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2 (2.00 pm)3 MS PATRY HOSKINS: Good afternoon, sir. We have one witness 4 this afternoon and that witness is Lord Smith. 5 CHRISTOPHER ROBERT SMITH (sworn) 6 Questions by MS PATRY HOSKINS 7 MS PATRY HOSKINS: Lord Smith, if you could take a seat and 8 make yourself comfortable. First of all, could you 9 provide your full name to the Inquiry, please? 10 A. I am Christopher Robert Smith, Lord Smith of Finsbury. LORD JUSTICE LEVESON: Lord Smith, I think you've previously 11 12 appeared by proxy at the Inquiry. Let me thank you for 13 the evidence that you there provided, although given 14 through another voice, and indeed for your present 15 statement and the obvious work that's gone into it. 16 Thank you. 17 A. Thank you. 18 MS PATRY HOSKINS: As Lord Justice Leveson has indicated, 19 you've actually now provided two statements to the 20 Inquiry. The first was in relation to your role as 21 chairman of the Advertising Standards Authority, and 22 it's dated 16 September 2011. The second is dated 23 30 April 2012, and that relates to Module 3 issues, if

- 1 Q. Two days after the election. Sticking with that date in
- 2 your mind, please, I want to understand the position in
 - terms of media, government policy and what the policy
- 4 was in relation to the media and press. I want to
- 5 understand the position you inherited on that date. So
- 6 if we can just rehearse the history very briefly in this 7

8 It's correct to say, isn't it, that roughly seven

- years before that, in June 1990, Sir David Calcutt's
- 10 first report had essentially ushered in the abolition of
 - the Press Council and set up the PCC. Calcutt 2, the
- 12 second Calcutt report, was delivered in January 1993, so
- 13 about four years before you took up office, and this
 - concluded that the PCC was not an effective regulator of
- 15 the press, essentially on the basis that the body was
- 16 set up by the industry and operating a code of practice
- 17 which was devised by the industry and he considered to
- 18 be overfavourable to the industry. So good so far?

19 A. That would be an accurate summary of Sir David Calcutt's 20 conclusions.

- 21 Q. He recommended in 1993 the establishment of a statutory
- 22 press tribunal. You're very familiar with that.
- 23 A. Yes.

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- 24 Q. That statutory tribunal to have the power to impose
- 25 fines, amongst other things, and require the printing of

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A. It does indeed. 1

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2 Q. Thank you very much. We're going to start, please, with

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3 a description of your career history. In that respect,

I can describe it in that way. Can I confirm that all

that amounts to your formal evidence to this Inquiry?

- 4 if you would turn to tab 1 of the bundle you should find
- 5 your second witness statement. At paragraph 1 of that,
- you have set out helpfully for us a brief summary of 6
- 7 your career history.

You explain there that for 22 years, from the period 1983 to 2005, you were the Labour Member of Parliament for Islington South and Finsbury, and from 1997 to 2001 in particular you were Secretary of State for Culture, Media and Sport, responsible, amongst other things, for government policy towards the media and the press.

You explain that from 2003 to 2008 you were founding director of the Clore Leadership Programme. You're currently the chairman of the Environment Agency and chairman of the Advertising Standards Authority, and you explain that you've recently been reappointed for a further term of office for both positions.

For the purposes of these questions, we'll be focusing on the period 1997 to 2001, when you were Secretary of State for Culture, Media and Sport. You took office, as I understand it, on 3 May 1997. Would

24 that be approximately correct? 25 A. Yes. Two days after the election.

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- apologies and corrections and so on. Overall,
- 2 Lord Wakeham accepted it was a rather damning assessment
- 3 of the PCC in 1993.
- 4 That was all before your time. I simply want to set
- 5 the background to your evidence. Others will, in due
- 6 course, be asked about it. Only one other aspect of the
- 7 history that we need to remember before we focus on your
- 8 questions is that on 1 January 1995, Lord Wakeham had
- 9 been appointed chairman of the PCC. That was just
- 10 before your time, but nevertheless he remained chairman
- 11 of the PCC when you took office.

12 A. I think he was chairman of the PCC throughout my period

- 13 of office as Secretary of State.
- 14 Q. Going back to the date that I asked you to stick in your 15
 - mind, 3 May 1997, can you assist us with this: what were
- 16 your impressions, on taking up office, of the culture,
- 17 practices and ethics of the press at that time?
- 18 A. The first thing to say is that it probably wasn't
- 19 a hugely current issue at that moment. There had, of
- 20 course, been a lot of discussion and debate around the
- 21 time of both the Calcutt reports, but since the Calcutt
- 22 review had taken place, and especially since John
 - Wakeham had taken over as chairman of the PCC, the issue
- 24 had appeared to go off the current political boil. One
- 25 of the things I would say is that I think John Wakeham

Page 4

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- 1 was outstandingly skilful at taking the PCC forward 2 enough to take the sting out of the political debate, 3 and it was almost certainly due to to the steps that he 4 had already taken, in terms of the people he'd brought 5 on to membership of the PCC, the way in which it was 6 making its adjudications, and he'd already taken quite 7 a lot of steps to effectively ensure that the Calcutt 8 proposal for statutory intervention did not have any 9 political legs.
 - When I became Secretary of State in 1997, I don't think at that moment there was any major public or political demand for statutory intervention.
- 13 Q. So that was the position you inherited. You tell us at 14 paragraph 4 of your statement, just over the page from 15 where we've been looking -- you explain that the major 16 change that had taken place was the appointment of 17 Lord Wakeham but you say at the end of that 18 paragraph that one of the first things you did on taking 19 up office is you met with Lord Wakeham on 25 June 1997 20 to hear his views and proposals and to identify areas 21 where further progress might be needed. 22

Given you say that there was no public demand, it wasn't something that was top of everyone's agenda, why identify areas where further progress might be needed?

A. Because it was -- despite not being a particularly hot Page 5

- 1 taking up office? Were you a believer in
- 2 self-regulation? Were you a supporter of the Calcutt 2
- 3 recommendations? Where did your opinion lie?
- 4 A. I was a strong believer in self-regulation, and I still
- 5 am. In a democracy, I believe it is very dangerous to
- 6 go down the road of statutory regulation of the press,
- 7 and however deleterious some of the behaviour of the
- 8 press may from time to time be, nonetheless having in
- 9 place a permanent apparatus of state regulation I think
- 10 would be profoundly detrimental to free speech. I still
- 11 believe that.
- 12 LORD JUSTICE LEVESON: Will you please explain what you mean
- by "self-regulation"? I've said it once today already.
- Lots of people mean very, very different things by it,
- and I'd be very grateful, as you explain your view, if
- you'd expound precisely what you mean by that and what
- 17 you done mean.
- $18\,$ $\,$ A. By "self-regulation", I mean that the press should be
- 19 responsible for policing its own rules, should do so
- 20 effectively -- that perhaps we will come onto in due
- 21 course.
- 22 MS PATRY HOSKINS: Yes.
- 23 A. As I say right at the end of my statement of evidence,
- 24 I think in any self-regulatory system there is scope for
- 25 having some sort of statutory backstop to assist with

Page 7

- 1 current issue, it was nonetheless clearly important, and
- 2 as I had taken over, as Secretary of State,
- 3 responsibility for the government's policy generally
- 4 towards the media and press regulation, I thought it was
- 5 important to meet Lord Wakeham -- I didn't know him
- 6 particularly well prior to that point -- to hear what
- 7 his views were, how things were going, and to indicate
- 8 that -- I think at that stage I thought that probably
- $9 \qquad \hbox{ the steps that had already been taken didn't go really} \\$
- 10 far enough, but I wanted to have a candid and
- 11 constructive discussion with him about what the future
- might hold.

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- 13 Q. Okay. So you --
- 14 LORD JUSTICE LEVESON: Presumably you knew Lord Wakeham?
- 15 A. I knew him a bit but more as a figure across the other
- side of the House of Commons until he was translated to
- 17 the House of Lords. I'd seen him at the dispatch box
- 18 but I didn't particularly know him well personally.
- 19 I got to know him quite well over the succeeding months.
- 20 MS PATRY HOSKINS: Around this period, May/June 1997, you'd
- just taken up this post. You've explained that you met
- 22 with Lord Wakeham to discuss the future. You've
- 23 explained that at that time the behaviour of the press
- was not particularly in the public eye. What were your
- views though about how the press should be regulated, on
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- 1 the enforcement of decisions that are made by the
- 2 self-regulatory system, but the decisions themselves
- 3 should be made by a body that is voluntarily put
- 4 together by the press rather than imposed upon them by
- 5 government decision.
- 6 LORD JUSTICE LEVESON: Right. Sorry, I'm going to just
- 7 press you on what that means. Decisions by a body
- 8 voluntarily put forward by the press. So you don't
- 9 necessarily mean editors?
- 10 A. Not necessarily editors at all. Indeed, I think it
- 11 could be argued that having current editors sitting on
 - the adjudicatory body for the press is not necessarily
 - a particularly sensible way of proceeding.
- 14 LORD JUSTICE LEVESON: Well, so this is why I'm simply
 - trying to explore what the concept is, because although,
- save for Sir Christopher Meyer, most people have
- 17 concerns about the current PCC system but describe it as
- self-regulatory, that's very much dominated by press
- 19 editors on the Code Committee, and indeed the chairman
- 20 is selected effectively through PressBoF, which is very
- 21 much dominated by, if not exclusively staffed -- I'm not
- sure, I think there may be some independent people there
- 23 now -- by the press. So if they can nominate everybody
- 24 who's on it -- I'm not suggesting this is quite how it
- works -- then the element of having independent

Page 8

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1 engagement becomes a little bit more diffused because 1 more difficult to find somebody who is truly independent 2 you can choose who your independent people are. 2 in the way that I am sure is possible for ASA to staff 3 3 A. I think the key is having someone in the chair who is the Press Complaints Commission. 4 4 unimpeachably independent, and I think John Wakeham If I give as the example -- I think I'll be 5 actually was in the way in which he ran the PCC. 5 corrected because I'm going back some time in my memory. 6 I think that's also why he was right to bring in 6 Lord Hunt explained that he was asked in terms whether 7 7 significant people from the world outside who had no he believed in a free press and freedom of speech in 8 8 connection whatsoever with the press. a way that some might think meant: "Are you going to be 9 9 The best analogy I can draw -- and you've already on our side?" 10 10 received evidence on this -- is with the Advertising I'm not suggesting that anybody asked him that in 11 11 terms, and I'm not suggesting that was the intention Standards Authority, where, as chairman, I am appointed 12 by ASBoF, which is the advertising equivalent of 12 behind the question, I say immediately, but that is the 13 PressBoF, which provides the money for the system by 13 risk or there is a perceptive risk which wouldn't exist 14 14 raising a levy on all advertising spend. ASBoF is an in advertising, I think. Correct me if you think I'm 15 entity primarily drawn from the advertising industry but 15 wrong. 16 in seeking a chairman for the ASA they are required by 16 A. No, no, you're absolutely right to draw quite a clear 17 the memorandum and articles of the ASA to look for 17 distinction between the two, and it is probably --18 someone who has had no connection whatsoever with the 18 almost certainly easier to regulate advertising 19 19 advertising industry in the course of their life. So effectively than it is to do the same with the press 20 they are required to look for someone who is totally 20 because in advertising there is a clear defined purpose 21 21 independent. of selling a product to the public and there are clear 22 Then appointments to the ASA council are made by 22 consumer protection ambitions to be met. 23 that chairman and in drawing those appointments, he is 23 In the case of the press, it's a matter of 24 24 required to choose at least two-thirds of the members expression of opinion, of description of people or 25 who have also had no connection whatsoever with the 25 actions that may or may not have a harmful or Page 9 Page 11 1 advertising and marketing industry during the course of 1 detrimental effect on those people that they're talking 2 2 their life. So built into the system is a robust 3 provision for independence of mind and thought. 3 LORD JUSTICE LEVESON: The concept of public interest. 4 LORD JUSTICE LEVESON: I must let Ms Patry Hoskins continue, 4 A. Much more difficult. And the concept of public interest 5 but let me just ask whether the parallel quite works 5 in relation to advertising is relatively clearly and 6 between the ASA and the Press Council, because in 6 easily defined. The concept of public interest in 7 relation to the ASA, you have standards of appropriate 7 relation to the press is much more difficult to define. 8 advertisements, and if an advertiser wants to advertise 8 So you're absolutely right to identify that there are 9 in a way that offends those standards, then the media 9 major differences between the two. 10 and the rest simply won't publish the adverts. 10 The other difference that you have also identified 11 A. Yes. 11 is that we have a very effective sanction at the ASA, 12 LORD JUSTICE LEVESON: There's a tremendously easy sanction. 12 which is that if we find an advertisement to be in 13 That's the first thing. 13 breach of the code then it cannot appear in any medium, 14 The second thing is that there is nothing perhaps 14 and there is an agreement across all parts of the media 15 quite so fundamental within advertising as within the 15 that if there is an adverse adjudication, they will not 16 press, because we can all agree with truthful, honest, 16 carry the ad. That's a quite powerful sanction. 17 decent -- I can't remember the phrases. 17 LORD JUSTICE LEVESON: I'm sorry. 18 A. Legal, decent, honest and truthful. 18 MS PATRY HOSKINS: No, no, please. 19 LORD JUSTICE LEVESON: I didn't do badly. 19 We'll come back in due course to this very 20 20 A. Very good. interesting issue of the future of press regulation and 21 LORD JUSTICE LEVESON: -- for advertising, but actually, in 21 if any analogy can be drawn with the authority's work, 22 22 relation to intense desire for a free press, that that would be very useful. 23 23 actually raises other issues which create a tension I'm just going to continue to take you through the 24 perhaps between the press and those who are likely to 24 chronology. We'd been discussing your views back in 25 25 early or mid-1997 when you took office, and you've told complain about the press, and therefore it may be rather

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us about your views, that you believe very much in self-regulation. It's at that point that Lord Justice Leveson asked you about what that meant.

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If you look at paragraph 5 of your statement, you confirm that. You say:

"The only way to secure the objective of ethical behaviour ... is through the self-regulatory route."

But you go on to say that you think it must be far more robust and effective than it has been, and that your views during your time at Secretary of State probably became stronger in wanting to see more robustness in the operations of the PCC. As you identify -- and we'll look at this in some detail -there were significant improvements in the wake of the death of Diana, Princess of Wales. But they were still, you say, insufficient. We will look at that in some detail if we can.

If we just, again, look at dates, Diana Princess of Wales died on 31 August 1997, so a few months after you took office. You explain in paragraph 6 of your statement that following her death there was much public concern about the actions of the paparazzi who had chased her. In fact, you go on to tell us, further down in your witness statement, paragraph 9, that in the two or three weeks following her death you received

1 regulation of the press hadn't worked. Is that the

2 feeling that you got from the letters and from the --

3 A. That was very much the burden of a lot of the letters 4 that came in, yes.

5 Q. So quite a contrast from when you'd first taken up 6 office, when public concern didn't seem to be very high,

7 and then suddenly overnight, literally, very high?

A. It had become, directly as a result of the tragedy in Paris, a very hot current topic of public concern and

debate. Q. You tell us at paragraph 7 of your statement that what

12 you did is that on 2 September, so two days after the 13 death, you wrote to the Prime Minister to recommend that

14 the government should not make any hasty public comments

about press regulation, that it might be necessary to 16 look at laws relating to harassment but it would not be

17 desirable or practical to move towards privacy

18 legislation. You also say it was up to newspaper 19 editors and proprietors, in the light of public

20 sentiment, to indicate now what action they proposed and

21 that you would be meeting with Lord Wakeham on

22 8 September.

> Now, just in case there's anything you would like to add, let's look at the actual document that was sent.

If you look behind tab 2 of the bundle you have, you

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1 thousands of letters about press conduct. Can you tell

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2 us a bit about that? Were those from members of the

3 public, from organisations?

A. There were entirely letters -- 1,200 of them -- that

5 came into the department in the couple of weeks or so 6

after the death of Diana, all from ordinary members of

7 the public, and the overwhelming burden of those letters 8 was that the actions of the paparazzi were unacceptable,

press regulation clearly doesn't work, you, the

10 government, have to do something about it and we need 11 much better protection against intrusion.

12 Q. Apart from the letters that you received at your 13 department, can you give us a flavour of how you could

14 gauge public opinion on this issue at that time?

A. It was clearly something that was of general public concern, not just the letters that were coming in to the department but the discussions that were taking place in pubs and buses up and down the country that you pick up

19 from all sorts of different sources, coupled with 20

actually quite a lot of discussion and debate in the

media itself about what had happened, and including, of

22 course, lots of letters to the press that gave the 23

public's view alongside the press' view.

24 Q. I think I heard you -- I think I'd be correct in saying 25 that you said that one of the concerns is that

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1 should see the first page is the letter -- do you call

2 that a letter? Memo? Whatever it is.

3 A. Memorandum.

4 Q. Memo that you sent to the Prime Minister on that date,

5 2 September 1997. You make it absolutely clear in the

6 first paragraph that there should be, essentially,

7 abstinence from any substantive comment on the issue

8 immediately. You explain that the issues of press

9 regulation are complex, have a long history -- obviously

10 we know that and we've just been discussing Calcutt and

11 Calcutt 2 -- and then you say this in the third

12 paragraph:

13 "As the first step, it is for newspaper editors and 14 proprietors now urgently to indicate what action they 15 propose to take in the light of the weekend's events."

16 Then you explain that John Wakeham is now engaged in 17 an urgent review with editors and so on.

18 I understand perhaps the concern not to do anything 19 rash and not to make a statement immediately, but why,

20 in your view, was it for newspaper editors and

21 proprietors to do something about it, given the very 22 strong public opinion and sentiment at that time?

23 A. The first thing to say is that I believe it's a very

24 important lesson for governments not to rush into making

25 hasty pronouncements in immediate response to particular

1 events. Much better to consider, to prepare and to come 1 as a spokesman for the press. He was coming forward 2 2 out with statements and judgments that are much more with ideas and proposals for tightening up the PCC code. 3 3 fully formed some time after the event. Indeed, as He was talking with me about how he intended to get that 4 4 I said in my memorandum to the Prime Minister: agreed by the Code Committee, the public statements that 5 5 "In due course, however, we shall be called upon to he was going to make in order to push the agenda 6 make a clear statement of our position and I shall put 6 forward. My view was that because he was being so 7 7 proposals to colleagues accordingly." proactive, so keen to make progress on this, that My point about the newspaper editors and proprietors 8 8 actually that was much the best way of getting the press 9 now urgently to indicate what action they propose to 9 rowing in behind him. 10 10 take was really to put the onus first of all tonight One of the other things that he admitted to me in 11 11 private was he said, "If the government can keep up some them, to say, "Look, folks, there's a huge amount of 12 public concern out there. What do you, channelled 12 external pressure on me, pushing me all the time to go 13 through the rather able medium of Lord Wakeham, propose 13 a bit further, then that will be very helpful, he said, 14 to do to change your behaviour?" With the thought that 14 in enabling me to make better progress with the editors 15 if that was not going to be sufficient, then government 15 and proprietors." 16 might need to bring further pressure to bear 16 LORD JUSTICE LEVESON: That's: "If you don't do what I say, 17 17 subsequently. you're going to get worse"? 18 Q. That's what you say in the third paragraph: 18 A. Exactly. 19 "This will help establish a benchmark against which 19 MS PATRY HOSKINS: Exactly. You described him as regulator. 20 to consider whether further government action is 20 I think he himself said in evidence that he didn't 21 21 needed." consider himself to be a regulator, but I see your 22 A. Yes. 22 point. 23 Q. Am I right in thinking that essentially you said, "You, 23 A. I think one of the interesting dilemmas of the 24 24 chairmanship of the PCC, especially at that time -- and proprietors and editors, go away and think about it. 25 25 You come up with a proposal and then we will look at it, I think it endures -- is that the chairman is both and Page 17 Page 19 1 decide whether it's enough, and if it's not, we might 1 regulator and a champion. There is a very interesting 2 2 have to propose some further changes ourselves"? potential conflict in those roles, and although 3 3 a succession of chairs of the PCC would probably not A. Yes. 4 Q. Is that basically the position? 4 wish to describe themselves as regulators, they would 5 A. Yes, although of course in the discussions that I had 5 probably have seen themselves more as mediators. 6 6 with Lord Wakeham a few days after I'd put that I think the public were expecting them to be regulators, 7 memorandum to the Prime Minister, I did push him to go 7 and for that period in the immediate aftermath of the 8 further than he was already, at that stage, proposing to 8 death of Diana, I think John Wakeham was stepping up to 9 9 the plate and being a regulator. 10 LORD JUSTICE LEVESON: He was encouraging others to accept 10 Q. We'll come onto the first meeting that you had post the 11 death of Diana in a moment. At paragraph 8 of your 11 restrictions. 12 12 A. Yes. statement, you tell us that your main point of contact 13 13 LORD JUSTICE LEVESON: But how can you ever be both for discussions with the press at that time was 14 Lord Wakeham. You repeated that several times. 14 a regulator and a champion? 15 15 A. I think the nearest anyone has ever come to it is John A. Yes. 16 16 Q. You say that you don't recall much contact with Wakeham. 17 17 proprietors or editors yourself. I want to understand LORD JUSTICE LEVESON: That may be, but are they not not 18 why it was that that view was taken, that you would 18 merely not always consistent but actually inconsistent? 19 simply entrust this discussion that needed to take place 19 A. I think they potentially present conflicts but not 20 20 with the press and Lord Wakeham. always, and there are times when being an advocate for 21 A. I think I took that view at that stage because 21 the freedom of the press sits relatively easily 22 Lord Wakeham was himself keen to take the initiative and 22 alongside a role of keeping the press honest in trying 23 23 to make the running. I think during that period of the to preserve those freedoms, and I think it is possible 24 three or four weeks after 31 August, Lord Wakeham acted 24 to be both, but you have to have some pretty clearly 25 25 defined boundaries and I think they've never been in -primarily as a strong regulator of the press rather than

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1 in terms of the role of the chairman of the PCC, I don't 1 especially in the light of, for example, events like the 2 think they've ever been as clearly defined as 2 death of Princess Diana. 3 3 potentially they ought to be. We turn now to the meeting that you had. You told 4 LORD JUSTICE LEVESON: That's probably the point, because if 4 the Prime Minister you were going to have a meeting with 5 I wanted to complain to the PCC, or to a body because 5 Lord Wakeham to discuss potential changes, and you met 6 I believed that I'd been unfairly treated by the press, 6 with him on 8 September. 7 I'm not sure I would want to go to somebody whose role 7 If you look behind tab 2, behind the memo that we 8 in any sense was to be a champion of the press. 8 were just looking at to the Prime Minister, you will 9 A. Perhaps "champion of the press" is not the right term. 9 find a document dated 9 September 1997 which appears to 10 10 "Champion of the freedom of the press" might be a better be a minute of your meeting with Lord Wakeham on 11 11 are description, because I think it is possible to have 8 September. Do you see that? 12 12 confidence in the ability of someone to adjudicate, to A. Yes. 13 analyse the information in front of them, to come to 13 Q. It's prepared by the principal private secretary. 14 a robust decision against the rules that are laid down, 14 A. Yes. 15 whilst at the same time defending, in broad and general Q. What you tell us about that meeting in your statement, 15 16 terms, the right of free expression in a free society. 16 before we look at the detail of it, is that you know 17 LORD JUSTICE LEVESON: I understand that, but speaking from 17 that he was seeking urgent changes to the code and that 18 a judicial perspective, I think I might be concerned, if 18 you suggested further possible measures which could be 19 I were a complainant, that such a person might use the 19 contemplated in particular in relation to the actions of 20 rather imprecise language of the code and define it 20 the paparazzi. 21 against me, rather than absolutely square, because of 21 If we look at the document itself, the minutes, it's 22 their emphatic interest in a free press. Of course one 22 clear there -- paragraph 2, you say that you welcome 23 has to be conscious of the importance of a free press 23 Lord Wakeham's initiative in setting in hand a review of 24 and the importance of freedom of expression, but I think 24 what can be done to control the activities of the 25 that if I were approaching somebody who was tasked with 25 paparazzi. Then, in paragraph 3, Lord Wakeham explains Page 21 Page 23 1 judging whether I had a legitimate complaint against the 1 that it might take some time. Paragraph 4, Lord Wakeham 2 press, I would want the scales to be square, not tilted. 2 explains the possible programme of action. Paragraph 5, 3 A. And the scales absolutely have to be square. Because of 3 he explains that this is all going to be set out in 4 the grey area nature of some of the decisions that will 4 a speech to the London Press Club. 5 need to be made by any press regulatory body, I can see 5 At paragraph 6, your response to that. You welcome 6 absolutely the point about the need for the complainant 6 the agenda, you wish him success. It's explained that 7 to have confidence, but if the rules are as clear as it 7 you were particularly concerned that there should be 8 is possible to make them and if the process by which the 8 a permanent change in press attitudes and that the press 9 chairman and the other members of the PCC come to their 9 should not slip back into old ways when the events of 10 conclusions are clear and transparent and follow 10 the past week have receded from recent memory. You say 11 11 absolutely robust procedure, then I think it is possible that the government's natural instinct is to strengthen 12 for a complainant to have confidence. 12 legislation rather than to introduce any privacy or 13 MS PATRY HOSKINS: Perhaps we'll come back to discuss this 13 harassment legislation and that you would watch 14 when we're discussing the role that Lord Wakeham played 14 developments with interest. 15 during the passing of the human rights bill, but we'll 15 A. To strengthen self-regulation. 16 come back to that in a moment. 16 Q. Sorry, strengthen self-regulation. 17 We're still going through the chronology. You'll 17 At paragraph 7, there's then a question on timescale 18 understand why we're doing this, Lord Smith. If we look 18 able and then there's a discussion right at the end on 19 at the terms of reference of this Inquiry, one of the 19 procedural matters, ie whether it should be disclosed 20 things that Lord Justice Leveson will have to do is 20 that a meeting has taken place. 21 to -- I just want to quote the exact paragraph: 21 I don't see any reference in that to you saying, 22 22 "... has to consider the extent to which there was Lord Smith -- well, you say in your statement that you 23 a failure to act on previous warnings about media 23 suggested further possible measures that could be taken. 24 misconduct." 24 I don't see any mention of this. I'm wondering whether

So we need to understand what the PCC was doing, Page 22

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that's been missed out in the minute or --

following the death of Diana to Lord Wakeham. The

2 2 government could have been more proactive, it might be explaining his proposals. Under (c) I say -- it says: 3 3 "The Secretary of State stressed that it was said, during that period, in essentially suggesting 4 4 changes. Would that be a fair assessment or -important to address the means by which photographs were 5 5 taken rather than their source." A. I don't think that would be fair at all because the 6 Which reflects back on some of those points about 6 discussions that we had on 8 September were very much 7 7 the paparazzi that I made in my statement. And then, an assessment of what he was proposing, coupled with 8 8 a range of proposals that I was making. In the under (e): 9 "The Secretary of State suggested that the press 9 subsequent couple of weeks, there was further discussion 10 10 might, on such occasions, agree to take pooled between our offices, so the government were keeping very 11 11 much in touch with what Lord Wakeham was proposing. Our photographs. Mr Phillips [who was my official] noted 12 12 that there was precedent for press co-operation in the view was that it was up to him to come forward with 13 13 matter of news blackouts." proposals at this stage. It wasn't up to the government 14 14 Then, under (f): to come forward with proposals. 15 "The Secretary of State said that Lord Wakeham might 15 Q. Right. 16 also usefully look at the definition of the public 16 A. When I met with him again on 24 September, the three 17 17 interest defence in the code, which he noted was more principal things that I said -- basically I said to him at that point: "You've done pretty well to get this 18 widely drawn than that favoured either by the Calcutt or 18 19 Select Committee reports." 19 far", which he had, and he had been, I think, remarkably 20 So there were various points where Lord Wakeham was 20 successful in getting some rather reluctant press 21 21 saying, "I'm proposing this", where I was saying, "How editors and proprietors to agree to a range of changes. 22 about going a bit further and doing that?" 22 But the three things that I said, "Really, this isn't 23 23 Q. Okay, so there was a discussion about options. You then good enough yet" were firstly the need for the PCC --24 tell us in your statement at paragraph 11 that you kept 24 Q. Can I interrupt you just so we can actually be looking 25 25 in regular contact with him and his office over the at the minutes of the meeting of 24 September. It's not Page 25 Page 27 1 following three weeks as he worked up his proposition 1 an exam. You can look at what you actually said. It's 2 for changes to the code. So he worked them up. Did you 2 just on from tab 2. It's minutes dated 29 September 3 3 1997, but they refer to the meeting on 24 September. Do have any other input into the changes? Other than that 4 discussion on 8 September and the discussions that you 4 you see that? 5 made, did you have any other formal input into the 5 A. Yes. 6 changes that he ended up proposing? 6 Q. We can see there from paragraph 2 that you do say quite 7 A. There was no -- until 24 September, which was the day 7 clearly: "Thank you very much for your proposals but the 8 before he made his public statement, when I next met 8 press must stay in the letter and spirit of 9 him, there was no formal meeting, and as far as I am 9 undertakings", and that there remain areas in which the 10 10 aware, there was no formal correspondence during that press needs to make further progress. 11 time, but there would almost certainly have been 11 Then, over the page at paragraph 5, this is where 12 discussions between my private office and his office at 12 you set out that there are three further areas where the 13 the PCC about the evolving nature of what was happening. 13 Press Complaints Commission needs to address. 14 14 Q. Tell me if my assessment is unfair, but the impression I interrupted you when you were about to tell us what 15 that's coming out here is that Princess Diana dies and 15 those were. 16 effectively you write to the Prime Minister and you say, 16 A. These were indeed what I was recalling as being the 17 "Well, don't do anything hasty, I'm going to be meeting 17 three principal areas where I thought further progress 18 with Lord Wakeham and I'll discuss with him what the 18 was absolutely needed. 19 right thing to do is, and then if anything else needs to 19 The first was the issue of sanctions. The second 20 20 be done, the government can have a think about that." was the definition of the public interest used to 21 You then meet with Lord Wakeham and have an informal 21 justify intrusion, and the third was the way in which 22 discussion about the proposed changes. He works up the 22 the Commission's procedures were pretty much entirely 23 proposals and on 25 September he's, essentially worked 23 reactive rather than proactive or intervening before the 24 up the proposals himself. One might say that the 24 25 25 government essentially handed over all responsibility Q. Of course, if we look back in the note to paragraph 4,

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A. There are some references where Lord Wakeham was

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- 1 two of these issues are ones where Lord Wakeham had said 2 to you, in effect: "I've been able to make absolutely no
- 3 headway on these points." Look at paragraph 4:

"He explained that there were two issues on which he had been unable to make headway [presumably with editors and proprietors]. The first was on sanctions against newspapers that broke the code. This needed a great deal more thought."

Then on the issue of children of well-known figures, that's fine, but they wouldn't accept that spouses should be similarly protected. Do you see that?

A. Yeah. On the first issue of sanctions, I think we all accepted that this was a very difficult area. It's still a very difficult area, referring back to our exchange earlier on about the rather effective sanctions that are available to the ASA that would not be similarly translatable to any revamped press regulatory body.

The issues of the definition of "public interest" and the proactive role that the PCC could or ought to play, those had not, at that stage, as far as I can recall, been part of the Lord Wakeham agenda. He did develop a procedure subsequently where he personally would intervene with editors prior to a story appearing, but that was very much part of his personal style and

- 1 difficulties in this whole area is that the balance of
- 2 power between government and the press is a complex
 - matter and one which -- there tends to be much more
- 4 equality of power than there is with the role of
- 5 government in many other areas of national life. There
 - are moments when the balance changes in the government's
- 7 favour, and the death of Diana was one such moment,
 - where there was clear public demand for change. And so
- 9 the changes that were put in place -- and there were
- 10 quite a considerable number of changes that Lord Wakeham
- 11 was able to put in place at that point -- were able to
- 12 be carried through, sometimes, I suspect, with gritted
- 13 teeth amongst the editors and proprietors, because there
- 14 was a public wind at the back of change. But that
- 15 moment did not last for terribly long, and the
- 16 equilibrium returned more or less to normal, which makes
- 17 it very difficult for government to take strident steps 18
 - to restrain press activity.

I would suggest that we are living through currently another such moment, where the balance has changed and it is possible to make further progress, but these are

- 22 moments that have be seized.
- 23 Q. Princess Diana died on 31 August 1997 and you were
- 24 Secretary of State until 2001. Just looking back over
- 25 your years, how long did that period last, where there

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1 relationship with editors rather than a wholesale change

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- 2 in the reactive/proactive nature of the way the PCC
- 3 worked.

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- 4 Q. Can I stick on sanctions for the moment. It's clear
- 5 from this minute of the meeting -- two things are clear.
- 6 The first is that Lord Wakeham says, "Look, I've made no
- 7 headway on sanctions. I'll need to give that a great
- 8 deal more thought."
- 9 Secondly, you say, "Despite that, frankly, it's one area which you need to address. It's something which
- 10
- 11 still firmly remains on the agenda." Am I fairly
- 12 assessing it?
- 13 A. Yes.
- 14 Q. We know from the announcement the very next day that 15 sanctions did not form part of the changes proposed by
- 16 Lord Wakeham and in fact they never did form part of any
- 17 of the changes ever proposed by Lord Wakeham. Did you
- 18 take any steps yourself to move forward the agenda on
- 19 this issue or any other steps to ensure that this was an
- 20 issue that continued to be reviewed and taken seriously
- 21
- 22 A. It's something that I raised from time to time, but I
- 23 have to say with as little success subsequently as
- 24 Lord Wakeham himself had had at that early outset.
- 25 I suppose it's worth saying that one of the

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- 1 was that window of opportunity to make a difference?
- 2 A. Probably, I would estimate, for no more than two or 3 three months.
- 4 Q. Okay. And after that, what? The position became much
- 5 as it had been when you first took office?
- 6 A. Yes, although we did have a considerable amount of
- 7 discussion, of course, as I've reflected in my
- 8 statement, about the incorporation of the European
- 9 Convention on Human Rights into British law and the
- 10 potential impact that that might have on the press and
- 11 press freedom and also on press activity.
- 12 Q. We'll come back to that. Moving through the chronology,
- 13 we know that the next day after this meeting,
- 14 Lord Wakeham's proposals were published and you describe
- 15 the proposed changes in some detail in your statement.
- 16 You explain that these included increased protection
- 17 against the publication of photographs obtained by
- 18 persistent pursuit or in places which might legitimately
- 19 be regarded as private, extended protection for children
- 20 between 16 and 21 -- of course, that was in direct
- 21 response to the protection needed for the young princes
- 22 who had lost their mother -- a ban on payment to minors
- 23 for stories, requirements for intrusion into grief or
- 24 shock to be handled with sympathy and then various other
- 25 small changes, including a small change to the "public

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interest" definition.

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You say that on the day of publication you issued 2 3 a press release welcoming the changes but still saying 4 that, yes, the PCC had done well, but that you expected 5 newspapers to abide by all of this and that you expected

6 the Commissioner and the newspaper industry to take the 7 process of self-regulation even further.

So again, we get the same scenario: yes, you've done well, but you kept pushing to say, "I want you to continue to do rather more." Would be that a fair assessment?

12 A. That would be an entirely fair assessment, yes.

13 Q. At that stage, you said in evidence earlier that one of 14 the reasons you were pushing is because Lord Wakeham had 15 asked you to. Essentially he'd said, "Look, if you put 16 a bit of pressure on me, then it would be easier for 17 editors and proprietors to accept the changes I've 18 proposed."

> So were you pushing because essentially there was this discussion with Lord Wakeham about needing to keep up the pressure or was the pressure because you genuinely believed or thought that you could actually push them into doing rather more?

24 A. The answer is both.

25 Q. Did you ever achieve any more than Lord Wakeham himself Page 33

24 and more generally on the press through public

major things that I kept on pressing.

successful where you were not?

stronger in their impact on the press.

O. You tell us, in effect -- in fact, expressly -- in

that you would have liked to see, but of course all

paragraph 15 that you made no headway with the proposals

Lord Wakeham's proposals did translate to changes to the

code. Why was that? Why was it that he was able to be

A. Well, he was able to be successful because the proposals

proposals that I was making would have been considerably

that he was making were relatively modest. The

The other reason that I suspect he was quite

successful was that there was external pressure, both

from ourselves in government but also from the public,

and the editors and proprietors at that time recognised

they had to do something in order to demonstrate that

Q. You've described three things that you would have done

that you think would have made a difference. Are there

A. Short of introducing government legislation, probably

not, because bringing pressure to bear both on the PCC

any other steps that you think you could have taken to

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advance those in any way?

they had learnt some lessons.

statements and speeches and so on were the tried and Page 35

1 put forward.

- 2 A. No, and it's a matter of some regret to me that I didn't 3 perhaps often enough return to the fray subsequently 4 over the course of the following three years.
- 5 Q. In paragraph 13 of your statement, you tell us that you 6 wanted to keep the pressure up on the PCC in light of 7 these proposals. On 25 November, you wrote a minute to 8 the Prime Minister essentially circulated to all Cabinet 9 colleagues, saying:

"Although these proposals are a welcome step, I don't think they go far enough to ensure a proper balance between the freedom of the press and the rights of the individual."

You've just told us that you never did achieve the changes that you would have liked to see. Two things, really. Which changes do you think would have made a difference? Two, why do you think that they weren't achieved?

A. I think the three principal changes that I think had crystallised in my mind and in the mind of government colleagues following the meeting on 24 September with Lord Wakeham were those three that we identified from that meeting which related to sanctions, the definition of public interest and the potential for the PCC to become most proactive, and I think those were the three

Page 34

1 tested ways of bringing government pressure to bear.

2 The possibility of including legislation was something

3 that I was very anxious to avoid, if at all possible.

4 Q. I'm told that Guy Black -- if you give me a moment, I'm 5 just going to look at the note we were just looking at

6 of your meeting. (Pause)

7 LORD JUSTICE LEVESON: I'll ask a question, which might take

8 Ms Patry Hoskins slightly out of order, but she can

9 revert. It is a matter of fact, isn't it, that the

10 calamity of the press behaviour in relation to

11 Princess Diana, which led to this activity and some

12 change was then followed by the activity of the press

13 revealed in Motorman in 2002, and the activity of the

14 press revealed by phone hacking in the same period. So

15 the moment might only have been a moment, but it wasn't

16 really very enduring.

17 A. I think there were some changes that did endure, but as

I say, I think in paragraph 20 of my submission, where

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20 "Looking back, I should probably have been more 21 active in continuing to press the case for further change, especially once the immediate public concerns

22 23

had died down."

24 And just earlier in that paragraph I say:

25 "Lord Wakeham's changes did lead, for a period at Page 36

1 least, to more acceptable behaviour on the part of the 1 and especially, I hesitate to say, you, sir -- where all 2 2 press." of us have to get to. The difficulty is finding the 3 3 I'm afraid that after a while, some old habits began precise framework that will take us there. 4 4 There are clearly activities which are plainly to creep back. 5 LORD JUSTICE LEVESON: But isn't that the problem with all 5 illegal. For those, having robust legal sanctions in 6 this? One can go back to the end of the last war -- and 6 place is obviously the way to go. There are other 7 7 I've said this several times in the course of the behaviours which are intrusive, which are unnecessarily 8 Inquiry. Royal Commission, behaviour improves. Royal 8 damaging to individuals, which are unpleasant and 9 Commission, behaviour approves. Calcutt 1, behaviour 9 unsavoury, and which need to be somehow curbed and 10 10 doesn't really improve. Calcutt 2, slight changes. controlled --11 11 LORD JUSTICE LEVESON: Except where there's a dramatic and Then this, Princess Diana, and try a little harder 12 12 again. Then all these other things and nothing much obvious public interest. 13 happens and it all goes to bed and then the Guardian and 13 A. Yes. 14 eventually -- we don't need to recount recent history. 14 LORD JUSTICE LEVESON: And I recognise that, but if one just 15 How many times can we do this? 15 takes your first point first, plainly illegal, robust 16 A. I think it's probably fair to say that for the two or 16 legal sanctions, this goes back to the example 17 three years following the Wakeham changes immediately 17 I provided the other day. Many persons have sat there 18 after the death of Diana, the conduct of the press did 18 and said, "Well, this isn't really a failure of the 19 improve. Certainly in terms of the specifics of the 19 press; this is a failure of the criminal law", and I ask 20 changes, their approach to the coverage of the princes, 20 whether speeding is a failure of the criminal law or the 21 21 offence of the motorist who is speeding, and whether we handling of children and minors, some of the intrusive 22 taking of photographs, there was a palpable change of 22 don't have to have a system whereby the press accept 23 23 behaviour. But after that two to three-year period, they don't need a policeman sitting at their shoulder 24 24 and to say, "Well, you can't blame us for doing this, I think it began to slip, and as we know from all the 25 25 evidence that you've been receiving, it slipped that or the other because the law was there and didn't Page 37 Page 39 1 grievously in quite a number of ways. 1 enforce the law" is, to my mind, not an argument that 2 The dilemma always is the freedom of one newspaper 2 causes me to be sympathetic to the view, but tell me. 3 3 to engage in inappropriate activity is the freedom of It's your evidence, not mine. 4 another newspaper to investigate what they're doing --4 A. No, clearly someone who breaks the law, it is their 5 LORD JUSTICE LEVESON: No, with great respect, I don't 5 responsibility for having done so. One of the problems, 6 accept that that --6 I suspect, in all of this is the culture that develops 7 7 within the press -- not all parts of the press, but in A. I don't equate them, I have to say, but one of my 8 reasons for wanting to find a way of securing the 8 some parts of the press -- where it is assumed that the 9 9 end justifies the means, and the press needs to remind genuine freedom of the press, whilst at the same time 10 10 ensuring that behaviour is proper -- and that's a very itself that that is not always the case. But how we 11 11 difficult equations to make. One of my reasons for produce a framework which enables the culture to change 12 wanting to do that is that the freedom of the press can 12 and to change permanently rather than just for another 13 13 result in real public interest being secured. two or three years, that's what needs to be tried for. 14 14 LORD JUSTICE LEVESON: I have no doubt about that at all, I doubt if we'll get it perfect, but it can be better 15 15 and I remain obviously open to persuasion, but I do not than it is now. 16 16 accept that there would be any curtailment on the LORD JUSTICE LEVESON: I can live with something short of 17 17 freedom of the press to hold all those in office to perfect. What I personally would find it extremely 18 account, whether they be politicians, local government 18 difficult to live with is improving things for two 19 workers, health service workers, judges, or to indulge 19 years, because I would feel that a lot of people had 20 20 in investigative journalism, is imperilled by a system spent a lot of money and put a lot of effort into not 21 that prevents the type of behaviour which I've heard so 21 very much. 22 much about in the last few months. 22 A. Mm. 23 Now, if you think I'm wrong about that, I'd be very, 23 LORD JUSTICE LEVESON: And that's everybody here and 24 very interested to hear it. 24 everybody who's sat where you're sitting, those who have 25 25 A. You're not wrong at all and that must be what all of us, told about the invasions of their privacy, who've gone

Page 38

1 through the process of giving evidence in public to 1 that he thought, "I may as well aim high and then we'll 2 identify the extent to which they've suffered at the 2 end up with a compromise", I think. Is that your 3 3 hands of the press, and the public money. So two years recollection, that he was responsible essentially for 4 would represent, for me, a real failure, I think. 4 tabling that particular issue? 5 A. And I have to hold up my hands and say the changes which 5 A. I think he and others. I don't think he was solely 6 we were able to secure in 1997 and which lasted for 6 responsible, but he was a very effective voice in 7 a two to three-year period in terms of their impact and 7 arguing that case and certainly he gave every impression 8 effect, I regret that I didn't see properly at the time 8 at the time of believing in it rather more than as 9 that this wasn't enough and we should have pushed 9 10 further. 10 As I point out in my evidence, there were some quite 11 MS PATRY HOSKINS: Of course, one of the changes that was 11 robust discussions within government on this subject, 12 12 made in that two to three-year period was the coming and the law offices in particular were powerfully 13 into force of the human rights bill becoming the Human 13 opposed to any suggestion that the press or the PCC, as 14 14 Rights Act. Can I touch on that briefly. We've public bodies, should be exempt from the provisions of 15 discussed it with Lord Wakeham. 15 the privacy part of the Convention. 16 You tell us at paragraph 16 that fairly soon after 16 Q. Of course that didn't happen. We ended up with 17 17 all these discussions about changes to the code, the section 12. 18 focus changed because there was now a government 18 A. Yes. 19 proposal to incorporate the Human Rights Convention into 19 Q. But what I want to ask you is about the appropriateness 20 British law. You tell us that getting the balance right 20 of the chairman of the PCC essentially lobbying for 21 between articles 8 and 10 was something that you were 21 a complete exemption and then eventually being one of 22 very anxious to secure and there were many discussions 22 the parties to the agreement, to the solution, which 23 within government, and between yourself and the PCC and 23 ended up being section 12. In your view, is that an 24 editors at that stage, to establish how you could best 24 appropriate thing for the chairman of the PCC to do? 25 achieve your objectives. 25 A. As things stood at the time, I think the role that Page 41 Page 43 1 At paragraph 17 you say: 1 Lord Wakeham played in relation to the press meant that 2 "The press argued strongly that they were worried 2 if you wanted to find a collective view that was likely 3 that the human rights bill would introduce a judge-made 3 to find purchase across the editors and proprietors of 4 law of privacy by the back door as cases were gradually 4 the press -- remember, these are fiercely competing 5 brought. They were demanding at the outset that the PCC 5 individuals quite a lot of the time -- if you wanted to 6 6 and the press should be exempted from the provisions of secure a collective view, then Lord Wakeham was the 7 the human rights bill." 7 route to channel it. So I think at the time everyone 8 When you say "the press" were arguing strongly and 8 accepted that this was an appropriate role for him, both 9 then you go on to say "they were demanding that the 9 as an individual but also as chairman of the PCC, to 10 press and the PCC should be essentially exempted", do 10 play. 11 you mean Lord Wakeham? 11 If you ask me in general terms: "Is it an 12 A. No, I mean both the press and Lord Wakeham. It was an 12 appropriate thing for the body that regulates the 13 argument that was being put quite strongly by a number 13 press?", probably I would have to say now: no. 14 14 of editors and proprietors, by Sir David English Q. You then go on in your witness statement at paragraph 20 15 15 particularly, who was the chairman of the PCC Code to say that you believed at the time the changes were 16 Committee, and by Lord Wakeham, and in a way, when we 16 made that they'd make some difference but you didn't 17 got to these few months of discussion about the Human 17 believe that they would resolve the problems completely. 18 Rights Act, Lord Wakeham had moved from being in 18 With hindsight, the view is stronger. You say the 19 19 regulator mode, which he had been the changes led to a period where some more acceptable 20 20 previous September, into being champion of the freedom behaviour took place but then you say -- and you've 21 of the press mode by the time we got to these 21 already touched on this: 22 22 discussions. "I'm afraid that after a while, some old habits 23 23 Q. He suggested that the press should be exempted from the began to creep back, and in any case there had been 24 provisions of the human rights bill initially. He 24 little progress on proactive work by the PCC on the

explained to us that that was a tactic, essentially,

Page 42

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public interest test and on effective sanctions."

Day 75 pm Leveson Inquiry 1 1 You go on to say at the end of the paragraph that 2 2 you still believe, despite this, that strong 3 3 self-regulation is the right answer but it does have to 4 4 be demonstrably strong and that can't be said of the PCC 5 at present. 5 the decision --6 Earlier when you gave evidence, you had an exchange 6 7 7 with Lord Justice Leveson about the ASA example and you 8 8 were asked a number of questions about whether or not 9 that example could successfully translate to a new 9 10 10 regulatory body which regulates the press. We've 11 11 covered that in some detail now. Is there anything else 12 12 that you would like to say? You cover this at 13 paragraphs 22 and 23 of your statement, if you want to 13 14 14 refresh your memory on what you've said to us in 15 15 writing. Is there anything in particular that you would 16 like to add to what you've already said? 16 have to do it. 17 17 A. I think the two things I would add, apart from the 18 importance of perceptible independence of the council 18 19 that makes the decisions, are firstly finding effective 19 20 sanctions in relation to the press -- the most obvious 20 21 21 sanction would be a requirement for equal prominence. 22 A system of fines of some kind has been mooted many 22 23 times. Very difficult to put in place, but nonetheless 23 24 24 should certainly be considered as a way of toughening 25 the ability of the PCC or its successor to make 25 Page 45 Page 47 1 a newspaper recognise that it has made a mistake and to 1 2 2 deter it from making a similar mistake again. 3 3 The other point I'd make is that ultimately the ASA it happens. 4 system has two statutory backstops. In relation to the 4 5 non-broadcast media, it's currently the Office of Fair 5 my mind, of course, you are viewing whether the 6 6 Trading. 7 O. Yes. 7 identify. 8

enable decisions of a self-regulatory body to be enforced effectively might well have quite a lot to be said for them. Rather than having direct statutory control or direct -- a government-appointed body making LORD JUSTICE LEVESON: There's no question of my going towards a government-appointed regulation. A. If you still maintain a body that is voluntarily put together by the press, as we discussed earlier on, but make sure that its decisions are enforceable by having some sort of statutory authority underpinning it, I think that might provide a more effective ability to have -- for the press to have regard to. LORD JUSTICE LEVESON: Just think about the word "voluntarily". If the ASA did not exist, Ofcom would A. In relation to broadcast media, yes. LORD JUSTICE LEVESON: Yes, or the OFT. A. In relation to the non-broadcast media, there is no statutory provision about advertising responsibility. If the ASA didn't exist, I suspect any government would have to put together something to replace it. LORD JUSTICE LEVESON: Yes. A. But the industry has always -- the advertising industry has always recognised that in order for advertising to be effective, it has to have some degree of trust from consumers, and this is a way for them of ensuring that

A. In relation to the broadcast media, it's Ofcom. Indeed, 9 all our work in the broadcast arena is done on 10 a co-regulatory basis on Ofcom's behalf rather than on 11 a self-regulatory basis.

I think having those back stops in place, which are hardly ever invoked -- we've referred, I think, two companies to the OFT in the course of the last four years. One was Ryanair, one was Groupon. In the case of Ofcom, I think there have been one or two cases of Ofcom taking over a licence inquiry into a particular broadcaster because of a persistent offence. So very rarely invoked, but the existence of the backstop means that our adjudications are probably taken more seriously by the people who receive them than if the backstops did not exist.

23 LORD JUSTICE LEVESON: Why shouldn't that happen for the 24

25 A. I think the potential for having a backstop in order to

Page 46

- LORD JUSTICE LEVESON: Yes. But again, as I'm examining in
- advertisement placed fits the standards that you
- 8 A. Yes.
- 9 LORD JUSTICE LEVESON: So to that extent, the criticism that
- 10 you make is directed not to the medium through which the
- 11 advertisement is being put out to be the public; it's
- 12 directed to the person who is putting the advertisement
- 13
- 14 A. Yes. It is the advertiser who is -- who carries
- 15 responsibility for the advertisement, although, having
- 16 said that, in the case of broadcast advertising, it is
- 17
- the broadcaster who ultimately carries responsibility,
- 18 but they will, of course, pray in aid the case that the
- 19 advertiser themselves has made to them.
- 20 LORD JUSTICE LEVESON: Yes, and to such extent as they've
- 21 been convinced by the advertiser, then doubtless they
- 22 will have remedies back against the advertiser. I'm not
- 23 trying to look at the contractual arrangements. But
- 24 there isn't that same one stage removed in relation to
- 25 the press.

Page 48

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1	A. That is indeed true and that is why it is more difficult	1	LORD JUSTICE LEVESON: What you're championing then is your
2	both to devise sanctions but also to get buy-in from	2	code, actually.
3	right across the press. One of the reasons the ASA	3	A. Yes.
4	system is effective is that there is buy-in across the	4	LORD JUSTICE LEVESON: You're not championing the industry;
5	whole of the advertising industry. Everywhere	5	you're championing the code and the effectiveness of the
6	recognises that this is a system that ultimately	6	code.
7	protects advertising, and simply for example, good	7	A. Absolutely.
8	companies who are good advertisers, who follow the code,	8	LORD JUSTICE LEVESON: Which is rather different.
9	don't want to be undercut by bad advertisers who don't	9	A. Yes.
10	follow the code. They want to see the system operating	10	MS PATRY HOSKINS: Lord Smith, those were all my questions.
11	robustly. You don't have the same immediate buy-in	11	Is there anything that you would like to add?
12		12	
13	across the press. LORD JUSTICE LEVESON: No, and indeed the finance it's	13	A. There's just one further point that I would add, rather
	· · · · · · · · · · · · · · · · · · ·		separate from most of the issues that we've been
14	financed by advertising revenues, which is slightly	14	discussing and which has risen in one or two discussions
15	different from the way in which who is paying for the	15	in the House of Lords recently. That is in relation to
16	regulation of the press.	16	decisions that are taken at the moment by secretaries of
17	A. The ASA system is financed by a 0.1 per cent levy on all	17	state about issues of media ownership and control.
18	advertising spend, whereas, of course, the PCC is	18	I believe very strongly, looking back on my time at
19	financed by direct contributions from newspaper groups.	19	Secretary of State but also looking at what's happened
20	LORD JUSTICE LEVESON: Yes. The other problem of the system	20	subsequently, that those decisions should almost
21	as present which you've really identified is it depends	21	certainly not rest with a political figure, however
22	to a very, very large extent on finding an individual	22	honourable that person may be. That decisions about
23	human being who is capable of commanding the respect of	23	applying the public interest plurality tests to media
24	the entire press, the confidence of the public and the	24	ownership issues are matters that should be for either
25	confidence of the government and/or politicians and all	25	the Competition Commission or Ofcom or both, and should
	Page 49	_	Page 51
1	those who might be affected. That itself may be	1	not rest in the hands of a Secretary of State.
1 2	those who might be affected. That itself may be a pretty big ask.	1 2	not rest in the hands of a Secretary of State. LORD JUSTICE LEVESON: How would one then ensure that the
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1	A. Yes, but also there must be protection against any	1	relationship of the politicians and the media, I always
2	possible suggestion of a decision being made for	2	tried, through the whole of my time as Secretary of
3	partisan political reasons rather than for reasons of	3	State, to approach issues of press regulation, media
4	the national interest.	4	policy from the point of view of what is going to be
5	LORD JUSTICE LEVESON: Of course.	5	best for a flourishing media, rather than from the point
6	A. And so enabling a government view to be stated openly,	6	of view of which particular company is arguing what
7	transparently, put into the process alongside the	7	particular case, and I think it is perfectly possible
8	overriding principle of the public interest as	8	for ministers to take that view and to take a properly
9	identified in legislation, and then to have an entirely	9	impartial approach to the way in which they view these
10	impartial body then making the decision seems to be much	10	matters, despite the fact that the press are campaigning
11	better than placing what is ultimately going to be	11	out there for or against political parties. It is
12	a potentially intolerable burden on an individual	12	entirely possible for ministers to approach the making
13	Secretary of State.	13	of policy in a way that has regard to the public
14	LORD JUSTICE LEVESON: Not least because I think somebody	14	interest rather than any partisan interest.
15	has said somewhere, either in the Inquiry or elsewhere,	15	LORD JUSTICE LEVESON: All right. Thank you.
16	that every politician would have a strong view on some	16	MS PATRY HOSKINS: Thank you very much indeed.
17	topics, one way or the other, and it then becomes	17	LORD JUSTICE LEVESON: Lord Smith, thank you very much
18	difficult for them to exercise an independent national	18	indeed.
19	interest mind.	19	A. Thank you.
20	A. Absolutely. I know in a very small way and I hold	20	(3.36 pm)
21 22	a range of strong views if a view that I hold would	21 22	(The hearing adjourned until 10 o'clock the following day)
23	in any way run the risk of jeopardising the impartiality of a decision that the ASA council had to make on	23	
24	a particular adjudication, I would resile myself from	24	
25	the process and ensure that I did not take any part in	25	
23	Page 53	23	Page 55
	- 1.61 0.0		- 1.61 53
4	•,		
1	it.		
2	LORD JUSTICE LEVESON: Yes. Well, that's on the competition		
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	ī	ı	ı	ı		ı
A	advertisement	appointments	22:16 24:9	52:22 53:10	2:16,17 4:9,10	41:17 42:15
	12:12 48:6,11	9:22,23	25:6 28:25	boil 4:24	4:12,23 8:19	49:8,10 50:25
abide 33:5 ability 21:12	48:12,15	approach 37:20	29:14 31:14,24	boundaries	9:11,16,23	51:2,5,6
	advertisements	55:3,9,12	32:12 36:20	20:25	19:25 21:1	colleagues 17:7
45:25 47:12	10:8	approaching	37:4,6 39:16	box 6:17	22:9 42:15	34:9,21
able 17:13 24:18	advertiser 10:8	21:25	42:4 44:23	breach 12:13	43:20,24 44:9	collective 44:2,6
29:2 31:11,11	48:14,19,21,22	appropriate 10:7	46:12 48:22	break 50:24	chairmanship	come 7:20 12:19
35:6,8 41:6	advertisers 49:8	43:24 44:8,12	51:18	breaks 40:4	19:24	17:1,25 18:10
52:21	49:9	52:18	background 4:5	brief 2:6	chairmen 50:13	20:15 21:13
abolition 3:10	advertising 1:21	appropriately	backstop 7:25	briefly 3:6 41:14	chairs 20:3	22:9,13,16
absolutely 11:16	2:17 9:10,12	52:21	46:19,25	bring 9:6 17:16	champion 20:1	27:12,14 32:12
12:8 16:5	9:14,15,19	appropriateness	backstops 46:4	bringing 35:23	20:14 21:8,9	50:3
21:21 22:3,6	10:1,15,21	43:19	46:21	36:1	21:10 42:20	comfortable 1:8
22:11 28:18	11:14,18,20	approves 37:9	bad 49:9	British 32:9	50:10,22	coming 14:16
29:2 50:12	12:5 47:20,24	approves 37.9	badly 10:19	41:20	championing	19:1 26:15
51:7 53:20	47:25 48:16	2:24	balance 31:1,6	broad 21:15	51:1,4,5	41:12 52:8
abstinence 16:7	49:5,7,14,18	April 1:23	31:20 34:12	broadcast 46:8,9	change 5:16	commanding
accept 20:10	50:22,24	area 22:4 29:13	41:20	47:17 48:16	17:14 24:8	49:23
29:10 33:17	adverts 10:10	29:14 30:10	ban 32:22	broadcaster	30:1 31:8,14	comment 16:7
38:6,16 39:22	advocate 20:20	31:1	basically 18:4	46:18 48:17	32:25 36:12,22	comments 15:14
50:5	afraid 37:3 44:22	areas 5:20,24	27:17	broke 29:7	37:22 40:11,12	Commission
acceptable 37:1	aftermath 20:7				changed 31:20	11:3 28:13
44:19		28:9,12,17 31:5	basis 3:15 46:10 46:11	brought 5:4 42:5 built 10:2	41:18	
accepted 4:2	afternoon 1:3,4 Agency 2:16	31:5 arena 46:9	bear 17:16 35:23	bundle 2:4 15:25	41:18 changes 18:2	37:8,9 51:25 52:7
29:13 44:8					U	
account 38:18	agenda 5:23 19:5 24:6 29:22	argued 8:11 42:2	36:1	burden 14:7 15:3 53:12	23:5,17 26:2,3	Commissioner 33:6
52:15,16	24:6 29:22 30:11,18	arguing 42:8 43:7 55:6	becoming 41:13 bed 37:13	53:12 buses 14:18	26:6,22 27:4 27:21 30:15,17	Commission's
accurate 3:19	,					
achieve 33:25	agree 10:16	argument 40:1	began 37:3,24	buy-in 49:2,4,11	31:6,9,10	28:22
34:14 41:25	25:10 27:21	42:13	44:23	C	32:15,25 33:3	Committee 8:19
achieved 34:18	agreed 19:4	arrangements	behalf 46:10		33:17 34:15,16	19:4 25:19
act 22:23 41:14	agreement 12:14	48:23	behaviour 6:23	c 25:2	34:19 35:5	42:16
42:18	43:22	articles 9:17	7:7 13:7 17:14	Cabinet 34:8	36:17,25 37:10	Commons 6:16
acted 18:24	aid 48:18	41:21	36:10 37:1,8,9	calamity 36:10	37:17,20 41:5	companies 46:14
action 15:20	aim 43:1	ASA 9:16,17,22	37:9,23 38:10	Calcutt 3:11,12	41:11,17 44:15	49:8
16:14 17:9,20	allowing 50:9	10:6,7 11:2	38:21 44:20	4:21,21 5:7 7:2	44:19 50:5	company 55:6
24:2	alongside 14:23	12:11 29:16	behaviours 39:7	16:10,11 25:18	channel 44:7	competing 44:4
actions 11:25	20:22 53:7	45:7 46:3	believe 7:5,11	37:9,10	channelled 17:12	competition
13:22 14:8	ambitions 11:22	47:15,21 49:3	13:1 16:23	Calcutt's 3:9,19	charged 52:22	51:25 52:7
23:19	amount 17:11	49:17 50:20	44:17 45:2	calibrated 54:21	chased 13:23	54:2
active 36:21	32:6	53:23	51:18	call 16:1	children 29:9	complain 10:25
activities 23:24	amounts 1:25	ASBoF 9:12,14	believed 11:7	called 17:5	32:19 37:21	21:5
39:4	analogy 9:9	asked 4:6,14	21:6 33:22	campaigning	choose 9:2,24	complainant
activity 31:18	12:21	11:6,10 13:3	44:15	55:10	Christopher 1:5	21:19 22:6,12
32:11 36:11,12	analyse 21:13	33:15 45:8	believer 7:1,4	candid 6:10	1:10 8:16	complaint 22:1
36:13 38:3	and/or 49:25	aspect 4:6	believing 43:8	capable 49:23	chronology	Complaints 11:3
actual 15:24	announcement	assessing 30:12	benchmark	career 2:3,7	12:24 22:17	28:13
ad 12:16	30:14	assessment 4:2	17:19	carried 31:12	32:12	complete 43:21
add 15:24 45:16	answer 33:24	26:14 27:4,7	best 9:9 19:8	carries 48:14,17	circulated 34:8	completely 44:17
45:17 51:11,12	45:3	33:11,12	41:24 55:5	carry 12:16	circumstances	complex 16:9
address 25:4	anxious 36:3	assist 4:15 7:25	better 14:11 17:1	case 11:23 15:23	54:5	31:2
28:13 30:10	41:22	assumed 40:8	19:14 21:10	36:21 40:10	clear 11:16,20,21	compromise
adequately	anybody 11:10	attitudes 24:8	40:14 53:11	43:7 44:23	16:5 17:6 22:7	43:2
52:21	apart 14:12	August 13:19	big 50:2,3	46:15 48:16,18	22:10 23:22	concept 8:15
adjourned 55:21	45:17	18:24 31:23	bill 22:15 41:13	55:7	30:4,5 31:8	12:3,4,6
adjudicate 21:12	apologies 4:1	authority 1:21	42:3,7,24	cases 42:4 46:16	52:6	concern 13:22
adjudication	apparatus 7:9	2:17 9:11	bit 6:15 9:1 14:2	caught 54:14	clearly 6:1 12:5	14:16 15:6,9
12:15 53:24	appear 12:13	47:11	19:13 25:22	causes 40:2	14:9,15 20:24	16:18 17:12
adjudications	appeared 1:12	authority's	33:16	cent 49:17 50:24	21:2 28:7 39:4	concerned 21:18
5:6 46:20	4:24	12:21	Black 36:4	certain 54:20	40:4	24:7
adjudicatory	appearing 29:24	available 29:16	blackouts 25:13	certainly 5:3	Clore 2:15	concerns 8:17
8:12	appears 23:9	avoid 36:3	blame 39:24	11:18 26:11	Club 24:4	14:25 36:22
admitted 19:10	applying 51:23	aware 26:10	bodies 43:14	37:19 43:7	code 3:16 8:19	concluded 3:14
adulatory 54:9	appointed 4:9		body 3:15 8:3,7	45:24 50:20	12:13 19:2,4	conclusions 3:20
advance 35:21	9:11	B	8:12 21:5 22:5	51:21	21:20 23:17	22:10
adverse 12:15	appointment	back 4:14 11:5	29:18 44:12	chair 9:3	25:17 26:2	conduct 14:1
advertise 10:8	5:16	12:19,24 22:13	45:10 47:1,4,8	chairman 1:21	29:7 35:6	37:18
	<u> </u>	<u>l </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

						Page 57
o	l	l	1	l .		
confidence 21:12	41:11 43:16	52:19	differences 12:9	due 4:5 5:3 7:20	34:11 52:2,19	exercise 53:18
22:7,12 49:24	46:14 48:5,18	decision-making	different 7:14	12:19 17:5	53:25	exist 11:13 46:22
49:25	49:18 53:5	52:5	14:19 49:15		ensuring 38:10	47:15,21
confirm 1:24	court 52:9,18	default 50:15	51:8 52:13	E	48:2	existence 46:19
13:5	cover 45:12	defence 25:17	54:16	e 25:8	entire 49:24	expected 33:4,5
conflict 20:2	coverage 37:20	defending 21:15	differently 54:21	earlier 29:15	entirely 14:4	expecting 20:6
conflicts 20:19	covered 45:11	deficit 52:25	difficult 11:1	33:13 36:24	28:22 33:12	explain 2:8,14,18
connection 9:8	co-operation	define 12:7 21:20	12:4,7 29:13	45:6 47:9	53:9 55:12	5:15 7:12,15
9:18,25	25:12	defined 11:20	29:14 31:17	early 12:25	entity 9:15	13:20 16:8,16
conscious 21:23	co-regulatory	12:6 20:25	38:11 40:18	30:24	entrust 18:19	32:16
consider 17:1,20	46:10	21:2	45:23 49:1	easier 11:18	Environment	explained 6:21
19:21 22:22	create 10:23	definition 25:16	50:11 53:18	33:16	2:16	6:23 11:6 24:6
considerable	creep 37:4 44:23	28:20 29:19	54:7	easily 12:6 20:21	equal 45:21	29:4 42:25
31:10 32:6	criminal 39:19	33:1 34:23	difficulties 31:1	easy 10:12	equality 31:4	explaining 25:2
considerably	39:20	degree 48:1	difficulty 39:2	editors 8:9,10,11	equate 38:7	explains 23:25
35:10	criticism 48:9	deleterious 7:7	diffused 9:1	8:19 15:19	equations 38:11	24:2,3
considerations	crystallised	delivered 3:12	dilemma 38:2	16:13,17,20	equilibrium	explore 8:15
52:15.16	34:20	demand 5:12,22	50:12		31:16	expound 7:16
considered 3:17	culture 2:11,22	31:8	dilemmas 19:23	17:8,24 18:17	equivalent 9:12	expression 11:24
45:24	4:16 40:6,11	demanding 42:5	direct 32:20 47:3	19:14 27:21	equivalent 9.12 especially 4:22	21:16,24
consistent 20:18	curbed 39:9	42:9	47:4 49:19	29:5,24 30:1	19:24 23:1	expressly 35:2
			directed 48:10	31:13 33:17		- •
constantly 54:9	current 4:19,24	democracy 7:5		35:15 41:24	36:22 39:1	extended 32:19
constructive	6:1 8:11,17	democratic	48:12	42:14 44:3	essentially 3:10	extent 22:22 41:2
6:11	15:9	52:25	directly 15:8	effect 12:1 29:2	3:15 16:6	48:9,20 49:22
consumer 11:22	currently 2:16	demonstrably	director 2:15	35:2 41:8	17:23 26:23,25	52:24
consumers 48:2	31:19 46:5	45:4	disclosed 24:19	effective 3:14	27:3 33:15,19	external 19:12
contact 18:12,16	curtailment	demonstrate	discuss 6:22	12:11 13:9	34:8 42:10,25	35:13
25:25	38:16	35:16	22:13 23:5	29:15 43:6	43:3,20	extremely 40:17
contemplated		department 14:5	26:18	44:25 45:19	establish 17:19	eye 6:24
23:19	D	14:13,17	discussed 41:15	47:12 48:1	41:24	
context 50:9	damaging 39:8	depends 49:21	47:9	49:4	establishment	F
continue 10:4	damning 4:2	describe 1:24	discussing 12:24	effectively 5:7	3:21	f 25:14
12:23 33:10	dangerous 7:5	8:17 20:4	16:10 22:14	7:20 8:20	estimate 32:2	fact 13:23 30:16
continued 30:20	date 3:1,5 4:14	32:14	51:14	11:19 26:16	ethical 13:6	35:2 36:9
continuing 36:21	16:4	described 19:19	discussion 4:20	47:2	ethics 4:17	55:10
contractual	dated 1:22,22	35:18 50:10	6:11 14:20	effectiveness	European 32:8	failure 22:23
48:23	23:9 28:2	description 2:3	18:19 24:18	51:5	event 17:3 28:24	39:18,19,20
contrast 15:5	dates 13:18	11:24 21:11	25:23 26:4,22	effort 40:20	events 16:15	41:4
contributions	David 3:9,19	desirable 15:17	27:9 32:7	either 25:18	17:1 23:1 24:9	fair 27:4,5 33:10
49:19	42:14	desire 10:22	33:20 42:17	51:24 53:15	54:14	33:12 37:16
control 23:24	day 26:7 30:14	despite 5:25 30:9	discussions	elect 52:4	eventually 37:14	46:5
47:4 51:17	32:13 33:2	45:2 55:10	14:17 18:5,13	elected 52:3	43:21	fairly 30:11
controlled 39:10	39:17 55:21	detail 13:13,17	26:4,12 27:6	election 2:25 3:1	everybody 8:23	41:16
Convention 32:9	days 2:25 3:1	23:16 32:15	41:17,22 42:22	element 8:25	40:23,24	familiar 3:22
41:19 43:15	15:12 18:6	45:11	43:11 51:14	emphatic 21:22	everyone's 5:23	far 3:18 6:10
convinced 48:21	deal 29:8 30:8	deter 46:2	dispatch 6:17	enable 47:1	evidence 1:13,25	13:8 26:9
correct 2:24 3:8	54:12,13	detrimental 7:10	distinction 11:17	enables 40:11	4:5 7:23 9:10	27:19 29:21
11:14 14:24	dealing 54:18	12:1	54:11	enabling 19:14	19:20 33:13	34:11
corrected 11:5	death 13:15,21	develop 29:23	document 15:24	53:6	37:25 40:3	favour 31:7
corrections 4:1	13:25 14:6	developments	23:9,21	encouraging	41:1 43:10	favoured 25:18
correspondence	15:13 18:11	24:14	doing 22:18,25	20:10	45:6	feed 52:21
26:10	20:8 23:2 27:1	develops 40:6	25:22 33:23	ended 26:6 43:16	evolving 26:13	feel 40:19
council 3:11 9:22	31:7 37:18	devise 49:2	38:4 39:24	43:23	exact 22:21	feeling 15:2
10:6 45:18	debate 4:20 5:2	devised 3:17	dominated 8:18	endure 36:17	Exactly 19:18,19	fiercely 44:4
53:23	14:20 15:10	Diana 13:15,18	8:21	endures 19:25	exam 28:1	figure 6:15 51:21
country 14:18	decent 10:17,18	14:6 18:11	door 42:4	enduring 36:16	examining 48:4	figures 29:9
couple 14:5 27:9	50:25	20:8 23:2	doubt 38:14	enforce 40:1	example 11:4	finance 49:13
coupled 14:19	decide 18:1	26:15 27:1	40:14	enforceable	23:1 39:16	finance 49.13
27:7	decision 8:5	31:7,23 36:11	doubtless 48:21	47:10	45:7,9 49:7	49:17,19
course 4:6,20	21:14 47:5	37:11,18	dramatic 39:11	enforced 47:2	exchange 29:15	find 2:4 11:1
7:21 9:19 10:1		died 13:19 31:23	draw 9:9 11:16	enforcement 8:1	45:6	12:12 23:9
12:19 14:22	52:8,9,22,23	36:23	54:11		exclusively 8:21	
17:5 18:5	53:2,10,23	dies 26:15	drawing 9:23	engage 38:3	exempt 43:14	38:8 40:17
21:22 28:25	decisions 8:1,2,7	difference 12:10	drawn 9:15	engaged 16:16	exempt 43.14 exempted 42:6	44:2,3
	22:4 45:19	32:1 34:17		engagement 9:1	42:10,23	finding 39:2
32:7,20 34:4 35:4 37:7	47:1,10 51:16		12:21 25:18	English 42:14	· · · · · · · · · · · · · · · · · · ·	45:19 49:22
35:4 37:7	51:20,22 52:12	35:19 44:16	dual 50:12	ensure 5:7 30:19	exemption 43:21	fine 29:10
	I	l	I	I	l	<u> </u>

			-		-	
fines 3:25 45:22	28:10,12,17	groups 49:19	ideas 19:2	individuals 39:8	issue 4:19,23 6:1	
Finsbury 1:10	31:21 33:7	Guardian 37:13	identified 12:10	44:5	12:20 14:14	
2:10	36:21 41:10	Guv 36:4	34:22 49:21	indulge 38:19	16:7 28:19	Labour 2:9
		Guy 30:4				laid 21:14
firmly 30:11	51:12		53:9	industry 3:16,17	29:9,12 30:19	language 21:20
first 1:8,20 3:10	future 6:11,22	Н	identify 5:20,24	3:18 9:15,19	30:20 43:4	large 49:22
4:18 5:18	12:20	habits 37:3 44:22	12:8 13:13	10:1 33:6	issued 33:2	lasted 41:6
10:13 15:5		hacking 36:14	41:2 48:7	47:24,24 49:5	issues 1:23 10:23	law 32:9 39:19
16:1,6,13,23	G	hand 23:23	illegal 39:5,15	51:4	16:8 29:1,4,19	39:20,25 40:1
17:10 18:10	gauge 14:14	handed 26:25	immediate 16:25	informal 26:21	51:13,17,24	40:4 41:20
28:19 29:6,12	general 14:15	handled 32:24	20:7 36:22	information	54:3,25 55:3	42:4 43:12
30:6 32:5	21:15 44:11	handling 37:21	49:11	21:13	,	laws 15:16
39:15,15	generally 6:3	hands 41:3,5	immediately	infuriating 54:7	J	
firstly 27:23	35:24	52:1	11:12 16:8,19	inherited 3:5	January 3:12 4:8	lead 36:25
45:19	genuine 38:9	happen 43:16	37:17	5:13	jeopardising	Leadership 2:15
fits 48:6			impact 32:10	initially 42:24		learnt 35:17
flavour 14:13	genuinely 33:22	46:23			53:22	led 36:11 44:19
	getting 19:8	happened 14:21	35:11 41:7	initiative 18:22	job 50:7	legal 10:18 39:5
flourishing 55:5	27:20 41:20	51:19	impartial 53:10	23:23	John 4:22,25 9:4	39:16 50:25
flow 52:5	give 11:4 14:13	happening 26:13	55:9	input 26:3,5	16:16 20:8,15	legislation 15:18
focus 4:7 41:18	30:7 36:4	happens 37:13	impartiality	inquiry 1:9,12	journalism	24:12,13 35:22
focusing 2:21	given 1:13 5:22	48:3	53:22	1:20,25 22:19	38:20	36:2 53:9
folks 17:11	16:21	harassment	imperilled 38:20	37:8 46:17	judge 52:7	legitimate 22:1
follow 22:10	giving 41:1	15:16 24:13	importance	53:15	judges 38:19	legitimately
49:8,10	go 4:24 6:9 7:6	harder 37:11	21:23,24 45:18	instinct 24:11	judge-made 42:3	32:18
followed 36:12	13:8,23 17:24	harmful 11:25	important 6:1,5	insufficient	judging 22:1	
50:6	18:7 19:12	hasty 15:14	16:24 25:4	13:16	judgments 17:2	legs 5:9
following 13:21	21:7 34:11	16:25 26:17	50:18	intended 19:3	judicial 21:18	lesson 16:24
13:25 26:1	37:6 39:6 42:9	headway 29:3,5	impose 3:24	intense 10:22	June 3:9 5:19	lessons 35:17
27:1 34:4,21	44:14 45:1	30:7 35:3	imposed 8:4	intention 11:11		letter 16:1,2 28:8
37:17 55:21			imposed 8.4 impossible 50:8		Justice 1:11,18	letters 14:1,4,7
force 41:13	goes 37:13 39:16	health 38:19		interest 12:3,4,6 21:22 24:14	6:14 7:12 8:6	14:12,16,22
	going 2:2 4:14	hear 5:20 6:6	imprecise 21:20		8:14 10:4,12	15:2,3
form 30:15,16	6:7 8:6 11:5,8	38:24	impression	25:17 28:20	10:19,21 12:3	let's 15:24
formal 1:25 26:5	12:23 17:15	heard 14:24	26:14 43:7	29:19 33:1	12:17 13:2	Leveson 1:11,18
26:9,10	19:5,17 22:17	38:21	impressions 4:16	34:24 38:13	19:16 20:10,13	6:14 7:12 8:6
formed 17:3	23:4 24:3	hearing 55:21	improve 37:10	39:12 44:25	20:17 21:4,17	8:14 10:4,12
forward 5:1 8:8	25:22 26:17	help 17:19	37:19	51:23 52:3,8	22:20 36:7	10:19,21 12:3
19:1,6 27:12	36:5 47:6	helpful 19:13	improvements	53:4,8,19	37:5 38:5,14	12:17 13:3
27:14 30:18	53:11 55:4	helpfully 2:6	13:14	55:14,14	39:11,14 40:16	19:16 20:10,13
34:1 54:14,22	good 1:3 3:18	hesitate 39:1	improves 37:8	interested 38:24	40:23 45:7	20:17 21:4,17
founding 2:14	10:20 27:23	high 15:6,7 43:1	improving 40:18	interesting 12:20	46:23 47:6,14	22:20 36:7
four 3:13 18:24	49:7.8	hindsight 44:18	inadequately	19:23 20:1	47:18,23 48:4	
46:14	government 2:13	history 2:3,7 3:6	52:10	54:7	48:9,20 49:13	37:5 38:5,14
framework 39:3	3:3 8:5 14:10	4:7 16:9 37:14	inappropriate	interrupt 27:24	49:20 50:9,15	39:11,14 40:16
40:11			38:3			40:23 45:7
	15:14 17:15,20	hold 6:12 38:17		interrupted	50:22 51:1,4,8	46:23 47:6,14
frankly 30:9	19:11 26:20,25	41:5 53:20,21	included 32:16	28:14 intervene 20:24	52:2,11 53:5	47:18,23 48:4
fray 34:3	27:2,10,13	honest 10:16,18	including 14:21	intervene 29:24	53:14 54:2,16	48:9,20 49:13
free 7:10 10:22	31:2,5,17	20:22 50:25	32:25 36:2	intervening	54:18,24 55:15	49:20 50:9,15
11:7 21:16,16	34:20 35:14,22	honourable	inconsistent	28:23	55:17	50:22 51:1,4,8
21:22,23	36:1 38:18	51:22	20:18	intervention 5:8	justifies 40:9	52:2,11 53:5
freedom 11:7	41:18,23 43:11	Hoskins 1:3,6,7	incorporate	5:12	justify 28:21	53:14 54:2,16
20:21 21:10,24	47:21 49:25	1:18 6:20 7:22	41:19	intolerable 53:12		54:18,24 55:15
32:11 34:12	52:20 53:6	10:4 12:18	incorporation	introduce 24:12	K	55:17
38:2,3,9,12,17	governments	19:19 22:13	32:8	42:3	keen 18:22 19:7	levy 9:14 49:17
42:20	16:24	36:8 41:11	increased 32:16	introducing	keep 19:11 33:20	licence 46:17
freedoms 20:23	government's	51:10 55:16	independence	35:22	34:6	lie 7:3
frequently 54:7	6:3 24:11 31:6	hot 5:25 15:9	10:3 45:18	intrusion 14:11	keeping 20:22	life 9:19 10:2
front 21:13	government-a	House 6:16,17	independent	28:21 32:23	27:10	31:5 52:13
full 1:9	47:4,7	51:15	8:22,25 9:2,4	intrusive 37:21	kept 25:24 33:9	light 15:19 16:15
fully 17:3	gradually 42:4	huge 17:11	9:21 11:1	39:7	35:1	_
fundamental	grateful 7:15	hugely 4:19	53:18	invasions 40:25	key 9:3	23:1 34:6 54:4
10:15	great 29:7 30:7	human 22:15	indicate 6:7	investigate 38:4	kind 45:22	liked 34:15 35:4
further 2:19 5:21	38:5	32:9 41:13,13	15:20 16:14	investigative		literally 15:7
5:24 13:23	grey 22:4	41:19 42:3,7	17:9	38:20	knew 6:14,15	little 9:1 30:23
17:16,20 18:2		,	indicated 1:18	invoked 46:13,19	know 6:5,18,19	37:11 44:24
18:8 19:13	grief 32:23	42:17,24 49:23	individual 34:13	irrational 52:14	16:10 23:16	live 40:16,18
	grievously 38:1	Hunt 11:6	44:9 49:22		30:14 32:13	living 31:19
23:18 24:23	gritted 31:12			irrelevant 52:15	37:24 52:11	lobbying 43:20
25:22 27:9	Groupon 46:15	<u> </u>	50:8 53:12	Islington 2:10	53:20	local 38:18
M:11 C		I			041- 121 1	<u> </u>

						rage 37
	l	l 	l	l	l	
London 24:4	12:9 35:1	Minister 15:13	40:13	11:24 14:14	55:11	25:4,11 32:17
long 16:9 31:15	making 5:6	16:4 17:4 18:7	never 20:25	16:22	partisan 53:3	37:22
31:25	16:24 27:8	23:4,8 26:16	30:16 34:14	opportunity 32:1	55:14	phrases 10:17
look 9:17,20 13:4	35:9,10 46:2	34:8	54:9	opposed 43:13	parts 12:14 40:7	pick 14:18
13:13,16,18	47:4 52:22	ministers 55:8	nevertheless	options 25:23	40:8	place 4:22 5:16
15:16,24,25	53:10 55:12	55:12	4:10	order 19:5 35:16	passing 22:15	7:9 14:17
17:11,25 22:18	managed 50:5	minors 32:22	new 45:9	36:8 46:25	Patry 1:3,6,7,18	18:19 24:20
23:7,16,21	mandated 52:4	37:21	news 25:13	47:25	6:20 7:22 10:4	31:9,11 39:6
25:16 28:1,25	marketing 10:1	minute 23:10	newspaper 15:18	ordinary 14:6	12:18 19:19	44:20 45:23
29:3 30:6	marketing 10.1 matter 11:23	24:25 30:5	16:13,20 17:8	54:13.17	22:13 36:8	46:12 52:6
		34:7			41:11 51:10	
33:15 36:5	25:13 31:3		33:6 38:2,4	organisations		placed 48:6
48:23	34:2 36:9	minutes 23:21	46:1 49:19	14:3	55:16	places 32:18
looking 5:15	matters 24:19	27:25 28:2	newspapers 29:7	ought 21:3 29:20	Pause 36:6	placing 53:11
23:8 27:24	51:24 55:10	misconduct	33:5	outset 30:24 42:5	paying 49:15	plainly 39:4,15
31:24 36:5,20	May/June 6:20	22:24	nominate 8:23	outside 9:7	payment 32:22	plate 20:9
51:18,19	mean 7:12,14,16	missed 24:25	non-broadcast	outstanding 50:7	PCC 3:11,14 4:3	play 29:21 44:10
Lord 1:4,7,10,11	7:17,18 8:9	mistake 46:1,2	46:5 47:19	outstandingly	4:9,11,12,23	played 22:14
1:11,18 4:2,8	42:11,12	Mm 40:22	normal 31:16	5:1	5:1,5 8:17 9:5	44:1
5:17,19 6:5,14	means 8:7 25:4	mode 42:19,21	note 28:25 36:5	Overall 4:1	13:12 19:2,24	please 1:9 2:2
6:14,22 7:12	40:9 46:19	modest 35:9	noted 25:11,17	overfavourable	20:3 21:1,5	3:2 7:12 12:18
8:6,14 10:4,12	50:17	Module 1:23	November 34:7	3:18	22:9,25 26:13	plurality 51:23
10:19,21 11:6	meant 11:8 13:3	moment 4:19	number 31:10	overnight 15:7	27:23 29:20	pm 1:2 55:20
12:3,17 13:2	44:1	5:11 18:11	38:1 42:13	overnight 13.7	30:2,21 33:4	point 6:6 13:2
15:21 17:13	measures 23:18	22:16 30:4	45:8	overwhelming	34:6,24 35:23	17:8 18:12
18:6,14,20,22	24:23	31:7,15,20	73.0	14:7	41:23 42:5,10	19:22 21:4
18:0,14,20,22	media 2:12,13,22	36:4,15,15	0	ownership 51:17	42:15 43:13,20	22:6 27:18
		51:16		51:24	,	
20:10,13,17	3:3,4 6:4 10:9		objective 13:6		43:24 44:9,24	31:11 39:15
21:4,17 22:14	12:14 14:21	moments 31:6,22	objectives 41:25	o'clock 55:21	45:4,25 49:18	43:10 46:3
22:18,20 23:5	22:23 46:5,8	money 9:13	obtained 32:17		50:14,19	51:12 54:16
23:10,23,25	47:17,19 51:17	40:20 41:3	obvious 1:15	P	people 5:4 7:14	55:4,5
24:1,22 25:1	51:23 55:1,3,5	months 6:19	39:12 45:20	page 5:14 16:1	8:16,22 9:2,7	points 25:6,20
25:15,20 26:18	mediators 20:5	13:19 32:3	obviously 16:9	28:11	11:24 12:1	29:3
26:21 27:1,11	medium 12:13	38:22 42:17	38:15 39:6	palpable 37:22	40:19 46:21	policeman 39:23
29:1,22 30:6	17:13 48:10	mooted 45:22	occasions 25:10	paparazzi 13:22	54:13,17	policing 7:19
30:16,17,24	meet 6:5 26:21	mother 32:22	Ofcom 46:8,16	14:8 23:20,25	perceptible	policy 2:13 3:3,3
31:10 32:14	meeting 15:21	motorist 39:21	46:17 47:15	25:7	45:18	6:3 52:14,18
33:14,20,25	18:10 23:3,4	Motorman 36:13	51:25 52:7	paragraph 2:5	perceptive 11:13	52:20 54:25
34:22 35:5	23:10,15 24:20	move 15:17	Ofcom's 46:10	5:14,18 13:4	perfect 40:14,17	55:4,13
36:7,25 37:5	26:9,17 27:25	30:18	offence 39:21	13:20,24 15:11	perfectly 55:7	political 4:24 5:2
38:5,14 39:11	28:3 30:5	moved 42:18	46:18	16:6,12 17:18	performed 50:13	5:9,12 51:21
39:14 40:16,23	32:13 34:21,23	Moving 32:12	offends 10:9	18:11 22:21	50:14	53:3 55:11
41:15 42:11,12	36:6	1,10,1119	office 2:19,23	23:22,25 24:1	period 2:8,21	politician 53:16
42:16,18 44:1	member 2:9	N	3:13 4:11,13	24:2,5,17	4:12 6:20	54:19
44:6 45:7	54:19	name 1:9	4:16 5:19 7:1	25:24 28:6,11	18:23 20:7	politicians 38:18
46:23 47:6,14	members 9:24	national 31:5		,	27:3 31:25	49:25 52:3
47:18,23 48:4	14:2,6 22:9		12:25 13:20	28:25 29:3	36:14,25 37:23	54:6,8,8,12,14
48:9,20 49:13	membership 5:5	53:4,18	15:6 25:25	34:5 35:3	41:7,12 44:19	55:1
49:20 50:4,9	memo 16:2,4	natural 24:11	26:12,12 32:5	36:18,24 41:16	,	pooled 25:10
,		nature 22:4	38:17 46:5	42:1 44:14	permanent 7:9	
50:15,22 51:1	23:7	26:13 30:2	54:22	45:1	24:8	position 3:2,5
51:4,8,10 52:2	memorandum	nearest 20:15	offices 27:10	paragraphs	permanently	5:13 17:6 18:4
52:11 53:5,14	9:17 16:3 17:4	50:3	43:12	45:13	40:12	32:4 50:15
54:2,16,18,24	18:7	necessarily 8:9	official 25:11	parallel 10:5	persistent 32:18	positions 2:19
55:15,17,17	memory 11:5	8:10,12	OFT 46:14 47:18	Paris 15:9	46:18	possibility 36:2
Lords 6:17 51:15	24:10 45:14	necessary 15:15	Okay 6:13 25:23	Parliament 2:9	person 21:19	possible 11:2
lost 32:22	mention 24:24	need 4:7 14:10	32:4	part 29:22,25	48:12 51:22	20:23 21:11
lot 4:20 5:7	merely 20:18	17:16 22:5,6	old 24:9 37:3	30:15,16 37:1	personal 29:25	22:8,11 23:18
14:20 15:3	met 5:19 6:21	22:25 27:23	44:22	43:15 53:25	personally 6:18	24:2,23 31:21
40:19,20,20	11:22 23:5	30:7,10 37:14	once 7:13 36:22	particular 2:11	29:23 40:17	36:3 53:2 55:7
44:5 47:2	26:8 27:16	39:9,23 54:8	ones 29:1	16:25 23:19	persons 39:17	55:12
lots 7:14 14:22	Meyer 8:16	needed 5:21,24	onus 17:10	43:4,12 45:15	perspective	post 6:21 18:10
love 54:8	mid-1997 12:25	17:21 18:19	open 38:15	46:17 53:24	21:18	potential 20:2
1	mind 3:2 4:15	28:18 29:7	openly 53:6	55:6,7	persuade 50:5	23:5 32:10
M	10:3 34:20,20	32:21	operating 3:16	particularly 5:25	persuasion 38:15	34:24 46:25
main 18:12	40:1 48:5	needing 33:20	49:10		Phillips 25:11	potentially 20:19
	53:19	needing 33:20 needs 26:19		6:6,18,24 8:13	phone 36:14	21:3 53:12
maintain 47:8	mine 40:3		operations 13:12	24:7 42:15	photographs	power 3:24 31:2
major 5:11,15	11111C +U.J	28:10,13 40:9	opinion 7:3	parties 43:22	huorogi ahus	power 3.24 31.2
	1	1	1	1		

						rage of
31:4	42:20	nuonouls: 41.0	numahasa 11.2	managmina 20,14	remained 4:10	risen 51:14
		properly 41:8	purchase 44:3	recognise 39:14		
powerful 12:16	previously 1:11	55:8	purpose 11:20	46:1	remains 30:11	risk 11:13,13
powerfully 43:12	primarily 9:15	proposal 5:8	purposes 2:20	recognised 35:15	remarkably	53:22
practical 15:17	18:25 50:19	17:25 41:19	pursuit 32:18	47:25	27:19	road 7:6
practice 3:16	Prime 15:13 16:4	proposals 5:20	push 18:7 19:5	recognises 49:6	remedies 48:22	Robert 1:5,10
practices 4:17	17:4 18:7 23:4	17:7 19:2 25:2	33:23	recollection 43:3	remember 4:7	robust 10:2 13:9
pray 48:18	23:8 26:16	26:23,24 27:8	pushed 41:9	recommend	10:17 44:4	21:14 22:11
precedent 25:12	34:8	27:13,14 28:7	pushing 19:12	15:13	remind 40:9	39:5,15 43:11
precise 39:3	princes 32:21	32:14 34:7,10	33:9,14,19	recommendati	50:23	robustly 49:11
precisely 7:16	37:20	35:3,5,8,10	put 8:3,8 17:6,10	7:3	remit 54:3	robustness 13:12
prepare 17:1	Princess 13:15	propose 16:15	18:6 31:9,11	recommended	removed 48:24	role 1:20 20:22
prepared 23:13	13:18 23:2	17:9,13 18:2	33:15 34:1	3:21	repeated 18:14	21:1,7 22:14
present 1:14	26:15 31:23	proposed 15:20	40:20 42:13	recount 37:14	replace 47:22	29:20 31:4
20:19 45:5	36:11 37:11	26:22 30:15,17	45:23 47:8,22	refer 28:3	report 3:10,12	43:25 44:8
49:21	principal 23:13	32:15 33:18	48:11 53:7	reference 22:19	reports 4:21	50:12
preserve 20:23	27:17 28:17	proposing 18:8	54:14,21	24:21	25:19	roles 20:2
press 2:13 3:4,11	34:19	25:21 26:6	putting 48:12	references 25:1	represent 41:4	room 52:13
3:15,22 4:17	principle 53:8	27:7,11		referred 46:13	represented 52:5	roughly 3:8
6:4,23,25 7:6,8	printing 3:25	proposition 26:1	Q	referring 29:14	require 3:25	route 13:7 44:7
7:18 8:4,7,8,12	prior 6:6 29:24	proprietors	question 11:12	reflected 32:7	required 9:16,20	rowing 19:9
8:18,23 9:8	privacy 15:17	15:19 16:14,21	24:17 36:7	reflects 25:6	9:24	Royal 37:8,8
10:6,16,22,24	24:12 40:25	17:8,24 18:17	47:6 52:24	reformed 50:19	requirement	rules 7:19 21:14
10:25 11:3,7	42:4 43:15	19:15 27:21	questions 1:6	refresh 45:14	45:21 52:6	22:7
11:19,23 12:7	private 19:11	29:6 31:13	2:20 4:8 45:8	regard 47:13	requirements	run 53:22 54:3
12:20 14:1,9	23:13 26:12	33:17 35:15	51:10	50:19 55:13	32:23	running 18:23
14:22,23 15:1	32:19	42:14 44:3	quite 5:6 6:19	regarded 32:19	resile 53:24	rush 16:24
15:15 16:8	proactive 19:7	protected 29:11	8:24 10:5,15	regret 34:2 41:8	resolve 44:17	Ryanair 46:15
18:13,20,25	27:2 28:23	protection 11:22	11:16 12:16	regular 25:25	respect 2:3 38:5	
19:1,8 20:21	29:20 34:25	14:11 32:16,19	14:20 15:5	regulate 11:18	49:23	S
20:22 21:6,8,9	44:24	32:21 53:1	28:6 31:10	regulated 6:25	response 16:25	sanction 10:12
21:10,22,23	probably 4:18	protects 49:7	35:12 38:1	50:17	24:5 32:21	12:11,16 45:21
22:2,5 24:4,8,8	6:8 11:17	provide 1:9	42:13 43:10	regulates 44:12	responsibility	sanctions 28:19
25:9,12 27:20	13:11 20:3,5	47:12 52:13	44:5 47:2	45:10	6:3 26:25 40:5	29:6,12,15
28:8,10,13	21:4 32:2	provided 1:13,19	quote 22:21	regulation 6:4	47:20 48:15,17	30:4,7,15
29:17 31:2,18	35:22 36:20	39:17	44000 22.21	7:6,9 12:20	responsible 2:12	34:23 39:5,16
32:10,11,11	37:16 44:13	provides 9:13	R	14:9 15:1,15	7:19 43:3,6	44:25 45:20
33:3 34:12	46:20	provision 10:3	raised 30:22	16:9 47:7	rest 10:10 51:21	49:2
35:11,24 36:10	problem 37:5	47:20	raises 10:23	49:16 55:3	52:1	sat 39:17 40:24
36:12,14,21	49:20	provisions 42:6	raising 9:14	regulator 3:14	restrain 31:18	save 8:16
37:2,18 38:9	problems 40:5	42:24 43:14	ran 9:5	18:25 19:19,21	restrictions	saying 14:24
38:12,17 39:19	44:17	proxy 1:12	range 27:8,21	20:1,9,14	20:11	24:21 25:21,21
39:22 40:7,7,8	procedural	public 5:11,22	53:21	42:19 50:20,21	result 15:8 38:13	30:25 33:3
40:9 41:3 42:2	24:19	6:24 11:21	rarely 46:19	regulators 20:4,6	return 34:3	34:9
42:6,8,10,12	procedure 22:11	12:3,4,6 13:21	rash 16:19	50:16	returned 31:16	says 25:2 30:6
42:21,23 43:13	29:23	14:3,7,14,15	reactive 28:23	regulatory 22:5	revamped 29:17	scales 22:2,3
44:1,4,13	procedures	15:6,9,14,19	reactive/proac	29:17 45:10	revealed 36:13	scenario 33:8
45:10,20 46:24	28:22	16:22 17:12	30:2	rehearse 3:6	36:14	scenario 33.8 scope 7:24
47:9,13 48:25	proceeding 8:13	19:4 20:6	real 38:13 41:4	related 34:23	revenues 49:14	scope 7.24 seat 1:7
49:3,12,16,24	process 22:8	25:16 26:8	really 6:9 17:10	relates 1:23	revert 36:9	second 1:22 2:5
50:5,17 54:6,8	33:7 41:1 53:7	28:20 29:19	27:22 34:16	relating 15:16	review 4:22	3:12 10:14
54:9,12,18	53:25	31:8,14 32:25	36:16 37:10	relation 1:20 3:4	16:17 23:23	28:19
55:3,10	produce 40:11	34:24 35:14,24	39:18 49:21	10:7,22 12:5,7	52:12	Secondly 30:9
PressBoF 8:20	product 11:21	36:22 38:13		23:19 36:10	reviewable 52:9	secretaries 51:16
9:13	profoundly 7:10	39:12 41:1,3	reappointed	44:1 45:20	reviewed 30:20	secretary 2:11
pressing 35:1	programme 2:15	43:14 44:25	2:18	46:4,8 47:17	52:12	2:22 4:13 5:10
pressure 17:16	24:2	48:11 49:24	reason 35:12 reasons 33:14	47:19 48:24	right 7:23 8:6	6:2 13:10
19:12 33:16,21	progress 5:21,24	51:23 52:3,8		51:15 54:25	9:6 11:16 12:8	23:13 25:3,9
33:21 34:6	19:7,14 28:10	53:8 54:15,19	38:8,11 49:3	relationship 30:1	17:23 21:9,16	25:15 31:24
35:13,23 36:1	28:17 31:21	54:20,22,25	53:3,3	54:5 55:1	24:18 26:19	51:19 52:1
presumably 6:14	44:24	55:13	recall 18:16	relatively 12:5	27:15 41:20	53:13 55:2
29:5 52:9	prominence	publication	29:22	20:21 35:9	45:3 49:3	section 43:17,23
pretty 20:24	45:21	32:17 33:2	recalling 28:16	release 33:3	50:17 55:15	secure 13:6 41:6
27:18 28:22	pronouncements	public's 14:23	receded 24:10	relevant 52:17	rights 22:15 32:9	41:22 44:6
50:2	16:25	publish 10:10	receive 46:21	reluctant 27:20	34:12 41:13,14	
prevents 38:21	proper 34:11	published 32:14	received 9:10	remain 28:9	41:19 42:3,7	secured 38:13
previous 22:23	38:10	pubs 14:18	13:25 14:12	38:15	42:18,24 54:20	securing 38:8 see 13:11 16:1
Pictions 22.23	50.10	Pubb 17.10	receiving 37:25	50.15	72.10,27 J7.20	SCC 13.11 10.1
	•	•	•	•	•	•

						Page 61
10.21.22.5	1 1 2 . 2 . 2 . 2 . 2	1	47.01	22 20 27 17 22	. 11 12 25 22 2	1 , , , , .
19:21 22:5	slipped 37:25	statutory 3:21,24	47:21	22:20 27:17,22	told 12:25 23:3	undertakings
23:11 24:21,24	small 32:25,25	5:8,12 7:6,25	sworn 1:5	30:5 34:15	34:14 36:4	28:9
28:4,6 29:11 34:15 35:4	53:20 Smith 1:4,5,7,10	46:4 47:3,11 47:20	sympathetic 40:2	35:1,18 37:12 40:18 43:25	40:25 tonight 17:10	unfair 26:14 unfairly 21:6
41:8 49:10	1:10,11 22:18	stay 28:8	sympathy 32:24	45:17 50:18	tonight 17.10 top 5:23	unimpeachably
50:12	24:22 51:10	step 16:13 34:10	system 7:24 8:2	think 1:11 4:12	topic 15:9	9:4
seeking 9:16	55:17	stepping 20:8	8:17 9:13 10:2	4:25 5:11 6:8	topics 53:17	unnecessarily
23:17	society 21:16	steps 5:3,7 6:9	38:20 39:22	7:9,24 8:10,22	totally 9:20	39:7
seen 6:17 20:5	solely 43:5	30:18,19 31:17	45:22 46:4	9:3,4,6 11:4,8	touch 27:11	unpleasant 39:8
seized 31:22	solution 43:22	35:20	49:4,6,10,17	11:14,14 13:8	41:14	unsavoury 39:9
Select 25:19	somebody 11:1	stick 4:14 30:4	49:20	14:24,24 17:24	touched 44:21	urgent 16:17
selected 8:20	21:7,25 53:14	Sticking 3:1		18:21,23 19:20	toughening	23:17
self-regulation	soon 41:16	sting 5:2	T	19:23,25 20:6	45:24	urgently 16:14
7:2,4,13,18	sorry 8:6 12:17	stood 43:25	tab 2:4 15:25	20:8,15,19,23	Trading 46:6	17:9
13:2 24:15,16	24:16	stops 46:12	23:7 28:2	20:25 21:2,11	tragedy 15:8	use 21:19
33:7 45:3	sort 7:25 47:11	stories 32:23	tabling 43:4	21:18,24 22:11	translatable	useful 12:22
self-regulatory	54:25	story 29:24	tactic 42:25 43:9	26:20 27:5,19	29:17	usefully 25:16
7:24 8:2,18	sorts 14:19	strengthen 24:11	take 1:7 5:2	29:12 34:11,16	translate 35:5	ushered 3:10
13:7 46:11	source 25:5	24:15,16	12:23 16:15	34:17,19,19,25	45:9	T 7
47:1	sources 14:19	stressed 25:3	17:10 18:19,22	35:19,20 36:17	translated 6:16	V
selling 11:21	South 2:10	strident 31:17	24:1 25:10	36:18 37:16,24	transparent	various 25:20
sense 21:8	speaking 21:17	strong 7:4 16:22	30:18 31:17	38:23 41:4 43:2 5 5 25	22:10	32:24
sensible 8:13 sent 15:24 16:4	specifics 37:19 speech 7:10 11:7	18:25 45:2,4 53:16,21	33:6 36:7 39:3	43:2,5,5,25 44:7 45:17	transparently 53:7	vehicle 52:18
sent 15:24 16:4 sentiment 15:20	24:4	stronger 13:11	53:25 55:8,8	44:7 45:17 46:12,13,16,25	treated 21:6	view 7:15 14:23
16:22	speeches 35:25	35:11 44:18	taken 4:22,23 5:4,6,16 6:2,9	40:12,13,16,23	tremendously	14:23 16:20
separate 51:13	speeding 39:20	strongly 42:2,8	6:21 15:5	50:6,18,18	10:12	18:18,21 19:6 27:12 40:2
September 1:22	39:21	42:13 51:18	18:18 24:20,23	53:14 54:11	tribunal 3:22,24	43:23 44:2,6
15:12,22 16:5	spend 9:14 49:18	style 29:25	25:5 30:20	55:7	tried 35:25 40:13	44:18 52:14,20
23:6,9,11 26:4	spent 40:20	subject 43:11	35:20 46:20	thinking 17:23	55:2	53:6,16,21
26:7,23 27:6	spirit 28:8	submission	51:16	third 16:11	true 49:1	55:4,6,8,9
27:16,25 28:2	spokesman 19:1	36:18	takes 39:15	17:18 28:21	truly 11:1	viewing 48:5
28:3 34:21	Sport 2:12,22	subsequent 27:9	talking 12:1 19:3	thought 6:4,8	trust 48:1	views 5:20 6:7,25
42:20	spotlight 54:15	subsequently	task 50:8	10:3 17:14	truthful 10:16,18	12:24 13:1,10
seriously 30:20	spouses 29:10	17:17 29:23	tasked 21:25	28:17 29:8	50:25	50:20 53:21
46:20	square 21:21	30:23 34:3	teeth 31:13	30:8 33:22	try 37:11	voice 1:14 43:6
serve 52:3,4	22:2,3	51:20	tell 5:13 13:23	43:1	trying 8:15 20:22	voluntarily 8:3,8
service 38:19	staff 11:2	substantive 16:7	14:1 15:11	thousands 14:1	48:23	47:8,15
set 2:6 3:11,16	staffed 8:21	succeeding 6:19	18:12 23:15	three 13:25	turn 2:4 23:3	
4:4 24:3 28:12	stage 6:8 18:8,21	success 24:6	25:24 26:14	18:24 26:1	two 1:19 2:25 3:1	W
setting 23:23	27:13 29:21	30:23	28:14 34:5	27:16,22 28:12	11:17 12:9	wake 13:14
seven 3:8	33:13 41:24 48:24	successful 27:20	35:2 40:2	28:17 32:3	13:24 15:12	Wakeham 4:2,8
shock 32:24 short 35:22	standards 1:21	35:7,8,13 successfully 45:9	41:16,20	34:4,19,22,25 35:18 37:17	29:1,4 30:5 32:2 34:15,17	4:23,25 5:17
40:16	2:17 9:11 10:7	succession 20:3	tends 31:3 tension 10:23	40:13	37:16,23 40:13	5:19 6:5,14,22
shoulder 39:23	10:9 48:6	succession 20.3 successor 45:25	tension 10:23 term 2:19 21:9	three-year 37:23	40:18 41:3,7	9:4 15:21
side 6:16 11:9	start 2:2	suddenly 15:7	terms 3:3 5:4	41:7.12	41:12 45:17	16:16 17:13
significant 9:7	state 2:11,22	suffered 41:2	11:6,11 21:1	tightening 19:2	46:4,13,16	18:6,14,20,22 18:24 20:8,16
13:14	4:13 5:10 6:2	sufficient 17:15	21:16 22:19	tilted 22:2	51:14	22:14 23:5,10
similar 46:2	7:9 13:10 25:3	suggest 31:19	37:19 41:7	time 4:4,10,17,21	two-thirds 9:24	23:25 24:1
similarly 29:11	25:9,15 31:24	suggested 23:18	44:11	6:23 7:8,8 11:5	type 38:21	25:1,15,20
29:17	51:17,19 52:1	24:23 25:9	terribly 31:15	13:10 14:14		26:18,21 27:1
simply 4:4 8:14	53:13 55:3	42:23	test 44:25 52:17	16:22 17:3	U	27:11 29:1,22
10:10 18:19	stated 53:6	suggesting 8:24	tested 36:1	18:13 19:12,24	ultimately 46:3	30:6,16,17,24
49:7	statement 1:15	11:10,11 27:3	tests 51:23	21:15 24:1	48:17 49:6	31:10 33:14,20
sir 1:3 3:9,19	2:5 5:14 7:23	suggestion 43:13	thank 1:12,16,17	26:11 30:22,22	53:11	33:25 34:22
8:16 39:1	13:4,21,24	53:2	2:2 28:7 55:15	35:15 38:9	unable 29:5	37:17 41:15
42:14 52:6	15:11 16:19	summary 2:6	55:16,17,19	41:8 42:21	unacceptable	42:11,12,16,18
sits 20:21	17:6 18:12	3:19	they'd 44:16	43:8,25 44:5,7	14:8	44:1,6 50:4
	23:15 24:22	supporter 7:2	thing 4:18 10:13	44:15 50:23,23	undercut 49:9	Wakeham's
sitting 8:11	25:7,24 26:8	suppose 30:25 sure 8:22 11:2	10:14 16:23	51:18 55:2	underpinning	23:23 32:14
39:23 40:24		L SHEA X'// LI'/	26:19 43:24	times 18:14	47:11	35:5 36:25
39:23 40:24 skilful 5:1	32:8,15 34:5		44.10		1000	
39:23 40:24 skilful 5:1 slight 37:10	32:8,15 34:5 44:14 45:13	21:7 47:10	44:12	20:20 37:7,15	understand 2:23	Wales 13:15,19
39:23 40:24 skilful 5:1 slight 37:10 slightly 36:8	32:8,15 34:5 44:14 45:13 statements 1:19	21:7 47:10 52:11,17	things 2:12 3:25	45:23	3:2,5 16:18	want 3:2,4 4:4
39:23 40:24 skilful 5:1 slight 37:10 slightly 36:8 49:14	32:8,15 34:5 44:14 45:13 statements 1:19 17:2 19:4	21:7 47:10 52:11,17 suspect 31:12	things 2:12 3:25 4:25 5:18 6:7	45:23 timescale 24:17	3:2,5 16:18 18:17 21:17	want 3:2,4 4:4 18:17 21:7
39:23 40:24 skilful 5:1 slight 37:10 slightly 36:8	32:8,15 34:5 44:14 45:13 statements 1:19	21:7 47:10 52:11,17	things 2:12 3:25	45:23	3:2,5 16:18	want 3:2,4 4:4
39:23 40:24 skilful 5:1 slight 37:10 slightly 36:8 49:14	32:8,15 34:5 44:14 45:13 statements 1:19 17:2 19:4	21:7 47:10 52:11,17 suspect 31:12	things 2:12 3:25 4:25 5:18 6:7	45:23 timescale 24:17	3:2,5 16:18 18:17 21:17	want 3:2,4 4:4 18:17 21:7

					Page 62
	Ī	I	Ī		
43:19 45:13	46:9	21 32:20			
49:9,10	worked 15:1	22 2:8 45:13			
wanted 6:10 21:5	26:1,2,23 30:3	23 45:13			
34:6 44:2,5	workers 38:19	24 26:7 27:16,25			
wanting 13:11	38:19	28:3 34:21			
38:8,12	works 8:25 10:5	25 5:19 26:23			
wants 10:8	26:22	34:7			
war 37:6	world 9:7 50:24	29 28:2			
warnings 22:23	worried 42:2				
wasn't 4:18 5:23	worse 19:17	3			
27:13 36:15	worth 30:25	3 1:23 2:23 4:15			
41:9	wouldn't 11:13	23:25			
watch 24:13	29:10	3.36 55:20			
way 1:24 3:7 5:5	write 26:16	30 1:23			
8:13 9:5 10:9	writing 45:15	31 13:19 18:24			
11:2,8 13:6	wrong 11:15	31:23			
19:8 28:21	38:23,25				
30:2 35:21	wrote 15:13 34:7	4			
38:8 39:6		4 5:14 24:1 28:25			
42:16 45:24	Y	29:3			
48:2 49:15	Yeah 29:12				
50:6 53:17,20	years 2:8 3:9,13	5			
53:22 54:12,13	31:25 34:4	5 13:4 24:2 28:11			
55:9,13	37:17 40:13,19				
ways 24:9 36:1	41:3 46:15	6			
38:1	young 32:21	6 13:20 24:5			
Wednesbury					
52:17	0	7			
week 24:10 weekend's 16:15	0.1 49:17	7 15:11 24:17			
weeks 13:25 14:5					
18:24 26:1	1	8			
27:9	1 2:4,5 4:8 37:9	8 15:22 18:11			
welcome 23:22	1,200 14:4	23:6,11 26:4			
24:5 34:10	10 41:21 55:21	27:6 41:21			
welcoming 33:3	11 25:24	-			
well-known 29:9	12 43:17,23 13 34:5	9			
weren't 34:17	15 35:3	9 13:24 23:9			
50:16	16 1:22 32:20	99 50:24			
we'll 2:20 12:19	41:16				
13:13 18:10	17 42:1				
22:13,15 32:12	1983 2:9				
40:14 43:1	1990 3:9				
we're 2:2 22:14	1993 3:12,21 4:3				
22:17,18	1995 4:8				
we've 5:15 16:10	1997 2:10,21,23				
41:14 45:10	4:15 5:10,19				
46:13 51:13	6:20 13:19				
whatsoever 9:8	16:5 23:9 28:3				
9:18,25	31:23 41:6				
whichever 52:22					
whilst 21:15 38:9	2				
wholesale 30:1	2 3:11 7:2 15:12				
who've 40:25	15:25 16:5,11				
widely 25:18	23:7,22 28:2,6				
wind 31:14	37:10				
window 32:1	2.00 1:2				
wish 20:4 24:6	20 36:18 44:14				
witness 1:3,4 2:5 13:24 44:14	2001 2:10,21				
women 50:13	31:24				
women 50:15 wondering 24:24	2002 36:13				
52:19	2003 2:14				
word 47:14	2005 2:9				
work 1:15 12:21	2008 2:14				
14:9 44:24	2011 1:22				
	2012 1:23				
	-	-		-	-