: Yes.

Q861 Chair: Mr Wallis’s contract ended when?
Dick Fedorcio: His contract was terminated on 7 September 2010.

Q862 Chair: Is it not the case that he was offered another contract?
Dick Fedorcio: Yes.

Q863 Chair: When was he offered the second contract?

Dick Fedorcio: The situation with my deputy, as I said, continued; he was not coming back. So I had had the first contract. I reviewed it at the end of that period—

Q864 Chair: Look at your notes, please, if you would, so that we get this absolutely right. How long did the first contract run?
Dick Fedorcio: The first contract ran until 31 March 2010.

Q865 Chair: When did it start and when did it end?
Dick Fedorcio: The contract was issued on 1 October.

Q866 Chair: And it ended?
Dick Fedorcio: That one on 31 March—sorry, can I correct myself? The contract had a long potential date. That was why I said that, initially, it was seven months with the option of an extension.

Q867 Chair: So 1 October to 31 March.
Dick Fedorcio: Yes.

Q868 Chair: And he was offered another contract on 1 September.
Dick Fedorcio: He was offered an extension before 1 April, for six months, to take him through to the end of August. On 1 September, he was offered another six months’ extension, but things accelerated in the few days after that. If I can explain, on 1 September, The New York Times article appeared on the other side of the Atlantic, so that came over here later in the day. Over the following few days, the story developed in some ways, which operationally led Mr Yates to make some statements about looking at certain factors.

Q869 Chair: And then you terminated it.
Dick Fedorcio: On the evening of 6 September, reviewing the news coverage, I was determined that I needed to take steps to end the contract. I intended to do it the next morning. I actually received an e-mail from Mr Wallis just after 10 o’clock on the evening of the 6th, saying, “With what’s going on here, I fear this is going to embarrass you, and I don’t want to do that, so I wish to suspend the contract.”

Q870 Chair: So you did not terminate it; he volunteered to terminate it.
Dick Fedorcio: He got there by a couple of hours, ahead of my getting to him to say, “I’m sorry, this is the end.” I accepted his proposal and terminated the contract.

Q871 Chair: Can you clear up one other point in respect of the letter that you sent us concerning Andy Hayman? Mr Hayman has made it very clear that before he went to meetings, dinners etc. with News International, he spoke to you and that you said it was fine for him to go to these meetings. For the record, could you explain your position?
Dick Fedorcio: Certainly and I will try to do it briefly. I need to take this in reverse order, in the way that I wrote to you. The first I became aware of phone hacking taking place was when I returned home from a period of leave in August 2006. It was the only
dinner that I attended, with Mr Hayman and representatives of News International. Before that was in April 2006, which was while the investigation was ongoing. I attended that dinner with no knowledge whatever of the phone hacking investigation taking place.

Q872 Chair: And Mr Hayman didn’t tell you that the investigation was happening—even before the dinner?
Dick Fedorcio: No.
Q873 Chair: Did you go to the dinner together?
Dick Fedorcio: Yes.
Q874 Chair: Did he not mention on the way that he was doing a major investigation into phone hacking?
Dick Fedorcio: No. It would have been inappropriate for me to have been told. I am not briefed on operational matters until I need to know.
Q875 Chair: But were these matters not in the newspapers?
Dick Fedorcio: No. It was totally secretive. It became public on the arrest of Goodman and Mulcaire.
Q876 Chair: You never advised Mr Hayman not to attend any dinners with News International?
Dick Fedorcio: No. Not while there was a live investigation going on into them, no.
Chair: We have a final question from Lorraine.
Q877 Lorraine Fullbrook: Is it correct that you actually employed Mr Wallis before your deputy became ill?
Dick Fedorcio: No. My deputy became ill in the middle of February 2009.
Chair: We have a brief question from Mr Clappison.
Mr Clappison: This is on a different subject, which I want to ask first. It is very brief. I asked the Commissioner about the number of lunches and dinners that he had had with News International organisations, particularly News of the World. He told me that there was a strategy whereby you were trying to reach out to newspapers with a particularly high percentage of the market—I think he said 40% for News International. Were you aware of that strategy?
Dick Fedorcio: I would not accept the use of the word “strategy”. I deal with all of the media and I need to deal with them all of the time. The News International group of papers are a significant part of that, so naturally we would spend an amount of time with them.
Q879 Mr Clappison: Since then, I have seen a list of the hospitality accepted by the Commissioner, and as far as lunch or dinners are concerned—I am not talking about award ceremonies or parties or things like that—it would appear, and I might be wrong about this because we have only had a cursory look, that he only ever went to lunch or dinner with News International organisations, particularly the News of the World. What was the strategy for reaching out to people like myself who are readers of the Daily Mail and the Daily Mirror?
Chair: Not at the same time though.
Dick Fedorcio: My experience is that each news outlet has its own ways of meeting commissioners or senior police officers. Some prefer dinners, some prefer lunches, some prefer meetings in the office, some prefer it over sandwhiches, some prefer it over coffee and some prefer it with nothing. You go with the mood. This is something that has been in place since I started at the Met and it is something that I inherited.
Chair: Mr Fedorcio, thank you for coming in to give evidence. I am not sure whether we are any clearer at the end of this session than we were when we started. We may be writing to you again about these matters. Thank you for coming. May we have our final witness, John Yates?

Examination of Witness

Witness: John Yates, Acting Deputy Commissioner, Metropolitan Police, gave evidence.

Q880 Chair: May I start with an apology for keeping you waiting so long? We are most grateful to you for coming. Let me place it on the record that I greatly appreciate all the roles that you have played in the Metropolitan police and the way in which you have dealt with this Select Committee. You have always been very willing to come here even at very short notice and you have always been very helpful with our inquiries. It came as a surprise to most of us—I am not saying that this was connected in any way with my call to your office—when you announced your resignation yesterday, especially when you were reported as saying, very forcefully, that you had done nothing wrong. We have read your resignation statement and we have a copy with us. Why did you resign bearing in mind that you believe you have done absolutely nothing wrong in this case?
John Yates: Thank you for those kind words to start with, Mr Vaz. As I said in my statement, I felt that this has already become a huge distraction, in the same way that the Commissioner described, for me in my current role. I looked at the past two weeks in terms of my role as the head of counter-terrorism. I probably spent no more than two or three hours managing that level of risk. I see no indication that at any time, either now, in the future or for some considerable period, that pressure will subside. Point one, huge distraction.
Q881 Chair: Thank you. We are just going to examine you on two issues, one of which has emerged since you last gave evidence to us about the 9 July investigation. I will start with some interesting evidence that we have heard from Mr Fedorcio concerning the employment of Mr Wallis. Mr Fedorcio has just told us—this is in the public domain and perhaps one of the reasons why you felt that there were these allegations swirling around that caused you to be distracted—that he decided to employ Mr Wallis because of your reference. He said that he went to you and you said that he was someone who should be employed. Basically, you did due diligence.

Having conducted an investigation into the News of the World, you were the best person to decide on these matters. As a result of what you said to him—these were his exact words, although I do not have a copy for you because it has not yet been written down, but I can send you the transcript—that was why he took him on. If you had raised any concerns whatsoever, he would not have employed him in the Metropolitan police. What do you say to that?

John Yates: I did not hear Mr Fedorcio's evidence, but I think that that is slightly over-egg the pudding, to put it mildly. I sought—it was not due diligence in the due diligence sense—assurances off Mr Wallis before the contract was let. I wrote a note, which I will read, if you like. It said: 'Is there anything, in the matters that Nick Davies is still chasing and still reporting on, that could at any stage embarrass you, Mr Wallis, me, the Commissioner or the Metropolitan police?' I received categorical assurances that there were not. That is not due diligence. Due diligence is in the proper letting of a contract. I had absolutely nothing to do with the tendering process. That was a matter for Mr Fedorcio.

It was prior to anything happening. It was a conversation, which I made a contemporaneous record of because I thought it was relevant. It is a very short record, which I am happy to provide to the Committee. That was it. That is not due diligence and it is certainly not a recommendation. I absolutely know, because I have seen it happen in the Met on several occasions in the past five years, that the letting of contracts is an extremely sensitive issue. I would not touch it or go anywhere near it in a million years.

Point two, leaders occasionally have to stand up and be counted. I have said I am accountable for what has taken place on my watch. I firmly believe—I reiterate that—that I have done nothing wrong. My integrity is intact and my conscience is clear. It is time to stand up and be counted and that is what I have done. I have announced my intention to resign.

Q882 Chair: But, again, you have not seen or heard what he has said. He was pretty emphatic that he relied on your integrity. That is why Mr Wallis ended up getting this job. He left us with the impression that if you had raised a scintilla of concern, even the slightest concern, Mr Wallis would not have had this contract.

John Yates: I did not have a scintilla of concern in 2009. The facts have changed.

Q883 Chair: But you did not raise any concerns.

John Yates: I did not raise any concerns, because I did not have a "scintilla of concern" in 2009.

Q884 Chair: In respect of the other matter that is in the public domain, which is the employment of Mr Wallis's daughter, did you have anything to do with that?

John Yates: I am very happy to answer questions on this, even though it is a matter that has been referred to the IPCC. I am happy to be completely open with the Committee. Again, I have done nothing wrong. I was a post box for a CV from Mr Wallis's daughter. I have some notes in an e-mail, which I am again happy to pass on to the Committee, which give a completely equivocal interest in whether she gets employment. I passed on that e-mail and the CV to the director of human resources in the Met. Thereafter, I do not know what happened to it. It happens all the time. I know that a number of Members of Parliament employ friends and family. Bear in mind that this was January 2009. I think that is a very important point. I was not in charge of specialist operations. I had nothing to do with phone hacking. I had never touched it, and I simply acted as a post box for an application.

Q885 Chair: So you can categorically deny to the Committee that you "secured this job for Mr Wallis's daughter".

John Yates: I absolutely and categorically deny it, and the facts speak for themselves. There is one e-mail from me, and I even said in the e-mail, "Please let me know, director of HR, what the position is, so I can manage expectations." As it is, I am completely equivocal whether this individual gets the job or not. The Met employs people all the time. We have massive IT projects. If we wanted short-term staff, that is what we did. I had absolutely nothing to do with her employment. I was simply a post box.

Q886 Dr Huppert: The evidence that you have clearly missed is just subbing, and your name seems to come up quite a few times. First, how close were you to Mr Wallis? We have heard that you were close friends since 1998. Is that right?

John Yates: Again, I have been described as a close friend. I became friends with him. I first met Mr Wallis—I do not think it was 1998—whenever I was staff officer to the Commissioner, which I think was 2000. I met him once then. I must have met him, in the next five to six years, two or three times per year—if that. It was mostly in the company of others, but occasionally on our own. I think some of those are declared anyway in the hospitality register. I would see Mr Wallis, I reckon—I have given this some thought—two or three times a year. I do not go round to his house on a regular basis; I must have been round there once to pick him up to go to a football match. It is mostly sport related with other people. He is a friend.

Q887 Chair: We get that.

John Yates: I cannot be clearer, but if Mr Wallis has done something wrong—let me be absolutely clear—
Q888 Chair: You are telling this Committee that he is a friend of yours.
John Yates: Yes. I have been open with this Committee and previous Committees.
Q889 Chair: We accept that he is a friend of yours.
John Yates: Don’t get the impression that we are bosom buddies living in each other’s houses, because that is just not the case, and he would never describe it as that.
Chair: We understand that. We get the message.
Q890 Dr Huppert: But I am also shocked about what you just said about employment practices within the Met. You said that it happens all the time. Does it really happen all the time that an Assistant Commissioner passes a CV on to the director of human resources? A big organisation like the Met surely has procedures for how people apply.
John Yates: It has formal procedures.
Q891 Dr Huppert: Are you really telling the Committee that you did not think that you sending that would make any difference to this person’s chance of getting a job?
John Yates: The director of HR, as was then, if you knew him, you would know that he would absolutely say that if there was anything improper about this— he actually said so in an e-mail to me— he would have aborted the process forthwith. He was that sort of person, so I know, in passing it to that individual, that the matter will be dealt with entirely appropriately, with complete probity and in the proper way.
The Metropolitan police turn over a huge amount of staff. They want people for two weeks here, three weeks there, a month there and a month there. It is quite a useful way of getting people into your employment on a short-term basis. There are numerous examples from numerous senior people, both within the Metropolitan police and the Metropolitan Police Authority, where people who are known to those people have been employed on a short-term basis, and some have even become permanent employees in the future. It is not unusual.
Q892 Dr Huppert: Do you think that is a way that a public body ought to be behaving? That it relies on that personal connection. You just described it as a regular way of getting people in for two weeks here and three weeks there. What about the people who do not know a Commissioner?
John Yates: We are turning over a huge amount of staff. There are clearly normal processes that happen, but occasionally—I am sure that it happens in the House of Commons. You will bring people in to work for you for a short-period placement with you on a regular or irregular basis.
Q893 Chair: Can I just ask you about something that was raised by Sir Paul about his non-disclosure to the Prime Minister about the contract that Mr Wallis had with the Metropolitan police? He referred to an official at No. 10 saying to you or you saying to the official that the Prime Minister should be protected from such information. Is there such an official? If there is, who is this official who wanted everyone to keep this information away from the Prime Minister and the Home Secretary? Who was trying to protect the Prime Minister?
John Yates: Officials will always try to protect their principals from these types of things. There are very rare occasions when the Prime Minister will be briefed about operational matters, mostly around national security and counter-terrorism.
Q894 Chair: Was there a decision not to tell him about Mr Wallis?
John Yates: There was an offer in early September 2010 for me to put into context some of the nuances around police language, in terms of what a scoping is, what an assessment is and what launching an investigation—
Q895 Chair: An offer to whom?
John Yates: An offer to a senior official within No. 10, to say, “Should that be desirable, I am prepared to do it.”
Q896 Chair: Who was that official?
John Yates: The official is the chief of staff.
Chair: Ed Llewellyn.
John Yates: Yes.
Q897 Chair: You made an offer to brief him fully on these issues?
John Yates: No. I did not say that. I said that I offered to brief on the nuances of what a scoping was. It was the New York Times issue. People say, “You are launching an investigation.” No, we were not. But it is not well understood, as the word “review” is not well understood, around these nuances. It was simply an offer to explain what scoping meant and what it could lead to.
Q898 Chair: What happened to that offer?
John Yates: The offer was properly and understandably rejected.
Q899 Chair: So there was no question of not telling the Prime Minister for operational matters about Mr Wallis?
John Yates: I wouldn’t have disclosed any operational matters about this. It is the very rare occasions that the PM would be briefed on operational matters. It would be something catastrophic, something about national security, or something of huge public concern, which this was not at that stage, don’t forget. It was simply an offer to explain police protocol.
Q900 Chair: I understand. But you did not seek to tell the Mayor of London or the Home Secretary that someone working for the Metropolitan police, whom you knew as a friend, a close friend or whatever, was formerly the deputy editor of the News of the World. You felt that that was an operational matter, did you?
John Yates: It just wouldn’t be my place to do it. He was working to Dick Fedorcio predominantly, for reasons that I know you have had explained to you regarding his deputy’s illness. There was some brief
support for me as well. Why would I ever think that it was my responsibility to brief on those?

Chair: Thank you. I accept that.

Q901 Mr Winnick: When we had the previous witness, the Director of Public Affairs, before us, we asked him, in effect, if questions had been asked about Mr Wallis over phone hacking prior to the appointment being made. He said no, because in effect, this had all been cleared by you. That’s the situation, is it?

John Yates: Hopefully my earlier answer has explained. What I did was not due diligence in the truest sense. Once it goes into a letting and procurement process, a clear process is undergone. Part of that, I suspect, is proper due diligence, as opposed to my seeking personal assurances that there was nothing untoward. Let us not forget that Mr Wallis is an innocent man still, and we have no way of knowing what comes out in the future. As I say, I will provide you with the memo; you won’t be able to read my writing, so I will type it for you. It was a simple contemporaneous note, recorded in my day book, to say, “Record of a home conversation—sought assurances.” It is as simple as that.

Q902 Mr Winnick: What is not quite simple, at least to me, is that phone hacking had been much in the news. Investigations had taken place. You decided in 2009, was it not so Mr Yates, not to continue with the investigation? Am I right?

John Yates: in 2009, I did not reopen an investigation.

John Yates: You described it to a newspaper as a “crap” investigation.

John Yates: I used that to describe the word “decision” in the light of what I now know—that New International

Mr Winnick: And yet—

John Yates: Can I just finish my point? If I had known then what I know now, and the facts appear to be that New International has deliberately covered things up, I would have made a completely different decision, and none of us would be where we are today.

Mr Winnick: But bearing in mind that two people had been convicted and sent to prison prior to 2009 for phone hacking, and the News of the World was very much in the news as the paper that they worked for and which was supplied information as a result of phone hacking, does it not seem to you very strange indeed that the former deputy editor of the News of the World should be taken on in that year, 2009, with you having decided not to pursue the matter any further? Wouldn’t the first question to him have been, “Were you involved in any way?”

John Yates: I completely appreciate that it looks odd now in the light of what we now know, but I confidently predict that, as a result of News International disclosures, a very small number of police officers will go to prison for corruption. That does not taint the whole organisation. There was simply no evidence against either Mr Coulson or Mr Wallis at that point in 2009. The investigation had been carried out in 2005–06 by others and it was thought to have been a success at that time. There was nothing in that article in July 2009 to suggest anything else. You say that it was a huge story then, but it was not a huge story in September 2009. It re-emerged with The New York Times in 2010, but it simply—[Interruption.] It was another one of those newspaper stories that gets a huge blip and then goes down.

Q904 Mr Winnick: Would we be right to conclude that no questions were asked by you to Mr Wallis about phone hacking at the time when he was deputy editor of News of the World?

John Yates: I have never asked him any questions because he has never been a suspect.

Q905 Chair: Sorry. Mr Winnick is asking whether you asked Mr Wallis whether he was involved in phone hacking when you recommended him, or when advice was sought.

John Yates: I sought assurances about whether he had any role, or whether there was anything that was going to embarrass him—[Interruption.]

John Yates: That is the sort of question you would ask anybody.

Q906 Mr Winnick: That’ll read it in to the evidence: “Summary of phone call with Neil Wallis re potential contract with the metropolitan police service: phone call took place yesterday, 31 August, circa 9 am.” It was a bank holiday, so I did not record it until the following day. “Wanted: absolute assurance that there was nothing in the previous phone-hacking matters still being reported and chased by Nick Davies that could embarrass him, me, the commissioner or the metropolitan police service. I received categorical assurances that this was the case.”

Q907 Bridget Phillipson: When you had the discussion with the Prime Minister’s chief of staff about the offer, was any reason given for declining that offer?

John Yates: When I say it was a discussion, it was a very brief e-mail exchange. Ed, for whatever reason—and I completely understand it—did not think that “it was appropriate for him, the Prime Minister or anyone else in No. 10 to discuss this issue with you and be grateful if it wasn’t raised.” It is very simple—and I can understand it in some sense.

Q908 Bridget Phillipson: At any point when Andy Coulson was employed by the Prime Minister, did you ever meet him, or have you ever had any discussions with him?

John Yates: I have met him, but I have never had a discussion about phone hacking, obviously.

Q909 Bridget Phillipson: And did you discuss Mr Wallis with Andy Coulson?

John Yates: No.

Q910 Steve McCabe: Given that Mr Wallis is or was a friend of yours, were you ever tempted to ask him if your phone had been hacked or where the rumours about your private life were coming from?

John Yates: The fact that I have worked out in retrospect and hindsight that my phone may have been
 hacks as is of such small order to me that no, I have not, actually.

Q911 Steve McCabe: You were never tempted?

John Yates: No.

Q912 Steve McCabe: I want to understand what you said about Mr Coulson. Have you spoken to him since he was employed by Mr Cameron?

John Yates: I have spoken to Mr Coulson at No. 10, with other officials.

Q913 Chair: When was that?

John Yates: I will have to look in my diary. It was probably relatively early on. I think two or three officials were present.

Q914 Chair: About these matters?

John Yates: No, no, about counter-terrorism, police reform, and all the matters that I ought to be interested in.

Q915 Chair: Had you spoken to Mr Wallis before you had gone to that meeting or afterwards?

John Yates: Well, yes, but not about any of the content.

Q916 Nicola Blackwood: Last time you gave evidence to us, you mentioned that when you did the review for eight hours in 2009, you felt that perhaps there was a sense that you were doing the minimum to get it off your desk because there were more important issues, given the terror alert at that time. Was that your own assessment or did you get that from the sense from the instructions that came from Sir Paul?

John Yates: Can I take you back to the evidence and that particular exchange? Quis properly, you broke in and interrupted my flow. I did start by saying “If you had asked me that question” — and there is probably an element of that — but then I went on to say that it is a very small “if”. I reiterate the point that had there been any new evidence — if I had seen any new evidence — of course we would have considered it and may have reopened the investigation, depending on the level and quality of that evidence. I think the “doing the minimum” has been taken out of context, because I did qualify it and you did interrupt me — you did interrupt me in any discourteous way, but I did not get the full point out. It is quite clear from the transcript that that was what I was going to say.

Q917 Nicola Blackwood: What was your understanding of the instructions that Sir Paul gave you? What sort of attitude did you approach the review with — that you can be as thorough as possible and give it high priority, or that you should be as quick as possible and get it done within the time frame that he had laid out, with the hope of giving the press an announcement perhaps later that day?

John Yates: There was no time frame laid out, because clearly —

Q918 Nicola Blackwood: Well, he did say, hoping perhaps to make a statement that day.

John Yates: That could have been a holding statement, that could have been a completing statement, that could have been any type of statement.

So, first, there was absolutely no time frame set out. It was as long or as short as it had to be. I wrote myself a contemporaneous note that day, which I think I have read into the evidence of another Committee, but there were simply some principles I said — “principles to be adopted regarding Operation Caryatid”, it was called — and the request by the Commissioner to establish the facts around this case. I said, “I consider what approach I should adopt in undertaking the above exercise — specifically, this is not a review. It is to establish the facts around this case and to consider whether there is anything new arising in The Guardian article. I intend to adopt the following principles. And I have outlined eight principles here. The scale, scope and outcome in terms of the original case; consideration in relation to the level of liaison with the CPS and counsel and any advice they had provided; consideration of the approach adopted by the prosecution team and their focus, i.e. the framework of the case; any complexities and challenges around the evidence then and any evidence now, in particular into the availability of data, because data goes up to 12 months; the level of disclosure and who had viewed what material”; so I took that point; “how the case was opened after guilty pleas; and whether there was anything new or additional in terms of the articles in The Guardian; and finally, our approach to victims, how they were managed and dealt with, and the impact of any further inquiries, if deemed necessary, on them.” So I went through that process.

Now, I have accepted here, publicly, everywhere I can, that our approach to victims was far from perfect in this case. And it was a matter of —

Q919 Chair: Yes. You told us last week.

John Yates: That is the approach I took, Ms Blackwood. So it wasn’t a finger in the air, “I don’t fancy it”. It was actually reasonably sophisticated in terms of the points —

Q920 Nicola Blackwood: Not just on the issue of victims, there were a large number of principles there to consider in eight hours about the way in which they relate to 11,000 documents, which you admit were not freshly considered.

John Yates: But point five was the level of disclosure and who had reviewed the material. I took a view that it had been, in terms of two people had gone to prison.

Q921 Nicola Blackwood: Two people had gone to prison, but 12,000 victims have been identified now and only 12 had been identified at the time.

John Yates: I had been assured that the material had been reviewed by counsel. Counsel will of course say, as I said last time, they will review it in terms of relevance to the indictment and I accept that. But I was assured — I received assurance two or three days later to reaffirm that — that they had seen all the material and they had not seen anything else.

Okay, you can criticise me with hindsight, but it was not a — it was a reasonably sophisticated process to go
You have referred to police

Q926 Nicola Blackwood: But it was your decision that that was the process that you would go through. That was not on instruction from Sir Paul. It was your design entirely.

John Yates: Sir Paul would hopefully—

Q923 Chair: To be fair to you, we have heard from Sir Paul today. You did not hear his evidence and he was very clear to this Committee that he was putting you under no pressure. It was your call. He did say that he valued your integrity, but it was your call.

John Yates: I have got 30 years’ experience, a lot of experience in the detective world, I have done any number of reviews and establishing the facts. He would expect me to adopt a process that has got some resilience and that is reasonably sophisticated for what we were being asked to do that day, which was an article in a newspaper. This wasn’t a body being found; this was an article in a newspaper.

Q924 Mark Reckless: Mr Yates, you explained when we started our inquiry in September that CPS advice constrained the Met’s investigation. Indeed, as late as July 2009 when you looked at this, and you said just now that the CPS advice was a factor you considered, although I understand from what you said before that you didn’t go to them for new advice, but at that time the CPS stated to our sister Committee 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.” In light of that, do you think there has been a fair allocation of blame between the police and the CPS?

John Yates: As I stand here today, no I do not. It is absolutely apparent throughout that we had the clearest possible legal advice about what constituted a section 1 RIPA offence. That permeated the entire inquiry. We have written to you and to Mr Whittingdale on it, and I have been bashing my head against a proverbial brick wall to try to get that point across. It is absolutely clear what advice we got. Anyone who says that a police investigation isn’t framed by legal advice has never lived in the real world. It is of course what we did, and it is, of course, how we will conduct the investigations both now and in the future, Mr Reckless.

Q925 Chair: We have the former DPP and the current DPP coming in at 5.30. You will be off before then, by the way.

John Yates: I am enjoying myself so much.

Chair: And we love seeing you, Mr Yates.

Q926 Alun Michael: You have referred to police terminology sometimes being misunderstood. You helped us with the word “review” last time we spoke. The words “new evidence” have come up again and again. You were asked by the Commissioner to look at the available material, and in your letter to the Chairman you said that this resulted in you tasking a senior investigating officer to ascertain if there was anything new information that might require investigation.

John Yates: Is this The New York Times?

Alun Michael: Yes, that’s right. I want to be clear about that, because there may be misunderstandings. In the general public mind and perhaps in the mind of parliamentarians, we thought that there was an instruction being given to look at the available material to see whether there was anything that showed offences had been committed by people other than the couple of people who had been sentenced and whether there were other victims other than those who had already been identified. Is that general public and parliamentary impression wrong? Will you clarify that?

John Yates: I am not quite certain of the question.

Q927 Alun Michael: In everyday parlance, we all thought that at an earlier stage of the inquiry the Commissioner had requested, “Get back to looking at all of this and see whether there is anything else that has not been uncovered.” In other words, we thought that the request was as broad as that, and that therefore anything that was untoward and could possibly be pursued in a way that would lead to prosecution should be investigated.

John Yates: I hope that I have explained the method. Bearing in mind what we knew in 2009 compared with what we know now, we looked at what would merit that investment of resources and what would be my level of concern to say, “Gosh, there is something there that we haven’t seen or spotted before,” of a case that had been through the courts, had been reviewed by counsel and had been properly prosecuted and instructed by the CPS. There is nothing there that would say, “With hindsight, God, I wish I had done that.” It is really—

Q928 Alun Michael: I understand that. I am trying to get to the nature of the decisions at that stage. We heard from Mr Clarke that there was a fairly narrow focus because you were looking to pursue certain individuals and to bring the case to a—

John Yates: That was the start point of the case.

Alun Michael: That’s right. When you were asked by the Commissioner to take a fresh look—for the avoidance of misunderstandings, let’s not use the word “review”—did you task your officers to have a look at all that and see whether there is anything there, or did you task them to take a narrow look at the material?

John Yates: It was a fresh look at The Guardian article, just as the start point in 2005 was concern about the security of the Royal princes.

Q929 Alun Michael: So it was framed by The Guardian article? It wasn’t wider than that in looking at whether there was anything there?

John Yates: No, because, frankly, why would we have done then what we knew then? I have been before numerous Committees trying to explain that. You know now something different, I do—and God, I wish I had done something different.
Q930 Alun Michael: Understood. You would accept, I think, that many people felt that there was something around, and that it ought to be brought out into the open somehow. What you were tasked with, and what you tasked your office with, was a narrower look at this area. Is that correct?

John Yates: That is absolutely right, yes. Newspapers, on a weekly basis, will run very interesting articles—classy investigative journalism: “Gosh, that’s interesting”—but we don’t launch an investigation on the back of all of those. It is just, “Is there anything new in The Guardian article of 9 July?”; I am certain there was not.

Q931 Mr Clappison: May I ask something on a different subject, which goes to the issue of what was going on at the time, since we have you here, Assistant Commissioner? I imagine that you were very busy—

Chair: Not too wide, Mr Clappison.

Mr Clappison: It is very much related to this inquiry—the behaviour of certain parts of the press. You were probably very busy last night. There was a report on Channel 4 News into the case of Daniel Morgan, which I think you may be familiar with.

John Yates: Intimately.

Q932 Mr Clappison: To me, as a layman, it was a very alarming report about the way in which the investigation, I think by Chief Superintendent Cook, was interfered with at the time. This is going back to 2002, when that investigation was launched. It was an old case, which had happened in 1987. Can you tell us what you know about that, because I believe that you went to a newspaper office to speak to them about it? Is that right?

John Yates: I don’t think I did.

Q933 Mr Clappison: There was a report in The Observer that somebody from the Met had been to see them.

John Yates: I became involved in the Daniel Morgan case in or round about 2005 or 2006. It’s a case that’s been subject to numerous investigations and reinvestigations, but my involvement is about 2006 onwards. It’s a huge inquiry; there are something like 750,000 documents in the inquiry.

Q934 Mr Clappison: To cut to the chase, the point of it was that the officer who was investigating the murder was himself placed under investigation by the News of the World, who allegedly had some interest in the case.

John Yates: I am fully aware of the issue that has been in the public domain around Dave Cook, surveillance and all those issues. I am also aware, although I wasn’t present, that there was a meeting at the Yard between Dick Fedorcio and Rebekah Brooks, where these matters were discussed. I don’t know the outcome of that, and I wasn’t responsible for the case at the time.

Q935 Mr Clappison: Did you try to find out why that officer had been investigated by the News of the World at that time?


Q936 Mr Clappison: But you became interested in it later on? I’m not blaming you. I am trying to get at what happened.

John Yates: That makes a change.

Q937 Mr Clappison: You’re actually praised, if I may say, in The Guardian today in respect of this.

John Yates: Good Lord. The thing that concerns me, and the thing that I discussed with Dave Cook, was his personal security. That’s what would have concerned me. Dave would know and I would know that we put in place sufficient reassurance around his personal security. What happened in 2002, I would not be taking that further forward at that point.

Q938 Mr Clappison: You didn’t seek to investigate why he was placed under investigation by the News of the World?

John Yates: It was common knowledge between Dave and I that that had taken place. I put in place with David appropriate personal security measures, and relevant advice, to ensure that he felt confident in doing his job.

Q939 Mr Clappison: It was when he was investigating a particular case that he came under investigation. He was investigating the Daniel Morgan case, relaunching the investigation. When that happened, according to Channel 4, he was placed under investigation himself. Do you know why that happened?

John Yates: I don’t know why it happened. It was 2002, and I wasn’t responsible.

Chair: Thank you for that line of questioning. Can we go on to Michael Ellis, who will bring us back?

Q940 Michael Ellis: May I come back to a couple of things? First, you repeated this afternoon an assertion that you made last time before this Committee that it was effectively News International who were not co-operating that caused us to be here. Do you accept that wrongdoers often do not co-operate with the police?

John Yates: I absolutely accept that.

Q941 Michael Ellis: Do you rely on the fact that they were not co-operating to blame them for where you are now, or where the Metropolitan Police is now?

John Yates: On numerous occasions I have tried to explain to this Committee the issue around production orders. I have letters from News International going back to 2005, 2006, 2009, where they clearly, with legal advice, have constructed replies to letters that absolutely constrain the police’s ability to get a production order.

Q942 Michael Ellis: With respect—

John Yates: I am afraid that you haven’t listened to me, and no one is listening to me on this point. It is absolutely clear. We—the divisional investigation team—prepared a production order in 2005–06. We were told by the CPS and our own in-house legal
people that you simply cannot take that forward, a judge will not accept it.

Q943 Michael Ellis: Then you did not have enough evidence. Mr Yates. I am listening to what you are saying. The Committee is listening.

John Yates: It is not the point, Mr Ellis. The point is if they are seen to co-operate and you don’t have evidence that they are not co-operating, you cannot get a production order.

Q944 Michael Ellis: But a business does not have to open its doors to the police without good cause. You say that they constructed legal arguments to impede you, but the reality is that you should have had evidence so that you wouldn’t have needed legal arguments to deconstruct. You would have been able to get a search warrant. You had 11,000 pages of evidence sitting in the basement at Scotland Yard.

John Yates: If the News International lawyers demonstrate that they are co-operating with police inquiries, and they have evidence that they are co-operating—and there was evidence, because they were providing invoices and all sorts of stuff—unless you have contrary evidence, that they are deliberately obstructing you in any way, you cannot get a production order. There are lawyers round this table, I know, who will reiterate that. You cannot get a production order.

Q945 Michael Ellis: Yes, I am one of them. But the reality is that you are seeking to blame the legal process for something that is actually the Metropolitan police’s fault. Isn’t it?

John Yates: I completely disagree with you.

Q946 Michael Ellis: Do you know who first recommended Mr Wallis to Mr Fedorcio?

John Yates: I don’t know.

Q947 Michael Ellis: You didn’t make inquiries about that when you were asked to be the post box that you referred to?

Chair: This is Miss Fedorcio, no sorry, Miss Wallis, the daughter?

Michael Ellis: Did you make inquiries about Mr Wallis at all for Mr Fedorcio? Do you know who first recommended him?

John Yates: I cannot recall how Dick came to his process in terms of who else was on the list, the responsibility for producing the tendering process, identifying potential people. That was all for Dick, and I am sure he said that. I was aware—I don’t know when, but presumably before 31 August 2009—that Neil Wallis was one of those. That is why I sought those assurances.

Q948 Michael Ellis: Do you know how he came to be one of those?

John Yates: I don’t know. Surely you would have asked Mr Fedorcio.

Q949 Chair: You didn’t suggest his name? Mr Fedorcio came to you and said, “We’re thinking of appointing this guy. You know him, what do you think of him?”

John Yates: That could well have happened. That wouldn’t have been unusual.

Q950 Chair: You didn’t suggest his name?

John Yates: I can’t recall.

Q951 Chair: He said you did due diligence.

John Yates: I can’t absolutely recall that process. He was a guy who had recently left his appointment. He was setting up a PR business, with just the type of advice we wanted then. It is perfectly possible, yes.

Q952 Michael Ellis: The job for Mr Wallis’s daughter—you say you acted as a post box in that matter?

John Yates: I am happy to provide the e-mail on that.

Q953 Michael Ellis: How many times had you done that for others?

John Yates: Two, three, four times.

Q954 Michael Ellis: Over a period of how long? Your entire career?

John Yates: I can’t recall. In terms of work placements, my PA would say that I do it too often. Probably twice a year.

Q955 Michael Ellis: So it wasn’t a particularly busy post box. I am talking about you referring a potential employee to the head of human resources. You found that an appropriate thing to do.

John Yates: I was aware that the head of human resources was seeking short-term placements. I simply forwarded a CV. I had nothing to do thereafter.

Q956 Michael Ellis: Were any others connected with News International?

John Yates: Absolutely.

Q957 Chair: Sorry, did you say “absolutely”?

John Yates: Absolutely not.

Chair: Absolutely not. You took us by surprise. Mark Reckless and then Bridget Phillipson, and then we will close.

Q958 Mark Reckless: As a lawyer, I think I understand your point about production orders. I suspect BCL Burton Copeland and perhaps, more pertinently, Harbottle and Lewis are going to have to show a judge-led inquiry that they stayed on the right side of the line. I think Mr Ellis’s point is, did you not have those 11,000 pages of documents? If you had gone through those and perhaps found the names of a few News of the World journalists, might not that have allowed you to put the evidence to a court to get a production order?

John Yates: As I said, I was not responsible in 2005–06. Those who were come to this Committee and have accounted for what they did or allegedly did not do, so I cannot answer for that point. Mark Reckless: By you I meant the Met rather than you personally. I apologise.
The tendering process, so I don’t know.

As far as you are aware?

Due diligence done by somebody who was independent—as far as you are aware?

So there was additional process, you didn’t feel it necessary to say, “Because I am a friend, or even an acquaintance, of this individual, I feel like I might be too close to this and it would be inappropriate for me to do that process.”

I was not doing due diligence in the formal sense. I was just seeking assurances. It was prior to any of the contracts being let as well. Let me be absolutely clear, it was not due diligence in the accepted formal sense.

Secondly, I am pretty surprised that Dick wouldn’t have disclosed the fact that you had been involved in the hacking and had some expertise in the problems that might arise with employing a News of the World journalist. We then asked him, “Did you not disclose the fact that you were a friend of Mr. Wallis and had been a friend since 1998?” Mr. Fedorcio did not seem to want to answer that and implied that he did not know. I just wonder what your response would be, as it would be helpful for the Committee to know exactly what you told Mr. Fedorcio in that conversation when you agreed to do the due diligence.

As I thought, yes.

There are cases, yes—those that we could prove. We have been through the technical process of how you prove a voicemail has been accessed prior to the intended recipients listening to it. There were cases, yes. As I have said to this Committee—forgive me if I have got confused—there was only one case that we could actually prove on a technical basis. Others had to be proved through a mixture of other police techniques to satisfy a court that it had been listened to prior to being accessed. People were told for example, “Leave your phone. Don’t access your voicemail messages and let’s see what happens.”

There is a list of people in that case whose voicemails had been listened to both before and afterwards.

As I thought, yes.

Before we close, I want to give you a chance to clarify some comments made by Mr. Fedorcio in the light of the newspaper reports about your friendship with Mr. Wallis, which in your evidence you say was overstated. We were a little surprised to hear that he had come to ask you to do the due diligence. He said the reason for that was that you had been involved in the hacking and had some expertise in the problems that might arise with employing a News of the World journalist. We then asked him, “Did you not disclose the fact that you were a friend of Mr. Wallis and had been a friend since 1998?” Mr. Fedorcio did not seem to want to answer that and implied that he did not know. I just wonder what your response would be, as it would be helpful for the Committee to know exactly what you told Mr. Fedorcio in that conversation when you agreed to do the due diligence.

Let me take it in stages. First, whatever is written in The Observer this weekend, is, in the parlance, codswallop. I have explained to the Committee—I am not downing people—that the level of contact and the level of friendship is nothing like as described in The Observer, as it was then.

Secondly, I am pretty surprised that Dick wouldn’t have known that I knew Wallis in that sense. I can’t speak for him. I have absolutely nothing to hide around it, and I have said so on several occasions. I am confident that what I am saying is absolutely true. You described it as due diligence again. It wasn’t; it was just seeking assurances. Due diligence is something a tendering process would do.

So there was additional due diligence done by somebody who was independent—as far as you are aware?

I have no idea. I was a million miles from the tendering process, so I don’t know.

So because you believe that there was an additional process, you didn’t feel it necessary to say, “Because I am a friend, or even an acquaintance, of this individual, I feel like I might be too close to this and it would be inappropriate for me to do that process.”

I was not doing due diligence in the formal sense. I was just seeking assurances. It was prior to any of the contracts being let as well. Let me be absolutely clear, it was not due diligence in the accepted formal sense.

We understand that. Sir Paul, in his evidence and indeed in his resignation statement, said that the Prime Minister had appointed someone who used to work for News of the World and there was no reason why he shouldn’t have done so. Do you agree with that sentiment?

If the corruption cases, which we suspect are very small and very few in number, are properly investigated, I have no doubt that people will go to prison.

When did you come to that view?

I come to the view that if you put a level of investigative expertise and resources around these issues, you tend to get the results. If the evidence is there, the evidence will be followed through.

The next point is about the bin bags that you mentioned to The Sunday Telegraph and to us. What is the rule about the destruction of evidence? How many years do the police hold evidence for before it is destroyed? The last time they were really looked at, before you put them on the database, was in 2006. I understand that there is a six-year rule.

It depends on whether it is a matter of huge national interest whether they are kept in perpetuity. I think it is six or seven years. I will have to check.

You did not see them yourself but you understood that they were around. Is that right?

Yes.

On Operation Weeting, which is progressing, have you been kept informed of what is happening, up until the time of your resignation of course? For example, did you know that Rebekah Brooks was going to be arrested on Sunday?

No. Operation Weeting has quite properly put a complete firewall around what it is doing. I
know nothing of the developments, the next developments or anything at all.

Q970 Chair: What about your future, Mr Yates? You have now resigned. Do you have no plans to take up journalism, as Mr Hayman did when he left the Met?
Mr Winnick: What about The Guardian?
John Yates: On a serious point, I have expressed regrets that more was not done about those potentially affected in 2005-06 and 2009. I paid a heavy price for it in announcing my intention to resign, but I am accountable for what took place. We also must remember that it is not the police who have failed here in every respect, it is News International that has failed to provide us with the evidence it should have provided in 2005-06. Yesterday, I said that I was accountable and I that I needed to stand up and be counted. I have done that. I do think it is time for others to face up to their responsibilities and do likewise.

Q971 Chair: Who do you mean by that?
John Yates: I think it is very clear. News International.

Q972 Chair: Since you discovered what has been going on you have obviously had contact with News International in one way or another, either socially, at meetings or whatever. Do you make this point when you see the people there? Do you tell them, "If you had co-operated more we could have got to the truth"?

John Yates: I do not discuss these matters with News International now.

Q973 Chair: But you do think that News International should take the responsibilities that you and Sir Paul have taken?
John Yates: I absolutely do.

Q974 Chair: And that means resignations of more people from News International?
John Yates: That is a matter for them.

Q975 Chair: This is probably the last time that you will appear before this Committee in your present guise—
John Yates: Is that a promise?
Chair: So can I place on record the Committee’s appreciation of the way in which you have always approached these sessions? You have always been most co-operative and have been ready to come at very short notice. Every one of the commentators, including the Mayor, the Home Secretary and, I think, the Prime Minister, has mentioned your work on counter-terrorism, which I know is your main interest, and the work you did in respect of rape victims, of which I think you are particularly proud. May I, on behalf of the Committee, wish you the best of luck?
John Yates: Thank you.
Tuesday 19 July 2011

Members present:
Keith Vaz (Chair)
Nicola Blackwood  Steve McCabe
Mr James Clappison  Alun Michael
Michael Ellis  Bridget Phillipson
Lorraine Fullbrook  Mark Reckless
Dr Julian Huppert  Mr David Winnick

Examination of Witness

Witness: Lord Macdonald of River Glaven QC, former Director of Public Prosecutions, gave evidence.

Q976 Chair: Order. May I refer everyone present to the Register of Members’ Financial Interests? I thank Lord Macdonald for coming to give evidence at such very short notice. We are most grateful to you; I know you have been in court all day, so thank you for coming to this sitting.

Lord Macdonald: The case was adjourned, so I haven’t been in court today.

Q977 Chair: What we would like to ask you about is in two parts. The first is in respect of your role as the Director of Public Prosecutions. Immediately after you, we’ll be hearing evidence from the current Director of Public Prosecutions. I don’t know whether you have seen the previous evidence, but it is very clear from the evidence of Mr Yates—and indeed before that the evidence of Mr Clarke—that throughout his investigation they sought the advice of the CPS. Is that something that happens regularly when the police are involved in an issue of this kind? Do they consult with the CPS about what is happening?

Lord Macdonald: Yes, and indeed we encouraged it. A notion developed in the years before I became DPP in 2003, and continued to develop, of the prosecution team. We would encourage police officers and prosecutors, particularly in complex or sensitive crimes, to work together, so that advice would be sought by the police at an early stage from the prosecutors. I am very confident that that would have happened in this case.

Q978 Chair: Your role as the DPP was what? We were told that you had oversight of this.

Lord Macdonald: Every legal decision that is made in the CPS is made on behalf of the DPP. The reality is that the DPP has responsibility and accountability for all legal decision making. That is a serious point that I need to make at the outset. This case was notified to me because of the convention that any case involving a member of the royal family is notified to the DPP. At some stage, I would have received a note telling me that this case was in the pipeline. I am quite sure that I would have asked to be kept informed about it, and I am quite sure that I would have had meetings from time to time—I remember at least one—with the lawyer in charge of the case, who was the head of the special crime division.

Q979 Chair: Would you have met Mr Clarke or Mr Hayman, or any of the senior police officers?

Lord Macdonald: I do not believe so. I was not the decision maker in the case and I would have deferred, unless I substantially disagreed with what she was saying, to the head of the special crime division, who was an extremely senior lawyer in the CPS. She left the CPS two years or so ago, but she was an extremely senior and well respected lawyer. Indeed, I was on the panel that appointed her to her post.

Q980 Chair: Indeed, but you clearly remember the case.

Lord Macdonald: I am afraid I do not remember that issue at all. I do not expect I would have been consulted about that. We had instructed Mr David Perry, QC, who was a former senior Treasury counsel at the Old Bailey and one of the best criminal lawyers in the country without a doubt. I have, however, seen the evidence that my successor, Mr Keir Starmer, has given, particularly to the Culture, Media and Sport Committee. He makes an observation in his final letter to it, I think, or his final piece of evidence, that the indictment in the end contained counts in respect of which there was no evidence that they had been hacked before they were listened to. His analysis, which I am sure he can go into in more detail than me, is that unequivocal advice of that sort was not given, but I understand that this is an issue between the CPS and the Metropolitan police and I have seen the evidence that has been given before to this Committee.

Q981 Chair: And do you remember the advice that was given in respect of the big question, which is that the police and Mr Yates maintain that they had certain legal advice from the CPS, which they followed absolutely?

Lord Macdonald: I am afraid I do not remember that issue at all. I do not expect I would have been consulted about that. We had instructed Mr David Perry, QC, who was a former senior Treasury counsel at the Old Bailey and one of the best criminal lawyers in the country without a doubt. I have, however, seen the evidence that my successor, Mr Keir Starmer, has given, particularly to the Culture, Media and Sport Committee. He makes an observation in his final letter to it, I think, or his final piece of evidence, that the indictment in the end contained counts in respect of which there was no evidence that they had been hacked before they were listened to. His analysis, which I am sure he can go into in more detail than me, is that unequivocal advice of that sort was not given, but I understand that this is an issue between the CPS and the Metropolitan police and I have seen the evidence that has been given before to this Committee.

Q982 Mark Reckless: You say that unequivocal advice was not given, and to the extent that there are not documents, there may be a bit of “He said, you said” up to 2005–06, but in his evidence in July 2009 to the Culture, Media and Sport Committee, the current DPP was absolutely clear. He wrote: “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.”
Q983 Mark Reckless: According to the police, because one was there—according to Mr Yates earlier, they had had to say to the person whose phone it was, "Don’t pick up your messages," so that they could wait for the potential hacker to intercept those because they had not been listened to. The other five cases were just inferential on the basis of that, because of the advice the CPS gave and the DPP confirmed in July 2009.

Lord Macdonald: Mr Reckless, I know from speaking to Mr Starmer outside a moment ago that leading counsel David Perry simply does not agree that this unequivocal advice was given to the police. I do not know. I cannot say one way or the other because I was not party to it, but I must say that if Mr Perry says that, I would be inclined to accept what he says.

Q984 Mark Reckless: Leaving Mr Perry aside, I have here Keir Starmer’s evidence in July 2009 to the Culture, Media and Sport Committee. He says: “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.”

Lord Macdonald: Well, Mr Starmer is giving evidence directly after me. Mr Reckless, and I am sure he will be able to address that with you better than I can. All I can say is that my understanding, from the documents that I have seen, is that unequivocal advice of that sort was not given.

Q985 Mark Reckless: But isn’t the reality that in RIPA we have section 2(7), which makes it perfectly clear that the time of transmission includes any period when a message is stored in such a way that the intended recipient can collect it or otherwise have access to it? Is that not completely inconsistent with the advice the CPS gave and what the DPP said in July 2009?

Lord Macdonald: Well, I am not sure. It depends what the words “other access” mean. There is also the possibility, which I think was raised with the police, of charging these offences as conspiracy, which clearly would not have the requirement that you have alluded to.

Q986 Mark Reckless: Surely the words “or otherwise to have access to it” are entirely clear.

Lord Macdonald: Well, I don’t know.

Q987 Mark Reckless: The CPS just advised the opposite and ignored it.

Lord Macdonald: I don’t think that is right. I think Mr Starmer will be able to take you to e-mailed and written advice that was given to the police, which was not in any sense in line with what you are suggesting.

Q988 Mark Reckless: Finally, I put it to you that what the CPS advised in 2006 and what the DPP said in 2009 is inconsistent with section 2(7) of RIPA, which states “or otherwise to have access to.” That explains why the police did not follow this up in the way that they should have done. There have been senior resignations at the Metropolitan police and News International. When will someone else at the CPS take responsibility?

Lord Macdonald: I do not think that your analysis is fair, if you do not mind me saying so. I do not think that unequivocal advice was given. DPPs are responsible for casework that takes place in their period of office. I take full responsibility for this case. The evidence I have seen—I was not party to the discussions that you are talking about—particularly that given by Mr Starmer to the Committee, does not support the analysis that you are putting forward.

Mark Reckless: This evidence could not be clearer. I am sorry to read this for a third time, but it says, “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.” What could be clearer, and what could be more wrong?

Alun Michael: You are quoting from where?

Q989 Mark Reckless: This is from the evidence given to the DCMS Committee by Keir Starmer. It was written in July 2009. It is completely inconsistent with section 2(7).

Lord Macdonald: I think you should look at all of his evidence.

Q990 Chair: He is, as you say, giving evidence to us shortly. Was that your understanding of the law at the time?

Lord Macdonald: I must say that the first time I came to think about this was in July 2009, because I was not a party, so far as I can recall, to these legal discussions. I have not conducted any in-depth research of my own, because I had been out of office for something like 18 months before this came to my attention. I have seen the evidence that Mr Starmer has given to the DCMS Select Committee, and I am inclined to agree with it.

Q991 Chair: Why is July 2009 significant?

Lord Macdonald: Was that not when the stories in The Guardian started to appear? Of course, like anyone else, I began to think back over what had happened when I was DPP, and asked myself whether we had got it wrong, whether we had done what we could have done, and whether we had done everything that we could have done.

Q992 Chair: And you were satisfied that you had done everything that you could have done?
Lord Macdonald: Well, I tried to think back to what I knew and what I believed at the time when this case was live. From my perspective as DPP, having an excellent head of crime division who I trusted implicitly, having David Perry QC involved in the case, and believing that they would analyse the material that had been given to them by the police sufficiently and rigorously, I believed they would come to the right conclusions. I take full responsibility if that did not happen, but I do not believe that I had any reason to believe in 2005–06 that the right decisions were not being made.

Q993 Chair: What kind of material would you have looked at? What would they have given you?
Lord Macdonald: They would not have given me anything.

Q994 Chair: Not you personally, but what would they have given the CPS?
Lord Macdonald: The police? The way the system works, as I am sure you know, is that the police are responsible for the investigation. They gather material pursuant to the investigation, but they will not send it. They then send it to the CPS for analysis. The CPS at that time was responsible for charging all but the most minor cases. The charging decision has to be made by a prosecutor. The CPS would then consider the police material. It might advise that more was needed, that sufficient evidence was there, or that they ought to look in this or that direction. The CPS and the police would have a discussion of that sort. They would meet regularly—I am sure they did—and they would come to charging decisions. Charges would be laid and individuals would be prosecuted. It was a co-operative process of that sort, with the police maintaining their independence, as investigators, and the CPS maintaining its independence as a prosecutor.

Q995 Chair: And there is no doubt in your mind that some information may have been withheld? Is that a possibility?
Lord Macdonald: You mean deliberately? I never had any grounds to suspect that. I watched Mr Clarke’s evidence in the inquiry committee. Whether some material did not feature in the investigation because of the parameters that he set, so that the CPS did not see that material, I do not know. One thing that I am absolutely sure of is that if anyone at the CPS had seen material relating to Milly Dowler, or the 7/7 victims, or the relatives of war dead, that would have struck very sharp alarms.

Q996 Alun Michael: You referred to the very acute cases that have caused public outrage, and rightly so. It is clear that there is a large volume of evidence in the hands of the Metropolitan police that was not investigated, because there were more important things to do, to paraphrase Mr Clarke’s references. I preface this by saying that I am very keen on the joint working of the police and the Crown Prosecution Service, because day-to-day co-operation has greatly improved the nature of investigations, but there is an issue of being clear about where decisions are taken. How do you make sure that the advice given by the CPS is clearly understood and properly recorded? It seems that some problems in the evidence that we have been looking at rest on possible misinterpretations of legal advice.

Lord Macdonald: That is a risk, particularly if people are working day after day on intense cases. If we take the example of a terrorism case, the prosecutors and investigators will be speaking hour by hour, almost minute by minute. It is always possible, I suppose, for misunderstandings to arise. As a matter of principle, any serious, substantial legal advice should be reduced to writing and should be delivered in writing. A device was given in writing in this case. The barrister instructed by the CPS will almost always be required to produce an advice on evidence, which is a written document making recommendations about charges and so on and so forth. You are right that there is room for mistakes, and that is why it is so important that critical advice should be reduced to writing. It is also very important, as you say, that people understand their roles. The CPS has no power to direct police officers. At the time the CPS was set up, some people on the royal commission felt that prosecutors should be allowed to direct officers, but the contrary view won the day. My experience in serious cases, as the DPP, was that if we recommended that a certain course should be followed, subject to resources, the police would tend to follow it.

Q997 Alun Michael: So in a case like this, where there seems to have been a case for inquests in the first instance on pursuing specific individuals for specific prosecution, primarily in relation to the royal phone hacking, there was a wide body of evidence; as we subsequently found, it contained details of a wider range of victims and a larger number of incidents of hacking. Would the CPS people who were working with the police concentrate only on the lines of the police inquiry, or would they be likely to advise that this wider body of evidence ought to be looked at?

Lord Macdonald: It would depend. Either could happen, depending on the prosecutor’s assessment of the situation. I should say that there are two contexts. One of them, which Mr Clarke referred to, is terrorism cases. We had the Dhiren Barot case—a man who was planning simultaneous multi-casualty attacks in London, as well as in New York, Washington and Newark. We had the 21/7 trial about to start in January. We had the airline plotters arrested in 2006. That was one important part, and I have enormous sympathy with what Peter Clarke has said. The other context is that all of us had, in the early 2000s, experienced disastrous cases that had collapsed and gone wrong because they were overweighted—too many defendants, too many counts and too much evidence. The best example of this was the Jubilee line case, which, when I became the DPP, had already been running for about four months at the Old Bailey. It ran for another 10 or so and then collapsed under its own weight. So we—take full responsibility for this, because this was my policy—provided prosecutors with firm advice that they must focus their cases, and that we had to have sharp cases that we could prepare, assemble and prosecute to conviction. That did not mean that you did not look at important
Lord Macdonald: An account of serious cases. Would you agree with that?

Penalties should be massively increased to take account of serious cases. You presumably also know that the police have other sources of advice on legal interpretation. For example, the ACPO preferred source of advice on the lawful and effective use of covert techniques is the covert advice team at the specialist operations centre in the NPIA. I contacted it, and it says that it has been giving clear advice, which has essentially been the same since 2003. It says that it is clear that the process ends at the point at which the data leaves the telecommunications systems by means of which it is being transmitted and is no longer accessible, and not simply when the missed message has been listened to, but accessing voice mails which have been listened to could therefore amount to a criminal interception of a communication. The police have had that fairly clear advice since 2003. Why was that not the advice, which seems to have been so clear, from the CPS at any stage?

Lord Macdonald: My understanding is that the first piece of advice that was given on this—it was equivocal advice—suggested that that might be a problem, but that the area was untested by the courts. I think that was the position at that time. As the situation developed, further advice was given. This is all second hand coming from me, Dr Huppert. Further advice was given that indicated that this was not an issue that should limit the investigative strategy. Indeed, the very case turned out, that seems to have been the position. I keep saying that we had advice that indicated that this was not an issue, but that the area was untested by the courts.

Q998 Dr Huppert: In terms of what was and was not possible to explore, as I understand it, the idea of which evidence of that sort was not available. If the counsel’s view had been that you had to be able to prove that aspect, those counts would simply not have been brought on the indictment?

Lord Macdonald: If that had been available, given the nature of the investigation, which was focused.

Q999 Dr Huppert: I share the concern that Mark Reckless expressed, particularly about the interpretation of section 2(7) of RIPA, because it seems extremely clear. I will not read it out again, because he has done so.

You presumably also know that the police have other sources of advice on legal interpretation. For example, the ACPO preferred source of advice on the lawful and effective use of covert techniques is the covert advice team at the specialist operations centre in the NPIA. I contacted it, and it says that it has been giving clear advice, which has essentially been the same since 2003. It says that it is clear that the process ends at the point at which the data leaves the telecommunications systems by means of which it is being transmitted and is no longer accessible, and not simply when the missed message has been listened to, but accessing voice mails which have been listened to could therefore amount to a criminal interception of a communication. The police have had that fairly clear advice since 2003. Why was that not the advice, which seems to have been so clear, from the CPS at any stage?

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Q1000 Dr Huppert: For example. Would that be an important tool that the CPS should have available?

Lord Macdonald: Yes, this has always been an unpopular view with the press, but I have always thought that imprisonment ought to be available for blagging offences. It is then up to a court or a judge whether the sentence is imposed. If it is simply a fine, anecdotes suggest that it is sometimes treated as a business expense. I am not suggesting that blaggers in trivial cases should be sent to prison necessarily, but it should be available for serious cases.

Q1001 Dr Huppert: If that had been available, given the nature of the investigation, which was focused.

Lord Macdonald: An account of serious cases. You presumably also know that the police have other sources of advice on legal interpretation. For example, the ACPO preferred source of advice on the lawful and effective use of covert techniques is the covert advice team at the specialist operations centre in the NPIA. I contacted it, and it says that it has been giving clear advice, which has essentially been the same since 2003. It says that it is clear that the process ends at the point at which the data leaves the telecommunications systems by means of which it is being transmitted and is no longer accessible, and not simply when the missed message has been listened to, but accessing voice mails which have been listened to could therefore amount to a criminal interception of a communication. The police have had that fairly clear advice since 2003. Why was that not the advice, which seems to have been so clear, from the CPS at any stage?

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Q1002 Dr Huppert: How would you limit that public interest? Is it anything that a journalist thinks is interesting?

Lord Macdonald: No. The public interest is not the same as what people are interested in. The public interest is a test quite well understood in law. Many offences have a public interest defence. It is up to a court to decide. People have to make their own decision before they engage in behaviour as to whether they can persuasively demonstrate that they are acting in the public interest. It is a bit like an elephant: most people will recognise it when they see it. It is decidedly not to be equated with what the public are interested in.

Q1003 Chair: Thank you. Can I now turn to another matter that has arisen as a result of the evidence we have received today: your role with News International? When did you take up your appointment with News International?

Lord Macdonald: I was contacted by a firm of London solicitors called Hickman and Rose in May, and asked to review what has become known as the Harbottle & Lewis file. That was a file put together in 2007, when, as I later discovered, Mr Goodman was bringing internal unfair dismissal proceedings against News International. The file was brought into effect to deal with that issue. It was reviewed by Harbottle & Lewis, and it was asked to give an opinion on whether the material gathered in that process supported phone hacking or related criminality. Its view was that the material in that file did not. It prepared a letter that was to be forwarded to the DCM S Committee to that effect.

Q1004 Chair: In 2007, or this year?

Lord Macdonald: I think it was 2007. The communication was sent to the Committee, and that file remained, as I understand it, in Harbottle & Lewis’s offices.

Q1005 Chair: Who at News International asked you to do that?

Lord Macdonald: Hickman and Rose.

Q1006 Chair: The solicitors asked you?

Lord Macdonald: Yes. The solicitors asked me to look at the file and to report not to News International, but to the News Corporation board. I said, “I can’t look at anything that has anything to do with phone hacking.” They said, “This is an issue that isn’t to do with News International.” They said, “This is an issue that isn’t to do with phone hacking.” They said, “This is an issue that isn’t to do with phone hacking.” They said, “This is an issue that isn’t to do with phone hacking.” They said, “This is an issue that isn’t to do with phone hacking.” They said, “This is an issue that isn’t to do with phone hacking.”
with phone hacking; it’s entirely separate.” I looked at the file and came to a firm view about it, which I conveyed to the News Corp board.

Q 1007 Chair: What was that view?
Lord Macdonald: The view was that it must be handed to the police.

Q 1008 Chair: Do you remember the date on which that happened?
Lord Macdonald: It was 20 June. The file was handed to the police and, as a result, the police opened Operation Elveden, the investigation into corruption at the News of the World and the Metropolitan police service.

Q 1009 Chair: What was your reaction when you looked at that file? You obviously saw information that was so serious that you decided it should go immediately to the police. We are most grateful to you for sharing that information with us.
Lord Macdonald: I do not want to say anything more, if you do not mind, Mr Vaz, because the police are examining this material.

Q 1010 Chair: Of course. But it was important enough for you to give the file to the police. That is something quite exceptional, isn’t it?
Lord Macdonald: It was evidence of serious criminal offences. I gave that advice to the News Corp board, and I have to say that it accepted the advice unhesitatingly and instructed that the file should be handed to the police. I handed it to, among other officers, Cressida Dick on 20 June.

Q 1011 Chair: And Cressida Dick’s position is overall oversight of Operation Weeting. Lord Macdonald: And Operation Elveden. I think she has now moved into another position, but at that time she was doing both.

Q 1012 Chair: Did you present this orally to the members of the board of News Corp?
Lord Macdonald: Yes.

Q 1013 Chair: And there was no dissent?
Lord Macdonald: Absolutely no dissent whatsoever. I would say that they were stunned and shocked, and when I said that my unequivocal advice was that this must be handed to the police, they accepted that advice immediately.

Q 1014 Chair: And how soon after you saw them was it handed to the police?
Lord Macdonald: It would have been reasonably shortly afterwards. I know that News International—although I wasn’t involved in this process—was engaged in trying to find supporting evidence for the material that was in that file. It did find some, and that was handed to the police as well.

Q 1015 Chair: Is it your view that anyone looking at a file of that kind would have come to the conclusion that there was criminality in there, and that this should have been done before?
Lord Macdonald: Mr Vaz, I can say only that my view was completely unequivocal.

Q 1016 Chair: So anyone looking at that file would have said, “This must go to the police”?
Lord Macdonald: I cannot imagine anyone looking at the file and not seeing evidence of crime on its face.

Q 1017 Chair: And therefore, by implication, this file having been with Harbottle & Lewis, you disagreed totally with the advice that was given by Harbottle & Lewis?
Lord Macdonald: I don’t know whether Harbottle & Lewis ever considered the question of whether this file should go to the police.

Q 1018 Chair: What do you think its consideration was?
Lord Macdonald: There seemed to be a process whereby information was going to be given to a Select Committee—the DCMS Committee—about whether or not the company had come into possession of any more material relating to phone hacking or associated criminality. I cannot remember the exact wording of the letter, but it is a matter of record now, and I think indeed it was put to Mr James Murdoch this afternoon by some of your colleagues.

Q 1019 Chair: So if this had happened in 2007, with your other hat on—we’ll come to other questions on this with colleagues—when you were the DPP, and that file had been handed over to the police, it would have ended up back in your lap, in a sense.
Lord Macdonald: We would have had the Operation Elveden case four years ago.
Chair: Four years ago, if you had seen that file then.
Lord Macdonald: If the police had seen that file in 2007, Operation Elveden would have been opened in 2007.

Q 1020 Mr Winnick: Lord Macdonald, obviously we have noted what you just said, and I am sure that not a single Member in this room is surprised that you acted as you did in providing the police with what you found. The only surprise would have been if you hadn’t, but that is not the point of my question. Phone hacking was very much around, and allegations were made—whether or not the police acted properly is another matter—while you were Director of Public Prosecutions. When it came to being asked by solicitors to act for News International, did you not consider that to be a rather invidious position?
Lord Macdonald: It was the News Corporation board, not News International, but that is a point of detail. I was absolutely clear that I could not look at anything that had anything to do with phone hacking. Indeed, anything that I was shown of the Harbottle & Lewis file was material that had been extracted from it, and was to do with an entirely separate issue. Even the legal advices were redacted, so I saw nothing to do with phone hacking. My judgment was, and remains, that given that the question of corrupt payments to the police was never an issue when I was DPP, given that News International was never prosecuted when I was DPP, and given that the solicitor who instructed me,
and who I knew well and trusted, expressed a degree of anxiety about this material, I thought—and still think—that it was appropriate for me to do it. I am quite confident that the advice I gave the company, which has resulted in this police inquiry, was the right advice to give.

**Mr Winnick:** Well, of course, News International and News Corporation are one and the same.

**Lord Macdonald:** Well, of course, News International and News Corporation are one and the same.

**Q1021 Mr Winnick:** It is the parent company. Lawyers, as I understand it, use a phrase commonly used even outside the law courts—the cab rank. **Lord Macdonald:** There is something of a myth that Lord Macdonald: used even outside the law courts—the cab rank. Lawyers, as I understand it, use a phrase commonly used even outside the law courts—the cab rank. **Lord Macdonald:**

**Q1022 Mr Winnick:** Did that apply to you in this particular case?

**Lord Macdonald:** In the absence of conflict, but not really. That rule developed in the late 19th century when the so-called Fenian prisoners could not find barristers to represent them, so the Bar developed a rule that barristers had to take any case that came along. That is a very noble and worthwhile rule. I cannot pretend that I took this case because of the cab rank principle. I took it because I was satisfied that there was not a conflict. I was somewhat touched by the concern that Mr Ben Rose was showing about this file. He is a solicitor whom I know and trust very well. I could sense his concern. I also sensed a great deal of concern when I came in to read it and spoke to Mr William Lewis who is now the operations general manager at News International, I believe. There was a degree of concern about these documents.

**Q1023 Mr Winnick:** And you didn’t feel at any stage that your well-deserved and distinguished reputation would be harmed by taking on this position?

**Lord Macdonald:** I did not think so. If I had, I would not have done it.

**Q1024 Chair:** When you presented your findings to the News Corp board was Mr Murdoch there?

**Lord Macdonald:** He chaired it.

**Q1025 Chair:** Which Mr Murdoch?

**Lord Macdonald:** Mr Rupert Murdoch. Mr James Murdoch was there as well.

**Q1026 Chair:** Was Rebekah Brooks there, too?

**Lord Macdonald:** She is not a member of the board.

**Q1027 Chair:** Who else was there? Do you remember?

**Lord Macdonald:** Well, the directors. There were about 20 people. There were a group of directors. The former Prime Minister of Spain, the former chairman—

**Q1028 Chair:** Was Les Hinton on the board?

**Lord Macdonald:** No, he wasn’t.

**Q1029 Mr Clappison:** Could you describe what exactly it was that Harbottle and Lewis asked you to look at, and when was it they asked you to look at it?

**Lord Macdonald:** No. It was Hickman and Rose who asked me. They said that there was a file of documents and they wanted me to look at them and give the News Corporation board some advice about those documents. Once I had clarified that they weren’t to do with hacking and had the other conversations with Mr Rose that I have alluded to, I was content to do it.

**Q1030 Mr Clappison:** What were they about? Can you tell us or give us an idea what the subject matter was?

**Lord Macdonald:** Operation Elveden is an inquiry into corrupt payments to police officers. That inquiry was opened as a result of this file being handed to the police.

**Q1031 Mr Clappison:** When was that?

**Lord Macdonald:** 20 June.

**Q1032 Mr Clappison:** Of what year?

**Lord Macdonald:** This year.

**Q1033 Mr Clappison:** This year, 20 June?

**Lord Macdonald:** That’s when it was handed to the police.

**Q1034 Mr Clappison:** When was it you were asked to look at it by Hickman and Rose?

**Lord Macdonald:** May.

**Q1035 Mr Clappison:** Of this year?

**Lord Macdonald:** Yes.

**Q1036 Mr Clappison:** You see one of the points that we have come across in this inquiry, because appearances are important on this, relates to the evidence we had from police officers as to how intimidated they were by News International—I think that’s a fair way of summarising it; that’s the word I would choose to use—and as to how unco-operative News International has been. We had Mr Clarke last week. I don’t know if you heard this part of his evidence. He said: “We pursued it as far as we could through the correspondence with the News of the World lawyers... This is a global organisation with access to the best legal advice, in my view deliberately trying to thwart a police investigation.” Can I look at this in the round with you and ask you to consider how your employment as a barrister by News International looking into the activities of its employees might appear to a police officer such as Mr Clarke and to the outside world? How do you think that appears?

**Lord Macdonald:** He was not talking about legal services at the time when I was involved; he was talking about it at the time of his inquiry in 2005–06.

**Q1037 Mr Clappison:** I don’t think that that was the impression.

**Lord Macdonald:** It was.
Q1038 Mr Clappison: He has told us of a pattern of a lack of co-operation all the way through.
Lord Macdonald: Well, I was asked to conduct this single task. All I can say is that the result of it was that the documents were supplied. I have no reason to say that he is wrong in what he says about what was happening in those years. If he says there is a lack of co-operation, I am sure there was.

Q1039 Mr Clappison: He is making the point generally, but I am making the point to you about your position as a former DPP. If I may say, you are obviously a very distinguished barrister with an important post. But you weren’t just any old barrister; you were the former DPP and you were acting on behalf of News International, looking into the activities of their employees. I think that’s a fair summary, isn’t it?
Lord Macdonald: I don’t think that it is. I am sorry to keep saying that I was acting for the News Corp board, but I was not looking into the activities of their employees. I was looking at a file of documents, which had been held by a firm of London solicitors, and was asked to express a view about what should be done with it. I expressed a view.

Q1040 Mr Clappison: Forgive me for asking about this, but the final documents must have related in some way to News Corp because you ended up telling the board all about it. Whatever it was, you were acting on behalf of News Corp, who had been the employers through News International of the employees who had been involved in the original phone-hacking investigation. I appreciate that you did not want to be involved in the phone hacking. You were very clear and explicit about that, and you had that made clear in the newspapers, but you were still acting on behalf of News Corp. Are you happy with the appearance of that?
Lord Macdonald: I do not see any difficulty at all with the appearance. I do a lot of legal work. There is no reason why a former DPP should not work for companies. I do work for companies, for individuals, for governments, for foreign governments. I do not see any difficulty with that at all. Unless there is a conflict—and I did not see one here—

Q1041 Mr Clappison: I am not saying that there is an instant conflict, but you had given advice in matters relating to the same company—a high-profile company—in the past. It is the appearance of it.
Lord Macdonald: I had not given advice.

Q1042 Chair: Mr Clappison was saying that you had oversight of the CPS.
Lord Macdonald: Of the CPS.

Q1043 Chair: At a time when they were dealing with this particular case. An ordinary person switching on the telly and seeing you now acting on behalf of News Corp would think twice about whether that was appropriate.
Lord Macdonald: I am sorry, I don’t agree. If I had thought that, I would not have undertaken this task. I think that the way I undertook it speaks for itself and, as I say, it has resulted in a police inquiry.

Q1044 Steve McCabe: How would you describe your relationship with News International and News Corp during the time that you were the DPP?
Lord Macdonald: I do not think that I had any relationship at all with News Corp. I met and knew some people at News International, as I did at other news organisations. I would sometimes lunch with journalists, so I knew some journalists from News International newspapers such as The Times, The Sunday Times and The Sun, but also from all the other newspapers in the normal course of my work. I would meet with legal editors, legal correspondents, crime and security journalists, and we would have discussions about various topics.

Q1045 Steve McCabe: You met Rebekah Brooks twice during that period—once on 19 April while the Metropolitan Police were actively consulting the DPP about possible offences in relation to phone hacking during the first investigation. What was the purpose of your two meetings with Rebekah Brooks?
Lord Macdonald: Sorry, what date was that?

Q1046 Steve McCabe: 19 April 2006.
Lord Macdonald: What sort of meeting was that?

Q1047 Steve McCabe: You declared that you had a meeting with her, and again on 20 February 2007. That was the subject of an FOI request. I was just wondering—
Lord Macdonald: I remember having lunch once with Rebekah Wade, as she was then, but it would simply have been having lunch with her. It would not have been in connection with any casework, obviously.

Q1048 Chair: The point Mr McCabe is making is that that is the time when this company was being investigated, and you were having lunch with a senior member of the company.
Lord Macdonald: I do not think that the company was being investigated. The journalists were being investigated. I am afraid that I can’t remember this meeting. I am sorry. I am sure that it must have been a lunch meeting, but I can assure you that nothing inappropriate would have taken place. I did have lunch with quite a lot of journalists over these years.

Q1049 Steve McCabe: I merely make the point that she was not strictly speaking a journalist at that time, was she?
Lord Macdonald: I think she was actually. I think she was editor of The Sun at that time. In fact, I am sure she was.

Q1050 Chair: In other words, she had executive responsibility.
Lord Macdonald: Yes.

Q1051 Chair: She wasn’t any old journalist.
Lord Macdonald: I take your point.
Q1052 Michael Ellis: When you had your meetings with journalists, and lunch occasionally, was there any preference given to News International?
Lord Macdonald: No.

Q1053 Michael Ellis: None at all?
Lord Macdonald: Absolutely not.

Q1054 Michael Ellis: You did not see more of them than of other newspapers, for example?
Lord Macdonald: I probably saw quite a lot of Frances Gibb, who is the legal editor at The Times. The people I saw most would be Frances Gibb, Joshua Rozenberg, who is at The Daily Telegraph, Clare Dyer who was at The Guardian, and Robert Verkaik who was at The Independent. I would meet them to have meetings, but also occasionally to have lunch. Yes, I would see Frances Gibb quite often.

Q1055 Michael Ellis: You saw these papers when you were instructed to do so—the files that have been referred to, the Harbottle and Lewis file. How big was that file?
Lord Macdonald: I only saw the documents that had been extracted from it that were not connected with phone hacking—

Q1056 Michael Ellis: Some documents had been redacted that related to hacking?
Lord Macdonald: They extracted some documents that were not to do with hacking, and I looked at those. I think there were about nine or 10 e-mails.

Q1057 Michael Ellis: Nine or 10 e-mails?
Lord Macdonald: Yes.

Q1058 Michael Ellis: So how long did it take you?
Lord Macdonald: To read the material I needed to read?
Q1059 Michael Ellis: Yes.
Lord Macdonald: About three minutes, maybe five minutes.

Q1060 Michael Ellis: This is the material, just to make sure—
Chair: You’re not going to ask him for his bill, I hope?
Michael Ellis: No, I am certainly not. I am just establishing that you had no doubt at all about the criminality of the matter and that it needed to be referred to Scotland Yard. Within that, can you say whether you established that there was criminality outside Operation Elveden, the operation to do with police corruption?
Lord Macdonald: The material that I saw that I said should be given to the police was material that has ended up being, I imagine, a part of Operation Elveden.

Q1061 Michael Ellis: So no other criminality was disclosed in your reading of that material, other than Operation Elveden-type material?
Lord Macdonald: I don’t recall seeing any, no.

Q1062 Michael Ellis: And when you brought this to the attention of the board of News Corporation—it was News Corporation?
Lord Macdonald: Yes.

Q1063 Michael Ellis: You say they were very concerned, as were their solicitors?
Lord Macdonald: Yes. They had a lot of different firms of solicitors working for them at that time. I think they were all concerned, as well they might be.

Q1064 Michael Ellis: Is it your position, therefore, that senior police officers who have given evidence to this Committee are exaggerating—
Lord Macdonald: No, not at all. I am telling you what my experience was. I completely respect their experience, and I don’t wish to suggest in any way that they are wrong in what they say. I have to tell you that the material I saw was so blindly obvious that anyone trying to argue that it shouldn’t be given to the police would have had a very tough task.

Q1065 Dr Huppert: I am not a lawyer, but as I understand it, there is a duty on solicitors and barristers, if they find evidence of criminality, to report it. Is that correct?
Lord Macdonald: I don’t—

Q1066 Dr Huppert: Is there not a duty to the court?
Lord Macdonald: Well, if you were involved in a particular case. I may be wrong about this, but I am not sure there is a broader duty on lawyers to report crimes to the authorities. There may be some other lawyers shaking their heads on the Committee. I don’t know. I am not sure there is, actually.

Q1067 Dr Huppert: Presumably, a number of other lawyers must have looked at the same things that you looked at. What I am trying to understand is whether it was reasonable, in your opinion, for them to have taken no action on it until such time as, a number of years later, you were asked to have a quick look and spent a few minutes observing that it was clearly illegal.
Lord Macdonald: I was not asked to have a quick look; I was asked to look at it. All I am saying is that it did not take me very long. I do not know who else looked at it, and I do not know what Harbottle and Lewis were looking at it for. If they were looking at it in terms of whether it supplied more evidence of phone hacking, that is one question. If they were looking at it for evidence of wider criminality, that is another question.

Q1068 Dr Huppert: If it is only nine or 10 e-mails and it took you a few minutes to read, could somebody have glanced through it to look for phone hacking evidence and not noticed the other evidence of criminality? We are not talking about 11,000 pages: we are talking about a few e-mails.
Lord Macdonald: I don’t think you could have missed it.

Q1069 Dr Huppert: Do you find it surprising that people didn’t comment on it earlier or pass it on?
Lord Macdonald: I can only tell you what my reaction was: that it should be handed to the police.

Q1070 Nicola Blackwood: One of the consistent pieces of evidence that we have received from the senior police officers who have appeared before us—that includes Peter Clarke, who conducted the original 2005-06 investigation, the police officers who conducted the review in 2009 and police officers conducting the current investigation—is that News International has consistently failed to co-operate. The police officers have expressed a continual frustration at their inability to pursue the investigations in the way in which they wished they could, and they have expressed frustration with some laws, including production notices and the like. I am wondering, in the light of that, first, how it chimes with your experience with the News Corp board and, secondly, why this was not raised with you when you were DPP and what advice you would have given to the police in the light of that experience.

Q1071 Chair: But you were employed by them, so they wouldn’t not co-operate with you, would they? It would be a completely different experience.

Lord Macdonald: To take the last one first, I do not remember any suggestion from the police when I was DPP—that is, from 2003 to 2008—that News International had been obstructive in the original investigation. I do not remember the head of the special crime division ever saying to me that they were facing that sort of obstruction. I am not saying that the police were not, but it was never brought to my attention. How it chimes with my experience—well, I didn’t have that experience, but I was dealing with material that I thought was plainly and obviously destined for the police. It would have been quite difficult, I would have thought, to build a counter-argument. Nevertheless, there was as I said no resistance at all to the advice that I gave. I repeat that I am not trying to undermine anything that those very distinguished officers have said to you earlier, and perhaps to other Committees. No one drew it to my attention at the time if that was happening, and it was not my experience in May and June of this year.

Q1072 Nicola Blackwood: I suppose the confusion in this Committee is that we do not usually expect those suspected of wrongdoing to co-operate easily with the police, but we do expect that the criminal and legal system has ways in which it can impel people to co-operate with the police. We are slightly confused that the response of senior police officers to obstruction by News International was to throw up their hands and say they are thwarting our investigation. That is the appearance of their response. We wonder, as a former and distinguished DPP, what is your assessment of that response?

Lord Macdonald: There are other mechanisms which the police have at their disposal if people are not co-operating. If I am a police officer and I want some documents from someone and they do not produce them, I can either get a production order or, if I have the right grounds to suspect, I can get a warrant to go round and search their premises and seize the documents.

Q1073 Lorraine Fullbrook: Although you are acting on behalf of the board of News Corporation, the papers that alleged the illegal payments to police officers specifically related to the News of the World. Is that not correct?

Lord Macdonald: Yes.

Q1074 Chair: You must be quite pleased that, as a result of what you have done, criminality has been uncovered and that previously this would not have been uncovered. It could have been left in a file at Harbottle and Lewis, such as the bin bags that had the evidence from the first investigation by Mr Clarke. Somehow, all this has come to light.

Lord Macdonald: I don’t want to overdo it. I was engaged as a lawyer to do a piece of work, and I did it. Chair: I shall allow Mr Reckless to have one more go at you on this. I am sorry, but he is very keen to do so.

Q1075 Mark Reckless: You refer to the trial and how the indictment included cases where it couldn’t be proved that the interception was before the message was picked up. Given that the defendants proved guilty, isn’t one possible interpretation of that that the defence lawyers, like the NPIA, had read section 2(7) of RIPA and knew that it was wasn’t necessary to show that the interception happened before the message was picked up?

Lord Macdonald: It is possible. It was never an issue—there was never any point taken on it, and it was never argued in court. They pleaded guilty, and the court proceeded to sentence.

Q1076 Mark Reckless: You said that the e-mails that you were looking at from Harbottle and Lewis took five minutes to review. Will you tell the Committee how much you were paid by News Corp for that work?

Lord Macdonald: I don’t really want to, if you don’t mind. I have given them other advice and, documents, which have been supportive or not supportive, but I don’t think I should be put in the position of saying that.

Q1077 Mark Reckless: It is your decision, Lord Macdonald, but do you not understand that for the public watching this at home, if you reviewed something that took only five minutes and then reported it and you received a large sum of money for it, it may at least raise eyebrows?

Lord Macdonald: I don’t want any misunderstanding about this. I have not said that I only did five minutes work on this; I said that it took me five minutes to review those e-mails. There has been other documentation that has been obtained as a result of their internal investigations that either supports or does not support those e-mails, and I have given them advice about that material either going or not going to the police. All the material that supports those e-mails has gone to the police. Indeed, we had a second
meeting with the police on 22 June, I think, in which a large file of material was handed over. In addition to that—

Q 1078 Chair: Are you still advising them?
Lord Macdonald: Not at the moment, because I am doing it in a traditional barristerial way of brief by brief. I had the original brief. If they want to send me another brief in connection with the payments, then I will consider it when it comes up and consider it again in terms of whether I think there is a conflict.

Q 1079 Mark Reckless: Finally, Lord Macdonald, you drew a distinction between this work being for News Corp and News International. Have you also taken payments from News International, for instance in recompense for any articles or journalism in their diaries?
Lord Macdonald: I write for newspapers—The Times, The Guardian—and I think I have written for The Independent. Yes, I write for them, and they pay me for the articles that I write for them. I also wrote for newspapers when I was DPP, although I do not think that I got paid for it then.

Q 1080 Chair: You know what is troubling the Committee, Lord Macdonald? We are coming to the end of our evidence session; you are the penultimate witness, there are just two more witnesses after you, and then we will decide on our report. It is that we have seen and heard evidence that former members of the News of the World were working for the Prime Minister and for the Metropolitan Police Commissioner. We have a former DPP advising News Corp—we know that they are different companies, but still advising News Corp—and we have a former Assistant Commissioner writing articles for The Times. It is almost like a job placement scheme—a revolving door—and this worries us. There might not be a problem with individual issues, but collectively it is a worry. Do you see the worry that we have and the perception that is created, that this organisation has so many people in so many places of power that can determine its fate?
Lord Macdonald: I can see that there is a great concern that is shared very widely now about links between the press and other institutions. That is obvious, and I can see that. It may be that what has happened will fundamentally change the landscape. I must say that I don’t believe that the fact that I write articles for, among other newspapers, The Times—and, frankly, usually what I say there is not News International party line, by any means—is an indication of anything untoward happening. My involvement in this recent case, such as it was, resulting in a corruption inquiry into News International by the police, is hardly evidence of me being part of a revolving door and going in to help News International.

Chair: I understand that. I am not suggesting that you are part of the revolving door, but it is a general concern, having looked at it in the round, that of all the people who could actually decide the fate of this company, it has managed to get someone in everywhere. That is what concerns us. No one is accusing you of doing anything improper, I can assure you—and I am sure that Mr Clappison is not.

Q 1081 Mr Clappison: You have given very distinguished service, if I may say, including in this matter. As you will gather, it is the appearances that we are concerned about. I have read your articles and I have to say that they are worth every penny.
Lord Macdonald: They don’t pay very much, actually.

Q 1082 Mr Clappison: I am going to ask you, Lord Macdonald, if you could say it, because one of your constant themes is wider public scrutiny, you are against secrecy, and you want a scurrilous press, so I am tempted to ask: how much do you get paid for an article by The Times?
Lord Macdonald: I will tell you that, I am paid £500 an article, £400 by The Guardian and I think something like £200 by The Independent.

Q 1083 Mr Winnick: You have had a lot of close questioning today about your employment by News Corporation. If you had to do it again, would you have any reflections? Would you do the same or otherwise?
Lord Macdonald: I have not enjoyed some of the stuff in the press about me taking a job as a paid adviser with News International, and giving them advice on phone hacking—even, once in The Guardian or The Observer, that I am advising them about how to deal with civil claims brought by hackers. I have not enjoyed any of that, but I do not have any reason to regret what I did for them and its results.

Q 1084 Mr Winnick: You would do it again?
Lord Macdonald: I would do it again, yes.

Q 1085 Mr Winnick: Even knowing the criticism, justified or otherwise, that would arise?
Lord Macdonald: The criticism has largely been based on misinformation about what I am actually doing for them. I perhaps should have been clearer from the start about what I was actually doing for them.

Chair: That is why we are so grateful that you have come here. This is an opportunity to put the record straight and, as always, I only asked you to appear yesterday, you readily agreed to do so and we are extremely grateful. Thank you for giving such clear evidence.

Lord Macdonald: Thank you for inviting me.
Examination of Witness

Witness: Keir Starmer QC, Director of Public Prosecutions, gave evidence.

Q1086 Chair: Mr Starmer, welcome back. I will not give you a long introduction because you know why we are here. You are very busy and, again, I am also very grateful to you. I only rang you less than 24 hours ago, to ask you to appear. We will not go through all the evidence you have given in the past. We will just pick up on a number of points, and Mr Reckless will obviously pick up on the points that he raised with Lord Macdonald.

Having looked back at what has happened over the last few weeks, and bearing in mind that you were the Director of Public Prosecutions on 9 July 2009, do you think that the CPS had a duty to do more than it did in respect of this case? Do you wake up at night and think, “My goodness, if we had acted more quickly, we have a former DPP giving clear evidence, there was a file which contained issues of criminality that took him three to five minutes to send to the police, and if only the CPS had probed a little more, wouldn’t we be sitting here today, and things would have been very different.”?

Keir Starmer: I may answer that by picking up the date of 9 July 2009, and telling the Committee what I did when I first became aware of and seized of this matter, and the approach that I have taken thereafter. That will take me back to the 2006-07 situation.

My first involvement was on or about 9 July 2009. I had no involvement before then. It was not a live issue as far as the CPS was concerned. That is the day on which Mr Yates carried out his exercise. I played no part in that. It was also the day when the Culture, Media and Sport Committee wrote to me asking me to give evidence, which is why it featured for the first time for me. The Guardian was also reporting, I think, that it had access to an e-mail with the name “Neville” on. I think it had perhaps just handed it to a committee. Issues were raised with me for the first time which required me to look to see what had happened in the past. I thought that the right thing to do, as I had no prior knowledge of it, was to ask the then head of the special crime division to examine the material that we, the CPS, had—

Q1087 Chair: On 9 July?

Keir Starmer: That we had on 9 July, yes. That we still had at that stage. I asked them to look at the approach that was taken at the time, and to give me assurances as to the approach that had been taken. I wanted a number of matters looked at. On 15 July, some six days later, I received a formal submission or report from the head of special crime division with a six-page chronology setting out what had happened in 2006-07, which I obviously read for the first time. It also had a file of material—some 33 annexes—in support of what was being said in the chronology. I looked at that, and asked myself whether it gave me the assurance I needed at that stage as to what had happened. I felt that it did, and perhaps I may briefly set out what the assurances were—

Q1088 Chair: Assurances from whom?

Keir Starmer: Assurances about the CPS’s approach in 2006-07. Obviously, I was not DPP at the time, and I was looking back. The head of special crime division who had done the case at the time had left the CPS.

Q1089 Chair: The name of that person was?

Keir Starmer: Carmen Dowd. The review in 2009 was carried out by Simon Clements, then head of special crime division. What I ascertained from the report that I got on 15 July 2009 was that David Perry QC had been involved from an early stage, and that gave me assurance—he is one of the leading criminal barristers in the country. In particular, I was influenced by a note he had produced, dated 14 July 2009, of his recollection of two questions that he put to the police in conference. Those questions were whether there was any evidence that linked the editor of News of the World to any of the wrongdoing—

Q1090 Chair: The editor of the News of the World being whom at that time?

Keir Starmer: It was Mr Coulson. Mr Perry asked that question, and was told no. He asked whether there was any evidence linking Mulcaire with any other journalist at News of the World in relation to the wrongdoing, and he got the answer no.

Q1091 Chair: He got the answer no.

Keir Starmer: He got the answer no. He also said there was no material that he had had at the time, in August 2006, which suggested the same. So what I got from the report back to me was a clear indication that senior counsel was involved, that senior counsel had written a note for the purposes of my exercise to tell me he had asked those two questions, and the answers he had received in relation to them.

Q1092 Chair: To whom did he ask the questions?

Keir Starmer: He asked them in conference with the police team carrying out the investigation.

Q1093 Chair: Do we know names of people?

Keir Starmer: I don’t know. I have tried—

Q1094 Chair: Would it be Mr Clarke?

Keir Starmer: I don’t know and it is not helpful for me to speculate.

Q1095 Chair: Could we find out?

Keir Starmer: We certainly can, and he is clear enough about the questions that he asked at the time.

Q1096 Chair: Remind me again, for the record, of the date when this was done.

Keir Starmer: This was done, I think, in August ’06. It was a conference with counsel, the police and the CPS lawyers, as far as I understand it.

Q1097 Alun Michael: And in a note of July 2009.

Keir Starmer: I was looking at July 2009. You asked whether I looked back and considered what had happened at the time. I was looking at what I was being told and trying to draw conclusions from that: I see that senior counsel is involved, which gives me
comfort, because I know that David Perry is extremely good. I see that he asks some pertinent questions at the time, and he has recorded for me the answers that he got.

Q1098 Chair: As far as you are aware, from the assurances that you got, did—

Keir Starmer: Can I just complete my comments about the assurances, because they are important? From the chronology and the documents provided to me in July ‘09, I understood that briefings had been provided to the DPP and the Attorney-General from May ‘06 onwards, so there was high-level oversight of the case, which gave me assurance about what had happened. I understood that victims had been added to the indictment where witness statements supported the fact that they were victims. So wherever there is a witness statement, that supported it. I spoke to my predecessor before 15 July and I—

Q1099 Chair: You spoke to Lord Macdonald.

Keir Starmer: To get his general recollection. To be fair to him, I was phoning at a time when he did not have access to any of the documents, but I just wanted a general impression.

Q1100 Chair: And what was his general impression?

Keir Starmer: That he did not, frankly, remember much about it. I do not have here the note of any conversation with him, and he has just been before you. I also ascertained that the chronology that I was being provided with had been read through to the then head of special crime division, and that she had agreed that it was accurate, because, of course, I had no way of ascertaining that.

Q1101 Chair: So you had this note, you read it and you accepted the assurances.

Keir Starmer: It goes on from there.

Q1102 Mr Clappison: Can we just be very clear about what the assurances were, because there was an interruption?

Keir Starmer: Reflecting, almost, the question that you put to me, my query to myself was: I know nothing about this case; it is the first time that it has come up on my watch. Can I be assured that we adopted the right approach? Short of reopening all the evidence, can you do me a written advice, answering for me first, whether you think you saw them in ‘06; secondly, what view you would have taken had you seen them in ‘06; and thirdly, what view you now take of them in ‘09. And add to that, please, whether you think those two documents are sufficient to allow anyone to be arrested, on the basis of those two documents.

Q1103 Mr Clappison: What are the points? Can you tell us the two points.

Keir Starmer: The two points?

Q1104 Mr Clappison: The two points on which you got assurance from David Perry, which you referred to.

Keir Starmer: I was assured by the fact that David Perry was instructed and was leading the team—this was a senior, experienced counsel—and I was assured by the questions that he had asked at the time.

Q1105 Mr Clappison: What about the questions?

Keir Starmer: No, please. You asked me what exercise I went through. This is really important, because comments have been made about this. On 15 July, I drew the conclusion that the approach that we had taken seemed, on the information that I had been given, to be appropriate. There was high-level involvement of people whose judgment I would trust. At that stage I concluded that. The Guardian, I think, then contacted our office and asked some more questions about the Neville e-mail and the contract between Mulcaire, I think, and the News of the World—again, information that it was putting before the Culture, Media and Sport Committee. At that time, that was the critical new information. Because it had raised that question, I asked myself, “Has this been dealt with specifically enough?” I went back and asked for those two documents to be specifically drawn to my attention and I looked at them. It transpired that the contract, which was not particularly important, had always been with the CPS. The Neville e-mail was with the police, but it had probably been on the unused material schedule. I did not stop there; I then asked David Perry to come in and see me.

Q1106 Chair: When did you do that?

Keir Starmer: He came in on 17 July for three hours. I asked him to provide a written advice.

Q1107 Chair: And what did he tell you in those three hours?

Keir Starmer: I asked him: “Given that these two documents are now before us and it is being said by The Guardian and others that they are material new evidence, can you do me a written advice, answering for me first, whether you think you saw them in ‘06; secondly, what view you would have taken had you seen them in ‘06; and thirdly, what view you now take of them in ‘09. And add to that, please, whether you think those two documents are sufficient to allow anyone to be arrested, on the basis of those two documents.”

Q1108 Chair: And what did he say?

Keir Starmer: He produced that advice for me. I think it came on 20 July. He answered that he could not be clear whether he had seen it at the time; had he seen it, it would not have affected the approach he would have taken to the case; and he did not think it provided the basis for the arrest of anyone in relation to that e-mail. Now, at that stage, that is all I had to work with. So, by 30 July—some 21 days later—I had concluded for myself that I had not found anything to suggest that what had been done was a wrong approach, and I thought that I had probed as far as I could on what I understood to be the new material at that stage.

Chair: Indeed.

Keir Starmer: But I signed off by saying, “Should there be any further material, I’m prepared to go through the same exercise again.” I continued with that view and it was in late 2010, early 2011, that I was the first person in fact to say, “I want the entire material held by the CPS and the police to be...
thoroughly reviewed”, and I appointed Alison Levitt QC—

Q1109 Chair: When did you say that and why did you say that?
Keir Starmer: Because I had gone through that assurance exercise, I thought, and looked at what I thought I needed to look at, and drawn conclusions. As the autumn of 2010 rolled out and January 2011 arrived, it was clear enough to me that what was being disclosed in the civil actions was adding considerable cause for concern, and I was concerned. It seemed to me at that point the assurances I had sought and been provided with in July needed to be looked at again.

Q1110 Chair: Right. Which you did.
Keir Starmer: And then I said, “Okay, we need to look at all the information that we have, that the police have, lock stock and barrel, and I need our senior QC to review it from start to finish.”

Q1111 Chair: So you did that. Can I just—
Keir Starmer: Well, that is an ongoing process, because that review is being conducted. We are advising the team at the moment on the current investigation, so the two are running together.

Q1112 Chair: M r Starmer, that is very helpful and thank you. It is very helpful to the Committee. We wish we had had all this information previously.
Keir Starmer: Well, I have tried to put it together.

Q1113 Chair: I know that. But anyway, you have given it to us now.
A number of points arise out of this and I am sure that colleagues will want to come in. We will not detain you too long. But you knew that M r Yates was doing his eight-hour review on 9 July, because you have made it very clear that you did. At the same time, you were seeking assurances from leading counsel. Did you think of ringing up M r Yates and saying to him, “By the way, M r Yates, I gather you’ve done a review that’s lasted, well, a day, because you must watch the television as well and you’re obviously concerned about this. What did you find and what did you do?” M r Yates has told us he did not seek the advice of the CPS and he did not seek fresh legal advice on his eight-hour review, whereas you sought the advice of the CPS and he did not seek fresh legal advice.

Q1114 Chair: I understand that, but considering the closeness of the contact between the CPS and—
Keir Starmer: I did have contact with M r Yates during the course of my exercise.

Q1115 Chair: Right. When was that?
Keir Starmer: I had phone calls with him on the evening of 17 July and I had a meeting with him on 20 July, the reason being I was concerned about the Neville e-mail.

Q1116 Chair: So after M r Yates concluded his review and said that he did not think that the case should be reopened, he then had a meeting with you at your request to go through these matters?
Keir Starmer: We had at least two phone calls on 17 July as I was with M r David Perry QC and we then had a meeting on the Monday morning—20 July. At that point, I was concerned about the Neville e-mail. It was after that that I decided that I had to ask David Perry to give me, as it were, the hypothetical advice, “What would you have done if…?” and “What would you do now?” because I was concerned about it.

Q1117 Bridget Phillipson: There has been a lot of discussion with the police during this, around the unco-operative nature of News International. They found it very difficult getting information out of them, which we found in some ways quite unsatisfactory because you take as a given that sometimes people who may commit criminal offences may not always be willing to co-operate with those seeking to enforce the law. Could you clarify, in terms of the schedule 1 production order, whether this has any bearing on it, in relation to the Mulcaire contract and the Neville e-mail? Were they in the possession of the people carrying out the original inquiry, and were they considered as part of seeking a production order? Could that have helped in any way?
Keir Starmer: I think that, from memory—I can certainly clarify this matter for the Committee if there is any error—the e-mail was seized from Mulcaire when his premises were searched in 2006, and it had been, at least, in the unused material with the police. David Perry says he cannot now remember whether he saw it in 2006, but that is why I asked him to conduct the exercise that I did. So, there was no need for a production order in respect of that. As I understand it, it was material seized consequent to the arrest of M r M ulcaire.

Q1118 Bridget Phillipson: So it would already have been part of the correspondence entered into between the Metropolitan police and News International, with a view to using that as leverage to gain further access to material.
Keir Starmer: I don’t know. I have not seen all of that correspondence. I just don’t know. I can say that we are advising the current investigative teams on a number of issues, one of which relates to co-operation.

Q1119 Bridget Phillipson: The problem has been that on one hand, the police are talking about how unco-operative News International were, but on the other, the blame seems to be shifting to the CPS—that, really, you were not giving them the back-up that was required in order to pursue News International more vigorously.
Keir Starmer: I do not want to sit here and attribute blame. There is going to be a full judicial inquiry, and you will make your reports. I have tried, throughout this process—last time I appeared, and this time—
simply to give a chronological read-out of what happened, as I understand it, in neutral terms, without attributing blame to anyone. As far as I am concerned, this material—the particular material I was looking at in July 2009—had been seized as part of the ordinary search, in any event.

I add that there is an ongoing investigation here. We are being asked for and are giving advice on issues that can broadly come under the umbrella of cooperation.

Q1120 Alun Michael: Following on from Bridget Phillipson’s question, some of our witnesses have been slightly less restrained than you are being, and in effect, some witnesses at the Committee—I am sure you have read the evidence—have suggested that the CPS advice resulted in police inquiries being closed off. What are your comments on that suggestion?

Keir Starmer: Can I deal with that question in this way? Last time I appeared before the Committee, I was asked in detail about the legal advice that had been given in 2006–07. I produced a 10-page letter setting out, chronologically, each piece of advice. As you know, before I submitted evidence to the Committee, I asked Mr Yates whether he thought it was factually inaccurate, and he did not identify any factual inaccuracies. Since then, nobody has come back to me to suggest that that chronology of the legal advice is in any way inaccurate. Nobody has come back to me to say, “You overlooked a particular document.”

I read with considerable care the evidence of Mr Peter Clarke, which was given on 12 July to this Committee—it is question 454 and following. He says about the legal advice that he understood that he was being advised by the head of special crime. He understood that the RIPA legislation was untested. He understood that he was getting advice about the misuse of computers Act, and he understood that he was being told that should the interception have been before it was listened to, that was certainly a crime, and if it was after, that was untested.

I then read his evidence—I think it is questions 458 to 459—where he gives the four reasons why he decided that a team would not analyse the 11,000 pages of the Mulcaire diary. Four reasons are there, and one is split into sub-reasons. Legal advice is not there. To me, that is hard to reconcile with the advice that I have heard John Yates give this afternoon, and that I have read in the transcripts. The man who was receiving the advice at the time has given evidence to this Committee, which, in my view, corresponds with everything that I put in my letter and gave last time.

That gives me comfort that, as I was looking back to piece it together, I got it broadly right.

Q1121 Alun Michael: One other point of detail. You mentioned that on 14 July 2009, there were questions to the police from David Perry. This was looking at the question of whether there was a link between the editor of the News of the World and any wrongdoing. Your evidence on that was very clear. I just want to understand why that was so specific, because wrongdoing would have been wrongdoing in requiring investigation, even if it was not known to the editor, would it? You were very specific in that phrase.

Keir Starmer: I appreciate that. You could say why did he not ask a more general question about wider wrongdoing. I cannot answer that, but I did see him this afternoon, after I finished watching Mr Yates give his evidence, to prepare for this afternoon, and he said that at the time it occurred to him that the relevant question was, “Did the editor know?”. He rather thought that the editor might have known, and that is why he asked that specific question. It is true to say he did not go on to say, “And what about everybody else generally?”, but he did ask two quite pointed questions and he got answers to those questions.

What I took in July ’09 from that was that here we had a leading silk who was prepared to ask questions in conference about the material that had been gathered in the investigation. As I said, this afternoon I had a meeting with Mr Perry again, just to make sure that I understood what he meant by that information he gave me in July ’09.

Q1122 Dr Huppert: You have referred quite a bit to the Neville e-mails. You may have seen the Evening Standard today. There is a story that Neville Thurlbeck was an informer for the police in exchange for information from the police national computer. Have you seen that story?

Keir Starmer: To be honest, I have not, because I had booked out as much time as I could today to prepare for this hearing. I got the letter yesterday afternoon. I am not complaining about that, but it meant a major diary reshuffle. I did watch the evidence of Mr Yates, because I was concerned to hear what he may have to say on the subject. I knew it would be of concern to this Committee. I did not watch all the evidence of Sir Paul Stephenson this morning. I had picked up, from a trail, that he had said something, but I have not read the transcript yet.

Q1123 Dr Huppert: To fill you in, essentially Neville Thurlbeck was an informer for the police for a number of years and was given information in exchange from the police national computer to help him with his reporting. Two questions arise from that. First, if the police involved in the investigation knew that, do you think there was a risk that it would have affected their decision as to whether to work out who Neville was? While you think about that briefly, the second question relates to the fact that there has been no conviction for the police passing information from the police national computer to a journalist at News of the World. Is that something that you think we would have the tools to prosecute for at the moment?

Keir Starmer: As for the first question, undoubtedly it would have framed the way the police would have approached any evidence in relation to an informant. I have to say it is hypothetical, because I have not seen it and I have not read it. I was not told he was an informant. I am not sure I needed to have been told. That would have been, presumably, approaching ’06, ’07. It may have framed the way they approached it. The police are always careful in an investigation that involves an informant, for obvious reasons. But I
have not seen any documents myself that deal with that aspect of this case. As for the second question, do we have the tools to deal with essentially corrupt practices in the police or anywhere else? Yes. I do not anticipate that any issues will arise in the ongoing investigation in relation to the tools and powers that we have available.

Q1124 Mr Clappison: I think I can understand why you were so concerned about the Neville e-mail. Can I just take you back to the original trial and investigation leading to the trial? That was for hacking a member of the royal family’s phone, wasn’t it? It was the royal correspondent of the News of the World: Mr Goodman. He stood trial on counts relating to the hacking of members of the royal family, and Mulcaire had done the hacking for him. That is right, isn’t it?
Keir Starmer: Yes.

Q1125 Mr Clappison: The Neville e-mail was in the unused material, yes?
Keir Starmer: Yes.

Q1126 Mr Clappison: This was an e-mail that was marked for Neville, wasn’t it? It was about Mr Gordon Taylor, who was the secretary of the Professional Footballers’ Association. Is that right?
Keir Starmer: Yes.

Q1127 Mr Clappison: And it was relating to some private matters of his which we can only speculate about.
Keir Starmer: I am not sure that the e-mail made that clear. I think that the e-mail tended to suggest that a transcript was attached, or it was certainly referred to from memory. I am not sure that it had the details, but the significance was that it appeared to be an e-mail with Neville’s name on, referring to a transcript. That was what concerned me about it.

Q1128 Mr Clappison: Would you say that that is something that would immediately lead to a suspicion?
Keir Starmer: It concerned me.

Q1129 Mr Clappison: Because it had come from Mulcaire, hadn’t it?
Keir Starmer: No, I am not sure that it had come from Mulcaire. I think that this Committee may have the e-mail, so you can check the details. Certainly, it was of concern that here was an e-mail that appeared either to attach or make reference to a transcript and had the name “Neville” on it. That is why I asked David Perry to give me further advice in 2009 as to what significance he attached to it. I accept the premise of the question that you put to me.

Q1130 Mr Clappison: I can understand why you were concerned about it. Did you ask the police officers at the time if they had suspicions about this and what had they done about it?
Keir Starmer: I have done my best to piece together what happened in that period during the course of today. There are further documents that I need to check. I did have meetings with the police at the very time that I was concerned about the Neville e-mail, but in the time that has been available, I have not looked at each and every record. I was certainly raising it with David Perry at the time and that was uppermost in my mind in the period of 17 July to 20 July.

Q1131 Mr Clappison: Were you told if this matter had been investigated or not?
Keir Starmer: I do not know without double checking. I am certainly prepared to look at any further documents. I have been trying to piece together these relevant documents today. I can certainly have another look and help the Committee if I can.

Q1132 Mr Clappison: Did you raise this with Mr Yates when he was doing his review?
Keir Starmer: From my reading of Mr Yates’s evidence, his review was finished on 9 July.

Q1133 Chair: On the same day?
Keir Starmer: Yes. All of this for me was post-9 July. I certainly had conversations with Mr Yates—as I said, according to the records I have got, at least on 17 July by telephone and face to face on 20 July. The thing that was uppermost in my mind at the time was the Neville e-mail.

Q1134 Mr Clappison: There was not the problem with the Neville e-mail as to whether somebody had already listened to the message or not because you presumably did not know that.
Keir Starmer: This is the other point about the legal advice and whether it can constrain the investigation. There is the chronology of the legal advice—that is one thing. The other is the logic of the situation. Before you conduct the full investigation, you do not know whether you are going to get evidence that relates to a message that is listened to before or after it is listened to. I cannot see how an investigation can be constrained, even on an understanding that the narrow view is the view, because you do not know before you start what you are going to find. Therefore, you cannot say at the outset, “We are not going to investigate because we don’t know what we will find” because you may find evidence that satisfies even the narrow view. I have always had that fundamental difficulty with the suggestion that it was the legal advice that constrained the investigation. I note that Mr Clarke did not put that forward as his reason at all.

Q1135 Mr Clappison: Did it make you worried that in fact it might not just be confined to the royal family? Here was a football person who had been investigated for football matters. There might be a whole lot of other things that had not been investigated as well.
Keir Starmer: In relation to the legal advice, all I have been able to do is look back. I was not there at the time. My evidence on the chronology of what happened is exactly as it was before. I add this today, which is that logically, I am struggling with the idea that an investigation is constrained at the outset, or before being expanded, because of legal advice, unless the legal advice is that you cannot go there at all.
Chair: Thank you. Mr Reckless has a quick question and then Mr Yates has a quick question and then we will conclude.

Q1136 Steve McCabe: It is very quick. I just want to understand this. In your judgment, when you spoke to Mr Yates after 9 July, is there any way he could have failed to understand that you had some concerns after he had concluded his mini review? We know that he did not speak to you at the time, but you had some conversation with him subsequently. At that point, is there any way he could have failed to understand that you were expressing some additional concerns?

Keir Starmer: I do not think so. I have been trying to remember back. I had a three-hour meeting with Mr Perry on this issue. It was obvious that that was of concern to me. I spoke to Mr Yates twice early that evening. I then had a meeting with him the next Monday morning. This concern was my concern at that time. That is why I was spending time with counsel on it.

Mark Reckless: Mr Yates—

Chair: Mr Starmer.

Mark Reckless: I was going to start a question. Mr Yates has told us that prosecution counsel led by Sir David saw all this unused material and then gave, according to Mr Yates, an unequivocal counsel would have had access to the unused material. He has told me this.

Chair: That is very helpful.

Q1137 Mark Reckless: I was going to start a question. Mr Yates has told us that prosecution counsel led by Sir David saw all this unused material and then gave, according to Mr Yates, an unequivocal view that, as well as speaking to the News of the World journalist, to the police about no link between Mulcaire and News of the World, that was also his view on the basis of having seen all this unused material.

Chair: We do not want a long answer; we want a succinct answer. Did leading counsel see this information as Mr Yates said or not?

Keir Starmer: No. I have spoken to David Perry QC this afternoon. The quotation in Mr Yates's letter that he put before this Committee on, I think, Monday or Friday of last week quotes an extract from Mr Perry's note to me, but that was in August '06, when at that stage only limited information had been given to the CPS. So what Mr Perry was referring to was the information that he had at that stage seen.

Q1138 Chair: So he had not seen what was unused.

Keir Starmer: He was not signing off that he had seen all the material. This is where the chronology is absolutely critical. I am sorry about the long answer, but if you elide a statement and put it in the wrong place in the chronology, it makes it look as if something happened when it did not. Read properly and in context, it does not support Mr Yates's contention that David Perry saw this material. He has told me this afternoon that he did not.

Q1139 Chair: So Mr Yates is wrong.

Keir Starmer: It is true and fair to say that junior counsel would have had access to the unused material. We are currently going through the schedules of the unused material to try to ascertain exactly what was there and what was looked at. But Mr Perry's note cannot be read as implying that he looked at all the material. He has told me this.

Chair: That is very helpful.

Q1140 Mark Reckless: You are now telling us that the junior counsel did not look at all this unused material.

Keir Starmer: No, I am not saying that. We are going through the process of ascertaining—

Chair: Then not now.

Keir Starmer: No. Ascertaining what was available then and what is available now when there is a huge amount of new information coming to light. We are advising in real time on the police. It is the devil's own job. We are doing it and we will, when we finish that exercise, be able to say, "This was precisely what was seen at the time and this is all the new material." But we have not finished that exercise.

Q1141 Mark Reckless: Looking at this Mulcaire material, if we see in that News of the World journalist's names and phone numbers with pin codes, that is compelling evidence that a phone has been hacked, but it is not compelling evidence as to whether the hacking was before or after the recipient picked up the message.

Keir Starmer: I think it is highly unlikely that the documentary evidence would give very much of a clue about that. I do not know without looking, but I think it is pretty unlikely.

Q1142 Mark Reckless: All you did in relation to the legal advice was look at what happened back, but did you not in addition—I will not read this a fourth time—give an assurance to the DCMS Committee?

Chair: You know the point he is making.

Keir Starmer: I know the point you are making.

Q1143 Mark Reckless: Do you want to change the evidence you gave to DCMS?

Keir Starmer: I tried to deal with it in the letter I gave. That was clumsy because I was dealing with what I understood to be the advice at the time. To be fair, I wrote my evidence on the back of—

Q1144 Chair: What is not clumsy now? Tell us frankly.

Keir Starmer: I had a conversation with David Perry. The legal advice was not a big issue at the time. He had not the papers before him and I noted what I understood he was saying. What I wrote in '09 was my understanding of the cautious approach that was being taken, namely that it is a dead cert in this situation, but not if it is beyond. That, if you like, was me trying to interpret at some speed what David Perry was telling me happened at the time. On reflection, I accept—I understand why you make the point—that, compared with the later analysis that I have done, the advice that was actually given needs to be considerably nuanced to explain it in its context. I accept that. That was an error between me and counsel working at some speed.

Q1145 Mark Reckless: This is my final question. You have put a lot of stress now on the uncertainty as to the legal position, and how it has not been tested in court, but is not that argument circular, to the extent that it has not been tested in court because the CPS...
Chair: Thank you for being patient, Mr Lewis. This will not take long, you will be very pleased to know. You are our last witness in the inquiry. I want to ask you a few questions from the victims’ point of view. From what you have heard, and the evidence you have seen so far to the Select Committees—I think you were in for the evidence earlier on—what is your take on why we have not got to the bottom of this issue earlier, from the victims’ point of view?

Mark Lewis: From any point of view, including that of the victims, it is not just about assisting police with their inquiries. The DPP seems to have got it wrong, and perhaps needs to be helped out. The evidence then was that it was members of the royal family that the prosecution related to, but that was not correct. It was members of the royal household, not members of the royal family. There was a prosecution of Clive Goodman in respect of the royal household members, and there was a prosecution of Glenn Mulcaire in respect of the royal household members and in respect of five non-royal victims, one of whom was Gordon Taylor. I acted for Gordon Taylor in the first place. I know a little bit, and can probably answer some of the questions that were asked of the previous witness. What happened was that the “for Neville” e-mail was a story that was written out beforehand. It was provided by the Metropolitan police pursuant to an order for third-party disclosure to my firm at the time as part of the Gordon Taylor civil case, which the DCMS is now looking at. That was there. The police at the time, for whatever reason—I have already made written submissions—did not look into the fact that there was only one Neville working at the News of the World and so on.

Q1146 Chair: Very quickly, in terms of your press office at the CPS—we have asked this of all the witnesses—do you have any former News of the World journalists working in your press office?

Mark Lewis: No, but I want to be clear to the Committee: we have one member of staff who, years previously, had worked freelance for The Times. We also have one member of staff who, 20 years ago, worked with Mr Coulson on a local newspaper. That is the inquiry I have made.

Q1147 Chair: And since you have been DPP—are you satisfied that your contacts with News International do not compromise you in your position as the DPP?

Mark Lewis: Absolutely. They would not be involved in case decisions in any event.

Chair: Thank you very much. We are most grateful; that was very helpful. May we have our final witness, Mr Lewis?

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**Examination of Witness**

Witness: Mark Lewis, Solicitor Advocate, Taylor Hampton Solicitors Ltd, gave evidence.

Chair: Thank you for being patient, Mr Lewis. We would like a copy of the letter, but can I just clarify? You are saying that you were threatened with a civil suit, presumably for defamation or libel, for what you said in a Committee of the House of Commons?
Mark Lewis: No. What happened was that I made comments earlier this year that suggested that Mr Yates ought to resign when Operation Weeting started, because I considered that the Select Committee on Culture, Media and Sport had been misled about the evidence that could have been found if the investigation by Assistant Commissioner Yates had taken slightly longer than eight hours and looked at paperwork that was held. Instead of that being taken on board and pursued, when I gave written evidence here—when I made that comment—I got a letter saying I wasn’t going to be sued. I think the reason why I wasn’t going to be sued is that I would have defended the claim and said exactly what the position was.

As for other people, The Guardian newspaper was threatened with being sued. I got the letter—you will see the letter; it might be helpful—that refers to the evidence that I gave to the Home Affairs Committee, warning me off for my future conduct. My reply—I will read out an extract—was, “Notwithstanding your gracious acceptance of my constitutional right to give evidence, I should be entitled to do so without such evidence appearing in a warning letter from your firm. Am I meant to be fearful of making future submissions?”

Chair: That is extremely helpful, and we would very much like a copy.

Q1152 Mr Winnick: The legal firm that you worked for—what case was it that they didn’t want to pursue and you did?

Mark Lewis: I had acted in the Gordon Taylor case and the other two, the first three phone hacking cases. When The Guardian exposed it, there were obviously people who wanted to pursue other claims. My firm, as it was, took the view that they didn’t want to pursue any phone hacking claims, so I was given an hour to give an undertaking that I would not act for anybody else in phone hacking or be expelled as a partner. I was expelled as a partner because I wouldn’t give that undertaking.

Q1153 Mr Winnick: Did they give any reasons why they didn’t want to pursue it?

Mark Lewis: I was expelled as a good leaver because, I think, they were fearful of the future ramifications of getting involved in something like this.

Q1154 Mr Winnick: As far as Mr Yates is concerned, how did the correspondence originate?

Mark Lewis: What happened was that after I had given evidence to DCMS in 2009, Baroness Buscombe of the Press Complaints Commission decided to speak out against me. She effectively accused me of lying to the Select Committee, because I had suggested that I had had a conversation with a police officer who told me that there were 6,000 victims. At that time, it was known that there were a handful of victims. People might look at it now and say, “Of course there were thousands of victims,” but one has to go back to that time.

Q1155 Mr Winnick: She accused you of lying?

Mark Lewis: She accused me of lying. The basis on which I was accused of lying was a bit like Neville Chamberlain, but modernised. Instead of having in her hand a piece of paper, she said, “I have in my hand a letter from the Metropolitan police, and e-mails to confirm.” That was the modern touch. I requested copies of the e-mails and a copy of the letter under the Data Protection Act. Basically, I had been set up by the Metropolitan police, providing information to the PCC, in order for a speech to be made about me to the great and the good at the Society of Editors dinner. I ended up suing the PCC and Baroness Buscombe, who is still in her job but very silent at the moment. She paid me damages. I do still have a libel case that is in action against the Metropolitan police, because they facilitated the defamation of me. The Met police applied to strike out my claim on various issues two or three months ago, but they lost and have had to pay me costs. But that case is still proceeding, and it will be determined whether the evidence I gave the first time in 2009 was of a conversation I had had with the police officer. I said that he told me there were something like 6,000 victims of phone hacking: “You do not need everything. We’ll give you enough to hang them.”

Chair: Indeed?

Mark Lewis: The police officer does not admit—he denies—having said that. He admits to the conversation, but says that he did not tell me anything about numbers and that what he said was: “Not enough to hang them. I’ll give you enough to load your gun.” I am not sure that the choice of weapons helps.

Chair: Mr Lewis, that has been very, very helpful. Thank you very much. You have given us copious written evidence, which you will be pleased to know we are going to include in our report. Thank you very much for coming here today. Also, we have noticed the fact that you have acted on behalf of the Dowler family. Would you pass on to them this Committee’s commiserations over what has happened? I congratulate you on the way in which you have represented them and dealt with all these very difficult matters. Please tell them that they have our good wishes at this very sad time. What has happened to them and their daughter has been truly horrific; I think that everyone is agreed about that. Please pass on our best wishes.

Mark Lewis: Thank you. I will do.
Written evidence

Written evidence submitted by Amberhawk Training Ltd

Recommendation: The Committee (possibly with the assistance of the Interception of Communications Commissioner) needs to explore the consequences of the MPS legal advice (as mentioned in Q5 of Mr Yates’ comments) in relation to a review of the protection afforded to individuals by the Regulation of Investigatory Powers Act 2000 (RIPA).

If the arguments underpinning the MPS legal advice, then a change to RIPA might need to be urgently recommended. When Parliament provided public authorities with intercepting powers in 1999, Parliament had in mind the protection of all messages—not just the content of the unread ones.

Argument

I refer to the evidence given by Assistant Commissioner John Yates of the Metropolitan Police Service (MPS).

Mr Yates’ answer to Q5 reveals that the MPS have obtained legal advice from a leading QC which, if applied in practice, has some strange consequences. For example, it could mean that unread spam messages receive a high level of privacy protection under the Regulation of Investigatory Powers Act (RIPA) whereas read private email messages of immense confidentiality do not receive any privacy protection from RIPA.

In relation to the incidence of “voice mail hacking”, Mr Yates said the following:

Mr Yates: “.... hacking is defined in a very prescriptive way by the Regulation of Investigatory Powers Act and it’s very, very prescriptive and it’s very difficult to prove.... There are very few offences that we are able to actually prove that have been hacked. That is, intercepting the voicemail prior to the owner of that voicemail intercepting it him or herself”.1

Note my emphasis on “prior to the owner of that voicemail intercepting it him or herself”? The question that needs to be asked is: “What does that imply?”.

Consider the relevant provisions of RIPA and its definition of interception. Section 2(2) of RIPA states that “a person intercepts a communication in the course of its transmission by means of a telecommunication system if, and only if ... (he makes)... some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication”. Section 2(4) states that an “interception of a communication” has also to be “in the course of its transmission” by any public or private telecommunications system (my emphasis).

I had not appreciated the significance of “in the course of its transmission” or “while being transmitted” until now—but John Yates’ testimony has put an end to that. What Mr Yates appears to be telling the Home Affairs Committee is that the MPS legal advice states that once the lawful recipients have read or listened to their Inbox messages, there can be no interception in connection with those messages. The RIPA offence falls away because each read message “has been transmitted” rather than “is being transmitted”.

In most email Inboxes there will be all sorts of messages, some of which will no doubt left unread (eg spam in a “Deleted Items” folder), and some of which will be read and retained (eg mailings from constituents). If the MPS advice is followed, those unread spam messages gain the full protection of RIPA whereas those messages that you have read do not. In this way, the MPS legal advice appears to imply that RIPA provides a very a topsy-turvy world of protection.

However, there is a more serious side to the MPS legal advice. If it is correct, then any claim that RIPA provides a high level of protection against the misuse of RIPA powers by law enforcement agencies could easily be misplaced. For instance, suppose the law enforcement agencies wanted to gain access to the content of an email Inbox: in relation to the content of read messages, there would be no interference, and there would be no need to obtain a warrant, because RIPA is not even engaged. RIPA’s warrant provisions only cover unread messages.

It is for this reason that the arguments underpinning the MPS legal advice have to be obtained in full by the Committee. Mr Yates’ comments on RIPA cannot be left to gather dust. If that advice is correct, then Parliament may need to call for a change in the law. When Parliament provided certain public authorities with intercepting powers in 1999, Parliament had in mind the content of all messages—not just the unread ones.

September 2010

1 Oral evidence taken before the Home Affairs Committee on 7 September 2010, HC (2010–11) 441-i, Q 5.
I am a freelance journalist. I work regularly as a special correspondent at The Guardian. I wrote the stories about the secret settlement between Gordon Taylor and News Group which were published by the Guardian on 9 July 2009 and which led to new statements about the phone-hacking affair being made by Scotland Yard, the Director of Public Prosecutions and News International; and to new inquiries being opened by the Press Complaints Commission and the House of Commons select committee on media, culture and sport. Since then I have written some 30 further stories on the subject.

In relation to the three areas which you have highlighted for your current inquiry into the unauthorised hacking of mobile phones, I hope the following information may be useful.

(1) The definition of the offences relating to unauthorised tapping or hacking in RIPA and the ease of prosecuting such offences

(i) I have written several stories which are based on paperwork which is held by the Crown Prosecution Service. This includes detailed records of phone calls, meetings and briefing papers from the original investigation by police into complaints from Buckingham Palace. Some of these records are summarised in a chronology, which was prepared by the special crime division of the CPS on 15 July 2009.

The paperwork which I have read includes references to the legal advice provided by the CPS to Scotland Yard and makes no reference to Section One of RIPA requiring the prosecution to prove that an interception of voicemail has taken place before the owner of that voicemail has listened to it himself or herself.

For example, following a series of exchanges in which CPS lawyers provided legal guidance to police, a briefing paper was produced on 30 May 2006 by the Metropolitan Police for the Attorney General and the Director of Public Prosecutions. This referred to voicemail numbers "being accessed without authority" and to the victims of "this unauthorised access" and goes on to suggest that "it does appear that once the telephone evidence has been secured, the police will have sufficient to arrest the potential suspects." I have read no reference to the unauthorised access needing to occur to messages which have not been read by the intended recipient.

Similarly, after David Perry QC was briefed as Crown counsel, he wrote an email on 30 August 2006 to CPS lawyers in which he urged them to make a decision about the scope of the proposed indictment. He stipulated that they needed to prove that voicemail messages had actually been heard by the perpetrators but did not stipulate that they needed to prove that this had happened before the intended recipient had heard them:

"The position in relation to this needs to be ascertained as soon as possible because we need to decide what the scope of the case is going to be, whether there are to be any more charges. We also need to look at the indictment to make sure the charges include the interceptions where we can prove that messages were listened to and that there is a balance between the existing three victims."

(ii) I obtained a transcript of the hearing on 26 January 2007 when Clive Goodman and Glenn Mulcaire pleaded guilty to offences under section one of RIPA. During this hearing, David Perry QC presented the prosecution and included (p 55ff) what he described as "an explanation of the ingredients of the offences". The transcript shows that Mr Perry made no reference to the notion that RIPA required the prosecution to prove that the interception had taken place before the owner of that voicemail had listened to it himself or herself. Similarly, neither counsel for the two defendants nor the judge made any reference to the notion that the offence under RIPA requires this interpretation.

(iii) After publication of the Guardian stories about Gordon Taylor in July 2009, the assistant commissioner for specialist operations at Scotland Yard, John Yates, made a statement on 9 July in which he made no reference to this interpretation of RIPA; and the Director of Public Prosecutions, after reviewing the case file, made a statement on 15 July in which he made no reference to this interpretation of RIPA.

(iv) When reference was finally made to this by the DPP, in a memo submitted to the select committee in late July 2006, it was made clear that this interpretation of the law was something that had been mentioned in conversation at a case conference. It had never even been stated in a written opinion: "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 conversation."

(v) The same memo from the DPP makes clear that this interpretation of RIPA has been tested in court in relation to the interception of email but not in relation to the interception of voicemail. The memo makes reference to a judgement by Lord Woolf in a case in which Suffolk police requested access to email held by NTL. Two lawyers who specialise in this area have told the Guardian with considerable confidence that that judgement does not have any impact on the use of Section One of RIPA in relation to voicemail. One of them, Simon McKay, author of Covert Policing: Law and Practice, was quoted in the paper reacting to John Yates’ claim about this interpretation of RIPA: "That is nonsense and a recurring problem with the police position in this case."

Section One of RIPA stipulates that, for the offence to be committed, the interception must occur when the communication is "in the course of transmission". I understand that it is significant that whereas an old email is stored on the recipient’s computer and is no longer being transmitted, an old voicemail is stored on the
mobile phone company’s computer with the result that whenever a voicemail is intercepted—regardless of whether its intended recipient has already heard it—that interception has to take place “in the course of transmission” from the mobile phone company’s computer to the handset.

(vi) Specialist lawyers add that even in the event that a court were to accept this interpretation of RIPA in relation to voicemail, the Computer Misuse Act 1998 would continue to make it an unambiguous offence to intercept voicemail regardless of whether or not it had been heard by the intended recipient. Paperwork held by the CPS shows that this act also was the subject of legal advice from CPS lawyers working with the Met police on the original investigation.

(vii) It is possible that other evidence to which I have not had access will throw further light on this question. The evidence which I have seen suggests that this interpretation of Section One of RIPA is, at best, contentious; that it was not applied by police or prosecutors in the course of the original investigation and prosecution; and that it was referred to only after the Guardian put pressure on police to reconcile the version of events given in court, which disclosed only eight victims, with the emerging evidence that—in the words of the Met police briefing paper of 30 May 2006—“a vast number” of public figures had had their voicemail accessed without authority.

(2) The police response to these offences, especially the treatment of those whose communications have been intercepted

(i) Paperwork held by the CPS shows that police began their investigation in January 2006 by analysing data held by phone companies; that this revealed “a vast number” of victims and indicated “a vast array of offending behaviour”; but that prosecutors and police agreed not to investigate all of the available leads.

In addition, the CPS paperwork shows that prosecutors were persuaded by the police to adopt a policy of “ring-fencing” evidence so that, even within the scope of the limited investigation, there would be a further limit on the public use of evidence in order to ensure that “sensitive victims” would not be named in court.

This appears to have referred to a policy of not naming members of the royal family whose messages had been intercepted. It is not clear whether the ring-fencing extended to the suppression of the names of other potential victims such as senior officers at Scotland Yard.

On 8 August 2006, police arrested Clive Goodman, Glenn Mulcaire and one other man who was not finally charged. They seized computer records, paperwork, audio tapes and other material from all three men. As a result of an application by the Guardian under the Freedom of Information Act in January 2010, we now know that this material included 4,332 names or partial names of people in whom the men had an interest; 2,978 mobile phone numbers; 30 audio tapes which appear to contain recordings of voicemail messages; and 91 PIN codes of a kind which are needed to access mobile phone messages in the minority of cases where the owner has changed the factory settings on their mobile phone.

It has now become clear that, having seized this material, police chose to impose a further limit on their investigation by not fully searching and analysing it. This job was finally done only in the aftermath of the Guardian stories in July 2009. This emerged in written evidence to the media select committee in February 2010 after the Guardian disclosed the fact that the seized material contained 91 PIN codes. The chairman of the select committee, John Whittingdale, wrote to the assistant commissioner, John Yates, to complain that he had not mentioned this when he gave oral evidence to the committee in September 2009. Mr Yates replied that “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.”

Further evidence of the decision not to fully search and analyse the seized material also appears in a memo written to government ministers by Mr Yates’ staff officer, Det Supt Dean Haydon, on 18 February 2010 in which he stated that “minimal work was done on the vast personal data where no criminal offences were apparent”.

(ii) The decision not to investigate all the leads in the phone data and the subsequent decision not to fully search and analyse the seized material meant that there was a failure to investigate all those who may have been involved in associated criminal activity.

Police chose not to seek a production order requiring the News of the World to disclose internal records. Instead, as evidence to the media select committee disclosed, they wrote a letter to the newspaper asking them for disclosure of a list of items. The newspaper refused to comply, and Scotland Yard accepted this without further action.

Police also chose not to interview any reporter, editor or manager at the newspaper other than Clive Goodman. Emerging evidence about the phone data and other material in the possession of the police reveals that they were in possession of evidence which implicated named employees of the News of the World in dealing with the interception of voicemail messages. It is not clear whether police knew that they had this evidence and chose not to pursue it; or whether their decision not to fully search and analyse the seized material meant that they were unaware of it.

Among this material was an email, sent in June 2005, by a reporter in the News of the World’s newsroom to Glenn Mulcaire for the attention of the newspaper’s chief reporter, Neville Thurlbeck. This email contained
transcripts of some 35 voicemail messages taken from the phones of Gordon Taylor, chief executive of the Professional Footballers' Association, and of Jo Armstrong, his legal adviser. Responding to questions from the Guardian in July 2009, the DPP disclosed that police had never passed this document to prosecutors, even though Gordon Taylor was one of the eight victims named in the indictment. The DPP and police have said that crown counsel "had access" to all undisclosed material held by police. It is not clear, however, that crown counsel actually ever saw this document. The seized material was so complex and voluminous that it took Scotland Yard officers several months to search it when finally they undertook the task in July 2009. Responding to the Guardian's inquiry, the DPP conceded that crown counsel does not remember seeing it: "He cannot now recall whether the email was the subject of specific advice at the time."

(iii) The same decisions which limited the original police investigation of possible offenders also meant that there was a failure to investigate all those who were, or who may have been, victims of voicemail interception.

In terms of the prosecution, this meant that the case was presented on the footing that there were only eight victims. No offences involving other victims were presented to be "taken into consideration" by the court. Nor were any further offences involving other victims "left on the file". Nothing that was said in court or in any public statement by police or prosecutors at the time of the trial indicated that the eight named victims were only a representative sample of a "vast number" of public figures whose voicemail had been accessed without authority.

Separately, there is an issue about the warning of those who were or who may have been victims. In a statement on 16 July 2009, following the Guardian's stories, the DPP disclosed for the first time that the eight named victims had been only a representative sample and added: "For any potential victim not reflected in the charges actually brought, it was agreed that the police would inform them of the situation."

In written evidence to the media select committee in February 2010, John Yates suggested that this was indeed what police had done: "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."

However, the emerging evidence suggests that Scotland Yard have failed to honour their agreement with the DPP to inform "any potential victim":

(a) There are examples of their failing to inform people at the time of the original investigation even though they were holding clear evidence that Mulcaire had succeeded in intercepting their voicemail. This was conceded in evidence to the media select committee in July 2009 when John Yates said that following publication of the Guardian stories in July 2009, police had informed a small number of victims who had not previously been approached. Even then, however, they failed to complete the task in relation to these confirmed victims. In the case of Jo Armstrong, for example, they had the email of June 2005 which included transcripts of messages taken from her phone. The media select committee asked John Yates when Jo Armstrong was informed. In December 2009, Mr Yates wrote in reply: "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." Scotland Yard continue to refuse to say how many victims were warned at the time of the original investigation and how many have been warned since publication of the Guardian stories in July 2009.

(b) A further group of confirmed victims was identified by three of the five mobile phone companies but, contrary to the police agreement with the DPP, many of them were not informed. At the time of the original investigation, Scotland Yard passed Orange, Vodafone and O2 details of the phone numbers being used by Goodman and Mulcaire so that the three companies could search the data which they hold for a rolling 12-month period in order to try to identify customers whose voicemail had been accessed from those numbers. In February 2010, the Guardian discovered that each of the companies had identified approximately 40 victims; that Orange had warned none of them; Vodafone had warned them “as appropriate”; and only O2 had a policy of warning all of them. Correspondence from Scotland Yard suggests that they were unaware of the identification of these victims and had made no attempt to ensure that all of them had been informed. It is not clear why Scotland Yard did not also involve the other mobile phone companies in this exercise.

(c) Among “potential victims”, where the evidence of successful interception was not so clear, there is evidence of the police engaging in a limited attempt to honour their agreement with the DPP. In written evidence to the media select committee in September 2009, Mr Yates stated that “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.” Scotland Yard continue to refuse to say how many people were approached in each of these four categories.

(d) Another group of potential victims appears to have been given less attention. We now know that police found in the seized material 91 PIN codes of a kind needed to intercept voicemail from those targets who have changed the factory settings on their phones. Although the owners of these PIN codes would appear to qualify as “potential victims”, they were not all informed. For example, the actor Sienna Miller, through her lawyer, has disclosed that her PIN code was found in Mulcaire's
possession together with her mobile phone number and that Scotland Yard did not inform her until her lawyer wrote a series of letters requesting the information.

(e) There is a further category of an unknown number of people whose names and mobile phone numbers and/or other personal data were found in material seized from Mulcaire. These mobile numbers were found in the possession of a private investigator who was specialising in the interception of voicemail messages for a newspaper; the owners of these numbers are public figures; they are the subject of news coverage; they are not the personal acquaintances of Mr Mulcaire; their numbers and other details were found in his work records, not in some personal address book. The police concluded that they were not “potential victims” and informed none of them. Chris Bryant MP is an example in this category.

(f) There is a final category of people whose names were found on invoices recording payments claimed from the News of the World by Mulcaire. The then deputy prime minister, John Prescott, is one of these. He was named on two invoices in the Spring of 2006. Even though Mr Prescott was then in a very senior position in government which meant that he was involved in current matters of defence and counter-terrorism and was in receipt of sensitive political and economic information, police did not approach him to inform him that he had been targeted by a private investigator who specialised in the interception of voicemail messages.

The apparent failure to honour the agreement with the DPP has had some practical results for those victim and potential victims who received no warning. Because mobile phone companies are allowed to hold call data for only 12 months, these people have lost the chance to check to see if anybody had accessed their messages and, if so, who that might be. They had no chance to change their PIN codes to make their messages secure for the future and no opportunity to assess what confidential messages might have been heard.

Following the Guardian stories in July 2009, John Yates ordered officers at Scotland Yard to fully search and analyse the material seized nearly three years earlier, in August 2006. That search led to the creation of a spreadsheet which lists all those named in the seized material together with a summary of the personal information held on them. Scotland Yard chose not to publicise the existence of that spreadsheet and, shortly after it was finally created, at a media briefing in November 2009, a senior officer attempted to deny that it existed and conceded that it did exist only when confronted with detail about it.

Since then lawyers who have contacted Scotland Yard on behalf of clients report that they have received letters which have failed to give them a clear summary of the material relating to them which is in the possession of the police. I have spoken to several representatives of public figures who were simply misled by the wording of Scotland Yard’s letters which led them wrongly to believe they had not been targeted by Mulcaire.

(3) Police action to control these offences

The original police inquiry was highly effective in uncovering the truth about the interception of voicemail in the royal household. The jailing of a Fleet Street journalist sent a powerful message to the profession, that this practice was not only unlawful but also dangerous. It is reasonable to conclude that this must have had an impact in reducing the use of illegal techniques in newsrooms.

However, there is evidence that some in Fleet Street have continued to use illegal techniques, including the interception of voicemail. It is reasonable to conclude that the limiting of the original police inquiry sent a contradictory message to those journalists who had been involved in illegal techniques, suggesting that the police had only a limited interest in uncovering these offences.

The evidence suggests that the police continue to take an equivocal approach to enforcing the law in Fleet Street. Scotland Yard have insisted that they will not investigate the mass of unused evidence which they have held since 2006—the unfollowed leads on the “vast number” of victims found by analysing phone data by May 2006; and the information about potential offenders and potential victims in the material seized from suspects in August 2006.

Instead, they have said they will investigate only “new evidence”. And in this, it appears that they have restricted themselves to new evidence which is placed in the public domain by news organisations. For example, they agreed to interview Sean Hoare, who was named in the New York Times as a witness who alleged that the former editor of the News of the World, Andy Coulson, had encouraged the interception of voicemail; and Paul McMullan, who was named in the Guardian as a witness who alleged that Andy Coulson must have known about the widespread use of illegal techniques at the newspaper.

However, they have not attempted to find their own “new” witnesses and chose to tell their short list of witnesses provided by the media that they must be interviewed “under caution”, ie on the basis that anything they said might be used to prosecute them. Sean Hoare declined to comment on important questions. Paul McMullan refused to co-operate voluntarily with an interview on that basis.

October 2010
**Written evidence submitted by Mark Lewis, Taylor Hampton Solicitors**

By way of background, I was the Solicitor who acted for Gordon Taylor, Joanne Armstrong and another whilst at my previous firm. I gave evidence to the Select Committee in the last Parliament that amongst other things looked at press standards. I am currently representing other victims of phone-hacking.

I have also instituted libel proceedings in my own right against the Press Complaints Commission ("PCC"), Baroness Buscombe (the PCC’s chair), and the Metropolitan Police Service ("the Met") as a result of publications made by them about my evidence to the aforementioned Select Committee. In a speech to the Society of Editors Baroness Buscombe made reference to my evidence saying that I had misled Parliament. I stand by my previous evidence and repeat it.

On the last occasion I gave evidence as to the statement made to me by DS Maberley (now DI) outside Court at a hearing seeking disclosure from the Met. My evidence was that he told me that there were “6,000 victims” of phone hacking.

The issues that arise from my dealings are:

1. The actions of the Met; and
2. The actions of the News of the World.

### The Met

1. **RIPA**
   1.1 The Met rely upon a definition of the phone hacking crime, as being an offence under RIPA. The Met say that unless it is possible to prove that the offender listened into a voicemail of another and heard a message before the intended recipient, then there is no crime.
   1.2 It follows that if an offender listens into another person’s voicemail, by surreptitious means, the determination as to whether a crime has occurred is based upon whether the message is a new message or a saved message. That distinction does not make any sense. The message is the same in either case, the conduct of the person listening to the message is the same in either case, and the timing might be a second apart.
   1.3 The narrow definition of the RIPA crime seems to be used to justify the Met’s failure to notify victims of crime. If listening to a saved message is not a crime then the victim of phone hacking is not a victim of a crime under RIPA.
   1.4 The Met has not indicated whether it has considered any other offence (if they are correct under RIPA) such as the Computer Misuse Act or any crimes of attempt. The Met has not revealed whether it is aware that other people (whose phones were hacked), had listened to their messages before the hacker. If they do not know that was the case then the public statements and letters from the Met are misleading (see below).

2. **Notifying Victims**
   2.1 The decision to notify victims was arbitrary. When Glenn Mulcaire was prosecuted, the Met notified a few victims but not others. Mr Mulcaire was prosecuted for hacking Gordon Taylor, Max Clifford, Simon Hughes MP, Elle McPherson and Skylet Andrew as well as the members of the Royal Household.
   2.2 I gave evidence to the last select committee about Gordon Taylor and Joanne Armstrong (the first two civil cases). Mr Taylor was notified by the Met. Ms Armstrong was not. There was no difference between the offences against either. Both had their phone hacked.
   2.3 I am aware of other situations where one person was told but another in the same building was not. The Court records show that I am acting for (amongst others) Nicola Phillips who worked with Max Clifford.
   2.4 There is no doubt that the Met were aware of Ms Phillips as the documents given to Mr Clifford included documents about her. The same situation happened where Gordon Taylor was notified by the Met but Joanne Armstrong was not. Others within the football world were not notified even where their details must have been held by the Met.
   2.5 Even now, the Met refuses to hand documents to victims without a Court Order. Matters are made worse as the same documents were given to third parties who had less right to see them. For example, Max Clifford (according to the Court papers in his case) was told by the Met that Nicola Phillips phone had been hacked but she was not told.
   2.6 Statements made by the Met that they are notifying victims depend upon their narrow definition of RIPA. The “victims” that I represent have not been told.
1.3 Misleading Letters

1.3.1 The Met approach to requests from potential victims seems deliberately obstructive. Any request is met by a series of letters:

1.3.1.1 A request for a letter of authority from the client;
1.3.1.2 An acknowledgement that a search is being made (often after a reminder and a long delay);
1.3.1.3 It is made clear by the Met that even if the search reveals any information it will not be released without a Court Order as the documents were seized for the purpose of a criminal investigation. (Note that if the person had been invited to be a prosecution witness then they would have seen the documents without such an Order).
1.3.1.4 It seems incredibly obtuse to refuse to tell a victim of crime that they cannot have the evidence of that crime.
1.3.1.5 Finally, usually after two to three months a person who was a victim of Mr Mulcaire gets a letter that includes an opening paragraph to the effect of “you were a person of interest to Mr Mulcaire”. During our search we found a list with your name on it X times, your phone number Y times. Letters might also add that your name was found in an email, and that a billing guide shows that there were calls from people who had a “connection with News of the World”. There is no explanation as to why the Met chose to take no action against the people that they describe as such people connected to the News of the World and how they were connected.

1.3.2 The standard letters conclude with the phrase “there is no evidence to show that you were a target of Mr Mulcaire”. Phrases to that effect can only be designed to put off those who have made the inquiry or their solicitors. Quite plainly, there is evidence but not proof. It is the lawyer’s job to garner the evidence and make the case. Individuals who see that phrase are put off by thinking that the lack of evidence asserted by the Met is relevant. The phrase used by the Met would have the same meaning if expressed negatively “there is no evidence to show that you were not a target of Mr Mulcaire.” The Met has no business volunteering any advice. It seems clear that such advice is deliberately designed to stop people taking further action against the News of the World.

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1.4 Misleading Statements

1.4.1 The Police and former police officers have made public statements which have the effect of misleading the public and thereby putting them off bringing a claim.
1.4.2 The initial investigation was undertaken by Andy Hayman (“Mr Haymann”) who has now left the Met. Mr Hayman is now employed by News International as a columnist (or one of its subsidiaries). Mr Hayman is on record referring to a “handful of victims” of phone hacking, using his supposed insider’s knowledge to exonerate his new employers. There is an unhealthy position that a former Police Officer who must be bound by the Official Secrets Act feels able to discuss operational matters that occurred during his service within a newspaper published by the party he was meant to investigate. If permission has been given by the Met to reveal operational secrets then that must be said. If not, then action must be taken against Mr Hayman.
1.4.3 Assistant Commissioner Yates holds that line. The latest public statement by the Assistant Commissioner is that there were “10–12 high profile victims”. That seems to be based upon a vague definition of “high profile” (the profile of a victim of crime should be irrelevant) and the narrow definition of “victim” used by the Met.
1.4.4 It is not clear why the Met have chosen not to act openly. The impression created by the former investigating officer, now working for the organisation that was investigated is extremely alarming. Assistant Commissioner Yates has now conceded that Neville Thurlbeck should have been interviewed during the initial investigation. The Met operation that decided not to investigate Mr Thurlbeck was headed by Mr Hayman. Mr Hayman and Mr Thurlbeck are now colleagues.
1.4.5 The statement that seeks to explain the position is “there is no new evidence”. That might be so. The issue has always been that evidence existed but was not used. It is disconcerting that the Met’s failure to use that evidence is being investigated by the Met. There can be no confidence in a situation whereby the Met investigation of an incident can result in a criticism of the Met. That is obviously a conflict of interest as the Met is best served by a finding that shows it acted properly in the first place.
1.4.6 There are all sorts of explanations as to why the Met might have failed to investigate properly:
1.4.6.1 The initial investigation related to the Royal household. For that reason the investigation was allocated to a particular team. When it became clear that the investigation was much wider, the inquiry should have been transferred to a bigger team that had appropriate resources.
1.4.6.2 Former Met Officers go to work for News International after retirement (the parent company of News Group Newspapers) such as Mr Hayman. There should not be such an incentive. It is difficult to see whether Mr Hayman would have been appointed if he had extended the scope of the investigation and prosecuted further.
1.4.6.3 News of the World investigations are passed to the Met. It follows that the Met might themselves
use information that derives from phone hacking. That has to be a disincentive to a thorough investigation by the Met.

1.4.6.4 The News of the World and other media often accompany the Met to see secret arrests. The alliance between the News of the World and the Met has the appearance of being too close and might be too close.

1.4.6.5 At the relevant time, Mr Hayman had reason to fear that he was a target of Glenn Mulcaire and the News of the World. It became public knowledge that throughout the period of the investigation into voicemail hacking, Mr Hayman was involved in a controversial relationship with a woman who worked for the Independent Police Complaints Commission and was claiming expenses which were subsequently regarded as unusually high.

1.4.6.6 The same, of course, is also true of John Yates who, we now know, at the time when he responded to the Guardian stories about Gordon Taylor’s settlement with News Group was involved in a controversial relationship with a woman who worked for the Met press bureau.

1.4.6.7 At the time of the Guardian story a statement was rushed out by the Met with indecent haste. Although it seems farfetched that the News of the World would have hacked into phones of Police Officers, we now know that Mr Brian Paddick’s phone was hacked and he was not notified by the Met that they had such information.

1.4.6.8 The Met were just incompetent and failed to realise the importance of the documents that they had.

1.4.6.9 The Met were under-resourced and therefore failed to read the documents.

1.4.7 The above are not materially inconsistent so two or more of the explanations might be valid together.

News of the World

2.1 Until there is a proper and thorough investigation of the papers held by the Met, the extent of unlawfulness by the News of the World will not be known. The investigation by the Met is unlikely to conclude with a decision that leads to criticism of their initial investigation or charges against their own officers (if there was a deliberate decision not to interview or prosecute offenders).

2.2 Without such an investigation it will not be known who should be prosecuted.

Conclusion

I am willing to give evidence to the Home Affairs Select Committee in order to amplify any of the above submissions.

October 2010

Written evidence submitted by the Information Commissioner

1. The Information Commissioner has responsibility in the UK for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000. The Information Commissioner’s Office (ICO) is the UK’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken. The Commissioner’s response to this consultation is primarily based on the practical experience the ICO has gained in regulating compliance with the DPA.

2. As Information Commissioner, I welcome the opportunity to contribute to the Home Affairs Committee inquiry. I should point out at the outset that it is important to recognise the context of the legislative framework within which hacking and tapping are regulated, and the very limited role I have as Information Commissioner in the oversight of the interception of communications.

3. In my role as Information Commissioner, I have been involved in the debate about the unlawful trade in personal information. The most high profile case my office has dealt with in this area was Operation Motorman. This was a case where a private investigator had been supplying personal information to some 305 journalists. The personal information included details of criminal records, registered keepers of vehicles, driving licence details, ex-directory telephone numbers, itemised telephone billing and mobile phone records. Documentation seized at the home of the private investigator included reports, invoices, settlement of bills between the detective and many of the better known national newspapers—tabloid and broadsheet. The case touched upon similar issues to those raised by the interception of communications, but this was not the main focus of the investigation; nor am I, as Information Commissioner, empowered to investigate or act on unlawful interceptions.

4. As Information Commissioner, I have oversight of the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). Thus I have responsibility for taking

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2 Operation Motorman was the subject of two reports to Parliament by the Information Commissioner, published as What Price Privacy? May 2006 and What Price Privacy Now? December 2006
action on the DPA s.55 offence that may arise from the unlawful “blagging” of personal information from a data controller. But the Information Commissioner does not have any regulatory competence in the area of interception of communication—which would cover hacking and tapping, for example, of mobile phone communications. This latter activity is dealt with entirely under the Regulation of Investigatory Powers Act (RIPA). This means that the regulatory regime that covers the use, disclosure and interception of communications related data is fragmented.

5. My office has direct experience of dealing with some of the complaints that arise under the current mosaic of regimes that govern the various forms of communications data processing in the UK. In particular, cases come to my office about processing of communications data which have been collected through interception of communications.

6. The first data protection principle states that processing of personal information must be fair and lawful. Any processing of personal information which has been obtained in contravention of the provisions of section 1(1) of RIPA would also be in breach of the first principle. Understandably organisations approach the ICO for advice. However, it is inappropriate and arguably beyond the powers of the Information Commissioner to advise on the lawfulness of interceptions of communications under RIPA. My office does not have particular expertise or regulatory competence in this area. An organisation could follow the advice of my office but still be liable for prosecution if the prosecuting authority for RIPA takes a different view.

7. Section 57 of RIPA creates the role of Interception of Communications Commissioner, but his role is limited to overseeing the persons who issue warrants, and the procedures of those who are acting under warrant or who are assisting those acting under warrant. RIPA places no duty on the Interception of Communications Commissioner to provide advice to those who are not covered by RIPA, mostly private sector actors, who want to ensure they are acting in a manner which is in compliance with RIPA, nor is he resourced to provide such advice.

8. The Interception of Communications Commissioner has no remit to investigate complaints about those bodies outside RIPA who have contravened the requirements for “lawful interception” of communications. This also applies to the Investigatory Powers Tribunal. Effectively, what this means is that where the private sector, either through their own provision of services, or through being placed under a legal obligation, are intercepting communications of service users, there are gaps in the regulatory regime. The only recourse for a private sector breach is prosecution for a criminal offence. This is a very high bar, and on many occasions the nature of the offence and harm committed by the offence may not justify a criminal prosecution, but still justify some form of regulatory action, which neither body is empowered to take. This is different from the position that applies to the public sector, where there is regulatory oversight of interception of communication.

9. Under the Data Protection Act, when my office is approached for advice as to the application and applicability of data protection law, the Information Commissioner is empowered to provide such advice under section 31 of the Data Protection Act 1998. Indeed, the Information Commissioner is under a specific obligation to promote the following of good practice which includes but is not confined to compliance with the requirements of data protection law. The problem is that whilst the DPA, PECR and RIPA together form part of the framework of regulation that limits excessive surveillance and provides safeguards for individuals, it is only in relation to the DPA and PECR that there is an organisation charged with promoting compliance with the legislation and with providing authoritative advice to those who need it.

10. As Information Commissioner, I have made it clear on several occasions that there is a great difficulty with the gaps in the current regulatory regime covering interception of communications. It is important that individuals are given adequate protection in this ever evolving area. This is of particular interest at present, as the UK is facing potential infraction proceedings in the European Court of Justice as a result of the way in which the UK has implemented the EU Privacy Directive’s provisions on interception of communications. My office has been assisting Government in responding to these proceedings.

October 2010

Written evidence submitted by Keir Starmer QC, Director of Public Prosecutions

Thank you for your letter of 7 October 2010 seeking my views on the definition of offences relating to unauthorised tapping or hacking of mobile communications and, in particular, whether the relevant statutes present difficulties in terms of gathering sufficient evidence to prosecute a case. I am, of course, happy to assist you and the Committee and, to that end, I will deal first with the relevant law; then with the approach taken in the widely-reported prosecution of Clive Goodman and Glen Mulcaire in 2006; and finally with the general approach that I intend to take in relation to on-going investigations and future investigations.

The Relevant Law

The relevant law is complex. So far, prosecutions have (rightly in my view) been brought under the Regulation of Investigatory Powers Act 2000 (RIPA), but, depending on the circumstances and available evidence, offences under the Computer Misuse Act 1990 and/or the Data Protection Act 1998 might also fall to be considered in on-going or future investigations.
As is well known, Part I of RIPA deals with communications generally. Chapter 1 (sections 1–20) deals with “Interception”, the provisions of sections 1–5 setting out the framework and definitions for lawful, unlawful and authorised interception.

Section 1 creates two interception offences. Section 1(1) of the Act provides:

“(1) It shall be an offence for a person intentionally and without lawful authority to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of:
(a) ...; or
(b) a public telecommunication system.”

Section 1(2) creates a like interception offence in respect of private telecommunication systems, which excepts from liability the system controller or someone acting with the consent of the user. This is a considerable extension of the previous statutory regime.

The Act defines “communication” (section 81(1)) as including:

“(b) anything comprising speech, music, sounds, visual images or data of any description; and
(c) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;”

When considering what hardware is comprised in the system over which the communication is transmitted, “apparatus” is defined in section 81(1) as including any equipment, machinery or device and any wire or cable.

There are then both geographical and “system” limits to liability for the offence of unlawful interception under section 1—the interception must take place in the United Kingdom and it must occur in the course of transmission by a public or a private telecommunication system (a private system is a telecommunications system directly or indirectly attached to a public one). Once the communication can no longer be said to be in the course of transmission by means of the “system” in question, then no interception offence is possible.

The central core of the actus reus of the offence requires proof that a communication was intercepted. As to what is interception, section 2(2) provides as follows:

“(2) For the purposes of this Act, but subject to the following provisions of this section, a person intercepts a communication in the course of its transmission by means of a telecommunications system if, and only if, he:
(a) so modifies or interferes with the system, or its operation,
(b) so monitors transmissions made by means of the system, or
(c) so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system, as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.”

Meaning of “modifies”, section 81(1) provides that “modification” includes alterations, additions and omissions, and that cognate expressions shall be construed accordingly; its meaning in section 2 is also further dealt with by subsection (6).

“Interferes” is not further defined and neither is the word “monitors”; however, the ordinary meaning of the word “monitors” includes “listen to and report” and “observe” (New Shorter Oxford Dictionary, 2002). It is thus wide enough to include listening in to a telephone conversation or to a unilateral telephone speech message.

As to any limit of time in the definition of unlawful interception, section 1 contains the expression “...in the course of its transmission...”; section 2(2), which defines interception, refers again to this expression and also contains the words “while being transmitted”. This confinement of the time window for unlawful interception is further reflected in subsection 2(8). Taking the ordinary meaning of those expressions one would expect the transmission of a communication to occur between the moment of introduction of the communication into the system by the sender and the moment of its delivery to, or receipt by, the addressee. However, it should be noted that the limiting definition of interception in section 2(2) is expressly made subject to the other provisions of section 2 that follow (ie subsections 2(3)–(11)). They deal with such matters as broadcast transmissions, territoriality, and the distinction between communication content and attached traffic data among others.

Of most significance to you and the Committee is the fact that the definition of interception in subsection 2(2) is to be read subject to the particular provision in subsection 2(7), which extends the concept of transmission, and with it the time window, and reads as follows:

“(7) For the purposes of this section the times while a communication is being transmitted by means of a telecommunications system shall be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it.”

The specific extension of both the times and the kind of activity taking place during which a communication is being “transmitted” therefore includes any period during which the transmission system stores the communication; but it does not extend to all such storage, but only those periods when the system is used for storage “in a manner that enables the intended recipient to collect it or otherwise to have access to it.”
The difficulty of interpretation is this: Does the provision mean that the period of storage referred to comes to an end on first access or collection by the intended recipient, or does it continue beyond such first access for so long as the system is used to store the communication in a manner which enables the (intended) recipient to have subsequent, or even repeated, access to it?

Unfortunately there is no decision yet in which a court has determined this construction issue.

Some assistance can be gleaned from a series of decisions in which the Court of Appeal has considered the definition of interception. Most of these cases have been in the context of telephone voice communications, where investigators used equipment to record speech associated with the call which was then sought to be adduced as evidence for the Crown: see, for example, R. v. Hardy & Hardy [2003] 1 Cr. App. R. 494 and R. v. E. [2004] 2 Cr. App. R. 484 (and the other authorities referred to by the Court of Appeal in giving its judgment). If there is a theme, it has been to restrict the ambit of the interception definition in this context.

Perhaps the case most on point so far is R. (on the application of NTL Group Ltd.) v. Ipswich Crown Court and another [2002] 3 W.L.R. 1173, [2003] Q.B. 131, [2002] EWHC 1585 (Admin.), where the Divisional Court considered the situation of a telecommunications company facing an application for the production of the content of e-mails said to be relevant to a fraud investigation, by police officers who had applied to the Crown Court under section 9 and Schedule 1 of the Police and Criminal Evidence Act 1984. The company argued that if the order made applied to material in the system before it was made, it might well find itself in breach of section 1(1) of RIPA, having regard to the provisions of section 2(7) & (8). The Court held that, subject to authorisation by the making of the order, the company would have committed the section 1 offence, since diverting the content of the mails to storage and so making them available would amount to interception. In his judgment Lord Woolf Cj observed at paragraphs 18–19 that in relation to the effect of section 2(7) of RIPA: “Subsection (7) has the effect of extending the time of communication until the intended recipient has collected it”.

In due course, no doubt, the proper construction of sections 2(2) and 2(7) of RIPA will be determined authoritatively by a court. The role of the CPS is to advise the police on investigation and to bring prosecutions where it is appropriate to do so. In view of this, as I am sure you will appreciate, I need to take care not to appear to give a definitive statement of the law. For that reason, I will confine myself to explaining the legal approach that was taken in the prosecution of Clive Goodman and Glen Mulcaire in 2006; and then indicate the general approach that I intend to take to on-going investigations and future investigations.

The Prosecution of Clive Goodman and Glen Mulcaire

Both Clive Goodman and Glen Mulcaire pleaded guilty before the Central Criminal Court on 29 November 2006 to one count of conspiracy to intercept communications in respect of voicemail messages left for members of the Royal Household. Mulcaire alone pleaded guilty to five further substantive counts in respect of Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson. On 26 January 2007, 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.

In the course of those proceedings, no challenge was made to the prosecution case and the judge was not required to make any ruling on the legal definition of any aspect of RIPA.

I was not in post as DPP at the time of the prosecution of Clive Goodman and Glen Mulcaire, and therefore have no first hand knowledge of the way in which it was prosecuted. Moreover, the CPS lawyer dealing with the case at the time has now left the CPS. However, in 2009 I discussed the case with David Perry QC, who was instructed as leading counsel at the time, and with my predecessor, Lord Macdonald of River Glaven. It is my understanding that David Perry QC gave oral advice about the interpretation of sections 1 and 2 of RIPA at the time. He advised that, for the purposes of prosecuting Clive Goodman and Glen Mulcaire, if it became an issue, the prosecution may have to consider taking a narrow view of the offences under section 1(1) of RIPA. This was a case specific decision.

However, as matters turned out, it was not necessary to resolve in the proceedings whether section 1(1) of RIPA required proof that the interceptions had taken place before the intended recipients had listened to the messages. There were two reasons for this. First, the prosecution did not in its charges or presentation of the facts attach any legal significance to the distinction between messages which had been listened to and messages which had not. Secondly, the prosecution not having made the distinction, the defence did not raise any legal arguments in respect of the issue, and pleaded guilty. It is evident, therefore, that the prosecution’s approach to section 1(1) of RIPA had no bearing on the charges brought against the defendants or the legal proceedings generally. Indeed, the prosecution was not even required to articulate any approach. The issue simply did not arise for determination in that case.

In 2009, I gave written evidence to the Culture, Media and Sport Committee. In that evidence I set out the approach that had been taken to section 1(1) of RIPA in the prosecution of Clive Goodman and Glen Mulcaire, namely that 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. I also set out the reasons why David Perry QC had approached the case on that basis at the time.
ON-GOING AND FUTURE INVESTIGATIONS

Obviously the approach taken in the prosecution of Clive Goodman and Glen Mulcaire was case specific and the advice of David Perry QC has to be seen in that context. The approach in any given case will, in the end, depend on the facts in issue. But, on a much more general basis, I have given very careful thought to the approach that should be taken in relation to on-going investigations and future investigations.

Since the provisions of RIPA in issue are untested and a court in any future case could take one of two interpretations, there are obvious difficulties for investigators and prosecutors. However, in my view, a robust attitude needs to be taken to any unauthorised interception and investigations should not be inhibited by a narrow approach to the provisions in issue. The approach I intend to take is therefore to advise the police and CPS prosecutors to proceed on the assumption that a court might adopt a wide interpretation of sections 1 and 2 of RIPA. In other words, my advice to the police and to CPS prosecutors will be to assume that the provisions of RIPA mean that an offence may be committed if a communication is intercepted or looked into after it has been accessed by the intended recipient and for so long as the system in question is used to store the communication in a manner which enables the (intended) recipient to have subsequent, or even repeated, access to it.

I hope that this, unavoidably lengthy and technical, explanation of the difficulties of interpreting the relevant provisions of RIPA is helpful. I emphasise, once again, that providing a definitive interpretation of the law is ultimately for the court not me.

In view of my previous correspondence to the Culture, Media and Sport Committee, I am copying this letter to John Whittingdale MP.

October 2011

Written evidence submitted by Paul McMullan

Further to our conversation today a brief email to explain phone hacking was very easy in the 1990’s when people were new to mobiles and did not change their codes, you simply rang them up to ensure their phone was engaged; you rang a second time, got to their message system pressed 9, followed by 0000, you could then listen to all their messages. Everyone in the schoolyard did it, many particularly showbiz journalists did it. It wasn’t particularly illegal.

For what it is worth, Andy Coulson knew a lot of people did it at The Sun on his Bizarre column and after that at News of The World. As he sat a few feet from me in the newsroom, he probably heard me doing it, laughing about it, etc and told others to do it. I worked under Coulson for a year and a half at News of The World.

The real scandal is Cameron would have been briefed: “We can probably get away with this one,” when hiring Coulson, so Mr Cameron is either a liar or an idiot.

Hacking got more difficult as time progressed with call waiting so it was more difficult to provoke an engaged tone and by around 2006, actually probably after if not because of the Clive Goodman trial many mobile networks would not let you have a message system unless you put in your unique code.

However people who worked for Vodaphone etc would sometimes ring up the news desk offering to sell numbers and codes of stars’ phones, as indeed did people at the tax office, people in doctors receptions etc.

That is your real problem. As you make phones more difficult to hack, so you increase the value of an insider’s information. You can also scan/intercept mobile phones but the equipment is expensive to keep up to date with.

In truth I never got a decent story from hacking messages. If people have something important to say they say it to the person when he picks up. It was a third rate trick used by school kids and third rate journalists. There is no real security risk and more fool the MP who leaves messages about nuclear secrets etc. Scanning is another issue but you will have to ask your security peeps about protecting your phone from that.

November 2010
Written evidence submitted by Everything Everywhere

BACKGROUND

1. Everything Everywhere is the newly created company formed by the merger on 1 April 2010 of the mobile and broadband communications companies Orange UK and T-Mobile UK.

2. It is a 50:50 joint venture between France Telecom and Deutsche Telecom, the owners of the respective Orange and T-Mobile global businesses. The Everything Everywhere joint venture applies only to their UK businesses and they therefore remain entirely separate and competing companies throughout the rest of the European Union (and the world).

3. Everything Everywhere is an independent business operating at arms-length from France Telecom and Deutsche Telecom, although their representatives sit on its board. The views expressed in this submission do not therefore reflect the views of France Telecom or Deutsche Telecom.

4. Despite the merger, the Orange and T-Mobile brands continue to co-exist and “compete” in the UK market. But the views expressed in this submission do reflect the combined views of Orange and T-Mobile in the UK.

5. Through its Orange and T-Mobile brands, Everything Everywhere principally provides mobile voice and internet/data services to nearly 30 million UK consumers. In addition, it also provides landline broadband and voice telephony through the Orange brand and WiFi internet access through the T-Mobile brand.

6. Our voicemail service has been designed to enable customers to access their mailboxes both from their own mobile phones and from other phones. We find that customers appreciate this service, as it allows them to listen to stored messages, or to change the greeting on their mailbox, regardless of whether they use their own phone.

How widespread is the problem of unauthorised tapping or hacking?

7. We have no evidence to support the contention that the practice of unlawfully accessing mobile voicemails is widespread. Our customer service contact centres deal with over a million enquiries each week, and the reasons for their calls are carefully monitored so that emerging issues can be identified and addressed before they reach a critical mass and have an adverse impact on other customers.

8. The level of enquiries that are received from people who are concerned about the security of their voicemail accounts is so low that statistics are simply not kept. If this issue ever were to be of general concern, a “reason code” for the call would be created, which would enable the business to monitor the volume of enquiries more precisely, and address the matters that would be raised.

What are we doing to monitor and prevent unauthorised tapping?

9. Our voicemail platforms incorporate a range of security features which provide an appropriate level of protection against all but the most determined hacker.

10. We do not disclose full details of network features that protect voicemail services, but we continually review security features to protect against new and emerging threats. Protective measures include:

   — Provisioning mailboxes with a random PIN;
   — Preventing users from changing the random PIN to an easily guessable PIN;
   — Sending users text messages to confirm that instructions have been received to change a PIN;
   — Suspending mailboxes when PINs have been entered incorrectly; and
   — Preventing more than one handset from accessing a mailbox at the same time.

What advice do we give to our customers on how they may protect themselves?

11. We have stringent security controls which deter unauthorised access to customer accounts.

12. Our customer services representatives are trained to provide advice to callers who seek assistance in protecting the confidentiality of their accounts, if they feel that their public profile is such that additional security measures are appropriate.

13. Some users are also provided with a tutorial when they first call their mailbox, which includes advice on changing their PIN.

Do we pass on to our customers any suspicions that their mobile communications have been intercepted and misused?

14. We have not had any cause to suspect that particular mailboxes have been unlawfully accessed, and accordingly we have not needed to notify the relevant customers.
15. We do not consider it strange for callers to access their mailboxes from a phone other than the one they normally use, as this is a feature of the service we provide.

16. If a mailbox is suspended because a caller has entered their PIN incorrectly, they need to contact our customer contact centres to reset the PIN. This provides us with an opportunity to properly authenticate the caller before allowing them to access the mailbox. The protective measures we have in place to prevent voicemail abuse do not include automatic alarms to a central control centre to warn, say, our fraud teams, that particular accounts have been suspended.

17. Even if an allegation were to be made that a caller had inappropriately accessed a mailbox by using the correct PIN number, our transmission records only provide an investigator with limited information about what the caller had done once they had accessed the mailbox. Our records would indicate how long the call had lasted, but they do not log whether the caller had listened to, created or deleted particular messages.

18. We are happy to provide additional information, if this would be of assistance to the Committee.

October 2010

Written evidence submitted by Vodafone Limited

Thank you for inviting Vodafone Limited to contribute to your inquiry into the unauthorised tapping or hacking of mobile communications.

I understand your evidence session specifically relates to the voicemail incident which took place in 2006.

To provide you with the background, it is believed that journalists contacted customer services with details which enabled them to pass our security checks. They then selected their own PIN which they subsequently used to remotely access other people’s voicemail.

This incident does not conform to the legal definition of tapping which is defined within RIPA as “the use of devices to intercept a telephone transmission for the purposes of electronic eavesdropping”.

These devices or “bugs” as they are commonly known, may be planted legally or illegally and would not require somebody to use a PIN code set against a customer’s voicemail in order to listen to the message.

What happened here was an example of social engineering, or in other words, an illegal act by persons who falsely represented themselves as Vodafone customers in order to access the accounts and change PIN numbers.

This offence may be considered to fall within the definition of unauthorised hacking where there is an unauthorised attempt to bypass the security mechanisms of the network. It may also constitute illegal intercept, where a third party is able to access the voice mailbox and listen to the transmitted message before the intended recipient has done so. It would be for a police investigation to determine the nature of the offence that has been committed.

Throughout this document, we have therefore not addressed the issue of unauthorised tapping. We refer throughout this note to the incident being an example of social engineering, illegal interception or unauthorised hacking. We would also like the Committee to note that this document neither contains any admission in any way of any liability on our part nor any legal analysis or statement which should be regarded as legally binding on us.

Background

As you know, Vodafone takes its responsibility to protect customers’ privacy very seriously. We review and update our security procedures on a regular basis and we co-operate fully with police when crime is committed.

Your letter highlights a number of points that you would like us to cover:

(i) How widespread the problem is.
(ii) What our company is doing to monitor and prevent unauthorised hacking or unlawful interception.
(iii) What advice we give to customers to help them protect themselves.
(iv) Whether our company alerts its customers to suspicions that their mobile communications may have been intercepted or misused.

(i) How widespread the problem is

We believe that a small minority of customers were targeted by unscrupulous individuals. At the time of the investigation we provided all evidence to the police.

It is not, however, possible for us to provide a precise picture of how widespread the problem was at that time. This is because an analysis of our records may show that a number has been accessed but we cannot state with certainty that the access was an unauthorised hacking attempt. As an example, a customer might access their account from a home landline, mistype their PIN or accidentally press keys with their head or ear. All of these might appear to be an unauthorised hacking or illegal intercept attempt when in actual fact the
unsuccessful access attempt has been carried out by the contract holder. Most commonly, a customer may forget their voicemail PIN code and make several attempts to guess the PIN code in order to access their voicemail remotely. Again, this failed attempt to access voicemail by the account holder would be indistinguishable on our systems from an unlawful attempt made by a third party.

This problem occurred in the past and it is no longer a current problem. The changes Vodafone has instituted mean that this type of activity is no longer possible.

(ii) What our company is doing to monitor and prevent unauthorised hacking or illegal intercept

Following the 2006 incident, Vodafone carried out a root and branch review of its processes to make it harder for these individuals to target our customers. There was no evidence of any collusion whatsoever with Vodafone staff but we were determined to address any security issues and make the system as robust as possible.

As a result of this review, we implemented changes to our internal processes and voicemail systems in order to prevent this type of abuse from occurring in the future.

The changes included:

1. Ensuring the PIN is not accessible by front-line customer service staff: In the past, a front line customer agent could access a PIN to reset it. Our front line customer agents no longer have this access. Instead, the customer’s voicemail PIN is reset and a new (randomly generated) PIN is generated. This prevents “social engineering” by a fraudster or someone impersonating a customer, passing the relevant verification checks and gaining unauthorised access.

2. Sending an SMS alert to the user: If an unsuccessful attempt is made, an SMS is sent to the handset to alert the user. If a customer then alerts us to the fact they have not caused the failed access, we can look at the logs over a two week period to see what numbers have dialled in and what digits were pressed. Outside that two week period we can check to see what call caused the text message failure. If it does appear to be a malicious attempt then we can provide evidence to law enforcement if required.

3. Conducting regular security audits across all business: We take special care to ensure our security processes are not breached. We do so by ensuring our employees have the training they need to adhere to the security policies and we conduct regular security audits to prevent accidental or deliberate breaches.

(iii) What advice we give to customers to help them protect themselves

Vodafone has several pages on our website at www.vodafone.co.uk which are dedicated to voicemail PIN codes and security.

In terms of voicemail security and set-up, Vodafone customers have a choice when setting up their voicemail about how to protect it. They can choose from two levels of security: standard security (which is the default security level) or complete security.

Complete security requires the customer to enter their chosen PIN every time they access their voicemail, including from their mobile handset. Standard security does not require the PIN to be entered when accessing voicemail from the mobile handset but will require the PIN to be entered when trying to access voicemail from another phone or when abroad.

Vodafone’s default security settings mean that a PIN is required when accessing voicemail remotely (that is, from a phone other than the relevant mobile handset).

As stated above, in order to prevent social engineering, our front line customer service staff cannot access a customer PIN. Therefore customers cannot call our customer services team to be reminded of their PIN should they have forgotten it. In this circumstance, the customer’s voicemail PIN is reset and a new randomly generated PIN code is sent to the customer’s handset via SMS.

(iv) Does Vodafone alert customers to suspicions that their mobile communications may have been intercepted or misused?

As stated earlier, it is not always possible to ascertain whether an account holder has been subject to an authorised hacking attempt. At the time of the 2006 incident, Vodafone issued general security advice to a number of customers believed to be in high risk groups. This was in line with the guidance we received from law enforcement agencies about the level of information we could release to customers.

If a customer contacts us with a concern about a failed access attempt which they do not believe they have caused themselves, we will investigate to ascertain whether it was an unauthorised hacking or illegal intercept attempt. In compliance with relevant data protection requirements, Vodafone would provide this data direct to law enforcement agencies on receipt of a RIPA request, on receipt of an authorised solicitor’s request or following an appropriate Court Order.

November 2010
Written evidence submitted by Ofcom

As the Committee will be aware, the interception of telecommunications is governed by the Regulation of Investigatory Powers Act 2000 (RIPA). RIPA sets out that, aside from certain exceptions, warrants are required before interception can be legally undertaken. The Act also gives powers to the Secretary of State to issue orders which impose obligations on providers of telecoms services to ensure they are able to provide assistance in relation to complying with such interception warrants.

The Act creates the role of Interception of Communications Commissioner, to oversee much of its operation. Ofcom has no role in the issuing of, or complying with, these RIPA warrants or orders or indeed any other aspect of the operation of Chapter 1 (Interception). Therefore, beyond noting the general requirements placed on all communications providers by RIPA, Ofcom has no knowledge of the obligations on mobile network operators (MNOs) from any orders which may be in place.

In terms of the general obligations placed on providers of telecoms services by RIPA, these include:

Where a copy of an interception warrant has been served... on...a person who provides a public telecommunications service... it shall... be the duty of that person to take all such steps for giving effect to the warrant as are notified to him by or on behalf of the person to whom the warrant is addressed;

and:

The Secretary of State may by order provide for the imposition by him on persons who...are providing...public telecommunications services... of such obligations as it appears to him reasonable to impose for the purpose of securing that it is and remains practicable for requirements to provide assistance in relation to interception warrants to be imposed and complied with;

It shall be the duty of a person to whom a notice is given... to comply with the notice; and that duty shall be enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or for any other appropriate relief;

and:

It shall be the duty of the Secretary of State to ensure that such arrangements are in force as are necessary for securing that a person who provides... a telecommunications service, receives such contribution as is... a fair contribution towards the costs incurred, or likely to be incurred, by that person in consequence of...the issue of interception warrants relating to communications transmitted by means of a telecommunication system used for the purposes of that service.

Data Retention

Another relevant piece of legislation in this context is the Data Retention (EC Directive) Regulations 2007. These Regulations require all public communications providers (which would include the MNOs) to retain data that is generated or processed while providing a communications service, for a period of 12 months. In the language of RIPA, the data referred by these Regulations is “communications data” which includes data associated with a communication, but is not the content of the communication itself.

The Regulations appoint the Information Commissioner as the Supervisory Authority. As with RIPA, Ofcom has no role in the relation to the Regulations, and therefore has no additional background on their operation beyond that which can be found in the text of the Regulations themselves. This is summarised below.

In the context of mobile telephony, the following data is specified by the Regulations for retention:

— the telephone number from which the telephone call was made and the name and address of the subscriber and registered user of that telephone;
— the telephone number dialled and, in cases involving supplementary services such as call forwarding or call transfer, any telephone number to which the call is forwarded or transferred, and the name and address of the subscriber and registered user of such telephone;
— the date and time of the start and end of the call;
— the telephone service used;
— the International Mobile Subscriber Identity (IMSI) and the International Mobile Equipment Identity (IMEI) of the telephone from which a telephone call is made;
— the IMSI and the IMEI of the telephone dialled;
— in the case of pre-paid anonymous services, the date and time of the initial activation of the service and the cell ID from which the service was activated;
— the cell ID at the start of the communication; and
— data identifying the geographic location of cells by reference to their cell ID.

The Regulations specify a number of data security principles that should be adhered to in relation to the retained data:

— the retained data shall be of the same quality and subject to the same security and protection as those data on the public electronic communications network;
the data shall be subject to appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;

— the data shall be subject to appropriate technical and organisational measures to ensure that they can be accessed by specially authorised personnel only; and

— in the case of data retained solely in accordance with regulation 4(1), the data shall be destroyed by the public communications provider at the end of the period of retention.

November 2010

Written evidence submitted by Max Mosley

Until November 2009, I was president of the Fédération Internationale de l'Automobile. In 2008 the News of the World (NOTW) published a story about my private life. I sued for breach of privacy and was awarded damages and costs.

In pursuing its story about me, the NOTW engaged in criminal conduct. Such conduct is endemic at the NOTW and its parent company, News Group. The Metropolitan Police are aware of this. Yet only one NOTW employee has been prosecuted and no proper investigation of criminal conduct by these organisations has taken place.

NEWS INTERNATIONAL

1. Blackmail

The NOTW published its first story about me on 30 March 2008. It wanted a follow-up. To this end, its chief reporter, Neville Thurlbeck, set out to blackmail two of the women involved. He sent them emails threatening to publish their pictures in the next edition of his newspaper if they did not give him the story he wanted. This is described in detail in the judgement of Mr Justice Eady (Ref. [2008] EWHC 1777 (QB)), starting at paragraph 79.

As Mr Justice Eady pointed out “it is elementary that blackmail can be committed by the threat to do something which would not, in itself, be unlawful” (paragraph 87).

During the trial, Mr Justice Eady asked the editor of the NOTW, Mr Myler, if he had raised this matter with Mr Thurlbeck. The judge described his reply as "a non-answer, from which it would appear that Mr Myler did not consider there was anything objectionable about Mr Thurlbeck’s approach to the two women as he did not query it at any stage. This discloses a remarkable state of affairs." (paragraph 86).

Since then, despite it being clear that Mr Thurlbeck had committed a serious criminal offence, no disciplinary proceedings of any kind have been taken by News Group or the NOTW. Nor have the Metropolitan Police taken action. Mr Thurlbeck is still chief reporter of the NOTW.

This reveals a culture of criminality at News Group. No law-abiding organisation would simply ignore serious criminal conduct by one of its senior employees.

2. Phone Hacking

The NOTW used a private detective, Glenn Mulcaire, to hack illegally into the voicemail messages of people of interest to the newspaper. Mulcaire and a NOTW reporter, Clive Goodman (the only NOTW employee prosecuted in recent years), were convicted of unlawful interception of communications and conspiracy. Both went to prison in January 2007.

In 2009, Colin Myler, Tom Crone and Andy Coulson, respectively current editor, legal manager and editor in 2006 of the NOTW, told the Culture, Media and Sport Select Committee that no one but Goodman was involved in phone hacking: (Second Report of Session 2009-10, Volume II. Evidence at Q1331, Q1342 and Q1550).

It is my understanding that there is a mass of evidence in the hands of the Metropolitan Police which proves this claim is false.

News Group have paid very large sums of money to settle actions when faced with court orders for disclosure relating to phone hacking. In each case the sum paid was far higher than any damages the complainant could have hoped to secure in court.

The reason for this generosity is that News Group know disclosure would reveal the evidence currently held by the police and show that other reporters and senior management from News Group and NOTW were fully involved in phone hacking.

It is striking and worrying that the material which has been suppressed by News Group in these civil actions by means of very large payments, has been in the possession of the Metropolitan Police since August 2006. And yet, as they acknowledged in correspondence with the Select Committee (above Report at EV 356-EV
358), they failed to investigate this material at the time of their original enquiry. They continue to refuse to investigate it now, with the result that they have taken no action to deal with the criminal behaviour disclosed by that material.

The newspaper also told the Select Committee (Myler at Q1331) that it had stopped the practice of phone hacking after the Goodman case. This is untrue. In April 2010, another NOTW reporter, Dan Evans was caught hacking into voicemails from his phone in the NOTW offices. He has been suspended from his work ever since (following a claim against him and the newspaper), yet the Metropolitan Police have taken no action.

News Group's business methods include criminal offences. It has shown contempt for the law and, by virtue of its employees' false evidence to a Parliamentary Select Committee, contempt for Parliament itself. Yet the Metropolitan Police have not acted and continue to treat it like a normal commercial company.

3. Other anti-social conduct by News International

Apart from clear criminality, News Group and the NOTW resort to intimidation whenever their interests are threatened. Much of this may involve blackmail. There have been numerous well-documented threats to members of Parliament, including government ministers. There have been frequent allegations that actors, business people and journalists have been threatened, sometimes by very senior News Group employees, to prevent them suing or giving evidence.

Conduct of this kind is, of course, potentially criminal. Again, the Metropolitan Police have not investigated these threats even though some of them have been widely reported in the news media.

The Metropolitan Police will have been aware that a private detective, Jonathan Rees, was re-hired by NOTW in 2005 after serving seven years for planting cocaine in the car of a divorced woman to help her former husband gain custody of their children. The NOTW also used John Ross, a former detective sergeant who was sacked as a corrupt officer.

THE METROPOLITAN POLICE

When they arrested Mulcaire, the police searched his office and seized his papers. His papers will have included in each case details of the NOTW's target as well as the identity of the journalist giving the instruction. It was evident at Mulcaire's trial that journalists other than Goodman were involved.

Even a cursory examination of these papers will have identified a number of NOTW journalists who had commissioned potentially illegal investigations by Mulcaire. Evidence emerging in litigation involving News Group suggests that at least two senior members of the NOTW staff were involved, namely: the NOTW news editor Ian Edmondson and NOTW chief reporter Neville Thurlbeck.

Although the police visited the NOTW offices and searched Goodman's desk and computer, taking away material, they did not search desks or computers used by Edmondson or Thurlbeck, nor those of any NOTW journalist except Goodman. No attempt was made to question any NOTW journalist except Goodman.

The person in charge of the police investigation in 2006 was Assistant Commissioner Andy Hayman. Mr Hayman left the police in December 2007 and has been employed to write for News Group publications thereafter.

An explanation for Mr Hayman's failure to question Edmondson and Thurlbeck was offered by his successor, Assistant Commissioner John Yates, in evidence to the Select Committee on 2 September 2009 (Report at Q1890).

According to Mr Yates, Mr Hayman decided a polite enquiry to the NOTW's solicitors was preferable to questioning Edmondson and Thurlbeck or searching their computers and desks (see also, eg Q1938 and Q1960). Unsurprisingly, given the nature of the organisation he was dealing with, Mr Hayman's letter seeking information drew a "robust" refusal (Report at EV 366/377).

What is extraordinary about the conduct of the police, indeed beggars belief, is that it must have been clear to them on the face of the papers seized from Mulcaire, that instructions to hack phones came from journalists other than Goodman including the NOTW news editor, Ian Edmondson, and the NOTW chief reporter, Neville Thurlbeck.

Edmondson and Thurlbeck were, at the very least, participants in the very conspiracy for which Goodman and Mulcaire were sent to prison. Yet neither was questioned or arrested, nor were their desks or computers searched.

Here was criminality so serious that Goodman, a first offender with no criminal record, went to prison. Yet the police, despite their direct knowledge from the evidence in their possession, made no attempt to investigate the senior NOTW journalists who were apparently guilty of the same crimes as Goodman.

What makes the conduct of the police even more extraordinary is that among the names of the NOTW's targets were not just so-called celebrities and sports personalities, but senior politicians including cabinet ministers. Worse, the great majority of those targeted by the NOTW were not informed by the police that their phones may have been hacked into and their security compromised.
The Metropolitan Police not only failed to follow the evidence, they suppressed it and continue to do so. It is deeply disquieting that they should pull back from investigating a powerful media group despite clear evidence of systemic criminal conduct. It is unclear whether this failure to act is from fear of News Group's reaction of for other reasons.

In order to restore public confidence, an in-depth and transparent investigation is now essential. Independent lawyers should be tasked with examining all the Mulcaire papers held by the Metropolitan Police and listing the News Group and NOTW employees who instructed Mulcaire together with the frequency and nature of their instructions. If necessary, an investigation by an independent police force could then follow.

### Summary

On the face of it, there appears to be endemic criminality on a significant scale within the News Group organisation and a failure by the Metropolitan Police to investigate, despite having extensive evidence of wrongdoing in their possession. It is now probable that the entire question will come before the High Court in proceedings for judicial review. Nevertheless, I submit that what has happened is so disquieting that a full independent enquiry has become essential.

December 2010

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**Supplementary written evidence submitted by the Information Commissioner**

The Committee were interested in the extent of the powers I have at my disposal as Information Commissioner, and in particular how these could be brought to bear on cases involving unauthorised tapping into or hacking of mobile communications. There were two issues that the Committee explored briefly during my oral evidence session that I would like to expand upon and clarify. These are the role of the Information Commissioner in relation to the Computer Misuse Act and the limitations placed on the exercise of the Information Commissioners powers when dealing with processing of personal data for the “special purposes” of journalism, literature and art.

In relation to the Computer Misuse Act 1990, the Information Commissioner has no formal role in the prosecution of any of the offences detailed in Sections 1 to 3A of this Act, or in overseeing any other aspect of the Act. The Committee will already be aware that the first data protection principle states that processing of personal information must be fair and lawful. Any personal information which has been obtained by means of a contravention of the provisions of sections 1 to 3A of the Computer Misuse Act would also be obtained in breach of the first principle.

However, it must be remembered that a breach of the Computer Misuse Act is a criminal offence, for which the CPS are the prosecuting authority. A breach of the data protection principles is not a criminal offence, it would be outside my powers, as Information Commissioner, to rule on whether a criminal offence has been committed under the Computer Misuse Act. I must, therefore, rely on the police and CPS to indicate whether they consider that an offence under the Computer Misuse Act has been committed before I can assess whether there has also been an associated breach of the Data Protection Act (DPA) that I might act on, I would, nevertheless, ensure that my office passes any information which suggested an offence had been committed to the police.

In addition, it is possible that, in some circumstances, personal data could be obtained in a way that breaches both the Computer Misuse Act and the criminal provisions of Section 55 of the DPA. I have already provided evidence on how offences under the Regulation of Investigatory Powers Act (RIPA) and the Computer Misuse Act, which carry a custodial sentence, take precedence over offences under the DPA, which do not. Where offences under either of these Acts are suspected, the police will take the lead in investigating. They can consider the offence under Section 55 of the DPA as part of their investigation if they choose to do so. Whilst my office will pass relevant information on to the police to assist them in any investigation, it does not make good sense for us to run our own investigation in parallel. Only where it is clear that no offences under RIPA or the Computer Misuse Act are suspected will my office consider investigating.

In relation to the processing of personal data for the special purposes, I shall focus on how the DPA regulates the processing of personal data by the press. There is an exemption in Section 32 of the Act that effectively means that the processing of personal data for journalism is exempt from all the data protection principles (except the duty to keep data secure), the right of subject access, the right to prevent processing of personal data, the rights in relation to automated decision-making and the rights of rectification, blocking, erasure and destruction. It is therefore a comprehensive exemption.

The Committee were concerned about how the exemption applies. The exemption applies when personal data are processed only for journalism and the following conditions are met:
- the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material,
- the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and
— the data controller reasonably believes that, in all the circumstances, compliance with the relevant provision is incompatible with the special purposes.

This exemption is different from other exemptions in the DPA in that it is based on the reasonable belief of the data controller. This means that it is not the Information Commissioner’s judgment about where the public interest lies or whether the provisions of the DPA are compatible with journalism that counts. Rather if the Information Commissioner is to challenge reliance on the exemption, he must establish that the belief of the data controller is not a reasonable one. This is not easily done.

The Information Commissioner only has limited powers to investigate whether the exemption is being properly applied. Section 44 of the DPA creates special information notices that the Information Commissioner can serve when he receives a complaint or has reasonable grounds for suspecting that personal data are not being processed only for the special purposes or that the data are not being processed with a view to future publication.

In the context of the Committee’s interest in the hacking or interception of voicemails, it is clear that the information that was gathered was for the purposes of journalism with a view to publication, whether or not the gathering was done by lawful means. This means that in these cases, the Information Commissioner would not have been able to issue a special information notice, unless a complaint had been made by an affected person.

Even if a complaint is made, a special Information notice is limited to obtaining very specific information. The information that the Commissioner can seek is solely that information which is necessary to ascertain whether the personal data in question are being processed only for the purposes of journalism and to ascertain if they are being processed with a view to future publication.

The Information Commissioner also has powers of entry and inspection provided under Schedule 9 of the DPA. However, where personal data are processed for journalism these powers can only be exercised if there has first been a determination under Section 45 of the DPA that either the personal data are not being processed solely for journalism or that they are not being processed with a view to future publication. Such a determination does not take effect immediately and can be challenged before the first tier tribunal.

Given the limitations on the information gathering powers of the Information Commissioner in relation to the special purposes, it is very difficult to reach the stage where there is enough evidence to support serving an enforcement notice. Such enforcement action is in any case concerned with bringing about future compliance rather than punishing a data controller for breaches that have already taken place. Even if enforcement action can be justified, Section 46 places restrictions on when an enforcement notice can be served.

Normally an enforcement notice can be served where the Information Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles. In the case of enforcement in relation to information being processed for formalism, no enforcement notice can be served unless the Information Commissioner has first made a determination under Section 45 of DPA, as described above. After this determination has taken effect, a Court must grant leave to serve an enforcement notice after being satisfied that there is a matter of substantial public importance at stake.

Finally, since April 2010 there has been the possibility of issuing a civil monetary penalty under section 55A of the DPA for a serious breach of the duty to comply with the data protection principles, where this would be likely to cause substantial damage or distress to an individual. However, data being processed solely for the special purposes are exempt from the duty to comply with all of the data protection principles except the seventh principle. In effect this means that a civil monetary penalty cannot be issued in respect of personal data being processed solely for the special purposes, unless it is for a breach of the data controllers security obligations.

I apologise for the length and complexity of this letter but the provisions of the DPA relating to the processing of personal data for journalism are challenging to both interpret and apply. In essence the investigative and enforcement powers at the Information Commissioner’s disposal exist to enable me to ascertain whether personal data are being processed for purposes other than journalism and to act in relation to those other purposes, rather than enabling me to regulate the processing of personal data for journalistic purposes.

Indeed, it has been suggested to me that the relevant provisions of the DPA were drafted in a way that, whilst enabling the UK to meet its obligations under Article 9 of the EU Data Protection Directive (95/46/EC) on paper, would not, in practice, constrain the freedom of the press in relation to the processing of personal data. Whether or not this is actually the case, it appears to me that had Parliament seriously intended to give the Information Commissioner a significant role in overseeing the processing of personal data for journalistic purposes, it would have provided him with a very different and much simpler legal framework within which to do so.

April 2011
Correspondence from the Chair of the Committee to O2, Vodaphone and Everything Everywhere

Thank you for your response to my letter of 5 October 2010 in relation to the Home Affairs Committee’s inquiry into the unauthorised tapping into or hacking of mobile communications. We found your response helpful in shaping our investigation.

We are now nearing the end of the inquiry and, as a result of the evidence we have received, we have a few further specific questions to ask about your company’s response to the police inquiry into Glenn Mulcaire’s activities and more generally on the problem of hacking, as follows:

— How many potential victims of Mr Mulcaire’s activities were there among your customers?
— How many did you inform about these suspicions, and when did you inform them?
— What guidance did you offer to your customers on what they should do in response to this notification?
— Did you carry out any investigation to discover how Mr Mulcaire had obtained access to customers’ PIN numbers?
— How is it possible for anyone to access PIN numbers?
— Were any members of your staff disciplined following the release of PIN numbers; and, if so, how many?

18 April 2011

Written evidence submitted by O2

Please find below O2’s response to the six questions you raised with me in your letter of 18 April.

How many potential victims of Mr Mulcaire’s activities were there among your customers?

Having analysed network data available to us at the time, we identified approximately forty customers who may have been potential victims.

How many did you inform about these suspicions, and when did you inform them?

As soon as the above customers were identified, we contacted the vast majority by telephone to alert them that there may have been a breach of data. There were a small number of customers who were members of a concierge service that were contacted directly by that service rather than O2. There were also a small number of customers that the Police contacted directly for security reasons.

What guidance did you offer to your customers on what they should do in response to this notification?

We informed the customers that they were potential targets for voice-mail interception and changed their voice-mail PIN numbers. We also offered to put them in touch with the Metropolitan Police, if they wished to discuss this matter with the investigation team.

Did you carry out any investigation to discover how Mr Mulcaire had obtained access to customers PIN Numbers?

O2 undertook a thorough investigation, working closely with the Metropolitan Police and providing all information that they requested.

How is it possible for anyone to access PIN numbers?

It is not generally possible for people to access PIN numbers and that was also the case in 2006. However, when Mr Mulcaire was accessing voicemails in 2006, it was possible to remotely access voicemails if the PIN number was set to the default and that is the way in which Mr Mulcaire accessed customer voicemails. As a result of our investigation, we made changes to our voice-mail service so that a customer cannot access their voicemails remotely unless they personalise their PIN number.

Were any members of your staff disciplined following the release of PIN numbers; and if so, how many?

We found no evidence to suggest that any of our staff disclosed PIN numbers (which is consistent with our investigation that found that voicemails were accessed through use of the default PIN number, as explained above). No employee, therefore, was disciplined.

May 2011
Further written evidence submitted by Vodafone Limited

Thank you for your letter of 18 April 2011, in which you requested further information from Vodafone UK for the Home Affairs Committee inquiry into Unauthorised tapping into or hacking of mobile communications, in addition to the evidence we submitted in October 2010.

Your letter asked a number of specific questions, and our responses are set out below.

How many potential victims of Mr Mulcaire’s activities were there among your customers?

While Vodafone does not have sight of all of the evidence obtained by the Police in relation to Mr Mulcaire’s activities, we understand that Mr Mulcaire (or somebody connected with him) may have intercepted the voicemail of up to approximately 40 customers.

How many did you inform about these suspicions, and when did you inform them?

In summer/autumn 2006, we understand the Police were in the midst of their confidential investigations into Mr Mulcaire’s activities; Vodafone was not privy to all of the evidence obtained by the Police in relation to its customers nor was Vodafone aware whether the Police had determined, based on all of the evidence available to them, that Mr Mulcaire had in fact intercepted the voicemail of any Vodafone customers. In the circumstances, and mindful of the need to avoid undermining the ongoing Police investigation and/or jeopardising any subsequent prosecutions, Vodafone sought to contact the above customers in August 2006 to remind them to be vigilant with their voicemail security. At no point prior to November 2010 did the Police ask Vodafone to contact any specific individuals in relation to these issues.

What guidance did you offer to your customers on what they should do in response to this notification?

Customers who were contacted were advised to review their voicemail security and were reminded of the need to be vigilant with this security (through activities such as resetting their PIN regularly).

Did you carry out any investigation to discover how Mr Mulcaire had obtained access to customers’ PIN numbers?

Yes. While Vodafone is not privy to all of the evidence collated by the Police and is not therefore in a position to reach any definitive conclusions regarding Mr Mulcaire’s activities, it appears that attempts may have been made by an individual/individuals to obtain certain customer voicemail box numbers and/or PIN resets from Vodafone personnel by falsely assuming the identity of someone with the requisite authority (such as the relevant customer).

How is it possible for anyone to access PIN numbers?

At the time of the incident in 2006, an option was available to allow customers to protect access to their voicemail messages by setting a four-digit PIN on their voicemail account. The PIN was needed to access the messages remotely (ie from another SIM/handset and/or while roaming abroad). If a customer forgot their voicemail PIN they could contact Customer Services to request that the PIN be manually reset to a number of their choice.

When Vodafone was notified of Mr Mulcaire’s alleged activities, swift action was taken to increase the security of its voicemail system still further. In particular, Vodafone changed the process so that new PIN codes were only issued by SMS message direct to customer handsets.

Vodafone has since installed a completely new voicemail platform which has brought yet further security enhancements, with additional procedures in place to warn customers in the event of unsuccessful remote access attempts.

Were any members of your staff disciplined following the release of PIN numbers; and, if so, how many?

As indicated above, Vodafone is not privy to all of the evidence collated by the Police in these matters. In light of this, and given the nature of the deception that may have been practised upon Vodafone personnel (as described above), Vodafone is not in a position definitively to ascertain and/or to assess the actions of any personnel who may have provided information to a third party (having been led to believe that the individual in question was someone with the requisite authority). In the circumstances, Vodafone takes the view that it would not be appropriate to discipline any personnel.

May 2011
Further written evidence submitted by Everything Everywhere

As the Committee will know, Everything Everywhere responded to your previous request for information in October 2010 and is again happy to provide the relevant information, although the Committee will appreciate our obvious desire to avoid disclosing information that may prejudice any future criminal proceedings.

How many potential victims of Mr Mulcaire's activities were there among your customers?

We fully supported the police investigation in 2006 and assisted them, under the guidance and controls of RIPA. At that time, Orange UK and T-Mobile UK, then as separate organisations, provided call records of those customers whose voicemail boxes may have been accessed by telephone numbers supplied by the Police.

The call records supplied to the Police identified calls from the suspect numbers to customer's voicemails. In some cases we identified that a voicemail had been accessed remotely. However, we cannot know whether this was an attempt by someone gaining unauthorised access into a voicemail or whether it was simply the genuine customer listening to their own voicemails.

Orange UK has identified 45 customers whose voicemail box had been dialled by the suspect numbers. However, these records do not identify whether the caller had listened to, created or deleted particular messages within the voicemail box. T-Mobile systems are only able to identify the telephone numbers of calls that were diverted to voicemail. Clearly, many calls are routinely diverted to voicemail all the time.

Everything Everywhere has recently met with the Metropolitan Police to review the data supplied to them as part of the initial investigation and to discuss any further assistance that we can provide. We have given our commitment to fully support the Police in their new investigation.

How many did you inform about these suspicions, and when did you inform them?

Neither Orange or T-Mobile were asked nor did either company feel it appropriate to take further action in relation to these customers as any direct contact with customers could jeopardize the ongoing Police investigation and prejudice any subsequent trial. This is our standard approach when assisting in Police investigations.

What guidance did you offer to your customers on what they should do in response to this notification?

We, as set out above, did not proactively contact customers for the reasons already given.

We have stringent security controls which deter unauthorised access to customer accounts. In addition, T-Mobile UK customers are provided with a voice tutorial when they first call their mailbox which includes advice on changing their PIN.

Further best practice information is also currently included on our websites highlighting the importance of setting a secure PIN.

- Orange UK site
  - http://help.orange.co.uk/orangeuk/support/personal/503011/2
- T-Mobile UK site
  - http://support.t-mobile.co.uk/help-and-support/index?page=home&cat=VOICEMAIL

Our customer services representatives are trained to provide advice to callers who seek assistance in further protecting the confidentiality of their accounts and additional security measures can be applied if requested.

Did you carry out any investigation to discover how Mr Mulcaire had obtained access to customers' PIN numbers?

We do not disclose full details of network features that protect voicemail services, but we continually review security features to protect against new and emerging threats. Thorough reviews of security have been carried out since the original police investigation in order to examine controls around voicemail systems and additional security measures were introduced where appropriate.

How is it possible for anyone to access PIN numbers?

The voicemail PIN is not stored in any readable format within either T-Mobile UK or Orange UK and therefore we do not consider it possible for anyone to obtain a customer's unique PIN via our systems.

Only when a customer needs to set or reset their PIN directly with customer services (perhaps when a customer has lost their handset and forgotten their PIN) is a temporary PIN number given and the customer is advised to change this to their own unique PIN. To do this, a customer would need to call our customer service team and all of our contact centres have strict security controls to prevent third parties gaining access to our customers' details without their permission.
Were any members or your staff disciplined following the release of PIN numbers and, if so, how many?

We have no evidence of any Orange UK or T-Mobile UK staff involvement related to this hacking incident therefore there was no requirement to take any disciplinary action. Importantly, the systems we operate mean that individual staff members do not have access to a customer’s PIN number. They would only ever know the PIN number when a temporary PIN is issued (when a customer has lost their handset or forgotten their PIN) and this would only be done when the customer had successfully passed through our security process to verify their identity.

May 2011

**Written evidence submitted by John Yates, Acting Deputy Commissioner, Metropolitan Police**

File Note—Principles to be adopted regarding Operation Caryatid and request by Commissioner to establish the facts around the case, dated 9 July 2009.

I have considered what approach I should adopt in undertaking the above exercise. Specifically, this is not a review. It is to establish the facts around this case and to consider whether there is anything new arising in the Guardian article. I intend to adopt the following principles:

1. Scale, scope and outcome, in terms of the original case.
2. Consideration in relation to the level of liaison with the CPS and Counsel and any advice they have provided.
3. Consideration of the approach adopted by the Prosecution Team and their focus.
4. Any complexities and challenges around the evidence then and any evidence now, in particular, in relation to the availability of data.
5. The level of disclosure and who review what material.
6. How the case was opened after the guilty pleas.
7. Whether there was anything new or additional in terms of the articles in the Guardian.
8. Our approach to victims—how they were managed and dealt with and the impact of any further inquiries (if deemed necessary) on them.

**Written evidence submitted by the Hacked Off Campaign, on behalf of some of the victims of phone hacking and concerned journalists, lawyers and others**

1. Thank you for inviting us to submit evidence on behalf of some of the victims of phone hacking and others concerned about illegal methods of information gathering by the press, particularly with regard to the relationship between the press and the police.
2. The Hacked Off campaign is dedicated to securing a public inquiry into the scandal which is capable of getting to the truth across the wide range of issues involved. It was founded by a group of people who have followed these matters closely for several years, and it embraces victims of hacking and their lawyers as well as MPs and peers from all the leading parties. It has support from leading journalists, academics and others, and its online petition has gathered some 8,000 signatures. It is supported by the Media Standards Trust and its limited current funding is from individuals.
3. Our understanding, based on our conversations with those we represent, is that though the Metropolitan Police need to be a focus of the public inquiry, this scandal is not just about the Metropolitan Police, and certainly not just about the first, failed police investigation. It is about a relationship between the press and the police that appears to have grown far too close and is—in some cases—alleged to have become corrupt.
4. Nor is this just about one newspaper, or even a stable of newspapers, but about practices that are suspected of being widespread. Moreover, this is not just about the press and the police, it is also about politicians—who, as many of them now accept, have been too close to media organisations in the past and have failed to call them to account.
5. Hard information and substantial allegations are now circulating, which raise public concerns that obviously stretch far beyond the first police investigation and shortcomings.
6. The press, politicians and police all have very important questions to answer, and only a powerful inquiry with a clear remit can get to the truth. Anything less risks being seen as a cover-up of the kind that has plagued this affair.
7. Speaking for the Dowler family on 12 July, Mark Lewis said, “It just wouldn’t be right for politicians—when setting up this inquiry—to let themselves off the hook.” The Dowler family have last week gone with the Hacked Off campaign to meet the Deputy Prime Minister, the leader of the opposition and, today, the Prime Minister.
8. Speaking for the Hacked Off campaign on 12 July, Dr Evan Harris said, “What the public wants is for the political parties to unite around the need for an inquiry that gets to the bottom of all the causes of this scandal so that we can be certain that this can be stopped from happening again”.

9. The Hacked Off campaign, which represents some of those who have been hacked themselves, the 8,000+ people who have signed the petition, as well as prominent journalists, academics and politicians, has drafted a list of issues that it believes need to be covered by a public inquiry.

10. The Prime Minister, the Deputy Prime Minister, the leader of the opposition, your own committee, and the chairs of the CMS and Justice Select Committee have, we are pleased to report, all listened to the voices of some of the victims and the many thousands of people who have been appalled by the revelations of the last ten days.

11. On their behalf, we suggested that the terms of reference of the Judge-led statutory inquiry need to be capable of (and not be limited to) covering those set out in appendix 1. This was sent to the Prime Minister and the two other main party leaders on the afternoon of Tuesday 12 July.

12. When we saw the draft terms of reference at lunchtime on 13 July shortly before our meeting with the Prime Minister, we were pleased to see several of our points included.

13. There were however a number of omissions and subsequently we have sent the points summarised in the appendix to the party leaders and the Prime Minister’s Office.

14. We hope the Home Affairs Committee will support these proposed amended terms of reference, in particular the substantive points relating to the police, and the need for public funding to be available to enable the victims of phone hacking to be represented (by one barrister and supporting solicitor) at both parts of the Inquiry.

July 2011

Supplementary written evidence submitted by Telefónica UK Limited

When I gave evidence to the Home Affairs Select Committee on 14 June with industry colleagues from Everything Everywhere and Vodafone, we undertook to provide further information on two particular issues that were raised in the session. You confirmed these two points in a letter to me of 23 June 2011. I am responding on behalf of Telefónica UK Limited which operates under the O2 brand.

The Committee asked about the number of staff who have been disciplined, dismissed or prosecuted over the last 10 years for unauthorised disclosure of customer information. I told the Committee on 14 June that we take any such cases very seriously and in the last 12 months there have been 14 cases (out of approximately 12,000 employees) of unauthorised access to or disclosure of customer information. A proportion of these cases concern instances such as an employee accessing phone records in the case of a domestic dispute within their family or on behalf of a friend.

Whilst, we not have records for these issues going back 10 years (as such records are destroyed in accordance with our Information Retention Policy), my team’s records do show that since 2003, a total of 54 employees (including contractors) have been disciplined, dismissed or prosecuted for unauthorised access to or disclosure of customer information.

The other issue on which we undertook to provide further information was the number of investigations we have undertaken into suspected hacking based on reports from customers or staff over the last five years. My team’s records indicate that since June 2006 there have been 10 investigations into alleged hacking of voicemails. We found no evidence in those cases that voicemails had been compromised.

Your letter of 23 June raised three further questions.

1. Whether or not it was possible before 2006 for a customer to access his/her voicemail remotely (ie from somewhere other than the registered handset) without having a personal PIN number

   Yes, by using the default PIN number. After 2006 customers were required to set their own unique PIN number.

2. Whether or not it was possible before 2006 for a customer to change/reset any personal PIN number for their voicemail simply by phoning to say they had forgotten it

   Customers could change their PIN numbers back to the default PIN if they contacted O2 and were able to pass security checks.

3 Not printed.
4 Not printed.
3. Before 2006 were your staff able to access the personal voicemail PIN numbers of customers?

No, staff did not have access to customers’ voicemail PIN numbers. They were only able to reset the PIN number to default, if this was requested by customers.

July 2010

Supplementary written evidence submitted by Vodafone

I refer to your letter dated 23 June 2011 and to my oral evidence to the Home Affairs Select Committee’s inquiry into Unauthorised Tapping into or Hacking of Mobile Communications on 14 June 2011.

1. Action Taken Against Vodafone UK Employees in Connection with Unauthorised Disclosure of Customer Information Over the Last 10 Years

An internal investigation was launched at the time of the Mulcaire/Goodman incidents. No evidence was found of any wrongdoing on the part of Vodafone UK employees in connection with those incidents. As a result, no Vodafone UK employees were disciplined in connection with those incidents.

More generally, our records indicate that, from 2009 to date, nine Vodafone UK employees have been disciplined in some way in relation to the unauthorised disclosure of customer data. We do not hold comprehensive data in relation to other years.

2. Customer Utilisation of Voicemail Security Options

Customers electing to set up a PIN can choose between “standard” and “enhanced” security. The standard security setting makes remote voicemail access conditional upon entry of the customer’s PIN (without which remote access to voicemail is not possible). Enhanced security means that entry of the customer’s PIN is a precondition of all access to the customer’s voicemail—whether that access is remote or from the registered handset.

As at 13 June 2011, approximately 13% of subscribers using voicemail had set up a PIN. The vast majority of these subscribers chose the standard security setting (giving them remote access to their voicemails, via their PIN), while 1.3% of these subscribers (representing less than 1% of all Vodafone UK subscribers) chose enhanced security (making both remote and handset access to their voicemails conditional upon the entry of their PIN). The voicemail of the 87% of Vodafone UK subscribers who had not set up a PIN could only be accessed using the registered handset and cannot be accessed remotely.

3. Investigations Into Suspected Unauthorised Voicemail Access

The committee has asked for confirmation of the number of investigations Vodafone UK has conducted into suspected unauthorised voicemail access based on reports from employees or customers in each of the last five years.

Vodafone UK’s Fraud, Risk & Security team is responsible for investigating reports of this nature. Our records (which go back to 2007) indicate:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Investigations</th>
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<tbody>
<tr>
<td>2007</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>0</td>
</tr>
<tr>
<td>2009</td>
<td>3</td>
</tr>
<tr>
<td>2010</td>
<td>10</td>
</tr>
<tr>
<td>2011 (as at 16 June)</td>
<td>28</td>
</tr>
</tbody>
</table>

I would emphasise that the above figures correspond to investigations into suspected unauthorised voicemail access, and that the majority relate to the alleged activities of Mulcaire/Goodman. Leaving the latter investigations to one side, it is notable that none of the above investigations found evidence of actual unauthorised third-party access to Vodafone UK customer voicemails.

4. Vodafone UK Voicemail System Prior to 2006

The committee raises a number of additional questions in relation to our system prior to 2006. Taking each in turn:

(a) It is my understanding that it has never been possible to access Vodafone UK customer voicemails remotely without a PIN.

(b) Prior to 2006, and subject to passing the customer identity verification process, customers were able to ask Vodafone UK Customer Services to change their voicemail PIN to a number of their choosing. This functionality was removed, and numerous other safeguards were introduced, immediately after the alleged activities of Goodman/Mulcaire came to light. PINs are now either specified by the
customer using their handset or are generated at random and sent by our automated system direct to
the customer’s handset. As such, the only way a customer’s Voicemail PIN can be accessed is by
using the relevant handset.

(c) Vodafone UK customer PINs have always been held on an encrypted platform which has always been
inaccessible to our staff.

July 2011

Supplementary written evidence submitted by Everything Everywhere

Thank you for the opportunity of providing evidence to the Home Affairs Select Committee on 14 June
2011. As part of their Inquiry, ‘Unauthorised tapping into or hacking of mobile communications’.

I have received your letter of 23 June 2011 seeking further written information that the Committee requested
at this evidence session.

I am pleased to reply as follows:

Q: The number of employees of your company(ies) disciplined, dismissed or prosecuted for unauthorised
disclosure of customer information in the last 10 years?

A: Our records identify four employees who have been prosecuted (and dismissed) in the last 10 years for
the unauthorised disclosure of customer information. This has involved two employees at Orange UK [in 2007
and 2011] and two at T-Mobile UK [both in 2011]. We have not been able to ascertain from our records how
many employees have been subject to internal disciplinary hearings for unauthorised disclosures.

Q: The number of investigations into suspected hacking based on reports from your customers or staff that
you have undertaken in each of the last five years?

A: In the past five years, five cases have been investigated following enquiries from customers raising a
suspicion of voicemail hacking.

Q: The Committee would also be grateful if you would confirm whether or not it was possible before 2006
for a customer to access his/her Voicemail remotely (ie from somewhere other than the registered handset)
without having selected a personal PIN number?

A: Between 2002 and 2006 it was not possible to access voicemail remotely without a personal PIN (both
T-Mobile and Orange). Before June 2002 T-Mobile (at that time One 2 One) had a default PIN. Technically
we would not describe that as a personal PIN, and therefore prior to June 2002 those customers did not need
to select a personal PIN (although a customer could change the PIN to a personal PIN at any time). Default
PINs were removed on T-Mobile in June 2002, and never existed on Orange.

Q: Please could you confirm whether or not it was possible before 2006 for a customer to change/reset any
personal PIN number for their Voicemail simply by phoning to say they had forgotten it?

A: It was possible, prior to 2006, provided a caller had satisfied our security authentication checks. If a
Customer Service Advisor was not satisfied that they were speaking to the genuine customer, the advisor would
not have reset the PIN number.

Q: Before 2006, were your staff able to access the personal Voicemail PIN numbers of customers?

A: As the voicemail PIN code is not stored in any readable format it is not possible for anyone including a
member of staff, to obtain a customer’s unique PIN via our systems. This was the position before 2006 and
remains the case today.

However, because Customer Services Advisors can change the voicemail PIN number at the request of both
T-Mobile and Orange customers who, say, had reported they had lost their phone, at that point they would
know the PIN number allocated to that customer. In these cases, customers could subsequently change the PIN
at any time through their phone.

July 2011
Thank you for contacting the Specialist Operations Centre, Covert Advice Team (the ACPO preferred source of advice for the lawful and effective use of covert techniques).

You asked:
1. Has the NPIA provided any advice to police forces on how to interpret “interception” in the context of voicemail messages?
2. In particular has it advised on whether listening to messages that have already been listened to by the intended recipient would count as interception?
3. If so, what advice has been given and to which forces?
4. Has the advice changed over time in the last six years?

It must be borne in mind that this team responds to enquiries from law enforcement officers seeking advice on the lawful use of covert tactics for the prevention or detection of crime. In doing so, the issue of the lawful interception of communications is a frequent topic. Since September 2000 the law which allows for such lawful interception is the Regulation of Investigatory Powers Act 2000 (RIPA) and our advice stresses the importance of compliance with RIPA, as to intercept a communication other than by such compliance would be a criminal offence. In general, apart from interception with the consent of both the sender and the intended recipient, authorisation that will allow for an interception to be lawful is only available to those public authorities specifically named in RIPA.

Your question specifically relates to voicemail messages stored on the system of the relevant communications service provider although the advice given below equally relates to webmail messages. This differs from both text messages and “pop3/1 type” e-mail messages which are delivered to and stored on the end users device.

The advice we give is to individual officers rather than to “forces”. Whether that advice is adopted as force policy is a matter for the force concerned. For reasons of confidentiality I am unable to provide details of officers to whom this advice has been provided but I can confirm that this has been a regular subject of enquiries from a wide variety of police forces and other agencies for a number of years.

The following is an extract from advice provided to an enquirer in 2010 and explains the reasoning behind the advice given. Although individual responses may differ the principle behind the response remains the same today and is essentially the same as the advice we have been giving on this subject since 2003.

“You ask whether accessing the voicemail messages, which are held on the servers of the communication service provider (CSP), would amount to an interception of a communication, where you are neither the sender nor the intended recipient of the message. By virtue of section 1 of the Regulation of Investigatory Powers Act 2000 (RIPA) it is an offence for a person to intentionally and without lawful authority to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of a public or private telecommunication system, although there are some exclusions for criminal liability when the interception occurs on a private telecommunication system.

The term ‘telecommunication system’, as defined at RIPA s2(1) is given a broad definition which I would suggest is intended to include the complete ‘journey’ of a communication regardless of the route that the communication takes. By virtue of RIPA s2(7) that communication will remain on its ‘journey’ while it is stored in the telecommunication system awaiting the intended recipient to collect or otherwise access it. Section 2(7) states:

For the purposes of this section the times while a communication is being transmitted by means of a telecommunication system shall be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise have access to it.

The interception of communications code of practice offers little further explanation but states:

Paragraph 2.14—Section 2(7) of the Act defines a communication in the course of its transmission as also encompassing any time when the communication is being stored on the communication system in such a way as to enable the intended recipient to have access to it. This means that a warrant can be used to obtain both communications that are in the process of transmission and those that are being stored on the transmission system.

Paragraph 2.15—Stored communications may also be accessed by means other than a warrant. If a communication has been stored on a communication system it may be obtained with lawful authority by means of an existing statutory power such as a production order (under the Police and Criminal Evidence Act 1984) or a search warrant.

The explanatory note to RIPA at section 32 provides a further explanation and states: Subsection (7) expands the phrase ‘while being transmitted’, which is used in the tailpiece of subsection (2). The times when a communication is taken to be in the course of its transmission include any time when it is stored on the system for the intended recipient to collect or access. This means that an interception takes place, for example, where an electronic mail message stored on a web-based service provider is accessed so that its contents are made available to someone other than the sender or intended recipient, or where a pager
message waiting to be collected is accessed in that way. However, if a stored communication is accessed in this way, that conduct may be lawful by virtue of Section 1(5)(c).

It could therefore be concluded that the purpose and intention of RIPA s2(7) was to ensure that communications, such as mail messages and equally voicemail messages, that are stored on the servers of the CSP would still remain in the course of transmission irrespective of whether the message had already been read or listened to by the intended recipient. Accessing the message could therefore amount to an interception.

Ultimately it will be a matter for the courts to decide whether a stored communication, which has already been accessed, is capable of interception but until such time it remains my view that, on a strict interpretation of the law, the course of transmission of a communication, including those communications which are stored on the servers of the CSP such as voicemail messages, ends at the point at which the data leaves the telecommunication system by means of which it is being (or has been) transmitted and is no longer accessible, and not simply when the message as been listened to. Accessing such voicemails could therefore amount to a criminal interception of a communication, as well as a civil wrong, and should therefore be conducted with the appropriate consents and/or lawful authority under eg RIPA s(5)(c) or 53.”

I must emphasise the point in my advice that ultimately it is for the courts to decide on the definitive interpretation and not for the NPIA’s Covert Advice Team. In summary our advice on accessing voicemails held on a provider’s system is to seek a separate lawful authority for such interception as required by RIPA s(5)(c). In most cases, in the absence of any consent, this would be a production order given by a court in accordance with Schedule 1 of the Police and Criminal Evidence Act. Such production orders are only available to law enforcement agencies for the purpose of investigating indictable offences. They are not available to private individuals who cannot obtain an authorisation which would make interception lawful.

April 2011

Correspondence from John Yates QPM, Acting Deputy Commissioner, Metropolitan Police to the Chair of the Committee

I know you will have read the recent reporting in the media in relation to phone hacking following the debate last Thursday involving Chris Bryant, MP.

Mr Bryant has made some very serious allegations about my integrity in relation to evidence I provided to your Committee. You will no doubt have noted the responses that I have sent to both the Guardian and Independent newspapers who reported the matters at some length.

The purpose of this letter is to invite you, should you so wish or thought it appropriate, to ask me to reappear before your Committee so that I can provide the evidence necessary to rebut the allegations that Mr Bryant has made.

I am most concerned that the reputation of the Metropolitan Police as well as my own is being damaged by these unfounded allegations. You may therefore think it sensible that I be provided with the opportunity to allay Mr Bryant’s, and perhaps your, concerns.

Out of courtesy, I am copying this letter to the Chairs of all the Parliamentary Committees that have an interest in this matter.

14 March 2011

Further correspondence from John Yates QPM, Acting Deputy Commissioner, Metropolitan Police to the Chair of the Committee

I write further to my letter of 14 March 2011 in relation to my response to the allegations made by Chris Bryant, MP in the Adjournment Debate on “Mobile Communications (Interception)” on 10 March 2011.

Mr Bryant made a number of statements about the manner in which this investigation has been undertaken by the Metropolitan Police. In particular, he has suggested that I may have misled your Committee. This is a very serious allegation and it is for this reason that I felt it necessary to write and provide further detailed background material as well as to offer to appear before you discuss any points you feel need further clarification.

During the Debate Mr Bryant made several assertions that are not correct. The most stark and immediate of these is the aspect that relates to my evidence provided to the Home Affairs Select Committee on 7 September 2010. Mr Bryant stated that I misled the Committee in relation to legal advice. He stated that “I misled the Committee... and used an argument that had never been relied on by the CPS or by his own officers so as to suggest that the number of victims was miniscule.”

During this evidence, I set out what I termed the “very prescriptive” definition under Section 1, Regulation of Investigatory Powers Act (S.1 RIPA) of what has become known as mobile phone voicemail “hacking”. Principally, I explained to the Committee that in 2006, to prove the offence of Interception of a Communication
under Section 1 of this Act, the Prosecution had to show that a voicemail had been intercepted prior to it being listened to by its intended recipient. On this basis, I advised that there may in fact only be perhaps ten to twelve victims against whom we could actually prove the above mentioned offence of Interception of a Communication had occurred in relation to the evidence at the time.

Mr Bryant stated that “never at any stage during the prosecution of Goodman and Mulcaire did anybody from the Crown Prosecution Service advise the Metropolitan Police that the law should be interpreted in such a way”. This is not correct.

The investigation began on 21 December 2005. Legal advice—including as to what constituted an offence of Interception of a Communication under S.1 RIPA—was generally given “orally in conference” as explained by the Director of Public Prosecutions (DPP) in his letter to the Chair of the Culture, Media and Sport (CMS) Committee on 3 November 2009.

In this same letter, the DPP also explains that the following advice was given to the original investigation team: “section 1(1) of RIPA... requires the communication to be intercepted ‘in the course of its transmission’.” This is a direct rebuttal of what Mr Bryant claimed.

The latter clause is also qualified in the same letter:

“section 2(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 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.”

This advice itself followed a previous letter from the DPP to the CMS Chair on 30 July 2009 in which he states:

“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 recipient.”

A further reference to this point is mentioned in the same letter again as being “an essential element of the offence.”

The same legal advice was given to the Senior Investigating Officer (SIO) during the Mulcaire/Goodman case throughout the investigation in 2006. It permeated every aspect of his investigative strategy and his submissions to the CPS and required the employment of tactics, and indeed experts, to evidence the difference between a voicemail being opened or unopened at the point of its alleged interception.

There are several references to legal advice throughout the Goodman/Mulcaire investigation.

On 9 March 2006, the SIO recorded:

“Guidance to be sought from the Head of CT CPS to establish range of possible offences.”

On 4 April 2006, in his review of the case to date, the SIO reflected the oral advice given thus far and sought further guidance from the CPS, specifically.

“In terms of points to prove, the key aspect would be that any interception took place prior to the intended recipient receiving the message.”

On 20 April 2006, the SIO met with the senior CPS lawyer and provided relevant briefing material to which the CPS lawyer replied by email on 25 April 2006 that:

“The offences under Section 1 RIPA would, as far as I can see, only relate to such messages that had not been previously accessed by the recipient.” The CPS lawyer does however go on to say that the law in this area was not clear as, at the material time, it remained untested. The law, therefore, was untested, but the legal advice to the police was unequivocal.

On 30 June 2006, an Advice File was submitted by the SIO to the CPS which included opinion from an expert who specialises in telecommunication forensics. This included details of the technical challenges of proving that a voicemail had been intercepted prior to it being accessed by its intended recipient thus reinforcing the view that this was an essential element of the offence. (Note: On 13 July 2006, the CPS lawyer met with the same expert to discuss this point.)

On 18 July 2006, the CPS lawyer wrote to the SIO:

“It is also apparent that on four occasions... messages left on voicemail of (Subject A) have been accessed by those numbers prior to (Subject A) retrieving those messages.”

In the same letter, the CPS lawyer goes on to refer to these as “the RIPA offences” and “the four alleged instances of offences under RIPA”. In relation to the SIO’s tactic of asking the victims not to access their voicemails for a period to see what happens, the CPS lawyer refers to the lack of any apparent interception of these unopened voicemails during this time as a “weakness” in the case, again reinforcing that proof of this point was indeed an essential element of the offence.
This letter formed part of a further Advice File which included the same telecommunication forensics expert's testimony. This again reiterated the SIO’s tactic—based on the advice given—respect to leaving voicemails unopened in an effort to obtain best evidence if someone were trying to intercept them.

In a further email of 2 August 2006 to the police team, the CPS lawyer refers to “the four main clear RIPA offences” and on 9 August, the Deputy SIO explains in his log that:

“It should be noted that the advice from CPS at present is that we will require not only evidence of access but also evidence that (1st) a message existed and (2nd) that message was intercepted prior to being listened to by the victim. Only when both parts are complete would an offence be committed.”

On 7 August 2006, a third Advice File was submitted to the CPS which included additional evidence from one of the Service Providers which detailed the fact that the voicemails (of Subject A) were unopened by the intended recipient at the point of interception.

As is evidenced above, the SIO and his Deputy were very clear in what was required to provide the CPS and Counsel, and ultimately the Court, with the best evidence to secure a conviction. In light of the CPS and Counsel advice given at the time (as restated by the DPP himself in 2009) they based their investigative strategy on the need to prove that voicemails were unopened when “intercepted” and therefore still “in the course of their transmission” under Section 1 RIPA 2000.

In the Adjournment Debate of 10 March 2011, Mr Bryant also went on to say that the CPS “formally warned” a team from the Metropolitan Police on 1 October last year that “it was wrong to claim such an interpretation” of this offence. Further, he states that this misinterpretation of the law was “the very reason—and the only reason—why the Metropolitan police refused point blank to re-open the case until January of this year.”

Mr Bryant is mistaken on both matters.

On the first point, there was no such “warning” in relation to any previous cases. The claim may however refer to the provision of some newly commissioned legal advice—in late 2010—as to what might constitute an offence of Interception of a Communication for the purpose of any future investigations. The CPS, as is perfectly proper, have signalled an intention hereon to adopt a wider interpretation of what might constitute an offence of this nature—possibly to include the interception of voicemails that have already been opened by the intended recipient. This may of course impact on the current investigation being led by my colleague DAC Akers.

On the second matter, concerning the opening of a new investigation, it is clear that the sole reason for doing so was due to the fact that News International provided new material to the police in January of this year.

Whatever the outcome of future investigations of this nature, the fact remains that during the Mulcaire and Goodman case, and throughout the ensuing period until October 2010, the legal advice on this matter was unequivocal and, as I said on 7 September 2010, “very prescriptive”.

The significance of this point is clear. While the suspects may have had many possible targets of interest, we could only prove the offence of voicemail interception in relation to a very small number of cases.

If a wider interpretation of what constitutes an “interception” is now applied, then this position will of course need to be reviewed and may change significantly. This will be a matter for the new investigation team to address and clearly it would be wrong for me to comment further at this time.

I feel it important that your Committee be aware in greater detail of the very real legal challenges that this investigation posed. I also thought it important that I demonstrate the detailed and determined efforts undertaken by both the police and the CPS to overcome these challenges. I trust this letter will allay any concerns that you may have had about the integrity of the evidence that I provided to your Committee. I did not mislead you or any other Committee in relation to this case.

This letter has been copied to other Parliamentary Committees who have an interest in these matters, as well as the Director of Public Prosecutions.

24 March 2011

Correspondence from the Chair of the Committee to John Yates QPM, Acting Deputy Commissioner, Metropolitan Police

Thank you for giving such full evidence to my Committee on Tuesday.

I wished to ask for some further information arising from your oral evidence. The Committee would find it very helpful to be provided with copies of the legal advice on the scope of the offence given to you in relation to your review of the Mulcaire case last autumn: both before and after 1 October case conference at which you first learned of the DPP’s willingness to test a broader interpretation of the section 1 offence.
During the session you also mentioned the research that was being undertaken into the claims that police officers had been paid by newspapers for information. Please could you outline the remit of the research?

30 March 2011

Further correspondence from John Yates QPM, Acting Deputy Commissioner, Metropolitan Police to the Chair of the Committee

Further to my initial reply to your letter dated 30 March 2011, I am writing to inform you that the Crown Prosecution Service have now responded to my request to release to you the legal advice provided to the police both before and after the case conference that took place on 1 October 2010. Having discussed this with them at a senior level it has been determined that “it would not be right at this time” to release the details of the legal advice given due to the ongoing live investigation and the potential impact on any future prosecution/s. As these documents are not mine to give, I must refer you to the CPS if you wish to discuss this further.

As mentioned in my initial reply of 31 March, Assistant Commissioner Cressida Dick will be responding to the other question raised in your letter.

4 April 2011

Further correspondence from the Chair of the Committee to John Yates QPM, Acting Deputy Commissioner, Metropolitan Police

Thank you for your letter explaining that Assistant Commissioner Cressida Dick would be providing the Committee with details of cases of newspapers paying police officers for information.

I wished to give you the opportunity to comment on the letter of 1 April from the DPP, Mr Keir Starmer QC, to the Chair of the Culture, Media and Sport Committee. I enclose a copy for your convenience. The letter relates to both the CPS’s advice given to the police officers leading the investigation in 2006 and the advice given to you in relation to your review of the Mulcaire case.

Also, when you gave oral evidence to my Committee in September last year, you told us that you considered all reasonable steps had been taken to inform the potential victims of Mr Mulcaire’s hacking, via phone companies or directly. Please could you clarify whether you or your team in 2010 contacted phone companies requesting that they notify those whose PIN codes had been found in Glenn Mulcaire’s paperwork and if you received any response from the phone companies saying that they had done so.

I would be grateful to receive your response by noon on Friday 14 April 2011.

7 April 2011

Further correspondence from John Yates QPM, Acting Deputy Commissioner, Metropolitan Police to the Chair of the Committee

Prior to going into any detail on this specific issue, I am sure you will have noted the contents of the joint statement from both the DPP and I that was released on Monday afternoon, 11 April 2011. I think it worth repeating here the relevant section of that statement which says: “Neither of us had responsibility for this case at the time it was originally prosecuted. We have, therefore, both sought to interpret, as best we can, the original documentation and the recollections of those involved. The relevant information is now in the public domain”.

The following should not be seen in any way as contrary to the above, but rather as a reiteration of my previously stated views.

I can confirm that I was indeed provided with an opportunity to comment on the contents of the DPP’s 1 April letter and I provided a reply outlining our views. Some of these were accepted with commensurate changes made and some were not. I attach a copy of my letter, also dated 1 April 2011,5 and the DPP’s response of the same date, for your Committee’s attention.6

You have also sought further details regarding our dealings with mobile phone Service Providers. In particular, whether in 2010 the MPS contacted these companies requesting that they notify those whose PIN numbers had been recovered during Mulcaire/Goodman investigation, and as to whether we had received any response from them.

I should start by reiterating that in August 2006 a briefing took place between the investigative team and the Mobile Industry Crime Action Forum (MICAF) to discuss security and prevention issues. There were a number of further meetings with mobile phone service providers during the course of the original investigation. I can confirm that we wrote to the relevant Service Providers in October 2010 and I attach a redacted copy of the relevant letter (see Appendix). I can confirm that we did receive responses from them. It is fair to say that

5 Not printed.
6 Not printed.
there appears to been some confusion as to what was expected of them in some instances. One of the major providers replied to say that they had contacted a number of people who may have been affected. Another company took a contrary view, indicating that they did not feel that this was part of their remit. Before another round of correspondence was undertaken there were further developments culminating in new evidence which came to light from News International and which resulted in a new investigation being opened in January. As I stated in my evidence to your Committee, all matters relating to those potentially affected are now being dealt with by the new investigation team under the auspices of Operation Weeding.

Reflecting on the joint statement at the start of this letter, both Kier Starmer and I are conscious that we are somewhat hindered in our efforts to assist your Committee further in this matter by the very fact of our not being involved in any way until we came into our current posts—in my case in 2009. We are also conscious that we do not wish to do anything that might undermine the current investigation. However, should the Committee wish to have any further details of the original investigation, those actually involved in the original decision-making might be better placed to provide those details.

I have shared this letter in advance with Kier Starmer QC and he has agreed the comments that are jointly attributed herein.

14 April 2011

APPENDIX

CORRESPONDENCE FROM THE METROPOLITAN POLICE SERVICE TO MOBILE PHONE SERVICE PROVIDERS, OCTOBER 2010

You are familiar with our inquiry into the interception of mobile telephones and voicemails by Mulcaire and Goodman back in 2005–06.

At that time, we had and were very grateful for support of yourself and the mobile telephone service providers, who as a consequence of our collective learning, introduced a raft of measures to both alert customers to various steps they should take to avoid and/or deal with such intrusion and more widely, to prevent this type of intrusion from happening again.

As a consequence of more recent interest in the Mulcaire/Goodman investigation, Nick Davies of The Guardian has reportedly been in contact with the Service Providers to ask how many people they identified as being potential victims and whether or not they were informed. It has been reported by him, that all of the people potentially identified, as being victims, might not have been contacted as I, at the time, believed was being done by the Service Providers.

In the spirit of seeking to reassure anyone that might still be unduly concerned I would be grateful if you could clarify the following:

1. For all of those that were identified by (company) who may have been a potential victim of the 2005–06 interception investigation, have they been contacted?
2. If for any reason they have not, in the spirit of seeking to allay any on-going concerns, could I ask that you make arrangements to contact those customers and inform them of whatever it is that (company) discovered to suggest that they might have been a victim.
3. In tandem with (2) could I also ask you to provide that customer with the MPS single point of contact should that customer wish to then contact us.

Please email your details, including relevant telephone numbers and reasons why you believe your mobile telephone may have been unlawfully intercepted. Searches of the documentation gathered during the 2005–06 investigation may then be searched to determine whether your details are contained within that documentation.

This follows in the same spirit of how any customer who has concerns about anomalous activity with regards to their mobile phone, should first speak to their Service provider about their concerns, thereafter being referred to the Police should it be appropriate and/or the customer wishes to take matters further.

I would emphasise that we are trying to approach this in a proportionate manner and we are not seeking the disclosure of anything that would identify who the numbers belong to.

Privacy has been an important cornerstone of our whole investigation into this matter and there may be any number of reasons whereby having spoken to the Service Provider, the customer does not wish the matter to go any further and we are most definitely not seeking to identify or disclose the identity of anyone who wishes to remain anonymous.

I would ask that if you have any questions or further concerns to channel your request back to me so we can ensure maximum confidentiality and discretion around this information.

Dependent on the outcome of the process, I may well seek your advice and guidance on how best to proceed.
Correspondence from Director of Public Prosecutions to the Chair

During the course of my evidence to the Committee on 5 April, Mr Reckless MP asked me about the case of R (NTL Group Limited) v Ipswich Crown Court and another [2002] EWHC 1585 (Admin) ("the NTL case") and the analysis of that case as set out by me in my letter of 29 October 2010.

I undertook to provide a copy of the judgement\(^7\) and to comment further on the analysis of it.

In that case, NTL had been served with a production order which required the company to carry out activity defined in section 2(2) of RIPA 20000 in respect of emails which had not been collected by their intended recipients. The company argued that the production order did not provide lawful authority for such activity, and therefore compliance with its terms would amount to an offence contrary to section 1(1). In analysing NTL’s argument, Lord Woolf CJ stated that the activity NTL was required to carry out came within section 2(2) (and therefore within the offence creating provision in section 1(1)) by reason of the extended definition in section 2(7). Without that subsection, the communications in question, namely transmitted but uncollected emails stored on NTL’s network were not to be regarded as being in the course of their transmission: paragraphs 17–18. Lord Woolf CJ then went on to state (at paragraph 19):

"Subsection (7) has the effect of extending the time of communication until the intended recipient has collected it. It is essential on the evidence in this case that if NTL are to preserve the material, they take action before the intended recipient has collected the email. Subsection (7) means that we are here concerned with what happens in the course of transmission."

Against that background, I have given further thought to the matter; my view is that the CPS’ analysis is correct, namely that the judgement of Lord Woolf CJ appeared to suggest that once the intended recipient had collected the message, the communication was no longer in the course of transmission, and therefore there could be no interception and no offence committed under section 1.

With respect, Mr Reckless was in error when he said not once but twice, that the NTL case was concerned with emails which had already been read. In fact, the case concerned the converse position; it was because the emails could only be collected before they were read (because once they were read the system automatically overwrote them) that the issue had arisen for determination in this case.

It follows that the passage from my October letter (referred to above), with which Mr Reckless took issue, is legally accurate, and is consistent with both the CPS’ analysis and the judgement of Lord Woolf.

15 April 2011

Correspondence from DS Kevin Southworth to the Committee (COR8)

Further to our telephone conversation, I understand that representatives of the various mobile phone Service Providers have been invited to give evidence to the Home Affairs Committee next week in relation to what they did following the launch of the Metropolitan Police Service’s investigation which led to the conviction of Clive Goodman and Glenn Mulcaire.

From a very early stage, the investigation team were in close contact with, and had co-operation from, all the main Service Providers. Some were able to provide us with greater technical assistance than others. Contact with the companies themselves was complemented throughout by the well established mechanisms of the Mobile Industry Crime Action Forum (MICAF) and its Chair. The Chair’s role is recognised as the primary interface between the police and the mobile phone companies in relation to any crime matter.

On the 8 August 2006, following the arrest of Goodman and Mulcaire, the Chair of MICAF attended a meeting at New Scotland Yard at which the Deputy Senior Investigating Officer provided a briefing and next steps were discussed. An email sent on that date from the Chair to the various mobile phone companies is attached which highlights the partnership approach that was being taken.

In July 2009 and again in October 2010, the MPS contacted the relevant mobile phone Service Providers to gain further reassurance as to what steps the mobile phone companies took at the time of the original investigation. Please find attached also a copy of our latest letter dated October 2010 and copies of the responses provided by the three main Service Providers at each juncture.

10 June 2011

\(^7\) Not printed
Further correspondence from the Chair of the Committee to John Yates QPM, Acting Deputy Commissioner, Metropolitan Police

As you know, the Committee took oral evidence yesterday from three mobile phone companies, Vodafone, O2 and Everything Everywhere, in connection with its inquiry into phone hacking.

The companies told the Committee that in 2006 they were given no formal notification as to whether or not they should contact those customers identified as having received calls from the suspect numbers and inform them that they might have been the victims of voicemail hacking. My Committee would like to know why this information was not given to the companies in 2006.

The companies also said that they had not subsequently been given any information about the identities of those who had been victims. We wish to know why this is so.

Finally, we wish to know why there has been no response from the Metropolitan Police to the letters from Vodafone and Everything Everywhere of November 2010 in which they responded to DCS Williams’s letter of 28 October seeking confirmation that they had contacted their customers who were suspected victims.

I would be grateful to receive your response by noon on Friday 24 June 2011.

15 June 2011

Correspondence from the Chair of the Committee to Sue Akers, Deputy Assistant Commissioner, Metropolitan Police

As you may be aware, the Home Affairs Committee took oral evidence on 14 June from three companies, representing four leading mobile phone providers, in connection with its phone hacking inquiry.

The companies were uncertain whether they still had a list of the customers who were identified in 2006 as possible victims of unauthorised interference with their Voicemails. The companies told us, however, that the Metropolitan Police would still have the records.

I am therefore writing on behalf of the Committee to request a copy of the lists of possible victims (about 130 in all). We intend to finish taking evidence before the House rises for the summer recess, so I would be grateful if you could supply the list by 1 July.

17 June 2011

Correspondence from the Chair of the Committee to Rebakah Brooks, Chief Executive, News International

I am writing concerning the current Home Affairs Committee inquiry into the unauthorised tapping of Mobile Communications.

In March 2003, whilst editor of The Sun newspaper you gave evidence to the Culture, Media, and Sport Committee. You stated that the newspaper had paid police officers for information.

Today during the Home Affairs Select Committee session with Deputy Commissioner John Yates this matter was raised again.

I would be most grateful if you would let me know:
— The number of police paid by The Sun newspaper whilst you were Editor?
— How much these police officers were paid?
— When the practice ceased?

I would be grateful if you could respond by midday on Monday 4 April.

29 March 2011

Correspondence from Rebakah Brooks, Chief Executive, News International to the Chair of the Committee

Thank you for your letter dated 29 March 2011 and for giving me the opportunity to clarify comments I made towards the end of my appearance before the Culture Media and Sports Select Committee in March 2003.

As can be seen from the transcript, I was responding to a specific line of questioning on how newspapers get information. My intention was simply to comment generally on the widely-held belief that payments had been made in the past to police officers.
If, in doing so, I gave the impression that I had knowledge of any specific cases, I can assure you that this was not my intention.

11 April 2011

Correspondence from the Chair of the Committee to Cressida Dick, Assistant Commissioner, Metropolitan Police

I am writing concerning a letter I received from John Yates on 31 March 2011.

During the evidence Mr Yates gave the Home Affairs Select Committee on Tuesday 29 March, he mentioned that the police were carrying out research into allegations that police officers were being paid for information by journalists.

In his letter to me he mentioned that you would be writing to the Committee outlining information and the remit of the research being carried out.

I would be grateful if you could write to me with this information by noon on Monday 18 April 2011.

12 April 2011

Correspondence from Cressida Dick, Assistant Commissioner, Metropolitan Police to the Chair of the Committee

I am writing in response to your letter of 30 March 2011 addressed to Assistant Commissioner Yates asking for the remit of our research into claims that police had been paid by newspapers for information. I understand AC Yates has already written to you stating I would respond to your enquiry.

I can confirm Deputy Assistant Commissioner Mark Simmons is overseeing this research and the terms of reference are as follows:

1. To ascertain the MPS response to allegations made by Rebekah Brooks (then Wade) to the Culture, Media and Sports Committee on the 11 March 2003 regarding press paying police officers for information.
2. To conduct a scoping exercise to establish whether there are now any grounds for beginning a criminal investigation resulting from the comments made by Rebekah Brooks (then Wade) at the CM SC on the 11 March 2003.

I will write further to update you with the outcome of this research in due course.

13 April 2011

Correspondence from the Chair of the Committee to Her Majesty's Inspectorate of Constabulary, Association of Chief Police Officers, and National Policing Improvement Agency

You may be aware that the Home Affairs Committee is conducting an inquiry into the unauthorised tapping into or hacking of mobile communications, including the response by the police to allegations of interception.

During the course of the inquiry, the Committee has heard allegations of an unhealthy relationship between police officers and the media, and some of those giving evidence have referred to the statement in 2003 by the then editor of The Sun to the Culture, Media and Sport Committee, that newspapers had paid police for information. The previous Home Affairs Committee also held an inquiry into Police and the media in 2009 (Second Report of the Home Affairs Committee, Session 2008-09, HC 75) and made some recommendations.

The Committee understands that DAC Mark Simmons is conducting some research into this area on behalf of the Metropolitan Police and it has asked to be kept informed of this. However, the Committee is also interested in discovering what has happened as a result of its predecessors' recommendations in 2009, and in particular the conclusion:

The leaking of information from police officers to journalists is not in itself a criminal offence, unless it breaches the Official Secrets Act or impairs the investigation of a serious crime. It is, however, a breach of police discipline regulations. Police forces appear to take such breaches seriously but often find it difficult to identify the source of the leak. It is therefore important to effect a cultural change by frequently reminding officers of the harm that may arise from leaking information. We support Liberty's recommendation for the development of detailed and enforceable guidelines to govern briefings to the media by police officers or civil servants during counter-terrorism operations. (Paragraph 28)

It is not entirely clear which policing body would take forward such recommendations, so the Committee wishes to ask you what action you have taken to implement this recommendation about guidelines; and more precisely:

— What guidance have you offered to police forces?
— Do you know of any cases where officers have been paid by journalists for information?
— Do you know of any cases where police officers have been prosecuted under the Data Protection Act for handing over information, with or without payment? (The Committee is area of the recent prosecution in Scotland.)

28 April 2011

Correspondence from the National Police Improvement Agency (NPIA) to the Committee

PAYMENT OF POLICE OFFICERS BY JOURNALISTS AND OTHERS

Thank you for your letter of 28 April. I apologise for the slight delay in replying to the committee on this, but I felt it was important to provide as full an answer as possible from an Agency perspective.

In your letter, you refer to the ongoing inquiry into the unauthorised tapping into mobile communications, as well as the inquiry and subsequent report “Police and the Media” which the previous Home Affairs Committee published in 2009. You also asked three specific questions of the National Policing Improvement Agency (NPIA) which related to recommendation two within the report, which stated:

“The leaking of information from police officers to journalists is not in itself a criminal offence, unless it breaches the Official Secrets Act or impairs the investigation of a serious crime. It is, however, a breach of police discipline regulations. Police forces appear to take such breaches seriously but often find it difficult to identify the source of the leak. It is therefore important to effect a cultural change by frequently reminding officers of the harm that may arise from leaking information. We support Liberty’s recommendation for the development of detailed and enforceable guidelines to govern briefings to the media by police officers or civil servants during counter-terrorism operations.”

I will seek to answer the questions you posed relating to this recommendation in turn:

1. What guidance have you offered to police forces?

The National Policing Improvement Agency (NPIA) has not issued any specific guidance to the police service on this matter. I have also been in touch with colleagues at the Home Office who advise that there has been no specific guidance on this matter; ACPO colleagues have similarly not issued specific guidance to the best of my knowledge.

The leaking of information from police officers to journalists is, however, as stated in recommendation two, likely to constitute a breach of the Police Conduct Regulations. The Standards of Professional Behaviour contained within these Regulations require that: “Police officers treat information with respect and access or disclose it only in the proper course of police duties.”

A police officer who passes on information in this manner may also face criminal prosecution. Possible offences include: an offence under the Official Secrets Act; an offence of corruption in public office (see the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906); an offence under the Data Protection Act 1998; and the common law offence of Misconduct in Public Office.

The Initial Police Learning and Development Programme (IPLDP), which is run by the agency, also contains guidance and instruction for the behaviour of police officers and special constables in terms of their behaviour both on and off duty. Module IND001—Underpinning Ethics and Values of the Police Service, contains specific information covering “Honesty and Integrity” and “Confidentiality”. Further detail on this is contained in the table at Appendix A.

The IPLDP is the two year initial learning programme for all newly recruited student police constables to the Police Service of England and Wales. It is based around 22 core National Occupational Standards and formally accredited through the Diploma in Policing qualification. It provides learning across 200+ broad subject areas and provides the essential learning for officers to carry out the duties of Patrol Constable, dealing with priority and volume investigations and situations.

2. Do you know of any cases where officers have been paid by journalists for information?

Data is not held centrally for this, but I imagine that there would be some local variation in the way that instances were treated. A few years ago I set up and ran an “integrity unit” within Leicestershire constabulary. There, in the course of 12 months, we successfully identified two officers who had been improperly passing information to the press. One of these did serve for financial gain, the other for a different motivation. Each of these was, at the time, arrested for misconduct in public office. One resigned from the service and the other faced a misconduct hearing. At the time, we did not feel that there was a lack of alternatives available to forces to deal with this behaviour and it is the consensus of ACPO officers that I have spoken to recently, that sufficient options continue to be available.
3. Do you know of any cases where police officers have been prosecuted under the Data Protection Act for handing over information, with or without payment? (The Committee is aware of the recent prosecution in Scotland)

This would again be a matter for the records of individual forces that hold this information on their officers. We would not hold this centrally at the NPIA.

I hope that this information proves useful in informing the Committee’s ongoing inquiry. The Agency remains willing to assist in any way that we can.

10 June 2010

APPENDIX A

IPLDP MODULE IND001—UNDERPINNING ETHICS AND VALUES OF THE POLICE SERVICE

<table>
<thead>
<tr>
<th>Section</th>
<th>Advice</th>
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<tbody>
<tr>
<td>Honesty and Integrity</td>
<td>Police officers are honest, act with integrity and do not compromise or abuse their position.</td>
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<tr>
<td></td>
<td>Police officers act with integrity and are open and truthful in their dealings with the public and their colleagues, so that confidence in the police service is secured and maintained.</td>
</tr>
<tr>
<td></td>
<td>Police officers do not knowingly make any false, misleading or inaccurate oral or written statements or entries in any record or document kept or made in connection with any police activity.</td>
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<tr>
<td></td>
<td>Police officers never accept any gift or gratuity that could compromise their impartiality. During the course of their duties police officers may be offered hospitality (eg refreshments) and this may be acceptable as part of their role.</td>
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<td></td>
<td>However, police officers always consider carefully the motivation of the person offering a gift or gratuity of any type and the risk of becoming improperly beholden to a person or organisation.</td>
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<td>It is not anticipated that inexpensive gifts would compromise the integrity of a police officer, such as those from conferences (eg promotional products) or discounts aimed at the entire police force (eg advertised discounts through police publications). However, all gifts and gratuities must be declared in accordance with local force policy where authorisation may be required from a manager, Chief Officer or Police Authority to accept a gift or hospitality. If a police officer is in any doubt then they should seek advice from their manager.</td>
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<td></td>
<td>Police officers never use their position or warrant card to gain an unauthorised advantage (financial or otherwise) that could give rise to the impression that the police officer is abusing his or her position. A warrant card is only to confirm identity or to express authority.</td>
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<tr>
<td>Confidentiality</td>
<td>Police officers treat information with respect and access or disclose it only in the proper course of police duties.</td>
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<tr>
<td></td>
<td>The police service shares information with other agencies and the public as part of its legitimate policing business. Police officers never access or disclose any information that is not in the proper course of police duties and do not access information for personal reasons. Police officers who are unsure if they should access or disclose information always consult with their manager or department that deals with the management of Police Information, data protection or freedom of information before accessing or disclosing it.</td>
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<td></td>
<td>Police officers do not provide information to third parties who are not entitled to it. This includes for example, requests from family or friends, approaches by private investigators and unauthorised disclosure to the media. Where a police officer provides any reference in a private as opposed to professional capacity, then he or she will make this clear to the intended recipient and will emphasise that it is being provided in a private capacity and no police information has been accessed or disclosed in giving such a reference.</td>
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|                          | In addition to this, all Student Officers are directed to the online reference material relating to the PCSPB (Performance Conduct and Standards of Professional Behaviour) programme, where these messages are reiterated and reinforced through specific case studies.
Correspondence from the Chairman of the Committee to Sue Akers, Deputy Assistant Commissioner

As you may know the Home Affairs Committee is currently conducting an inquiry into the unauthorised tapping of mobile communications. We have had a number of witnesses who have provided very helpful evidence including Assistant Commissioner John Yates QPM, the DPP, Keir Starmer QC and the Information Commissioner Christopher Graham and others.

We understand from Mr Yates's letter of 14 April 2011 that you have responsibility for the new investigation named Operation Weeting.

I would be most grateful if you can assist our inquiry with the following information;

— As far as I can see the senior officers involved in the current investigation alongside yourself include Deputy Assistant Commissioner Mark Simmons, Detective Constable Andrea Fletcher and Assistant Commissioner Cressida Dick. How many officers are currently working on the investigation and from which ranks?
— How long do you anticipate the investigation continuing for?
— How many victims of phone hacking have you detected and how many of those have been contacted?
— I have received a letter from DC Andres Fletcher. I would be grateful if you could inform me of the basis on which searching for names is being carried out?
— How many of the mobile phone service providers have informed victims of phone hacking?

28 April 2011

Correspondence from Sue Akers, Deputy Assistant Commissioner to the Chairman of the Committee

Operation Weeting

I refer to your letters of 28 April, 17 June, 22 June and 27 June 2011. I apologise for the delay in responding to your letter of 28 April, in particular, but, unfortunately, for some reason, it was not received within my office until 23 June.

Your most recent letter invites me to give evidence to your Committee on 12 July. I am afraid that, due to operational commitments, I am unable to attend on that day. However, even if I were able to attend, It does seem an unusual request given that I am in the middle of a live investigation. The constraints of that ongoing investigation would prevent me. From adding anything much further to the response in this letter and a personal appearance during which I was unable to answer questions would seem an unnecessary waste of the Committee's time. I hope, therefore, that you will accept this letter in lieu of my personal attendance.

Taking all the questions you have raised in the four letters above, I set out below, as comprehensively as our current position allows, our response:

The total number of police officers and police staff currently assigned to Operation Weeting is 45, although this number will undoubtedly fluctuate as the investigation progresses. The same pool of officers is drawn upon to service the demands made upon the police service in connection with the numerous separate civil actions that have been brought by individuals against NGN. The officers, who have been assigned from various Boroughs and HQ Departments across the MPS, comprise of mix of ranks from superintendent to constable. The team is headed by me and I report to Assistant Commissioner Cressida Dick.

At this stage it is too early to predict how long it will take to complete the investigation.

We are currently in the process of attempting to establish the exact number of victims or potential victims of phone hacking. The number of people who have written in and/or who have been contacted by the police is also currently ongoing and therefore changing on a weekly, if not daily, basis. Accordingly, any precise figures will be inaccurate by the time you receive this letter. However, I am conscious that these numbers are of interest to you and I am therefore happy to provide approximate figures, to assist:

— To date, about 350 people have contacted police, to check whether their details are contained in the material we hold. This includes correspondence prior to and post the establishment of the Weeting enquiry.
— Of those, approximately 160 have been positively identified as being present in the material. Their presence in the material does not, of course, necessarily make them victims of phone hacking.
— There are 3,870 persons (first and second names) contained in the seized material.
We hold about 18 months of call data. Within this data about 400 unique voicemail numbers (UVNs) have been rung by Mulcaire, Goodman or the News of the World hub phones. This figure probably gives us the best estimate for victim numbers for that finite time period, given that there can reasonably only be one reason to call a UVN, ie to listen to saved voicemail messages. I should point out that, among that number of UVN calls, there could be some legitimate usage from News of the World staff accessing their own mobile phones. Obviously, any activity outside of the 18 month time parameter is not detectable.

We are in the process of liaising with the telephone service providers to establish what they are doing and/or did at the time of the original investigation to inform victims/potential victims. As you have heard from them, the picture is not entirely clear and appeared to vary between the companies. However, Operation Weeting is now working closely with all the phone service providers to identify all individuals who may have had their voicemails intercepted. Together, we are attempting to compile a comprehensive list from the call data held by the police and the subscriber information held by the phone companies. Once a list is formulated, there will be occasions when it will be entirely appropriate to make contact by phone or letter.

Supplementary written evidence submitted by Sue Akers QPM, Deputy Assistant Commissioner

I have had the opportunity to read the transcript of my evidence to your Committee last Tuesday and there are a couple of small, but important, points that I wish to clarify.

Firstly, in describing my commitment to the victims of phone hacking, on several occasions I made reference to “visiting” all those who had been named in the Mulcaire documentation. Strictly, I should have used the term “contact”. Whilst many of those affected will receive personal visits from members of the Weeting team, there will be occasions when it will be entirely appropriate to make contact by phone or letter.

Secondly, on my reading of the transcript, there appears to be some ambiguity around the investigations for which I am responsible. I am leading Operation Weeting—the investigation into phone hacking and Operation Elveden—the investigation into the corrupt payments to police officers by journalists. I am not involved in investigating any conduct matters that may not arise from the original investigation—Operation Caryatid.

I hope that this clarifies matters and will assist your Committee in compiling its report.

Further correspondence from John Yates QPM, Acting Deputy Commissioner, Metropolitan Police to the Chair of the Committee

I write in response to your letter dated 15 June 2011. I believe my Private Office informed you that I have been on annual leave in the interim but nevertheless please accept my apologies for not being able to reply sooner.

The first question in your letter relates to the liaison that took place between the original police investigative team and the mobile phone service provider companies at the time of the investigation which led to the prosecution of Goodman and Mulcaire in 2006. Whilst I was not personally involved at this time, it is my understanding that from an early stage of the inquiry there was significant engagement with the relevant mobile phone companies. In August 2006 the Chair of the Mobile Industry Crime Action Forum, Mr Jack Wraith, was also appraised and, in keeping with his role, he facilitated contact with the wider mobile phone service provider industry.

One aspect of our joint working included the inquiry team sharing the telephone numbers which we were aware that the suspects were using to dial into peoples’ voicemails with the phone companies. This was to enable them to proactively identify any of their customers who may have been affected from their own databases. Indeed, when DCS Williams wrote to the three main companies (O2, Vodafone, Orange) on 28 October 2010, O2 wrote back to us to confirm their understanding of this arrangement, explaining that ‘O2 customers identified in 2006 by us as potential victims of voicemail interception were contacted at the time’.

I am aware that Peter Clarke, who oversaw the operation in 2005-06, is appearing before your Committee next week and he may be able to provide more detail on this issue from his recollection of events at the time.

In terms of your last question I can confirm that we have not been in further correspondence with Vodafone and Orange/Everything Everywhere since their responses to DCS Williams’ letter in November. It was clear from their replies that they did not share O2’s understanding of what we considered to be an agreed way forward from 2006. At that juncture (November 2010) however there had been significant and parallel developments in a number of areas. These included the potential for a Judicial Review and an indication from the CPS of their intention to adopt a wider interpretation of Section 1 RIPA in the future, which culminated in written legal
advice being provided on 10 December 2010. These developments had to be considered in terms of their implications for our victim strategy which necessarily was the cause of some delay in taking matters forward. In January, News International then provided significant new information to the MPS which resulted in a new investigation being started. All matters relating to victims are now being dealt with by DAC Akers.

I have already acknowledged in my evidence to your Committee that in hindsight more could have been done in terms of notifying those who may have been affected, but I hope the above is helpful in terms of answering the specific questions raised.

6 July 2011

Correspondence from the Chair of the Committee to John Yates QPM, Acting Deputy Commissioner, Metropolitan Police

I am writing to ask for some further information about the review of the 2006 investigation which you conducted last autumn, in the light of the recent allegations over the Milly Dowler case.

You explained to us that you had thoroughly reviewed all the evidence from the 2006 investigation. Was any information referring to Milly Dowler case in the evidence you reviewed?

I would be grateful to receive your response by noon on Monday 11 July 2011.

5 July 2011

Further correspondence from John Yates QPM, Acting Deputy Commissioner, Metropolitan Police to the Chair of the Committee

I write in response to your letter dated 5 July 2011 and in which you refer to a "review of the 2006 investigation...conducted last autumn" and any awareness or knowledge that I may have had of Milly Dowler being amongst those potentially affected.

As you know, I am not sighted on the progress of the new investigation. However, the recent revelations about Milly, her family and indeed anyone who has suffered a family tragedy potentially being affected are obviously a matter of huge concern and it is a source of great regret that these matters were not uncovered earlier. To answer your specific question though, the first time I became personally aware that Milly Dowler may have been affected was when the news emerged in the public domain this week.

You also refer in your letter to the question of a review and suggest that I have informed your Committee that I "had thoroughly reviewed all the evidence from 2006". This is not the case and I do not believe that I have ever given the impression to either your Committee or your fellow Committee—Culture, Media & Sport (CMS)—that I had carried out such an exercise. For clarity, a review, in police parlance, involves considerable resources and can either be thematic in approach—such as a forensic review in an unsolved murder investigation—or involves a review of all relevant material. The specific question was raised by the CMS at my appearance before them on 2 September 2009 and I have enclosed the extract for your attention.8

I appreciate that events have moved on considerably but it should not be forgotten that the catalyst for the new investigation (and the levels of resources now applied) was solely the result of new evidence being produced by the News International in January of this year. From the beginning of my involvement in this matter in 2009, I have never conducted a "review" of the original investigation and nor have I ever been asked to do so. If I may, I think it useful to set out the sequence of events that has taken place and the levels of assurance that were evident at that time which led to the judgement that a full-scale review was not necessary.

The facts are that following reporting in The Guardian in July 2009, as the then newly appointed Assistant Commissioner in charge of Specialist Operations, I was asked by the Commissioner to "establish the facts around the case and to consider whether there (was) anything new arising in the Guardian article". This was specifically not a review.

At this time (July 2009), the case had remained closed for over two years since the sentencing of Mulcaire and Goodman in January 2007. Following detailed briefings from the Senior Investigating Officer it was apparent that there was no new material in the Guardian article that would justify either re-opening or reviewing the investigation.

A short while later, this view was endorsed independently by the Director of Public Prosecutions, Keir Starmer QC, who had simultaneously "ordered an urgent examination of the material supplied to the CPS". The Crown Prosecution Service acknowledged that Prosecution Counsel had seen all the unused material during the original investigation in addition to the actual evidence utilised in the case itself. It is appreciated that such a review is always undertaken in relation to relevance in respect of the indictment. However, in a written memorandum, dated 14 July 2009, Counsel stated: (the underlined aspects are my emphasis)

"...we did enquire of the police at a conference whether there was any evidence that the Editor of the News of the World was involved in the Goodman-Mulcaire offences. We were told that there was not (and we never saw such evidence). We also enquired whether there was any evidence connecting Mulcaire to other News of the World journalists. Again, we were told that there was not (and we never saw such evidence)."

In other words, in whatever guise—relevance to the indictment or otherwise—that Counsel considered the unused material, they stated then in unequivocal terms that they were neither told about nor did they see any matters that appeared to merit further investigation.

On 16 July 2009, in his own statement on the matter, the DPP stated “it would not be appropriate to re-open the cases against Goodman and Mulcaire, or to revisit the decisions taken in the course of investigating and prosecuting them”. This led to the case remaining closed until January this year when new evidence was provided by News International which resulted in the launch of Operation Weeting.

Therefore, as can be seen, in relation to events that took place in 2009, I was provided with some considerable reassurance, (and at a number of levels), that led me to a view that this case neither needed to be re-opened or reviewed. For completeness, I have enclosed a copy of the press lines released by the Commissioner.

In terms of the work conducted “last autumn” referred to in your letter, there was some further reporting in the New York Times on 1 September 2010 which led to my tasking of a Senior Investigating Officer to ascertain if there was any new information that might require investigation. A number of interviews were conducted in the ensuing months and advice was again sought from the CPS. In their final written legal advice provided on 10th December 2010 however, the Head of the CPS Special Crime Division concluded that he did “not consider that there is now any evidence that would reach the threshold for prosecution. In my opinion there is insufficient evidence to provide a realistic prospect of conviction against any person identified in the New York Times article”. This, again, was not a review of the original case.

I hope you find this helpful. Due to the significant media and public interest in this matter, I am copying this letter to the Commissioner and to the Chair and Chief Executive of the Metropolitan Police Authority.

11 July 2011

APPENDIX A

METROPOLITAN POLICE SERVICE STATEMENT

This morning (9 July) the Commissioner, Sir Paul Stephenson, discussed an article in The Guardian newspaper regarding the alleged access of phone messages and data:

He said: “Clearly I am aware of this story and I think as everybody knows this relates to an investigation that the MPS undertook back in 2006. That investigation was undertaken by the Specialist Operations Directorate as it related very much to a matter of complaint from the Royal Household.

“As a result of that I have asked Assistant Commissioner John Yates to establish the facts of that case and look into that detail and I would anticipate making a statement later today perhaps.”

9 July 2009

Correspondence from the Committee to Sir Paul Stephenson QPM, Commissioner of Police of the Metropolis

The Home Affairs Committee has asked me to write to you seeking clarification of a piece of evidence provided to the Committee by Assistant Commissioner Yates.

In his letter dated 8 July, of which I believe you are aware, he refers to the commission you gave to him in July 2009 with reference to the hacking inquiry. Mr Yates has provided us with an extract from a statement dated 9 July 2009, and we are seeking elucidation of the last sentence, which reads as a quotation from you: “As a result of that I have asked Assistant Commissioner John Yates to establish the facts of the case and look into that detail and I would anticipate making a statement later today.”

The Committee were uncertain from this what you intended to be done by AC Yates and his team (they were not clear what “establish the facts of the case and look into that detail” meant in this context) and whether the reference to a statement to be made later that day implied that you intended the task to be completed within one day.

12 July 2011
Correspondence from Sir Paul Stephenson QPM, Commissioner of Police of the Metropolis to the
Chair of the Committee

Thank you for the letter from the Committee Clerk, seeking clarification on the statement attached to AC Yates’ letter of 8 July 2011.

The attachment is a transcript of a verbal statement I made on the morning of 9 July 2009. I made the statement to a news camera while attending the ACPO Conference in Manchester.

When I said “…and I would anticipate making a statement later today”, I was indicating to the journalist that the MPS was likely to release a formal press statement. It was not an indication of any time scale I had given AC Yates to establish the facts in the case.

13 July 2011

Correspondence from the Chair of the Committee to Dick Fedorcio OBE, Director of Public Affairs, Metropolitan Police Service

The Home Affairs Committee is in the process of obtaining final pieces of evidence in order to conclude its inquiry into the unauthorised tapping and hacking of mobile communication.

During our evidence session with Mr Andy Hayman on Tuesday, he stated that he had discussed with you his decision to accept hospitality from News International while they were under investigation by the Metropolitan Police.

To assist us in our inquiry, please could you tell us in writing what advice you gave Mr Hayman on this occasion.

14 July 2011

Correspondence from Dick Fedorcio OBE, Director of Public Affairs, Metropolitan Police Service to the Chair of the Committee

I am responding to your letter 14 July 2011 asking me to comment upon an element of the evidence given by Mr Hayman to your Committee on 12 July 2011.

I first became aware of the investigation into phone hacking upon my return from a period of leave in August 2006.

To the best of my knowledge and recollection, the only dinner I attended with Mr Hayman and News International staff was on 25 April 2006, some three months previously. The dinner was entered in the Specialist Operations Directorate Hospitality Register.

Therefore, I did not discuss with, or give advice to, Mr Hayman on any question relating to attending this dinner whilst the investigation was in progress. Furthermore, I did not have any conversation with Mr Hayman about phone hacking more generally at the time.

15 July 2011

Correspondence from the Chair of the Committee to Keir Starmer, QC, Director of Public Prosecutions

I am writing regarding further to the evidence you provided to the Home Affairs Committee’s inquiry into the unauthorised tapping of mobile Communications.

The Committee would like to ask you some questions regarding legal advice provided by the DPP. In particular:

— Whether you have provided advice to police officers working on Operation Weeting on the interpretation of Regulation of Investigatory Powers Act 2000 (RIPA);
— What interpretation of the RIPA you have provided the police officers working on Operation Weeting;
— What advice you have provided to police officers working on Operation Elvedon regarding inappropriate payments to Metropolitan Police Officers;
— What was the involvement of former DPP Kenneth MacDonald QC during the first police investigation into phone hacking in 2006; and
Correspondence from Keir Starmer, QC, Director of Public Prosecutions to the Chair of the Committee

Thank you for your letter of 7 July 2011. The answers to the questions you have asked are as follows.

1. "Whether you have provided advice to the police officers working on Operation Weeting on the interpretation of Regulation of Investigatory Powers Act 2000 (RIPA)"

   In December 2010 the CPS provided two written advices to the MPS on the interpretation of RIPA. It has been clearly understood by both the CPS and MPS that this is standing advice and has not changed. No other or contrary advice has been given since.

2. "What interpretation of the RIPA you have provided the police officers working on Operation Weeting"

   Neither prosecution nor police would normally share with anyone the advice sought or given during the course of a live investigation. However, because of the public importance of the issue, I intend to make an exception to our normal practice.

   The most recent advice dealt with many legal aspects of the offences under RIPA. We assume that the Committee's interest is in the advice given as to whether the narrow or broad approach to section 2 should be taken. On this aspect the advice given to the police in December 2010 was as follows.

   "Since the provisions of RIPA in issue are untested and a court in any future case could take one of two interpretations, there are obvious difficulties for investigators and prosecutors. However, in my view, a robust attitude needs to be taken to any unauthorised interception and investigations should not be inhibited by a narrow approach to the provisions in issue. The approach I intend to take is therefore to advise the police and CPS prosecutors to proceed on the assumption that a court might adopt a wide interpretation of sections 1 and 2 of RIPA. In other words, my advice to the police and to CPS prosecutors will be to assume that the provisions of RIPA mean that an offence may be committed if a communication is intercepted or looked in to after it has been accessed by the intended recipient and for so long as the system in question is used to store the communication in a manner which enables the (intended) recipient to have subsequent, or even repeated, access to it."

   As noted above, this is standing advice.

3. "What advice you have provided to police officers working on Operation Elvedon regarding inappropriate payments to metropolitan police officers"

   In relation to Operation Elvedon, there are ongoing discussions between the CPS and the MPS and we have given advice when we have been asked to do so. As this is a live investigation, it would not be appropriate to give any further details about the requests made or nature of the advice given.

   The answers to questions 1, 2 and 3 have been shown to DAC Sue Akers, and she has confirmed that they are factually accurate.

4. "What was the involvement of former DPP Kenneth Macdonald QC during the first police investigation into phone hacking in 2006"

   Lord Macdonald QC was consulted and had general oversight of this case.

5. "Do you know of any records that evidence Kenneth Macdonald QC providing legal advice to News International whilst he was DPP from 2003 to 2008"

   There are no CPS records which indicate that Lord Macdonald QC provided legal advice to News International whilst he was DPP.

   As a matter of courtesy, the answers to questions 4 and 5, have been shown to Lord Macdonald and he has confirmed that they are factually accurate.

   I hope that this is of help.

11 July 2011
Correspondence from the Chair of the Committee to Rebekah Brooks, Chief Executive, News International

You will recall that I wrote to you earlier this year about the Home Affairs Committee's inquiry into the unauthorised tapping of Mobile Communications.

The Committee would like to ask you some further questions arising from the recent allegations about hacking of phones in relation to the Milly Dowler case, at which time you were editor of the News of the World. In particular, did you have any knowledge of:

(a) phone hacking in the case of Milly Dowler and her family;
(b) phone hacking taking place in any other cases; and
(c) do you know whether the practice of phone hacking is still continuing.

5 July 2011

Correspondence from Rebekah Brooks to the Chair of the Committee

Thank you for your letter of Tuesday 5 July, on behalf of the Committee, seeking further information in reference to the allegations surrounding phone hacking at the News of the World.

Like everyone I was appalled and shocked when I was informed of the new allegations relating to Milly Dowler and her family—and, indeed, the further awful revelations over the course of the last few days. As I said to News International staff on Tuesday, it is almost too horrific to believe that a professional journalist, or even a freelance inquiry agent, working on behalf of a member of the News of the World staff could engage in such alleged practices.

In response to the specific questions you raise in your letter, I want to be absolutely clear that as editor of News of the World I had no knowledge whatsoever of phone hacking in the case of Milly Dowler and her family, or in any other cases during my tenure.

I also want to reassure you that the practice of phone hacking is not continuing at the News of the World. Also, for the avoidance of doubt, I should add that we have no reason to believe that any phone hacking occurred at any other of our titles.

As you know, there are two major police investigations taking place and we are cooperating fully and actively with both. Indeed, it was News International which voluntarily brought evidence which led to the opening of Operation Weeting and Operation Elveden. This full cooperation will continue until the police's work is done.

We will also cooperate fully with the two public inquiries announced by the Prime Minister this morning. In addition, as you may have seen, we have instructed Olswang LLP to undertake a full review of our policies, practices and systems and to advise us to ensure that journalistic standards are properly maintained in the future.

The hurt and suffering caused to Milly Dowler's family, and the many other alleged crime victims of phone hacking, is horrendous and inexcusable. We will continue to do all that we can, with the police, to discover the truth and face up to the mistakes and wrongdoing of the past.

8 July 2011

Correspondence from the Chair of the Committee to Mr Andrew Coulson

I am writing regarding your role as Editor of the News of the World from 2003 to 2007. As you may know, the Home Affairs Committee's is undertaking an inquiry into the unauthorised tapping of Mobile Communications.

The Committee would like to ask you some questions arising from the recent allegations about hacking of phones in relation to the Milly Dowler case and the payment of police officers at which time you were editor of the News of the World.

In particular, did you have any knowledge of:

(a) phone hacking in the case of Milly Dowler and her family;
(b) phone hacking taking place in any other cases;
(c) the number of police paid by the News of the World newspaper whilst you were Editor;
(d) how much these police officers were paid;
(e) when the practice ceased; and
(f) do you know whether the practice of phone hacking is still continuing.

6 July 2011
Correspondence from DLA Piper UK LLP to the Chair of the Committee

We act for Andy Coulson who has passed us a copy of your letter to him of 6 July 2011.

We, of course, understand that your Committee would wish to have answers to the questions you pose, particularly as the issue of phone hacking has taken a new turn in the past 48 hours and there is intense media interest in it.

Your Committee was convened shortly before the first police investigation into phone hacking concluded, and just before the CPS advised on the evidence that had been collected. Since then, however, the current police investigation into allegations of phone hacking has commenced (Operation Weeting), led by Deputy Assistant Commissioner Sue Akers, and on Wednesday 6 July a further police investigation (Operation Elveden) was announced to look into new allegations about payments by the News of the World to police officers. This is also being led by DAC Akers. In fact, by the time you receive this letter Mr Coulson will have attended a police station in London voluntarily to be interviewed.

These investigations, individually and collectively, are extremely serious. A number of direct allegations have been made in the media about Mr Coulson’s role in the subject matter of both Metropolitan police inquiries. Because of this, we have advised Mr Coulson that it would be inappropriate to respond to the questions posed in your letter, as they go to the very heart of the issues that the police investigations are looking into. We recognise it is within the prerogative of a parliamentary committee to investigate these matters but it must be important to balance the interests of Parliament against the interests of justice in ensuring that any criminal investigation or process is not prejudiced by a parliamentary inquiry prematurely exploring issues with potential witnesses or suspects before the police have had a chance to complete their inquiries. Of course a claim of parliamentary privilege might be an answer to any concerns that the courts might have about any interference by a Select Committee with the course of justice but we would ask you to reflect on whether it is appropriate for you to pursue the inquiries you make of Mr Coulson at this time.

You will find the answers to some of your questions in Mr Coulson’s previous evidence as he has already been questioned in Parliament by the Culture, Media and Sport Select Committee.

There has been much debate about the police investigations proceeding before any public inquiry is commenced, so as not to prejudice those investigations. We would respectfully submit that the same consideration should apply equally to the Select Committees, particularly where they are asking questions of an individual who is in jeopardy of criminal investigation and possible criminal proceedings. To do so would flout the enshrined statutory and common law rights and protections he ordinarily has, in every environment other than a Parliamentary one.

8 July 2011