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- 1 2 (2.00 pm)
- 3 MR JAY: The last point I'd like to make in relation to the
- 4 ICO issue is a meeting which took place on 13 July 2006,
- 5 a note of which we will see in bundle 10, tab 16,
- 6 page 00389.
- 7 A. 369?
- 8 Q. Sorry, 389, my apologies. Top right, it says RJT13.
- 9 A. Yes, I have it.
- 10 Q. The reason for the meeting is to discuss your response
- 11 to recommendations in the first report, "What price
- 12 privacy?". Do you see under "Specifics" --
- 13 A. Yeah.
- 14 Q. "Mr Thomas set out the background and gave the history."
- And at the end of the first bullet point says:
- 16 "He [that's Mr Thomas] expressed some disappointment
- that the PCC had not been more forthright in its
- 18 condemnation of the activity."
- 19 Is that a fair criticism?
- 20 A. No, it's not a fair criticism.
- 21 Q. Because?
- 22 A. Because I had been forthright in my condemnation of
- 23 blagging and offences against the Data Protection Act in
- speeches and the annual reviews and interviews,
- 25 repeatedly, to be quite frank.

#### Page 1

- Q. At the second bullet point you set forth your position.
- 2 You said:

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- 3 "The PCC is not able to act as a general regulator."
- 4 What did you mean by that?
- 5 A. I think what I had in mind there was a notion that we
- 6 should in some way take on the work of the
- 7 Information Commissioner by virtue of being a Press
- 8 Complaints Commission, and this is what I wanted to
- 9 reject. The point I always made to Mr Thomas, apart
- from my insistent demands on beef, was to suggest that
- 11 we had to work in a complementary way. He did his
- thing, but there were things that we could do to help
- him, and I've described them in the -- before lunch.
- 14 And I think as a consequence of this precise meeting, it
- 15 led to direct contacts between the Code Committee and
- Mr Thomas, which led to a change in clause 10 on
- subterfuge in the code of practice.
- 18 Q. I think your position is -- and you articulated it this
- morning -- that you believe that the PCC is correctly
- 20 called a regulator, but you've qualified that in
- 21 language which we've heard.
- 22 A. Yes.
- 23 Q. Which, of course, is a position somewhat different from 23
- that taken by Mr Toulmin and Mr Abell yesterday, isn't
- 25 it?

## Page 2

- 1 A. Indeed.
- 2 Q. Can I ask you about the next page, please? This is the
  - issue about the Code of Practice Committee. The basic
- 4 point is that it was news to Mr Thomas that there was
- 5 jurisdictional separation, as it were, between the PCC
- 6 and the Code of Practice Committee.
- 7 A. Mm.
- 8 Q. Is it a fair criticism that you had not carefully
  - explained to him back in 2003 and 2004 that there was
- that division of powers and that if he wanted a code
- amendment, he needed to go to the Code of Practice
- 12 Committee rather than to you?
- 13 A. No, I think that is also an unfair criticism, and it was
- as a direct result of the advice we gave him at this
- meeting that he went to the Code of Practice Committee,
- 16 entered into correspondence with Les Hinton, who at the
- time was chairman of the Code Committee, and then
- 18 I think proceeded to send the Code Committee a possible
- draft of a revised clause 10. Those words were not
- 20 accepted by the Code Committee but it was strengthened
- and amplified.
- 22 Q. Why was it left to Mr Thomas to go to the Code of
  - Practice Committee? Why wasn't that matter, which was
- 24 preeminently one which you should take up on behalf of
- 25 the PCC with a sister committee, in effect?

#### Page 3

- 1 A. No, I thought actually this would be helpful. Rather
- than mediating his contacts with the Code Committee on
- 3 the matter of clause 10, the very best thing he could do
- 4 was to speak to them directly. It was a kind of
- 5 obvious, common sense practical thing to do, to which he
- 6 raised no objection, and which bore fruit.
- 7 Q. But is this not another example of you adopting
- 8 a somewhat minimalist approach, leaving it to Mr Thomas
  - to have dealings with, in effect, your own Code of
- 10 Practice Committee?
- 11 A. If that is minimalism, that is a strange concept,
- 12 considering the amount of effort we had made to exhort
- journalists to obey the Data Protection Act, without
- ever having been given evidence of which journalists and
- which newspapers had committed sins.
- So I think that -- what was this, our third meeting
- with Mr Thomas, I believe? Yes, third. It might have
- been fourth but I think it was third. It was
- a thoroughly positive and constructive thing to do,
- which bore fruit.
- 21 Q. The next question and final question on the ICO issue is
- one which others, I know, want me to put. You get the
- second report. You get the table in the second report.
- The Daily Mail happens to be top of the list but maybe it doesn't matter precisely who it is. Why don't you
  - it doesn't matter precisely who it is. Why don't you Page 4

1 (Pages 1 to 4)

1 call in the editor, or one of the editors or some of the 1 A. Absolutely, and we could have done that at the Select 2 editors near the top of the list, and ask for an 2 Committee as well. We could have closed the meeting, 3 explanation? 3 chucked the public out, and done it in a different way. 4 A. I was not in the business of calling in editors to 4 Q. I think your position, though, is really one of partial 5 explain actions that were perfectly legal. The beef had 5 disbelief. Because he didn't provide you with the 6 to be an indication of which newspapers and which evidence, you doubted his conclusions. You said, in 6 7 7 journalists had actually hired inquiry agents to procure terms in your memorandum to the Select Committee, that 8 information illegally. Then we would have been in 8 the evidence was old and incomplete, and that, for you, 9 a different ball game, but we never got there. 9 was enough. You didn't need to cause any further 10 Q. But that's a misunderstanding, I think, Sir Christopher, 10 investigations? 11 of the table in the second report. The table in the 11 A. A lesser --12 second report evidenced, in Mr Thomas' view, probably 12 Q. That's the true position, isn't it? 13 illegal transactions. So the point I'm putting to you A. No, it's not that at all. A lesser consideration was 13 14 is: on the basis of that table alone and assuming that 14 the fact that the information went back to 2002 and 15 Mr Thomas it is acting in good faith and has evidence, 15 2001, so it was several years old. That was a lesser 16 as he must be doing, why not call in some editors and 16 consideration. The main consideration, as I've said 17 ask for an explanation? 17 several times now in this hearing, is that I needed 18 A. He can have all the good faith in the world, but like 18 actionable information. That was never given. the chairman of the Select Committee himself, I wanted 19 19 Q. Move off that topic to a different one. Mr Desmond, he 20 to see the beef. Then we had something to say to the 20 doesn't pay his subscriptions to the MPA, I think, in 21 editors. And it wasn't just me; it was also the Select 21 2008, and you write a letter to him -- it's probably not 22 Committee itself wanted to know the answer. He couldn't 22 necessary to turn up the letter -- asking for a meeting 23 give it. So by definition, there was a limit to what 23 and a discussion. Was there any discussion with 24 could have been done. We could have done more --24 Mr Desmond in relation to that? 25 LORD JUSTICE LEVESON: It may be he couldn't give it because 25 A. No, there was no meeting, and there was no discussion Page 5 Page 7 that itself would breach the data protection 1 1 with him. I don't think he was interested in having 2 2 legislation. 3 A. My Lord? 3 Q. Why was that, do you think? 4 LORD JUSTICE LEVESON: Well, it may be he couldn't give it 4 A. Well, you'll have to ask him. 5 because he would be disclosing information in breach of 5 O. Did you try and engage him further in discussions? 6 data protection. 6 A. Well, no, for the very good reason that, if I remember rightly, I wrote that letter in January 2008, and then 7 A. Well, then that is a very curious situation to find 7 8 yourself in when you're giving evidence under 8 on 19 March of that year, the court ruled against the 9 9 parliamentary privilege. four Northern & Shell titles. I spoke relatively 10 10 MR JAY: Well, Sir Christopher, the position under mildly, considering the circumstances, to the media, and Section 59 of the Data Protection Act, as Parliament 11 11 from then, I think, as far as Mr Desmond was concerned. 12 itself pointed out, probably correctly, is that there 12 I was the devil incarnate, so there was no point of 13 wasn't an impediment on Mr Thomas giving the information 13 engaging in any kind of dialogue with him. 14 to the newspapers, should the newspapers request it --14 Q. He didn't rejoin the PCC through the mechanism, 15 and eventually they did, after a number of years -- but 15 I suppose, of repaying his subscriptions until after you 16 I think there was a recognition that there was a problem 16 left in May 2009; that's right, isn't it? 17 in giving it to you, that information, because that 17 A. Yeah, I think that's right. I think once I had gone, he 18 would not be justified under Section 59. 18 felt that an impediment had been removed to his resuming 19 A. Well, in which case, I have to say, why was it then in 19 relations to the PCC, which also included paying his 20 his letter of November 2003 that the 20 subscription to the MPA. I think that's what had 21 Information Commissioner suggested that in certain 21 happened. 22 circumstances he would be prepared to give me that 22 Q. Yes. At the very least, then, there was some bad 23 information? 23 feeling from his point of view -- not necessarily, of 24 Q. Yes, but he made it clear that that would have to be 24 course, from yours -- in relation to the handling of the 25 25 under very specific conditions, didn't he? McCann case, wasn't there?

Page 6

- A. There was extremely bad feeling from Mr Desmond about
- 2 that, which I think he expressed even at this Inquiry.
- 3 Q. Maybe I was guilty of understatement on that occasion.
- 4 May I ask you, please, to look at file 5, which
- 5 I think is in a lever-arch file in front of you, which
- 6 says B5 to 9.
- 7 A. I don't see a 5 here. What is this I have? No, I -- do
- 8 I have that? No, I don't think I do.
- 9 Q. I think there's a composite bundle which is 5 to 9.
- 10 A. This is 10. Something weird about -- oh, what's this?
- Oh, sorry, I couldn't read the label. My apologies.
- 12 Q. If you kindly turn up tab 1.
- 13 A. Oh yeah.
- 14 Q. This is a letter you write quite early on in your term
- as chairman to the editor of the Sun. Do you remember
- this one, Sir Christopher?
- 17 A. Oh yes.

20

- 18 Q. 26 September 2003:
- 19 "Dear Rebekah ..."
  - If I can paraphrase -- it's a letter which has been
- 21 redacted. 39320 is the number.
- 22 A. Yeah, I'm looking at it.
- 23 Q. It relates -- I mean, it may be that we're being too coy
- over this since we all remember the particular incident.
- 25 It relates to the use of the word "bonkers" in the
  - Page 9
- 1 context of a sportsman -- let's put it neutrally, in
- 2 that term -- who unfortunately was suffering from mental
- 3 illness at the time, and therefore the use of the term
- 4 "bonkers" was entirely inappropriate. You pointed out
- 5 that that was right, and you asked for reassurance that
- 6 breaches of the code of this nature would not occur;
- 7 that's correct, isn't it?
- 8 A. That is absolutely right.
- 9 Q. And then the reply is at tab 3 at page 39323.
- 10 A. Yeah, I'm getting there.
- 11 Q. It's not particularly contrite, is it? The point --
- 12 A. No, I remember this. Yes.
- 13 Q. The point is made in the final paragraph of this first
- 14 page:
- "I hope you will not mind my adding one final
- thought about your letter. I consider you
- a constructive and interested critic of the newspaper
- industry and value your opinion; but the tone and style
- of a newspaper is a matter for an editor. If the
- 20 readers object (and a few certainly did in this case),
- 21 they have the option of buying another newspaper to
- 22 read."
- How would you characterise that reply? We can see
- what you thought about it at the time, I know, because
- 25 there's a manuscript annotation --

Page 10

- A. I said it was just silly, didn't I, something like that?
- Yeah. Well, it was silly, and it also contradicted her
  - first paragraph, in which she said:
- 4 "As you know, the Sun is strongly committed to the
- 5 code of practice -- and opposed to any form of
- 6 discrimination, on health or any other grounds."
- 7 Q. It's fair to say that on the next page, there is an
- 8 acceptance that the Sun made the mistake.
- 9 A. Yes.
- 10 Q. But then they go back into the offensive, really, by
- 11 saying:
- 12 "Whenever we do, our rivals, in particular the BBC
- and some of the broadsheets, are ready to stir the pot.
- Respectfully, I think it would be a mistake to dance to
- their tune every time a tabloid slips up."
- Again, what do you make of that?
- 17 A. Silly and sillier, really.
- 18 Q. Your note says, after pointing out it's silly and that
- 19 the broadsheets would have got a similar letter from you
  - had they transgressed in an identical way -- you say:
- 21 "Another lunch for the new year."
- 22 A. Yeah, that's absolutely right, and as I said to you in
  - early evidence, I tried to see each national editor once
- a year over lunch. We were setting up the programme,
- 25 I suppose already, in October 2003, 2004, and obviously
  - Page 11
  - Rebekah Wade, as she then was, would be included in that
- 2 list

20

23

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- 3 Q. Yes. Some might say this is a slap on the wrist which
- 4 is dismissed by the editor of the Sun and you're going
- 5 to sort it all out now in a lunch in the new year, which
- 6 it is a certain way of operating. Is that a fair point?
- 7 A. It's an unfair point. This letter is in fact an
- 8 expression of extreme irritation, and it never happened
- 9 again. I mean, not the letter, but the -- that kind of
- 10 medical reference.
- 11 Q. Okay. You gave an interview to the Guardian, I think,
- when you left -- or about the time when you left -- on
- the expiry of your second term. It's at B6, tab 12, so
- 14 I think probably the same file you're looking at,
- section 6 of that file?
- 16 A. B6, tab 12?
- 17 Q. Yes.
- 18 A. This is -- oh, the 6 is embraced by the 5 to 9, yes.
- 19 LORD JUSTICE LEVESON: You'll find --
- 20 A. Yes, section 6. I've found it. What was the tab again?
- 21 MR JAY: 12.
- 22 A. I'm sorry.
- 23 Q. A piece in the Guardian written by -- it's
- 24 Professor Greenslade, isn't it?
- 25 A. It is Professor Greenslade.

- 1 Q. 30 March 2009.
- 2 A. Yes.
- 3 Q. The headline "Watchdog or lap dog?"
- 4 A. Yes.
- 5 Q. Can I just deal with a few points you raised. His
- commentary I don't think we need -- we can read it. The 6
- 7 second page at the top is quite interesting. Do you see
- 8 this:
- 9 "When asked in his valedictory interview what he 10 thinks is wrong with the PCC, Meyer replies: 'Not
- 11 a lot."
- 12 Are you correctly reported there?
- 13 A. Absolutely.
- 14 Q. So presumably, then, your position is: not a lot is
- 15 wrong, not a lot needed to be changed in March 2009, and 15
- 16 perhaps not a lot needs to be changed now; is that
- 17
- 18 A. Well, I think in an interview with Roy Greenslade, to
- 19 have said, after six years, in answer to his question,
- 20 "A hell of a lot" would have been perverse. So I said,
- 21 "Not a lot", but this does not contradict what I have
- 22 said in my witness statement, that things need to be
- 23 done to improve the effectiveness of the PCC.
- 24 Q. Then it continues:
- 25 "He believes [that's you, of course] he's done much Page 13

- 1 you reply:
- 2 "I have to tell you that inside this building we say 3 to each other: 'It would be better if we had some more
- 4 adjudications."
  - What did you mean by that?
- A. This was an old debate between me and Roy Greenslade 6
- 7 about adjudications and what I meant by that was
- 8 actually, if you could say, instead of: "We've done 39
- 9 adjudications in a year, or 49 or 51" -- which doesn't
- 10 sound very much, given the large number of people who
- 11 have come to us with complaints and the large number of
- 12 rulings that we make. That presentationally, for those
- 13 who don't understand how the PCC works, doesn't look
- 14 like a very great deal and it's quite hard to explain
- how rulings operate. So if we could say -- let's say we
- 16 said we had 250 adjudications a year. Presentationally,
- 17 it would be better, but the fact of the matter is you
- 18 cannot artificially inflate the number of adjudications.
- 19 Your job, among others, is to mediate between
- 20 complainant and editor. If you can bring the thing to
- 21 a resolution, you have done your job.
- 22 There are circumstances in which it is necessary to 23 go to the full Commission, and that produces an
- 24 adjudication one way or another. That was the point of 25 my argument, but as I say, Roy and I -- Roy Greenslade
  - Page 15

- 1 to ward off statutory legislation and to enhance the
- 2 status of the press, following what many regarded as its
- 3 Wild West period of the late 1980s when tabloids were
- 4 misbehaving on a regular basis. I think it's improved
- 5 a great deal over the last six years. I'm not saying
- 6 we've reached a state of grace but it's in a state of
- 7 permanent evolution and it's done jolly well."
- 8 So you're pretty pleased with how well you've done, 9 and you might well be entitled to be, but that's what

A. Yes, and I would rest on those words even now.

- 10 you're telling Professor Greenslade, aren't you?
- 12 Q. You've made it absolutely clear that one of your
- 13 objectives was to ward off statutory legislation; is
- 14 that right?

11

- A. Of course. 15
- Q. Can I ask you just another point or two. At the bottom 16 16
- 17 of this page:
- 18 "There is precious little transparency in the way 19 the PCC goes about its behind the scenes business of
- 20 resolving complaints by acting as an arbitrator.
- 21 Although the organisation also negotiates a solution
- 22 between the two parties, wouldn't more adjudications
- 23 against offending papers generate more public
- 24 confidence?"
- 25 Then it's recorded on the next page -- you laugh as Page 14

- 1 and I have had this debate going back to when I started 2 at the PCC in 2003.
- 3 Q. I think you're rejecting the proposition which may have
- 4 been implied through Professor Greenslade's remark or 5 question, that the whole system is loaded or skewed in
- 6 favour of achieving a mediation, a resolved settlement,
- 7 as it were, rather than an adjudicated solution; is that
- 8 right?
- 9 A. Well, there was a -- there is a philosophical difference 10 between Roy Greenslade and myself on this. If you go
- 11 back to the original Calcutt insight into the then new
- 12 PCC, the notion of mediation was a the centre of his
- 13 recommendations. Now, if you can bring a complaint to
- 14 a successful conclusion -- don't forget we moved fast
- 15 when I was chairman. We could generally turn this
- around within a month, give or take a few days, so it
- 17 wasn't a protracted process. If you could do that to
- 18 the satisfaction of the complainant, job well done. If
- 19 you couldn't, then you would go to adjudication. 20
- 21 a lot of the energy comes out of the complaint, it's in

Q. But there's a sense, though, of attribution here, that

- 22 the interests of the newspapers to get a mediated
- 23 settlement rather than adjudication, so all the
- 24 pressures are on sorting it out "amicably", rather than
  - reaching a decision of the PCC itself. Is that not Page 16

4 (Pages 13 to 16)

- 1 fair?
- 2 A. No, that sounds plausible, but actually it's heretical.
- 3 Let me put it like this: the threat of an adjudication
- doesn't drag the issue out. As I said, we turn these --
- 5 I used to turn these round, on average, within a month.
- 6 The pressure is on the editor, because editors --
- 7 I haven't actually been able to say this, but I will say
- 8 this now. Editors hate negative adjudications in their
- 9 newspapers, and if they know one is coming down the
- pipe, then the pressure mounts on them to come up with 10
- a remedy that is satisfactory to the complainant.
- So, far from there being attribution in the system,
- you actually have satisfaction in the system, and if you
- didn't have this satisfaction in the system, you would
- not have the vast increase in the number of ordinary
- people, 98 per cent of those who come to the PCC who
- seek help from that organisation. If it was attrition,
- we wouldn't have anybody.
- 19 Q. Thank you. Can I ask you to look at the bottom of the
- page. In the middle of the page, he makes the point
- about independence or lack or it, which we've already
- addressed. Bottom of the page:
- 23 "He also points to his success in having stamped out
- the use of the phrase 'illegal asylum seeker' ..."
- 25 A. Yeah, yeah.

# Page 17

- 1 Q. I understand that:
- 2 "... but he's much more reticent when I ask him
- 3 about his failures and his regrets."
- 4 Was that a fair comment?
- 5 A. Where is in? Which paragraph?
- 6 Q. Bottom of the page.
- 7 A. Oh, very bottom? I'm sorry, I'm on the wrong page.
- 8 I do apologise. I was looking at the first page. Oh,
- 9 yes. About his failures and his regrets?
- 10 Q. Mm.
- 11 A. Well, what is your question? Is your question: what are 11
- my failures and what are my regrets?
- 13 Q. No, I didn't ask that question. It's whether Professor
- 14 Greenslade has correctly characterised your position,
- which was reticence, on that occasion?
- 16 A. I think I might -- sorry, I don't want to sound
- 17 arrogant. Maybe I was scratching my head trying to
- think about failures and regrets. But I mean, it's
- a fair interview, this. It's a good interview in which
- 20 he does a decent job and I'm not going to quibble with
- 21 him at all on anything.
- 22 Q. The final point is that Professor Greenslade asked you
- about the Mosley case. That's on the last page of this
- 24 interview.
- 25 A. Yes.

## Page 18

- 1 Q. Page 4 of 4. Halfway through:
- 2 "When Anthony Lester QC [of course, it was, I think,
  - Lord Lester by then] asked him what had happened if
- 4 Mosley had gone to the PCC instead, Meyer said he
- 5 couldn't predict what the PCC would have said as it
- 6 would have weighed up issues of privacy against freedom
- 7 of expression."
- 8 Well, that's correct, isn't it?
- A. Yeah.
- 10 Q. "Lester said, just like [that should be
- 11 'Mr Justice Eady', in fact]-- when I asked directly
- whether he agreed with Eady's judgment, he simply said
- that the matter would have led to a big debate amongst
- 14 the commissioners."
- 15 A. Yes.
- 16 Q. Is that what you said to --
- 17 A. Absolutely. So I was less frank to him than I have been
- 18 to you.
- 19 Q. Fair enough.
- 20 Can I ask you, please, about your time as press
- secretary to the then Prime Minister between 1994 and
- 22 1996. Is this right: those were the days before you had
- 23 a professional director of communications or spin
- 24 doctor, whatever you want to call them? You had
- 25 a distinguished civil servant to act as your press
  - Page 19
- 1 secretary; have I got that bit right?
- 2 A. Yes. The practice was nearly always to have a civil
- 3 servant doing the job in Downing Street. Not
- 4 invariably.
- 5 Q. You say in your statement -- you refer to the cringing
- of politicians to the press. Could you elaborate on
- 7 that for us, please?
- 8 A. Well, which way into that? Enormous attention was paid
- 9 to editors of national newspapers -- this extended, to
- a degree, to regional editors, but not much -- and so
- a considerable effort went into courting them, bringing
- them around for privileged one-or-one briefings, for
- example. This was in the early 1990s. I believe that
- that practice has now expanded phenomenally over the
  - years.

15

- 16 So what it came down to was an exaggerated belief in
- 17 the influence of the front page headline and commentary
- columns within. There was an absolute belief that
- 19 newspapers and their editors could win or lose elections
- depending on how they reported the stories.
- I personally believe that that influence is gigantically exaggerated.
- 23 So the result of that was we did pay -- we, in
- 24 Downing Street, did pay a lot of attention, more than
- 25 I thought was necessary, to trying to pull people on Page 20

5 (Pages 17 to 20)

9

- 1 board. And of course the more you do that, the more
- demanding the editors and proprietors, in some cases,
- 3 become. So I was always a bit skeptical about that.
- 4 Q. Sorry?
- 5 A. So I was pretty skeptical about the power of newspapers.
- 6 Q. Were there particular organisations, editors and
- 7 proprietors who were especially courted?
- 8 A. Well, by the time I turned up in Downing Street in early
- 9 1994, the government of John Major was in some trouble,
- and in the two years that I was there, that trouble got
- 11 worse. Polls got worse, new Labour leader made things
- worse, and so the number of editors who could be counted 12
- on to be, how can I put it, supportive, diminished with
- every month that passed. So there was a natural
- 15 courting of those who supported the Prime Minister, to
- make sure they stayed on board.
- 17 The issue was always: to what extent should one try
- and turn newspapers and their editors who were hostile
- to the government? My own personal belief was: if
- you're going to go in for this kind of practice, you
- 21 should have everybody in. That is how things progressed
- in my two years there.
- 23 Q. I think if I can put the question in a perhaps more
- loaded way. Was there particular attention paid to the
- 25 Murdoch papers?

## Page 21

- 1 A. No, not especially. There was an attempt to get
- 2 alongside Rupert Murdoch, but if my memory serves, it
- 3 failed utterly, because I think Rupert Murdoch
- 4 considered John Major to be a loser, and by all
- 5 accounts, Rupert Murdoch was not interested in losers.
- 6 I do recall an occasion when they met for dinner
- 7 when I was there -- I wasn't present at the dinner.
- 8 This was brokered by somebody else and it was, by all
- 9 accounts, not a success.
- 10 So the short answer to your question is: no,
- 11 actually, in practice.
- 12 Q. Do you feel that the press in any way influenced
- 13 government policy or tried to influence government
- policy or tried to influence the selection of ministers
- by the Prime Minister?
- 16 A. Oh yes, of course they do. I mean, that's part of the
- partisan parcel, isn't it? If you are a partisan
- 18 newspaper and you have a line to peddle, you'll go for
- 19 policies, you'll go for people.
- 20 Q. No, my question, I think, was guilty of considerable
- 21 imprecision. There's nothing wrong with the press
- 22 publicly taking a particular position on a policy.
- 23 A. Of course not.
- 24 Q. I'm talking more about the behind-the-scenes activity --
- I think the term I used when opening the case was

# Page 22

- "subterranean" -- which might be said to be
- 2 objectionable. I'm talking about private discussions
- 3 and dealings between the press and politicians, from the
- 4 press' perspective designed to influence policy. Did
- 5 that happen?
- 6 A. Yes, of course it did, because private contacts between
- 7 the politicians and the press are as old as sin itself.
- 8 Q. Yes. Well, we may be in the realm of sin, since it's
  - anti-democratic, but I must ask you to give us some
- 10 particular examples of this. Are you able to do that?
- 11 A. Private contacts? Well, over meals, for example. That 12 happened.
- 13 Q. What sort of things went on which you can assist the
- 14 Inquiry about, Sir Christopher?
- 15 A. I'm just trying to remember how many of these meals
- I was present at. I mean, although I was the press
- secretary, I was not omnipresent, not least because
- I was a civil servant and not an employee of central
- office. Now, we were in the curious situation of having
- somebody out at central office -- Tim Collins, I think
- 21 it was -- who spoke for the party, and I spoke for the
- 22 government.
- Now -- I know you're getting impatient. I can see
- 24 it coming.
- 25 Q. No, I'm just trying to drill down into what your Page 23
- 1 evidence is.
- 2 A. Well, I'm drilling. Right now I'm drilling!
- 3 Q. Okay.

9

12

- 4 A. And most of these occasions were considered as party
- 5 occasions to be organised by the party, rather than by
- 6 the civil servant government spokesman. It is part of
- 7 the rich tapestry of political life. It happens. It
- 8 happens to this day. It's happening now, maybe, over
  - lunch. No, it's a bit -- no, it could be.
- No, you're not going to get rid of this. This
- 11 happens. Private contacts are there. Public contacts
  - are there. Private pressures, public pressures.
- 13 Q. I'm not seeking to question your evidence in any way,
- 14 Sir Christopher, but I think what we'd like to hear is
- a concrete example, one that you can give, you feel,
- within the bounds of propriety, going back now 15 plus
- years. Can you share with us a particular example?
- 18 A. Of a private meeting between a Prime Minister and
- a proprietor, for example? Is that --
- 20 Q. Yes, in which there was an attempt to influence policy.
- 21 If you feel that you don't want to, fine, but if you can
- give us an example, please do so.
- 23 A. I -- I think what I have to say to you, particularly as
- I'm on oath, is I need notice of this question. But
- 25 I can remember people coming in.

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13

- 1 Q. Okay.
- 2 A. I think, to be fair, I wasn't expecting that question,
- 3 but you've lobbed it at me.
- 4 Q. You're right, I didn't give you warning of it and given
- 5 the nature of the question, I can see why it may not be
- 6 appropriate for you to want to answer it without
- 7 thinking very carefully --
- 8 A. Quite.
- 9 Q. -- about what you're going to say.
- You do say in your witness statement that the
- 11 Prime Minister shelved a proposed privacy law, which 11
- 12 I imagine hadn't got very far --
- 13 A. No.
- 14 Q. -- in terms of its formulation because, as you say, he
- had no wish to antagonise proprietors and editors who
- had set their face against a privacy tort.
- 17 A. Mm.
- 18 Q. Do you stand by that statement?
- 19 A. Yeah. I mean, it is an accurate reflection of my
- 20 memory, which I think on this is pretty accurate. Do
- you wish me to repeat this -- what I said in the witness
- 22 statement?
- 23 Q. Well, I don't think there's a need to repeat it. It's
- whether you want to elaborate it.
- 25 A. No, I don't think so. This thing had been rattling Page 25

- 1 transgression."
- 2 A. I do.
- 3 O. Then you said:
  - "Most people agree with that."
- And then you said, in answer to one MP's question -the question was:
- 7 "You're going to continue to encourage apologies to 8 be much firmer?
- 9 "Answer: Yes, otherwise it's ridiculous. They 10 should be, as I said, at least as prominent as the
  - original transgression."

    Then in answer to a point about front-page splashes, as it was put, you said:
- "What I'm saying is this: if we go to formal
  adjudication, you come out with a formal adjudication
  and there has been some hideous transgression on the
  front page, then I would expect the adjudication to be
- published, or at least to start on the front page,
- depending on how long the adjudication was going to be.
- 20 I think that would be entirely reasonable."
- Is it your evidence to the Inquiry, so we're clear about it, that those notions were carried through in
- practice between 2003 and 2009?
- 24 A. With difficulty.
- 25 Q. Right.

# Page 27

- around Whitehall for god knows how long, a draft White
- 2 Paper. I inherited it from my predecessor, Gus
- 3 O'Donnell, and it had manifold problems. Problems of
- 4 drafting, of concept, of defining public interest -- all
- 5 kinds of problems in there, and I think it reached
- 6 a pitch where the Prime Minister anyway had lost
- 7 interest in something he'd been quite keen on, so I was
- 8 told before I arrived in Downing Street, and lost
- 9 interest, and anyway thought the moment had passed and
- 10 he did not want to antagonise people.
- 11 Q. Sir Christopher, I have been asked to put to you one
- 12 question in relation to the evidence you gave to the
- 13 Select Committee back in 2003.
- 14 A. Yeah.
- 15~ Q. It was on 21~May 2003.~So this, as it were, is your
- 16 first outing to the Select Committee.
- 17 A. Yeah.
- 18 Q. In the context of apologies and prominence of
- 19 publication, you said a number of things, all consistent
- with each other. You said:
- 21 "These things ..."
- That's to say the publication of the correction or
- the negative adjudication.
- 24 A. Yeah.
- 25 Q. "... should be at least as prominent as the

Page 26

- 1 A. With difficulty. You referred earlier on, Mr Jay, to --
- 2 you suggested I was rash, so early in my career as
- 3 chairman, making a number of ex cathedra statements,
- 4 having had very little experience in the job, and
- 5 I suspect that applies to those remarks in conveying the
- 6 optimism that I seemed to express that I could achieve
- 7 this very soon.
- 8 In fact, over those six years, we did reach
- 9 a position where we had front-page tasters for
- adjudications, which we'd never had before, and I have
- referred already in this hearing to the way in which
- adjudications, apologies and all that sort of thing
- moved up towards the single digit pages of the
- 14 newspaper.
- So there was progress, but against that rather -those rather absolutist statements that you've just
- 17 quoted to me, it fell short of what I aspired to.
- 18 Q. Okay. Of course, the difference is that whereas your
- pronouncements on Section 55 were properly understood ex cathedra, this was a pronouncement which I think, to
- ex cathedra, this was a pronouncement which I think, to use the Latin, was ex curial, because this did fall
- 22 precisely within your jurisdiction, didn't it?
- 23 A. Yes, it did, but the difference between my ex curial
- statement and my ex cathedra statement was two years,
- and two years is a long time in the life of the PCC.

MR JAY: Yes. Thank you very much, Sir Christopher. A. I know, but I can't think of anything else which is more LORD JUSTICE LEVESON: Could I just ask one question? It 2 2 to your point. 3 LORD JUSTICE LEVESON: That's entirely fair enough, because arises out of the evidence that you gave in relation to 3 4 4 the political sphere. I'm not concerned about the whereas it's not surprising that politicians may meet 5 extent to which an editor or proprietor wished to seek 5 editors in the same way they meet industrialists or 6 to persuade the government or politicians of any 6 economists or any group of people and expect to be the 7 7 persuasion to a particular policy for which they were subject of lobbying, there is somebody there to keep an 8 8 eye on what's going on and report it, namely the press. advocates, but I am interested in a slightly different 9 type of policy, and that is the extent to which the 9 But that may not work in the example that I've just 10 10 press used their links in to government and politicians given. 11 11 to affect policy insofar as it affected them. That A. It may not work, although considering how editors watch 12 12 might be for business reasons. It might be for their each other like hawks, if there appears to be some kind 13 13 own views as to privacy or whatever. Privacy is one of advantage accruing to one newspaper group rather than 14 14 example. Another might be in relation to the business to another, then you might it find some kind of 15 interests of a particular newspaper group. Because that 15 balancing position taken by -- how can I put it? -- the 16 happening sub rosa, under the surface, may give rise to 16 disfavoured bit of the press. 17 17 LORD JUSTICE LEVESON: If that's how it happens. Of course slightly greater concern than editors pushing policies 18 for which they were well known in their newspapers. 18 if the general line would be supportive, then it might 19 19 A. You see -- yeah, I see exactly what you're saying, just disappear under the surface. 20 my Lord. The first thing to say is that politicians 20 A. It could do. I mean, I can't -- I can't say that that 21 21 should be grown-ups. They know with whom they are couldn't happen. I mean, I think the BSkyB thing was 22 supping and they know the boundaries of what is 22 quite interesting in this respect, in which the press 23 permissible and what is not permissible. So they have 23 split on the issue. 24 24 LORD JUSTICE LEVESON: Yes. I think it might be that we'll to make a decision -- they, the politicians, have to 25 25 learn a bit more about that in due course. make a decision about how close or how not close they're Page 29 Page 31 going to be with whichever newspaper group, be it the 1 All right, thank you very much indeed. 1 2 2 editor or proprietor. That's the first thing to say, A. Thank you, my Lord. 3 3 MR JAY: Thank you. The next witness is Lord Grade, please. and I say it as a general proposition. 4 In my own external experience, looking back to those 4 LORD MICHAEL IAN GRADE (sworn) 5 two years when I was working with John Major, actually, 5 Questions by MR JAY 6 MR JAY: Your full name? the only subject I can remember in which I was, to 6 7 a degree, directly involved was on the matter of 7 A. Michael Ian Grade. 8 a possible privacy law. Before I was appointed -- yes, 8 Q. Thank you very much. We're not going to need, 9 before I took up the job of press secretary, somebody 9 fortunately, any of those documents around you; only 10 from News International came out to see me while I was 10 your witness statement, which you've given us. It's still in the embassy in Washington and said, "Please, we 11 11 dated 15 September of last year, and you've signed it. 12 don't like a privacy law", and I said, "I haven't even 12 This is your evidence to the Inquiry. 13 13 got my feet under the desk yet. I hear what you say but You've also provided us with a CV. Your career in 14 14 we'll see." broadcasting is well-known, of course. You were 15 So the press at that time was lobbying very hard not 15 chairman of the BBC for two and a half years between 16 to have a privacy law. Now, that would have been 16 2004 and 2006. Then you were appointed executive 17 a factor in the final calculations by the Prime Minister 17 chairman of ITV where you stayed for about three years; 18 about whether or not it was wise to go ahead with 18 is that correct? 19 19 A. Correct. a privacy law, but in my own view, looking back on it, 20 the intrinsic difficulties of drafting that White 20 Q. Then you moved on to various companies, and in January 21 Paper -- leave aside the attitude of editors and 21 of last year, you went to the House of Lords as Lord 22 22 proprietors -- was already sufficient to kill the Grade of Yarmouth, and you take the Conservative whip; 23 project. 23 is that correct? 24 LORD JUSTICE LEVESON: That's a slightly different point, as 24 A. Correct. 25 I'm sure you'll appreciate. Q. I'm going to ask you some general questions which are

Page 30

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- 1 targeted less at your witness statement but more general
- 2 issues. Can I ask you, please, about your appointment
- 3 to the PCC? Can you remember when that was, please?
- 4 A. I think it was May last year.
- 5 Q. The appointment process, obviously a lot of it you don't
- know about, but you do know about the interview, 6
- 7 obviously. Were you asked about your commitment to
- 8 freedom of the press and the principles of
- 9 self-regulation?
- 10 A. I was asked whether I supported statutory regulation or
- 11 not, and I outlined some reasons why I didn't favour
- 12 statutory regulation.
- 13 Q. We're going to cover those reasons in a moment.
- 14 A. Yes.
- 15 Q. Were you asked about the need or desirability to balance 15
- 16 the interests of free speech, including the democratic
- 17 constitutional right of the press to express themselves
- 18 freely, against private rights of individuals?
- 19 A. I don't recall being asked that question at all, no.
- 20 Q. Okay. You've mentioned statutory regulation in the
- 21 context, I think, of not agreeing with statutory
- 22 regulation. Can we elaborate why you take that
- 23 position, please, Lord Grade?
- 24 A. I don't take the view that statutory regulation would
- 25 be -- would have a chilling effect on investigative

Page 33

- The same complaint, because there's a joint
  - jurisdiction here, went to Ofcom, and Ofcom came to the
- 3 same conclusion, but it took them, I think, three
- 4 months. It certainly took them many months to go
- 5 through their processes because they have a statutory
- 6 obligation, and they are a statutory body.
- 7 So I worry about the time -- when people complain 8
- about what's written about them, what's published about 9 them, they want speedy -- they want a speedy response
- 10 and a speedy redress, and I think the statutory
- 11 framework would slow that rather unpleasantly, and I'm
  - a sceptic.
  - The second reason I would give is I would be very worried about a statutory body taking over that function of the PCC which is extraordinarily effective, which is
- 16 its ex-ante intervention prior to publication and in
- 17 fact stopping publication, which the staff of the PCC
- 18 are absolutely brilliant at, and I would worry about
- 19 a statutory and politically appointed body having the
- 20 powers to stop publication. That would worry me
- 21 considerably.
- 22 Q. Yes. Can you explain, Lord Grade, why a statutory
  - scheme created imposed or created by legislation would
- 24 be inconsistent with the PCC carrying out its
- 25 anti-harassment and equivalent work?

Page 35

- 1 journalism. Investigative journalism is alive and well
- 2 in broadcast television, which is heavily regulated,
- 3 licensed and so on. I don't take that view at all, and
- 4 we are happily past the days when the politicians of the
- 5 day used to pack the boards of the regulators with their
- 6 friends and supporters, such as my time as a controller
- 7 of BBC One when, in the days of then Mrs Thatcher's
- 8 government, where the board of the BBC were packed with
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We've moved on from then. We have a Nolan process. We have a political culture of much more independent

12 regulation, which I think has been very, very healthy.

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So those are not my objections. My principal objections to statutory regulation:

15 once you have statutory regulation, you have the 16 prospect of judicial review post-judgment, and at that

17 point, that means that the regulator has to be painfully

- 18 methodical in its processes in order to ensure that it 19 isn't judicially reviewed. That slows the process up
- 20 and means -- I'll give you an example. When the BBC got
- 21 into trouble over the Jonathan Ross/Brand broadcast, the
- 22 BBC Trust, not being a statutory body, was able to send
- 23 for the Director General, sort the matter out, get
- 24 a correction and an apology all done within a space of
- 25 I think a week or ten days.

Page 34

- A. The worry -- I hope I'm on the same point here. My 1
- 2 worry would be that the influence that the PCC currently
- 3 has to stop publication, to stop harassment, could be
- 4 abused by a statutory body with -- you know, if it was
- 5 captured politically in some way or another, could be --
- 6 it could be -- stopping publication of a story could be
- 7 misunderstood, and I don't think the public would have
- 8 confidence in a politically appointed body having the
- 9 powers to stop publication.
- LORD JUSTICE LEVESON: Are we using the concept of statutory 10
- 11 regulation in slightly different ways here? I can
- 12 easily visualise precisely what is you're talking about.
- 13 If you had a statutory regime which set up the whole
- 14 thing and sought to control the whole thing, that indeed
- 15 could give rise to that risk.
- 16 But how about a slightly different approach -- and
- 17 I'll give the standard warning that I've not got there,
- 18 I'm not in this position, but I am just exploring what
- 19 you're saying -- that recognises the existence of
- 20 a body, maybe to give some carrots for membership, but
- 21 leaves appointment, the management and the adjudicative
- 22 responsibilities entirely to that body and does not
- 23 prescribe approaches but leaves it to the body, so that
- 24 there it is a framework -- but only a framework -- which
- 25 allows an independent body, independently appointed --

1 and there are lots of bodies that fit into that 1 been talking about the great confidence that the 2 category -- to do the work in a more structured way than 2 Ipsos MORI poll showed, sitting here for two months --3 is possible when it is purely consensual? 3 I appreciate I've had a wide range of people who have 4 A. I have no doubt that if the structure that you have 4 expressed concerns, from the celebrities to people who 5 described, sir, were to go into Parliament at one end 5 are not at all celebrities -- doesn't necessarily give 6 and come out exactly in that form as an Act, then 6 me quite the confidence that Sir Christopher has, and 7 7 I think that could indeed be workable, and I'm a great I hope that that's not unfair to the PCC or to anybody 8 believer in incentives for publishers to be members of 8 else. 9 PCC2 or whatever it's going to be called, and being part MR JAY: Lord Grade, one argument which is frequently 10 of a recognised body that, let's say, judges could take 10 employed against statutory regulation in the context of 11 into account in a case involving a newspaper. If 11 the press, in contra-distinction to the broadcasting 12 a newspaper goes down on a particular case, the fact 12 media --13 that they're a fully paid up member of a functioning and 13 A. Forgive me, when you say "statutory regulation", we're 14 statutorily recognised PCC and so on, I think that would 14 talking about a more interventionist model than that 15 be very, very helpful. 15 which his Lordship has described just now? 16 What worries me is the parliamentary process of 16 O. Probably, yes. 17 getting a structure such as you described through both 17 A. Yes, okay. 18 Houses of Parliament. 18 Q. -- is that statutory regulation in that sense is LORD JUSTICE LEVESON: I must let Mr Jay continue and pick 19 19 objectionable because it might prevent the press from 20 it up at the end, but at the moment, certainly I was 20 being partisan, which is its right. Of course, 21 very concerned to ensure that there was a political 21 broadcasters have a statutory duty not to be partisan. 22 consensus for the work of this Inquiry, because it 22 Do you give any weight to that argument? 23 simply couldn't work if there wasn't. I have not seen 23 A. None at all. 24 24 anything to suggest that the events of the last few Q. And why not? 25 months, as this Inquiry has proceeded, has diminished 25 A. Broadcasters are licensed. They are licensed in order Page 37 Page 39 1 that broad consensus. What happens thereafter, after to give them access to a nationally owned resource, the 1 2 I've produced a report, may actually be just as much 2 spectrum that belongs to the nation. They pay for that 3 a matter for you, wearing a different hat, as anybody 3 in various ways and they are regulated accordingly. 4 4 Now, on that primary requirement, to be impartial 5 A. Mm. I understand that. I understand that. 5 and not to be partisan like newspapers, where there are 6 I think the devil of the template that you've just 6 no barriers to entry, we are in -- sorry, I'm rushing 7 described -- I won't say "recommended" but described as 7 through this. There are no barriers to entry today to 8 an option -- the devil of that will undoubtedly be in 8 broadcasting, really, because the spectrum is almost 9 the detail, but statutory recognition of a -- provided 9 infinite, the spectrum available. It wasn't in the days 10 that the PCC2 is entirely seen to be and operated on 10 when broadcasting regulation was first put in place and 11 a basis that is entirely independent, both of 11 the requirement for impartiality -- on that washing line 12 government/Parliament and also of the proprietors and 12 of impartiality was hung taste and decency, family 13 publishers, seems to me a very important way forward. 13 watersheds, producer guidelines, journalist LORD JUSTICE LEVESON: Can I say -- and I suppose I have to 14 14 guidelines -- these have built up because of caselaw 15 be careful about this too but I'm not going to be too 15 over decade and decades, so we are where we are as 16 careful -- with that proposition I entirely agree, 16 a part of history. 17 subject to anything I might hear over the next few 17 For newspapers to feel that their ability to be 18 months, of course. 18 partisan as a result of statutory regulation without A. Indeed. 19 19 statutory obligation to be impartial seems to me -- just 20 LORD JUSTICE LEVESON: But I am not in any sense encouraged 20 doesn't hold water. There is a statutory obligation on 21 to believe that the government, politicians of any 21 broadcasters to be politically impartial and 22 persuasion, the legislature, the judiciary or indeed the 22 independent. 23 proprietors of the press should have ownership of the 23 Q. Okay. Now the issue of sanctions. Would you be in 24 scheme, because it only works if the public have 24 favour of a new body, a successor body, having what some 25 25 confidence in it, and although Sir Christopher has just have called more substantial teeth, including the power Page 38 Page 40

- 1 to enact fines?
- 2 A. I think that's essential for a regime of
- 3 quasi-regulation or regulation, whatever you want to
- 4 call it, to have visible, tangible, painful means of
- 5 a sanction, yes. Once you give the newspaper -- the
- 6 PCC2 the powers of sanction, how do you then keep the
- 7 publishers inside the tent? The Northern & Shell issue.
- 8 That's a difficult one, which I think you can only solve
- 9 by creating means by which it is also in their interest
- 10 to remain inside the tent.
- 11 Q. Yes, and by "interest", that would include or might be
- 12 primarily commercial interest, it may be seen more
- 13 widely. How would one create the necessary carrot, as
- 14 it were, to keep people who might have a tendency to
- 15 want to stay out within the tent?
- 16 A. If I was a publisher and I was in court -- let's take
- 17 a defamation case. I'll declare an interest in a second
- 18 on that. I've sat on the all parliamentary
- 19 pre-legislative scrutiny committee on the reform of the
- 20 Defamation Act, so just to declare an interest there.
- 21 But let's say a newspaper is in court and there's
- 22 a libel case, and let's say the newspaper goes down and
- 23 the judge at the end of that says, "Look, I've looked at
- 24 this. You're a member of the PCC. You're a good
- 25 member, in good standing. You consulted -- you know, Page 41

- a firmer footing than presently and I'd be hugely 2 supportive if I could understand, at the end of the day,
- 3 if there was a breach of that contract, what the redress
- 4 was. What are the damages? What redress can -- if the
- 5 PCC sued News International for not publishing
- 6 a retraction or an apology -- if it just refused and
- 7 decided it was going to walk away, what is the legal
- 8 sanction? What -- can you get specific performance?
- 9 What -- I'm not quite sure. A contract is terrific, but
- 10 if there's a breach, how does that get resolved in a way
- 11 that would prohibit or inhibit a breach? That's what
- 12 I need to understand. I haven't quite got there yet.
- Q. As a matter of general principle -- this would need to 13
- 14 be thought through -- I don't think there's any
- 15 impediment for the PCC itself getting an order for
- specific performance against the recalcitrant newspaper 16
- 17 who fails to publish the adjudication or fails to pay
- 18 the fine. You could improve it, I suppose, by having an
- 19 express term of the contract which recognises that there
- 20 would be a right to obtain specific performance in the
- 21 PCC.
- 22 A. Fine.
- 23 Q. But to be absolutely clear, the ramifications of this
- 24 have not been fully considered. I'm just expressing
- 25 them as --

1 A. No, but I --

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Q. -- probable positions.

creates clarity.

a carrot, though.

by law.

A. Yes.

# Page 43

A. I do think the contractual relationship between PCC2 and

LORD JUSTICE LEVESON: It doesn't permit you to have

LORD JUSTICE LEVESON: It's quite difficult to see how you

LORD JUSTICE LEVESON: Contrary to popular opinion, judges

would define it because a carrot could only be justified

don't actually simply decide what they want to decide.

They follow the law. So once there is a law that

provides you with any sort of carrot, there has to be

a definition of who gets the carrot, and to define who

gets the carrot has itself complexities if the only body

that is entitled to the carrot is bound together solely

A. No, it would have to go alongside the carrot, I think.

the publishers is a very attractive one, because it

- you went to your lawyers, you did everything you could 1
- 2 at the time. Actually, I'm finding against you, but
- 3 I take it that you're a responsible newspaper because of
- 4 your attitude to the PCC2, and therefore the damages --
- 5 I'm going to mitigate the damages", or -- I'm not
- 6 a lawyer so I'm not quite sure --
- 7 LORD JUSTICE LEVESON: We'd do it the other way around.
- We'd say if you were not, then you were at risk of 8
- 9 higher damages.
- 10 A. Absolutely, absolutely, and I think that would be
- a hugely important incentive, a carrot -- if you're 11
- 12 going to give PCC2 the stick, there ought to be a carrot
- 13 as well, and I think it would be well worth newspapers
- 14 remaining signed up as good members in good standing of
- 15 the PCC, if that was going to be taken into
- 16 consideration if they did go down, even on cases of
- 17 public interest, privacy, defamation and so on. I think
- 18 that would be a huge incentive.
- 19 MR JAY: Instead of some sort of statutory regulatory model,
- 20 which I know, for the reasons you've given, you don't
- 21 espouse, I think you favour some sort of contractual
- 22 model; is that correct?
- 23 A. I think that's worthy of exploring. The devil again
- 24 will be in the detail. The only issue that concerns me
- 25 about the contractual model -- I think it does put it on Page 42
- 21
- 22 LORD JUSTICE LEVESON: Well, that's a question which I'm
- 23 really asking, and you say, "Well, thank you very much,
- 24 I'm not the right person to ask."

in a private contract.

25 A. Indeed. I'll look to my learned friends for expensive

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- advice on that one.
- LORD JUSTICE LEVESON: Yes, that's fair enough. I'm very 2
- 3
- 4 A. I'll take the fifth amendment on that.
- 5 MR JAY: Lord Grade, you've been a member of the PCC for
- 6 seven or eight months, if I've added it up correctly.
- 7 Are there any insights you can bring to the Inquiry on
- 8 the experience you've built up over that period?
- 9 A. A few quick points.

10 Firstly, the thing that surprised me the most, which 11 I learnt at the interview, was the extent to which there 12 was ex-ante intervention by the PCC to stop some of the 13 worst excesses. That really surprised me. Seeing that

14 in action amongst the amazing staff of the PCC has been 15 very encouraging to me.

I joined because I thought -- I applied and I felt that the direction that Baroness Buscombe was taking the PCC in with independent appointments and a majority of independent people of real standing on the PCC was something I felt I could sign up to. I certainly wouldn't have signed up years ago when it was kind of

22 not quite as independent. That appealed to me a great

23 deal. I thought it was the right direction it was going

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25 On the negative side, I think that -- I think there Page 45

- 1 A. It's barely resourced to do what it does now. It's been
- 2 starved of rations, really. I think it gets a minuscule
  - increase each year, which is hard-fought and hard-won.
- 4 The staff work ridiculous hours. Bear in mind that
- 5 they're getting calls from editors or night editors and
- 6 news editors at 11, 12 o'clock at night, all across the
- 7 weekend. It's extraordinary what they do. They're
- 8 underpaid, overworked, overstretched, and the newspapers
- 9 do not recognise the work that they do, and the budget
- 10 is ridiculous.
- 11 Q. Are you able to assist the Inquiry with some sense of
  - the dynamic of PCC meetings, particularly when
- 13 adjudications are being discussed? Is there any sense
- 14 in which the editors line up on one side and the
- 15 independent public members on another side? Could you
- 16 help us with a flavour of --
- 17 A. I've never experienced that. I must have attended now
- 18 eight or nine meetings. Where a case is going against
- 19 a newspaper, where the recommendation of the officers is
- 20 that there's been a clear breach of the code --
- 21 such-and-such a clause in the code, the editorial
- 22 figures on the board, who are in a minority, are the
- 23 first to speak out in condemnation and say, "I can't
- 24 believe they did that, that was a --" you know, it's
- 25 a very, very honest debate. A very, very honest debate. Page 47

isn't enough -- there should be total separation between 1

- 2 the finances of the PCC and the operation of the PCC,
- 3 and it should be for the independent members -- it
- 4 leaves the question open as to who appoints them -- it's
- 5 for the independent members of PCC1 and PCC2 to decide
- 6 who they appoint and to be part of the process in
- 7 appointing the chairman and so on and so on, which it
- 8 isn't at the moment.

And the fact that PressBoF controls the purse strings leaves them in the position where -- which they either do or they don't abuse -- I don't have enough experience yet, but it leaves them in the position where they can have a huge influence on the constitution and the running of the organisation. I don't think that's healthy.

So there has to be complete separation. The publishers are going to have to pay for the new body, but they must be more than arm's length away from influencing appointments and so on.

- 20 Q. In your view, from what you've been able to observe, 21 Lord Grade, is the PCC resourced to do more than that
- 22 which it does now, namely to deal with complaints, to
- 23 provide valuable, as you've explained, ex-ante advice 24 and interpret compensation and the add-on activities we
- 25 have also heard evidence about?

Page 46

- Anybody with an interest, obviously, leaves the room at
- 2 that point, if they're part of a group and it's one of
- 3 their newspapers in the group, whether it's a local 4
  - newspaper or national newspaper.

5 No, the debates are very, very, very fair. There

- 6 are debates about the wording and quite often -- I can't
- 7 think of an example at the moment because we get papers
- 8 that thick every week (indicates). There are examples
- 9 where editorial figures around that table have
- 10 strengthened the criticism in the adjudication.
- 11 So I don't have any issue in that regard whatsoever,
- 12 and I wouldn't -- personally speaking, I wouldn't be
- 13 there if that was the case. I wouldn't stay there if
- 14 that was the case.
- 15 O. Has there been discussion on more general issues of
- 16 policy or themes which have come out which have caused
- 17 any controversy?
- 18 A. I think -- no, I don't -- not controversy. Good, honest
- 19 debate, robust debate, sometimes ending -- and I think
- 20 this is a positive, because in my experience of
- 21 broadcasting, the producer guidelines and the statutory
- 22 codes that the regulators are required to produce, in
- 23 the light of experience and case law as programmes come
- 24 and go, get updated and amended for the purpose of
- 25 clarity or covering things that people haven't thought

1 of before and so on and so on. Quite often those 1 A. Yes, exactly, yes. Yes. 2 debates end up with -- it's possible they get passed LORD JUSTICE LEVESON: I don't think that anybody would say 3 back by the Commission to the Code Committee to look at 3 "Oh yes, I'm in favour of statutory regulation, full 4 4 and clarify and rewrite the code. So it's a very stop." It is not a binary question. It's not statute or 5 5 effective forum. self. I mean, I might be interested in your view, MR JAY: Yes. Thank you very much, Lord Grade. 6 because the great value you bring to this Inquiry is 7 LORD JUSTICE LEVESON: I have a couple of more points to 7 that you've seen all the perspectives. In your 8 raise. 8 experience, is what the PCC does truly regulating at all 9 I'm interested that you said you were asked about 9 as opposed to providing a very sophisticated complaints 10 10 your belief in self-regulation but not asked about the mechanism? 11 balance between Article 10 and Article 8. You 11 A. I think the PCC, as it exists today, is just not 12 understand what I mean by that? 12 resourced to do any more than be a disputes resolution 13 13 A. An individual's right to privacy versus the public's vehicle, which it does extremely well. It's just not 14 14 right to know? resourced to do any more, and I think that one of the 15 LORD JUSTICE LEVESON: Correct. 15 problems with the PCC is that you'll get different 16 A. Yes. 16 opinions from different people as to what they think its LORD JUSTICE LEVESON: Because isn't part of your job, your 17 role has been and what its remit has been. 17 18 adjudicative role, entirely based to balancing freedom 18 It doesn't have the powers -- no, it doesn't have 19 19 the resources. You don't need the powers. If you want of expression against privacy or similar rights? Is 20 that a fair analysis of your adjudicative role? 20 to go and investigate something, you ought to be able to 21 21 A. Absolutely. When I -- let me answer, if I may, the go and do it, but if you haven't got the resources to do 22 point about the interview. I think my track record and 22 it, you just can't do it. LORD JUSTICE LEVESON: You can ask your editors to provide 23 23 my career has been as an editor-in-chief of a number of 24 broadcasting organisations with huge editorial 24 the information. 25 A. You certainly can, yes. responsibility, and therefore I think the interview 25 Page 49 Page 51 panel would have known that I'm pretty well -- my life LORD JUSTICE LEVESON: And wait and see if they say no. 1 1 2 has been doing that. I've been doing that as a career 2 A. But have you got the people to process that information? 3 LORD JUSTICE LEVESON: I understand. for 30, 40, years. 3 4 LORD JUSTICE LEVESON: Yes. A. And have you got the resources to pay them? The answer A. When I enter the Commission board meeting, I always feel 5 is: no, you haven't. 6 LORD JUSTICE LEVESON: I understand the point. 6 I am there to represent the public, the public as 7 potential victims of press intrusion, et cetera, and 7 I entirely agree with you that, for example, ex-ante 8 intervention, as you call it, and the anti-harassment misrepresentation and so on, but also representing the 8 9 public with their right to know and freedom of 9 policy are extremely valuable tools to try and prevent 10 expression and so on, and you are having to balance that 10 problems arising. But if the PCC is not resourced to do the job that the public expect it to do, then the 11 11 all the time. Every case is different. 12 LORD JUSTICE LEVESON: That's the point. That's the job. 12 question arises how one configures an operation so that 13 13 A. Exactly. it can do the job that the public want it to do and LORD JUSTICE LEVESON: Equally, one might say that asking 14 14 equally bring everybody who ought to be involved into 15 you about what you felt about independent or 15 the tent. 16 self-regulation may be the subject of the criticism that 16 A. It comes down to money, doesn't it, really? The 17 you're being asked whether you're "one of us", as 17 newspapers are -- you know, it's an ex-growth sector of 18 opposed to taking a critical look at the system that 18 our economy. They are shrinking. Newspaper readership 19 19 you're going to join to see whether it's at very best is falling. There's an intense fight for market share 20 model that could be achieved. Do you see the point? 20 and share of advertising and so on, which in my view is 21 A. I think that's a fair criticism. I can't answer it, 21 only going to intensify the competition, and the 22 22 because had I answered that I was in favour of statutory temptation that goes with the competition, which is how 23 23 regulation, I'm not sure where that debate would have we've got to where we are today. So I think the need 24 gone at the interview. 24 for your Inquiry and your recommendations has never been 25 25 LORD JUSTICE LEVESON: But that's the point, isn't it? greater. Page 50 Page 52

2 a former editor of ITN as a governor of the BRC when 3 going on in another part of this problem, that will be 4 enough to deter newspapers. Deter individuals, I should 5 say. That may well be enough in the short term, but in the long term — 1 to the long term				
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16   business to carry on as usual.   16   hold those jobs. Tm not being —   17   A. I can give you, from my own personal experience, assurance that let us say, Paul Daere and the   18   LORD JUSTICE LEVESON: You've been quite clear and   20   Daily Mail to get up to any mischief.   21   forthright about PressBoF, which I understand. Could   21   forthright about PressBoF, which I understand. Could   22   forthright about PressBoF, which I understand. Could   23   acceptability, and indeed the desirability, of there   23   acceptability, and indeed the desirability, of there   24   being so many serving editors, both on its board and   25   entirely responsible for the code.   Page 53   Page 55     A. I think it's a problem more of perception than it is   2   of — in reality. I think a lot of criticism of the PCC   has been attached to the position that you describe, and   if we are in the business of increasing public   confidence and political confidence and pidicial   confidence in the PCC, PCCI or 2, then it may be that   you're going to have to make it a rule that you can't   have serving editors.   Now, the gap you leave there — this is   a fast-moving business — is the day-to-day knowledge of an operating professional in drafting the codes, but it   shouldn't be impossible. The ITC, the IBA before and   programme-makers and the experience over the years, and   the ITA before that, and now Ofcom, they produce codes   based on precedent they've built up over years. They   are informed by producers and editors and   programme-makers and the experience over the years, and   they get adjusted and refined. So there is huge input,   Lust because you don't have a serving editor on the Code   Committee doesn't mean you can't consult and get   evidence from them and drafting suggestions and so on.   2   So you get their input another way, but I think the   public would have much more confidence in the Code.   The code at Ofcom — the codes at Ofcom are drawn up   by the Ofcom, the board of Ofcom. Crassionally the	14	public will accept, and not just to attempt to, as it	14	LORD JUSTICE LEVESON: I say no more, and I'm not saying
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23

# DAVID JAMES FLETCHER LORD HUNT OF WIRRAL (sworn) 1 Questions by MR JAY

- 2
- 3 MR JAY: Lord Hunt, please sit down and make yourself
- 4 comfortable. Your full name, please, for the Inquiry?
- A. David James Fletcher Lord Hunt of Wirral. 5
- Q. Thank you very much. You have kindly provided the
- 7 Inquiry with a witness statement which is signed and
- 8 dated by you on 12 January this year, and there's also
- 9 a statement of truth. So this is your formal evidence
- 10 to the Inquiry; is that right?
- 11 A. Yes, it is.

1

- 12 Q. Thank you very much.
- LORD JUSTICE LEVESON: Lord Hunt, I think it's right --13
- 14 I think there's a difference between us of seven years,
- 15 and I must confess that I have absolutely no
- 16 recollection at all, but I am reliably informed that we
- 17 attended the same school, if that matters to anybody,
- 18 the school being in Liverpool.
- 19 A. I'm very proud that we both went to Liverpool College
- 20 and I have a clear recollection of that experience
- 21 but --
- 22 LORD JUSTICE LEVESON: Oh, I recollect the experience.
- MR JAY: Lord Hunt, you have been the chairman of the PCC 23
- 24 since 17 October of last year, so that gives you only
- 25 three months' experience, as it were, in the saddle. In Page 57

- 1 a nutshell, your previous career, please? 2 A. I can personally think of no better container than
- 3 a nutshell. Shall we keep it at that, or would you like
- 4 me to go --
- 5 O. We're not going to cover every detail, but you were
- 6 a member of Parliament. You served in the cabinet under
- 7 Baroness Thatcher, I think as Secretary of State for
- 8 Wales, is that right, and then under Lord Major --
- 9
- LORD JUSTICE LEVESON: Sir John.
- 11 MR JAY: Sir John Major. I think you were, again, Secretary
- 12 of State for Wales and also Chancellor of the Duchy of
- 13 Lancaster. You left Parliament in 1977. You became
- 14 a life peer, is that correct, back in 1997?
- A. 1997. So I've been in Parliament for 35 years.
- Q. Thank you very much. Since then you have been 16
- 17 a practising solicitor, partner, at a well-known firm,
- 18 which practises in commercial and regulatory law -- that
- 19 is your specialism -- and you became chairman of the PCC
- 20 in the autumn.
- 21 May I ask you about the appointment process. You
- 22 answered an advertisement, which you refer to in
- 23 paragraph 3 of your witness statement; is that right?
- 24 A. Yes.
- Q. You provided me with a copy of the advertisement and it Page 58

- states that the candidate must be committed to the
- 2 principles of press freedom and to self-regulation, and
  - presumably it follows that you are committed to those
- 4 principles?
- 5 A. Yes. May I just point out that I joined my present law
  - firm in 1965 and I've been a partner since 1969. So it
- 7 pre-dates my career in Parliament and it has continued
- 8 right up to date.
- Q. Thank you.
- 10 A. But I applied for the job because I have a passionate
- 11 belief in freedom of the press. I think it's one of the
- 12 most valuable assets we have in the UK and it's much
- 13 envied across the world.
  - I also have seen for myself how state regulation can
- 15 go very badly wrong, and it's always preferable if it
- 16 can be the self-regulation which is the basic structure.
- 17 Q. Thank you. I'll obviously cover that in a moment with
- 18 you, Lord Hunt. May I understand what you mean by
- 19 "self-regulation", regardless of what the advertisement
- 20 might mean by it?
- 21 A. Self-regulation of the press, which I'd prefer to call
- 22 independent self-regulation of the press, means of the
  - press, for the press, in the public interest.
- 24 Q. But not by the press, presumably?
- 25 A. Well, it must, of course, be a voluntary system into Page 59
- which the press subscribe. I also chair a body called 1
- 2 the Lending Standards Board, which is a self-regulatory
- 3 body, successor to the Banking Code Standards Board,
- 4 which was again a self-regulatory structure which was
- 5 subscribed to by all the major firms involved in that
- 6 particular industry. So when I refer to
- 7 self-regulation, I really want to see the participation
- 8 of the whole industry in its own regulation.
- 9 Q. Thank you. To go back to the process of application and
- 10 interview, it is clear from Mr Abell's evidence
- 11 yesterday that you must have been interviewed by the
  - current chair of PressBoF, who is Lord Black; is that
- 13 correct?

- 14 A. Yes. My recollection, on 30 September, was that my
- 15 previous interviews had been with a firm who had been
- 16 instructed to come forward with a shortlist, and it was
- 17 my contact within that firm, a Mr Vardi, who made we
- 18 aware that I was to be interviewed on 30 September.
- 19 When I arrived, the chairman of the interview panel was
- 20 Lord Black, but there were a range of people on the
- 21 other side of the table, including an independent
- 22 assessor.
- 23 Q. The range of people -- there were some lay members, as
- 24 it were, and other members of PressBoF; is that correct?
- 25 A. I was told that the interview panel was a subcommittee Page 60

- 1 of PressBoF. But it had, of course, the independent
- 2 assessor and also the head-hunting firm was represented
- 3 on the other side of the table.
- 4 Q. In an interview which you gave with or to
- 5 Professor Greenslade, you apparently said, in terms of
- 6 why you put your name forward, that it was Lord Wakeham
- 7 who got you into a corner and, as it were, persuaded you
- 8 to throw your hat in the ring. Is that fair or not?
- 9 A. It's a complicated history, and I'm not sure how much
- 10 you want me to go into it, but I was, at the time,
- 11 considering putting my name forward for a range of
- 12 posts. I then became aware of this advertisement, and
- 13 Lord Wakeham, with whom I served -- I was one of his
- 14 colleagues for many years -- told me that he felt that
- 15 there was a need for the regulation of the press to be
- 16 taken further forward with some ideas, and he was aware
- 17 that I had just, for the Law Society of England and
- 18 Wales, presented them with a report on the recommended
- 19 future of regulation of solicitors and I'd also carried
- 20 out the first independent review of the Financial
- 21 Ombudsman Service. So against that background, John
- 22 Wakeham said to me that he thought I should put my name
- 23 forward.

- 24 Q. Thank you. One other point which comes out of
- 25 Professor Greenslade's interview is that you told him Page 61
  - that in your view the PCC was not a regulator. Does
- 2 that accurately set out your position and/or would you
- 3 wish to elaborate on that?
- 4 A. Yes. Speaking as a lawyer, I looked at the articles of
- 5 association and at the powers of the Press Complaints
- 6 Commission, against also the background of having been
- 7 in the cabinet that received the reports of Sir David
- 8 Calcutt in 1990 and then again in 1993, which described
- 9 what was needed as a regulator.
- 10 But I think in the second report, in 1993, Sir David 11 concluded that the press had not come forward with what
- 12 could be described as a regulator and he set out what he
- 13 felt a statutory regulator should be. So against that
- 14 background, I could see that the PCC was not, in
- 15 Sir David's terms, a regulator, and it had -- didn't
- 16 have the powers of a regulator. I thought I was stating
- 17 the obvious.
- 18 Q. Yes.
- 19 A. But suddenly I became aware that virtually everyone
- 20 agreed with me.
- LORD JUSTICE LEVESON: Well, Sir Christopher doesn't. 21
- 22 A. Yes, Sir Christopher and I go back a long way and I can
- 23 hardly recall a time when he has agreed with me, but
- 24 I don't want to go too far.
- LORD JUSTICE LEVESON: No, I think you've said quite Page 62

- 1 sufficient, thank you.
- 2 MR JAY: Is it inherent in what you're saying, Lord Hunt,
- 3 that a regulator would have wider powers, both of
- 4 investigation and of sanction?
- 5 A. Yes. Once -- what I feel is that the PCC has some
- appurtenances of a regulator, such as a pre-publication 6 7 service of developing a book of caselaw, but it doesn't
- 8 have the full range of powers that any regulator must
- 9 have and therefore I conclude it is not a regulator.
- 10 The proposed new body, to which we'll come in a moment, would be a regulator and I regard that as 11 12
- a huge difference. Q. Thank you. Your aversion to statutory regulation of the 13 14 press is made clear in paragraph 3 of your witness 15 statement, if not elsewhere. The reason you give:

16 "I believe that would be an unacceptable impingement 17 on our freedoms."

18 Why is there a nexus between statutory controls, 19 as you describe them here, and an impingement on our 20 freedoms?

- 21 A. Perhaps it would suffice to quote someone whose statue
- 22 is outside my law office, John Wilkes, who, 250 years
- 23 ago, in 1762, said, "The liberty of the press is the
- 24 birthright of a Briton, and is justly esteemed the
- 25 finest bulwark of the liberties of this country."

Page 63

- That's something I so passionately believe in.
- 2 Q. I think all of us would believe in that, but it's the
- 3 antipathy or aversion to statutory controls and the
- 4 impact that those controls might have on these cherished
- 5 freedoms. Why does the existence of statutory controls
- 6 threaten these freedoms?
- 7 A. I think I would talk about statutory regulation, not
- 8 statutory controls. I rely on "The Essential Law for
- 9 Journalists" to point out all the statutory provisions
- 10 that apply and restrict freedom of the press. I'm not
- 11 just talking about defamation or the Data Protection Act
- 12 or the Freedom of Information Act. The list is endless.
- 13 It's a massive textbook. So there is also statute
- 14 there

1

- 15 What is missing, thank goodness, is a statutory 16 regulator, and that is what I would regard as an
- 17 infringement of the freedom of the press.
- 18 Q. I think, again, we might all agree that if there were 19 a statutory regulator which itself was responsible for
- 20 the imposition of standards and, by virtue of that,
- 21 would be capable of curbing the exercise of the press'
- 22 democratic right to express itself, then we would have
- 23 a regrettable state of affairs. But if the statutory
- 24 regulator did not have power to set standards, would the
  - very fact that there was a statutory regulator be Page 64

1 offensive, in your view? 1 public. 2 A. Yes. 2 A. Yes. 3 Q. Because? 3 LORD JUSTICE LEVESON: And in the light of all that has 4 A. Because of my 35 years in Parliament. Perhaps the best 4 emerged, I think I've said this: tinkering around the 5 way to describe my background is to say that I've seen 5 edges is, I think, unlikely to be sufficient. 6 too many examples of where a simple objective was to be 6 A. (Nods head) 7 7 LORD JUSTICE LEVESON: I gather from your nod that you do reached through a new bill, and perhaps I would 8 8 summarise it by saying the road to parliamentary hell is not disagree with me? 9 A. Oh, I strongly agree. I think this is a tremendous paved with good intentions. 10 LORD JUSTICE LEVESON: Does that include -- and I've raised 10 opportunity for the press themselves to come forward 11 11 this with a couple of witnesses -- the independence of with the sort of system which Sir David Calcutt was 12 the judiciary, now enshrined in section 3(1) of the 12 asking for. As you may know, I worked very closely with 13 13 Constitutional Reform Act? Sir David Calcutt on a range of cases. I'm a great 14 14 A. I have in front of me the Constitutional Reform Act, and admirer of his excellent, and in his second report, he 15 I do recall when it was going through Parliament and the 15 set out very clearly the way ahead, and I have done my 16 debates that we had, where judicial opinion was greatly 16 best to persuade those with whom I've consulted that 17 17 valued, particularly in the upper house, and there was that is the right way forward, but not by statute. 18 general agreement that we had to enshrine the 18 LORD JUSTICE LEVESON: I'll deal with it at the end. 19 independence of the judiciary in legislation. But there 19 MR JAY: We'll come back to your proposals for the future in 20 is no such agreement -- and I'm well aware of the views 20 due course, Lord Hunt, but may I just deal with a number 21 21 of my parliamentary colleagues -- there is no such of points you raise in your statement? 22 agreement about the independence of the press. There 22 You identify in your view the strengths of the 23 23 are very strong views in Parliament that there must be current system. They can be collected under a number of 24 stronger limits on the power of the press and this 24 heads. The first is you've been impressed by the way in 25 would, therefore, in my mind, open a Pandora's box. It 25 which the Commission has been able to conciliate Page 65 Page 67 would be, for many of my colleagues in Parliament, 1 1 complaints. That's paragraph 10 of your statement. 2 2 a wonderful moment if they were given the opportunity to Presumably in your three months in the saddle, you have 3 move amendments, to debate a bill regulating the press, 3 had direct observational experience of that; is that 4 and I just do not know what would emerge the other side. 4 correct? 5 We were determined that what would emerge the other 5 A. I -- yes. I greatly admire the dedication and 6 side with the 2005 Act was the independence of the 6 commitment of the staff at the PCC. I've listened to 7 judiciary. There is no such agreement about the 7 them dealing with calls from the public. I have been 8 independence of the press. 8 made aware of the way in which they respond in 9 LORD JUSTICE LEVESON: So you think that Parliament might 9 a compassionate and caring way to members of the public 10 seek to use any form of legislation, however it was 10 who have what they feel is a genuine grievance and they cast, as a way of controlling the press? 11 11 work hard to ensure that a satisfactory solution is 12 A. Yes, and they have told me so, many of them, in both 12 found. 13 houses, and that is what is driving me forward to find 13 Q. Do you feel that they take a particular side or, I think 14 a solution and to respond positively to your own 14 in the words of Mr Abell yesterday, it's sort of 60/40 15 in favour of the customer as against the press. Would comments, right at the outset of this, particularly in 15 16 the seminars, that there is a wonderful opportunity for 16 that be your perception how they balance the two? 17 the press itself to put its own house in order. 17 A. I would say that my perception was that they pursue an 18 LORD JUSTICE LEVESON: I don't think that's quite how 18 independent course, seeking to balance, on the one hand, 19 I expressed it, but I certainly said, and firmly 19 the freedom of the press to comment and on the other believe, that it's critical that the press engage in the 20 20 side the public interest, and I think the recent change 21 debate about how its regulation, with a very small "R", 21 to the code, which only came into effect on 1 January, 22 22 should move forward, because it's critical that whatever the 1st of this month, is an example of how the 23 system emerges works for them, but it's equally 23 experience of the staff has been instrumental in 24 critical, as I have made clear, that it works for --24 constantly putting the code under careful review and 25 I've said "me", but by "me", I of course mean the 25 improving it as and when necessary. Page 66 Page 68

14

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- Q. Paragraph 12 of your statement, Lord Hunt, deals with
- 2 the code. You say you start from the belief it's
- 3 important the rules are written by the professionals
- 4 themselves, pausing there, presumably because the
- 5 professionals themselves have the knowledge and
- 6 experience to know what the standards should be. Then 7
- you say:
- 8 "... so long as they're responsive to public
- 9 concerns."
- 10 Can I just explore with you what the mechanisms are
- 11 to ensure that the code of practice, as a living
- 12 instrument, is properly responsive to public concerns,
- 13 please?
- 14 A. I'm not sure we have the best way of doing that at the
- 15 present time, so no doubt we'll come onto the way ahead,
- 16 but I would just, again, instance the amendment to the
- 17 public interest test which came in on 1 January, which
- 18 added to the code that -- the words "and how and with
- 19 whom that was established at the time".
- 20 This is to negotiate a way through of understanding
- 21 the public interest and how the public interest was
- 22 affected, and I think there needs to be much clearer
- 23 definition of processes, which I would advocate through
- 24 authorised internal regulation within the newspaper or
- 25 magazine.

#### Page 69

- witnesses, when necessary, and also to impose fines, all
- 2 backed by commercial contracts.
- Q. We'll come to that very shortly. 3

4 The other plus points you wish to draw our attention 5 to in your witness statement: paragraph 13, the issue of

6 harassment, and paragraph 14, the issue of

7 pre-publication advice.

8 You mention problems with the paparazzi in

9 paragraph 13. If it were made clear that the newspaper 10 publishing a photograph would be responsible for the

11 photo in all its attributes, really, including the mode

12 of obtaining of the photograph, then how the paparazzo

13 himself or herself had obtained it would be subsumed to

the newspaper, wouldn't it?

A. Yes. So that's the way you control the product, but if

- 16 I might add, I think there's also a place for
- 17 considering whether we shouldn't have voluntary
- 18 self-regulation by the photographic agencies as well,
- 19 because we have to bear in mind a number of the
- 20 photographers are not necessarily anything other than
- 21 freelance. Quite often, I understand, they're from
- 22 other countries and publication occurs in other
- 23 countries but the power of our press ensures that they
- 24 don't appear in the UK, unless certain clearly defined
- 25 objectives are met.

# Page 71

- LORD JUSTICE LEVESON: That picks up a point that has been 1 1
- mentioned several times by me, certainly, during the 2
- 3 Inquiry, about an evidence base for the decision-making
- 4 that was involved in making public interest assessments.
- 5 Is that right?
- 6 A. I agree.

18

- 7 MR JAY: Maybe we can take this out of sequence, if you
- 8 don't mind, Lord Hunt. Ensuring that the code, as an
- 9 organic series of principles and rules, is kept
- 10 responsive to public concerns, how would you recommend
- 11 that that is achieved?
- 12 A. I think it is part and parcel of the way in which I've
- 13 been looking ahead. I'm trying not to look back too
- 14 much, because I think there's too much history here,
- 15 although I felt Stephen Abell gave us a lot of lessons
- 16 that can be learned from the past, as he outlined the
- 17 way forward. But certainly there is a need for
- 19 mediation arm, and there should be scope for perhaps

a separate standards arm alongside the complaints and

- 20 a third arm. No doubt we'll return to that point.
- 21 But this new structure, I think, is sorely needed,
- 22 and I've come to the conclusion that we do urgently need 23
- a fresh start and a totally new body with substantially 24 increased powers to audit and enforce compliance with
- 25 the code, to require access to documents, to summon
  - Page 70

- LORD JUSTICE LEVESON: Making the editor responsible for
- 2 everything that's in his paper or her paper, whether
- 3 it's a photograph that had been taken in breach of
- 4 privacy rights or information that's been obtained
- 5 through a private investigator acting in breach of the
- 6 Data Protection Act, will make the editor or his team
- 7 careful about what information they use and how they
- 8 obtain it, presumably.
- 9 A. Yes. Yes. This is really self-regulation at its very
- 10 best.
- MR JAY: The weaknesses of the current system. Some of them 11
- 12 you've already touched on, Lord Hunt. The absence of
- 13 formal legal powers as manifested in the phone-hacking
- 14 investigation, the inability to check basic facts,
- 15 et cetera.
- 16 Secondly, the voluntary nature of the system, which
- 17 means that anybody could pull out, as indeed
- 18 Northern & Shell have done.
- 19 And the third point, paragraph 19, the way
- 20 compliance and internal mechanisms work within
- 21 newspapers and magazines. Can I ask you, please, to
- 22 elaborate the points you make under paragraph 19,
- 23 please?
- 24 A. Yes, well, here I would argue a natural and obvious
- 25 feature of any effective system of self-regulation is to

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- 1 ensure that the internal compliance and complaints
- 2 mechanisms within a paper operate and operate properly.
- 3 Q. Yes.
- 4 A. The complaints and mediation arm should always be the
- 5 last resort when the individual has not had proper
- 6 satisfaction direct.
- 7 Q. Is it implicit in paragraph 19 that you feel that, at
- 8 least in certain newspaper organisations, what we have
- 9 chosen to call corporate governance has been less than
- 10 satisfactory?
- 11 A. I think, looking -- I'm anxious not to be an apologist
- 12 for the past, but looking back, I'm constantly reminded
- 13 of the judgment in the Barings case, that the admiral on
- 14 the bridge should know, surely, what is happening in the
- 15 engine room, and there has been a feeling that perhaps
- 16 at the most senior level in a number of publications,
- 17 proprietorship, that insufficient knowledge and
- 18 responsibility has been taken, but there's been
- 19 insufficient knowledge of what was going on throughout
- 20 the organisation.
- 21 LORD JUSTICE LEVESON: It's a rather stronger case than 21
- 22 Barings, because in Barings it was the work of
- 23 a scientist called Dr Wong in Singapore who wasn't
- 24 identified in London.
- 25 A. Yes, yes, I agree.

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#### Page 73

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- MR JAY: Thank you. We look now to the future. This is
- 2 paragraph 21 and following, Lord Hunt, of your
- 3 statement. Can we just understand, please, what has
- 4 been happening, as it were, behind the scenes. You
- 5 refer to a meeting which took place on 15 December of
- 6 last year, and this included editors, publishers and
- 7 senior industry figures. Presumably a meeting which you
- 8 chaired; is that right? Or did PressBoF chair it?
- 9 A. Well, it was a meeting at which I presented what I must 10 confess are my proposals. When I was interviewed for
- 11
- the job, I remember I was closely questioned on the 12
- approach I would take, and I did say that I felt I could
- 13 only really advise properly on what should be the right
- 14 way forward if I had a blank piece of paper to start off 15 with, and I found that that met with some degree of
- 16
- support and respect.
- 17 Since I originally was interviewed, I have been
- 18 consulting as widely as I possibly could, and I was
- 19 encouraged, particularly bearing in mind the words used
- 20 in this Inquiry, about coming forward with proposals, at
- 21 least to share with the editors the way in which I saw
- 22 the future, and a meeting was called where -- I think it
- 23 was around about 50 editors, including all the most
- 24 senior editors, including several proprietors, including
- 25 the four -- or was it even five, with OK magazine,

## Page 74

- editors from Northern & Shell -- they all attended.
- 2 I presented my proposals in detail, which I'm very keen
  - to share with the Inquiry, and I was very pleasantly
- 4 surprised to find that everyone agreed.
- 5 So there is consensus on the right way forward.
- 6 Important now -- the target now is to start the process,
- 7 whether in shadow form -- trying to make sure that we
- 8 create the right sort of body on which can be built
- 9 a much more effective process of independent
- 10 self-regulation.
- 11 LORD JUSTICE LEVESON: As opposed to saying the target is
- 12
- 13 A. I have to be very careful, and of course I say yes, but
- 14 it just so happens I'm giving evidence on Thursday to
- 15 the joint Select Committee, and in a way I'm seeking to
- 16 try and get the widest possible consensus on the right
- 17 way forward. But I think, sir, the one area on which
- 18 I'm sure we will be fascinated as to your conclusions is
- 19 on the carrot side of this whole process.
  - I'm well aware, from my discussions with a lot of my
- parliamentary colleagues, that when the defamation bill,
- 22 if it is contained in the Queen's speech, comes forward,
- 23 there is a real opportunity then perhaps to build a much 24 better, quicker, safer, freer system, fairer system of
- 25 adjudicating on complaints and dealing with defamation
  - Page 75
  - and privacy issues in a different environment to that
- 2 which, at the moment, applies.
- 3 LORD JUSTICE LEVESON: I'm sorry, I don't quite understand
- 4 that. Does that mean that there is an appetite to
- 5 include within the bill that's had pre-legislative
- 6 scrutiny some other provisions?
- 7 A. Yes. But they're not that different. If one looks
- 8 carefully through Lord Mawhinney's report on the draft
- 9 defamation bill, there is a belief that building on the
- 10 Reynolds defence might be a very interesting way
- 11
- 12 LORD JUSTICE LEVESON: Well --
- 13 A. And Lord Lester of Herne Hill has already shared with
- 14 many colleagues his wish to see something modelled on
- 15 the Irish Press Council reference in the Irish
- 16 legislation being included in the defamation bill, but
- 17 that will be much later this year, after, sir, you have
- 18
- LORD JUSTICE LEVESON: Well, that's the point. I'd be very 19
- 20 keen to learn about that and the ideas that Lord Lester
- 21 and indeed anybody else has, as indeed I've made clear
- 22 I'm very keen to hear from you. Well ...
- 23 MR JAY: Lord Hunt, in terms of the proposals which you
- 24 outline in your witness statement, you make it clear
- 25 that these are very broad interim conclusions which

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1 need, perhaps, to be stress-tested and subject to

2 further discussion. Can we identify the key features? 3

You say quite clearly that the existing PCC structure is not viable and needs to be replaced, that

4 5 there can be no question of tinkering at the edges. In

6 terms of what the body would look like, putting to one

side the source of its powers, you, I think, have at

7

8 least two arms; is that correct?

9 A. Yes.

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- 10 Q. Could you explain that to us, please, Lord Hunt?
- 11 A. Well, I think we've heard evidence identifying certain 12 weaknesses with the present -- the current system of

13 self-regulation.

14 The proposal is that the new regulator should have 15 two arms, one that deals with complaints and mediation,

16 continuing the valuable work that's been going on

17 hitherto at the -- by the staff of the PCC, and one --

a separate arm that audits and, where necessary,

19 enforces standards and compliance, compliance with the

Editors' Code, with much greater emphasis on internal

self-regulation, with a named individual carrying

22 personal responsibility for compliance at each and every

one of the publishers and those responsible for

24 newspapers and magazines.

25 The individual will be responsible for providing Page 77

there be lay representation on the committee or the

2 compliance arm which would have responsibility for the

code of practice?

4 A. Yes, and that there should also be a review -- an

5 independent review of the code. This is all part and

parcel of the overall proposals, which I have summarised 6

7 in a two-page document which I have circulated to each

8 of the editors who attended that meeting, and on which

9 I'm now getting a number of very helpful and positive

10 responses.

11 Q. In terms of identifying the source of power -- this is

12 your third bullet point at page 54998 -- you make it

clear that there does need to be a formal legal 13

14 underpinning of the system. Is that because, Lord Hunt,

15 if you have a body which can impose fines, which can

16 require editors to provide documents and have other

17 coercive powers, there needs to be some legal framework

18 otherwise there is no means of achieving compliance? Is 19 that correct?

20 A. Yes. It's not a new idea. One leading Queen's Counsel

21 pointed out to me that Lord Shawcross had raised the

22 whole question of there being contractual underpinning

23 of the self-regulatory system in his Royal Commission

24 report.

25 Q. Yes. So --

# Page 79

- 1 a simple but thoroughgoing audit of compliance on an 2 annual basis, and as you've just mentioned, that will be
- 3 underpinned by a system of commercial contract.
- 4 Q. Is it right, therefore, that the Code of Practice
- 5 Committee would disappear and become part of the
- 6 compliance and standards arm of the PCC? Have
- 7 I correctly understood that?
- 8 A. I think the design that I have worked up, as you rightly
- 9 say, is a matter for further discussion. I do make
- 10 clear: these are my proposals, but I have done my best
- 11 to consult widely within the industry, with other
- 12 stakeholders, including many colleagues in Parliament,
- 13 and they have now been endorsed both by the Press
- 14 Complaints Commission and by the industry itself at that 14

meeting we had on 15 December, and I think it's very

- 16 encouraging that there is such a wide consensus for
- 17 radical reform. The very existence of this Inquiry has,
- 18 I think, been the key important factor in ensuring that
- 19 all the major players in the industry now accept that
- 20 radical reform is an urgent necessity.
- 21 Q. Yes. I'm just concerned about the code of practice. On 22 my understanding of your evidence, it's likely to be
- 23 located within the compliance and standards arm, but in
- 24 terms of how the code would reflect public concern,
- 25 public perception, et cetera, is it being proposed that Page 78

- 1 A. So I'm not seeking to be innovative. I'm building on 2
  - what I think is the right way forward, as expressed previously.
- 3 4 Q. But you would be content, on my understanding of this
- 5 third bullet point, with a contractual system, the
- 6 contract being the source of power, as it were, which
- 7 was recognised within statute -- or in due course was
- 8 recognised within statute -- but you would not, on my
- 9 understanding, countenance a contractual system which
- 10 had been created by statute; is that correct?
- 11 A. Correct. I think the easiest way to deal with this
- 12 point is to look at recommendation 1 of David Calcutt's
- 13 second report, which I've relied on here, when he,
- I think -- and I do recall all the debates we had --
- I think had rather lost patience with the response that 15
- 16 he'd received to his first report, which had been
- 17
- a committee on privacy chaired by him, and in 18 paragraph 9 of that summary, at the start of his second
- 19 report, he concluded that:

"The government should now introduce a statutory regime. A statutory press complaints tribunal would need to have these functions and powers."

And I have he been going through those functions and powers with one huge difference: I think these functions and powers could be set up under contract without the Page 80

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- 1 need for legislation.
- 2 Q. There are 19 functions and powers, which range from
- 3 drawing up a code of practice, enquiring into
- 4 complaints, holding hearings, giving guidance, awarding
- 5 compensation, imposing fines, et cetera, et cetera.
- 6 That's correct, isn't it?
- 7 A. Yes.
- 8 Q. His preference, as you say, was for a statutory regime.
- 9 In terms of the vice which you're seeking to avoid,
- 10 which is an unacceptable impingement of on freedoms,
- 11 paragraph 3 of your witness statement, what is the
- 12 difference between Sir David Calcutt's statutory regime,
- 13 with the powers we see itemised here in paragraph 9 of
- 14 the second report, and the contractual regime which you
- 15 favour?
- 16 A. The difference is statute. What I'm doing is to set out
- 17 what Sir David concluded in his first report, and where
- 18 he had been dissatisfied with the response that he had
- 19 received, which had then led him to believe the only way
- 20 forward was through statute.
- 21 I'm seeking to lift what he would have wanted into
- 22 today's age, and I think it is perfectly achievable.
- 23 The environment of the time, though, was that it was not
- 24 possible for the press to come forward with such
- 25 a self-regulatory regime. And please, Mr Jay, bear in Page 81

- 1 difficulties. Getting people to sign up on the dotted
- 2 line, Lord Hunt. We've called this the carrot or the
- 3 stick. It matters not --
- 4 A Or both
- 5 LORD JUSTICE LEVESON: That's neither a carrot nor a stick;
- 6 it's just getting them to sign up.
- 7 A. Yes, I agree. The contracts would arm the new regulator
- 8 with the necessary is investigative and enforcement
- 9 powers to investigate serious ethical breaches, which
- 10 the PCC has never possessed. And if I may add this --
- 11 MR JAY: Yes.
- 12 A. I think the PCC has been very unfairly criticised for
- 13 failing to exercise powers which it never had in the
- 14
- 15 LORD JUSTICE LEVESON: Well, it did have certain powers,
- 16 didn't it? We looked at them yesterday, in the articles
- 17 of association. They could have done a lot more.
- 18 A. Yes. I --
- LORD JUSTICE LEVESON: I'm not taking this as an opportunity 19
- 20 to have a go at the PCC, but looking at some of the
- 21 powers in the articles of association, they could easily
- 22 have been construed to permit a great deal more. They
- 23 may not have been able to afford to do it. That's
- 24 a different point.

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25 A. Sir, I'm not sure it is a question of resources. There

Page 83

- mind that I was part of those discussions which took 1
- 2 place, under colleagues in cabinet, to try and persuade
- 3 the new Commission, the Press Complaints Commission, to
- 4 move in the direction that is laid out here, and I think
- 5 there were a whole series of letters, no doubt which
- 6 will be revealed when at last we are allowed to see all
- 7 the internal letters and correspondence of the
- 8 administration, which -- I'm reminded that there were
- 9 challenges given to the press to do exactly what is now
- 10 set out in my statement, but they did not respond 11 positively.
- 12 I sense today there's a completely different
- 13 appetite for fundamental reform, and I'm anxious that we
- 14 should utilise this window of opportunity as quickly as 15 possible, to proceed in the way Sir David wanted and
- 16 I think the overwhelming majority of people now want,
- which is proper, independent self-regulation of the 17
- 18 press.
- 19 Q. Of course, under your contractual system, you would
- 20 have, I think we would all agree, a regulator, properly
- 21 so-called. Would it be self-regulation, though,
- 22 Lord Hunt?
- 23 A. Yes.
- 24 Q. Can I just understand what the possible difficulties
- 25 might be. I'm only putting these forward as possible Page 82

- was a reliance on correspondence, without the feeling
- 2 that there was power to demand the attendance of
- 3 witnesses, power to visit the premises under
- 4 investigation, to carry out proper, in-depth analysis of
- 5 the documentation, the emails, the computer records. It
- 6 would require a team and undoubtedly the new regulator
- 7 would have that power. I'm determined that it should.
- 8 I hope it would never have to be exercised, but it would
  - have that power.
- 10 All I'm saying is that this is in stark contrast to
- 11 the PCC, which certainly never felt it had that power,
  - and it would require an imaginative interpretation of
- 13 the articles to feel that it did.
- 14 LORD JUSTICE LEVESON: Well --
- A. And it never felt it had that power. 15
- 16 MR JAY: Well, Lord Hunt, it's perhaps not necessary to go
- 17 there and try and construe article 53.1(a) again, but
- 18 what I'm concerned really is to address the future.
- 19 There are at least three issues I'd like to discuss.
- 20 It's getting people to the starting block issue and 21
- forcing them into this system, which is the web of 22 contractual relationships. I think you would agree that
- 23 if there is a substantial newspaper group which is
- 24 outside the system, that damages the credibility of the
- 25 new body, whatever name it's given; is that correct? Page 84

21 (Pages 81 to 84)

- 1 A. Correct.
- 2 Q. So how are we going to get people to join up, Lord Hunt?
- 3 A. By asking them, and everyone I've asked so far, covering
- 4 virtually the whole range of publications, have said
- 5 that they are willing to agree to proceed in the way
- 6 I have set out.
- 7 Q. That includes Northern & Shell, presumably, does it?
- 8 A. Correct.
- 9 Q. Have you made it clear to Northern & Shell what all the
- 10 characteristics and attributes of this new body will be?
- 11 A. I have shared with them as much as I have shared with
- 12 everyone else.
- 13 Q. Is this right: that you are relying on the good faith,
- the goodwill of all the potential participants, to
- arrive at the signing ceremony on day one and
- 16 participate; is that correct?
- 17 A. Correct.
- 18 Q. Is there any additional incentive which one could put
- 19 forward or suggest which might make it even more
- attractive for people to sign up?
- 21 A. I sense there is a willingness to accept a fresh start
- and a new body. I did immediately call a meeting of all
- the general counsel, who advise each of the
- 24 publications, and found that there was agreement around
- 25 the table that it was perfectly possible to reach Page 85
  - agreement. The abiding theme was that it should be
- 2 simple, short, easy to understand, and that one could
- 3 foresee exactly the sort of structure that I had in
- 4 mind.

- 5 In many ways I've approached this as I would
- 6 a client who comes with a problem, the problem being the 6
- 7 present structure does not work. The solution, which
- 8 lawyers seek to find, is an answer which will provide
- 9 the best structure, and I think with the help of all
- those involved, it will be possible.
- 11 Q. Okay. On my understanding, the proposal entails
- a five-year rolling contract. Presumably anybody who
- wanted out would have to give five years' notice; is
- 14 that correct?
- 15 A. Yes. My error is that I'm always approaching it in
- a positive way, but you're quite right. I have to think
- of the consequences of anyone who, two years further
- down the road, might find that they could no longer
- support the structure, and I've been advised by those
- 20 I've consulted that the best way forward is to have
- a rolling contract over a five-year period.
- The sword of Damocles hanging over the whole
- industry is, of course, the threat of state regulation.
- 24 If someone just unilaterally withdrew, for whatever
- 25 reason, a five-year period would be more than enough Page 86

- 1 time to provide the statutory underpinning that would be
- 2 necessary if you could never achieve consensus, but at
- 3 the present time, I'm seeking to put as positive
- 4 a construction on the discussions I've had as possible.
- 5 LORD JUSTICE LEVESON: That's entirely understandable,
- 6 Lord Hunt. You'll forgive me if I view the problem
- 7 through a rather wider spectrum of history, as well as
- 8 having the anxiety that you identify. As I again have
- 9 said a number of times, it is rather disturbing the
- number of times since the last war that we've been in
- 11 a position are great calamity for the press, there has
- been an Inquiry, everybody agrees something must happen
- that is different, that is taken on board -- you don't
- 14 need me to carry on.
- 15 A. (Shakes head)
- 16 LORD JUSTICE LEVESON: Then disaster happens and everybody
- 17 starts again.
- 18 A. Sir, I think the difference, if there is sufficient
- agreement to move forward now, is that there would, at
- 20 least, be a contract. I think there were some people
- 21 who felt there was almost an implied contract setting up
- the Press Complaints Commission, but there wasn't.
- 23 Perhaps if we'd followed the Shawcross advice, there
- would have been, but there wasn't.
- 25 I suppose in many ways -- am I wrong in thinking the

Page 87

- 1 solution now is to learn the lessons of history and make
  - 2 sure that there is a proper contract in place?
  - 3 LORD JUSTICE LEVESON: Well, make sure there is something in
  - 4 place. What you have added to the equation by your
  - 5 evidence, which I frankly concede has taken me somewhat
  - 6 by surprise, is the appetite that you have identified in
  - 7 your parliamentary colleagues to take the opportunity to
  - 8 impose restrictions upon the press which are
  - 9 inconsistent with freedom of expression. That's what
  - 10 you've given me this afternoon. Have I understood it
  - 11 correctly?
  - 12 A. Sir, there have been a number of occasions on which
  - private members have put forward private members' bills.
  - 14 If one looks at those bills, they would have imposed
  - 15 restrictions on freedom of expression.
  - Now, Lord Soley, who I think has now written a book
  - 17 about it -- and I've consulted Clive Soley -- he has
  - very strong views about the need for some mechanism of
  - 19 that sort, and there are many others, too. I don't
  - 20 think their prime intention is to restrict freedom of
  - 21 expression, but in my view it would be a consequence.
  - 22 LORD JUSTICE LEVESON: Mm.
  - 23 MR JAY: Okay, Lord Hunt. May I deal with the contract?
  - 24 Imagine everybody is in the contract, either because
  - $25 \qquad \text{they're willing to sign up or some carrot has been} \\$

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- 1 devised to ensure that they do. There are three 2 possible issues which arise.
- 3 If the new body imposes a substantial fine -- let us
- 4 imagine the proprietor doesn't like the fine and refuses
- 5 to pay -- presumably your advice is an order for
  - specific performance can be obtained at the instance of
- 7 the new successor body against the recalcitrant
- 8 newspaper body; is that correct?

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- 9 A. Well, the fine would be issued by the standards and
- 10 compliance arm of the new regulator only if there was
- 11 a serious or systemic breach of standards. The level of
- 12 fine, would, of course, be proportionate and would
- 13 depend on a number of factors such as the seriousness of
- 14 the breach and the size of the organisation.
- 15 One way of doing that would be for the fine to be 16 added to the paper's levy for the following year's
- 17 membership. That was an idea put forward in one of the
- 18 meetings I've held.
- 19 There is, though, I stress again, an appetite to
- 20 proceed with this form of self-regulation, which
- 21 I warmly applaud, and I do think -- and perhaps I should
- 22 keep stressing this -- I think this Inquiry has opened
- 23 up a huge opportunity and I'm keen to use the momentum
- 24 that this Inquiry has provided to press on with reform.
- 25 MR JAY: Some might say -- but I suppose that person would 25 Page 89
- have to be a cynic -- that the appetite you are 1
- 2 referring to is simply a fear that this Inquiry might
- 3 recommend something which the press would regard as much
- 4 worse, namely a form of statutory regulation. Would
- 5 that be too cynical a view?
- 6 A. Having been in Parliament 35 years, I'm not sure
- 7 I recognise cynicism any more.
- 8 Q. Okay, Lord Hunt. I am concerned, though, with the
- 9 mechanics. You've got a fine. There's no means of
- 10 challenging the fine. It's fair and proportionate. Any
- 11 appeal right has been exhausted.
- 12 A. Yes.
- 13 Q. The proprietor doesn't pay. Is it your advice that
- 14 specific performance can be obtained by the new
- 15 successor body against the proprietor or not?
- 16 A. Yes. I'm told that it would be available, but that is
- 17 for the judiciary presented with such an application.
- 18 It would also depend very much on the wording of the
- 19 contract.
- 20 Q. Naturally it would, but if the contract were worded in
- 21 the right way, is it your advice, from Queen's Counsel,
- 22 that if there is no difficulty, an order for specific
- 23 performance would be ordered by the High Court?
- 24 A. Correct.
- 25 Q. Imagine then this scenario: the proprietor is now Page 90

- particularly disgruntled for whatever reason and wants
- 2 out and refuses to pay the subscription, and what's
  - more, refuses to submit to the jurisdiction of the new
- 4 successor body, in other words, doesn't accept that it
- 5 has any power over complaints arising against its
  - newspapers. Can an order for specific performance be
- 7 obtained, on your advice, in that sort of situation?
- 8 A. Or on a change of ownership.
- 9 Q. Yes.
- 10 A. A similar situation.
- 11 The advice I've received is that much would depend
  - on the way in which the contract was worded, but
- 13 provided the right words were used, the answer to your
- 14 question is yes.
- 15 Q. I suppose that might collapse into this question: that
- 16 once the newspapers understand that the wording which
- 17 they're asked to sign would enable, in the case of
- 18 breach, the High Court to order specific performance
- 19 against them, some newspapers might be less keen to sign
  - up. Does that not follow?
- 21 A. No, I don't think it does, because there is goodwill, at
- 22 the moment, amongst all those to whom I've spoken, to
  - set up such a system. The important thing is to make
- 24 sure that the terms on which the new regulator is
  - established are sufficiently wide to meet the range of Page 91
    - problems, some of which you've outlined, and there are

many others, too, which we would have to make sure were

- 3 covered.
  - Q. Finally, slightly more of a condite(?) point on judicial
- 5 review, because the previous witness mentioned it.
- 6 Presumably your advice is that if there were a web of
- 7 contractual relationships binding newspaper groups to
- this new regulator, this new regulator would clearly be 8
  - subject to judicial review, wouldn't it?
- 10 A. Judicial review has become now so commonplace. I've had
- 11 so many of my decisions as a minister challenged under
- 12 judicial review in a way that would never have taken
- 13 place many years ago. So I think almost certainly yes,
- 14 but whether or not the decision would be to intervene in
- 15 the rules of a self-regulatory body, that's still really
- 16 something which is uncertain.
- 17 Q. I would agree with that, but I'm dealing more with
- 18 points of principle. My understanding of the law in
- 19 quite old Court of Appeal decisions is that
- 20 a contractual regulator would be amenable to judicial
- 21 review. I think it's a decision of Lord Donaldson in
- 22 a case called Datafin. It may well be the case, but I'd
- 23 like to think about this further, that the PCC is
- 24 already amenable to judicial review, even without
- 25 a contract, but it's not necessary to express Page 92

23 (Pages 89 to 92)

a concluded view on that.

1

- 2 It deals with an objection Lord Grade raised to 3 statutory regulation, that there is no difference, for
- 4 judicial review purposes, between a statutory regulator
- 5 and a contractual regulator, is there?
- 6 A. Well, I thought I'd argued successfully on two
- 7 occasions, on behalf of an association of members
- 8 creating a body, that it was not capable of judicial
- 9 review, because it wasn't contained in statute. I think
- 10 I probably need to reflect on the stare decisis around
- 11 this issue. Please don't rely on me to give definitive
- 12 advice. I think I'd probably come to you for that.
- 13 Q. Yes, and I would ask for a bit of time to ponder the
- 14 jurisprudence you refer to, and I haven't had the time
- 15 in the last three or four days to do that, Lord Hunt. 16
- Can I come back to statutory regulation? I can see 17 the philosophical objection you put forward, and I can
- 18 see that you're coming to us with, if I may say so,
- 19 lengthy experience of Parliament, both in the House of 20 Commons and the House of Lords, and you fear that some 20
- 21 of your colleagues may take this opportunity to settle
- 22 old scores but in any event seek to muzzle or curb the
- 23 press because that would be their agenda.
- 24 Subject to that concern, there is no difference in
- 25 substance, is there, between the contractual system Page 93
- 1 which are you advocating and a system which has a
- 2 statutory underpinning but otherwise has exactly the
- 3 same powers as the system you're advocating; would you
- 4 agree?
- 5 A. I think I'd rather want to reword your question.
- 6 O. Fair enough.
- 7 A. But I'm not allowed to do that.
- 8 Q. You can, Lord Hunt. I'm going to permit you to do that.
- 9 A. But what I think is that Parliament, when it is
- 10 presented with a bill, believes there to be a problem
- 11 which it is necessary to solve. Now, the government may
- 12 present it in a limited way, but Parliament has the
- 13 right to proceed in the way that it thinks fit, and
- 14
- I think on an issue like this, there would be widespread 15
- belief that there would be a better way through
- 16 a different form of regulation.
- 17 Self-regulation, though, has a huge advantage, in 18 that it is capable of change, adapting to circumstances.
- 19 Changing the code, improving the code, strengthening the 19
- 20 code, strengthening the system in a new way,
- 21 particularly faced with online publications, the need to
- 22 extend the sphere. That is perfectly possible without
- 23 another bill, another Act of Parliament.
- 24 As soon as you get into statute, you're into an
- 25 inflexible system. I think self-regulation is so much

Page 94

- 1 the better because it can adapt to the challenge of
- 2
- 3 Q. But even with your contractual system, in order to adapt
- 4 to the challenge of change, you would have to amend the
- 5 contract, wouldn't you?
- 6 A. Not necessarily, because you, I hope, are going to
- 7 empower a new regulator with two columns: standards and
- 8 compliance, and complaints and mediation. I would want
  - to see the contract allow for a further arm, if it is
- 10 right to proceed down that road, but back to the new
- 11 regulator. The contract would give the new regulator
- 12
- power to adapt to the challenge of change. That is the
- 13 key. So you wouldn't need a new Act of Parliament; you
- 14 would need the new body to feel that it had to proceed
- 15 in that direction within the powers given to it by the
- contract.
- 16
- 17 Q. Yes, but an Act of Parliament which was not prescriptive
- 18 in the sense of the standards which were to be imposed,
- 19 moreover did seek to enshrine certain constitutional
- principles in relation to the freedom of the press --
- 21 that Act of Parliament and the regulatory body which
- 22 would spring from it would, it might be argued, be
- 23 exactly as flexible and exactly as independent as the
- 24 contractual mechanism that you are advocating, isn't
- 25 that right?

#### Page 95

- 1 A. Well, over the years I've seen so much legislation that
- 2 has been introduced into Parliament, needed amendment in
- 3 both houses, last-minute amendments, and then, after the
- 4 legislation has passed and become an Act, received royal
- 5 assent. Suddenly problems arise which were not covered
  - by the legislation. New situations arise.
  - What I'm seeking through self-regulation is to
- 8 establish a structure that can easily, easily, by
- 9 agreement and by consensus, be established and be
- 10 adapted to the changing environment. I think that's the
- 11 great advantage. It may work. I believe it will work.
- 12 But if it didn't work, yes, you can always go back to
- 13 the --

6

7

- 14 Q. Sword of Damocles.
- A. -- the sword of Damocles and establish a statutory
- framework. But the press already operate within a huge 16
- 17 statutory back-up system.
- 18 Q. Yes, I understand. It's the same sword of Damocles, though, that Sir David Calcutt left hanging over the
- 20 press in 1993, isn't it?
- 21 A. Yes, but I think in many ways the structure that I am
- 22 hoping to establish would meet his wishes and
- 23 expectations, which at the time -- I do know for a fact
- he was very, very disappointed that there wasn't such 25 a positive reaction then, but I believe we have that
  - Page 96

24 (Pages 93 to 96)

- 1 positive reaction now.
- 2 LORD JUSTICE LEVESON: Is this time-limited, Lord Hunt?
- 3 There is actually a second sword of Damocles here, not
- 4 merely the possibility of doing something in the future,
- 5 but: "Unless we get this signed up quite quickly, then
- 6 this fellow called Leveson is going to come and make it
- 7 much worse for us"? I don't have that power, actually,
- 8 because I would only make recommendations in any event,
- 9 but is there something to that effect about this, too?
- 10 A. No. I think you have opened the window of opportunity,
- sir. I'd be keen to use the momentum that your Inquiry
- has provided to press on with reform.
- 13 LORD JUSTICE LEVESON: Yes, well, I entirely agree with
- that, and as I have, I think, already said to you this
- afternoon, suggested just that possibility as long ago
- as last September/October. So I am not at all
- 17 concerned -- in fact, I positively encourage the work
- that you and those who are supporting you have done to
- 19 try to find a way through, but I have some concerns,
- which I would like to be thought about as well. But
- 21 I'll wait until Mr Jay concludes.
- 22 MR JAY: Two final questions, Lord Hunt. It goes without
- saying -- but this would be true of contractual system
- and a statutory system -- that more money would be
- needed, wouldn't it, to enable the new regulator or the Page 97
- renamed regulator to discharge its functions? That's right, isn't it?
- 3 A. No. I don't think the proposed new model is going to be
- 4 much more expensive. I don't think it can possibly be.
- 5 The newspaper industry is evolving all the time and it's
- 6 a simple fact of life, as my parliamentary colleague
- 7 Lord Grade pointed out, that printed newspapers are in
- 8 decline, especially at the regional and local levels,
- 9 and I'm determined that a regulator that deals with
- 10 complaints, but also polices internal self-regulation,
- will not grow into an intolerably expensive burden on
- the industry, although there will be some transitional
- 13 cost during the process of reform, but involving best
- practice, will and must see a higher proportion of
- alleged code breaches dealt with quickly, efficiently
- and internally by the offending publications themselves.
- There's huge opportunity here for the industry to regulate itself in a way that perhaps it hasn't focused
- on sufficiently well in the past.
- 20 Q. I've been asked to put to you this question. It goes,
- I suppose, to the point which someone put in these
- 22 terms: "cosy cabal", if you can forgive me for put it in
- this way.
- 24 A. Yes.
- Q. It hasn't escaped anybody's notice that the history of Page 98

- 1 the PCC has been rather dominated by Conservative peers.
- 2 That remains the position. It remains the position in
- 3 relation to PressBoF. Is that an accident? Does
- 4 anything flow from that, Lord Black? Lord Hunt, pardon
- 5 me.

23

- 6 A. I'm just absorbing your Freudian slip.
- May I just say that I hope my experience with the
- 8 press is not guiding me here, because it would be in the
  - opposite direction to that which you've set out.
- 10 I don't think there is anyone who's appeared as
- a witness before you who has had the sort of
- vilification I have had in the press in the past.
- 13 I think it was Edward Pierce who wrote that magnificent
- 14 article which my children so love: "David Hunt is
- a sponge, but even a sponge can be useful." And I just
- give you that as one example. I have had more than my
- give you that as one example. I have had more than my
- fair share of derision from the press, but my goodness,
- although I disagree with them, I'd fight to the death
- 19 for their right to express those views. That's always
- 20 been my view.
- I mustn't get too deep about this, but in the early
- 22 part of my career, it was certain newspapers who
  - supported me when I was in my early 20s, when I attacked
- 24 Enoch Powell on the issue of race and got sacked by my
- 25 local constituency with my parliamentary career at an Page 99
  - end, and it was one newspaper in particular who said --
- and wrote an editorial, which was quite brave and
- 3 courageous of them at the time, saying, "This young man
- 4 will go far. He need not worry."
- Well, I was very worried, but not after I read that
- 6 editorial. So I think the press is a mixture,
- 7 I suppose, but the fact it's a free press is probably
- 8 our nation's greatest asset.
- 9 MR JAY: Okay, well, forgive me for asking the question.
- 10 I'm grateful for your answer, Lord Hunt. Thank you.
- 11 A. Thank you.
- 12 LORD JUSTICE LEVESON: Let me just become slightly less
- over-arching. A contract may bind the press
- institutions that enter into the contract but says
- absolutely nothing to the public. So how do you see the
- 16 concept of your ability, for example, to award
- 17 compensation as fitting with the right of a member of
- the public to pursue litigation?
- 19 A. It would not be possible under the Human Rights Act to
- debar someone.
- 21 LORD JUSTICE LEVESON: That's the point.
- 22 A. But --
- 23 LORD JUSTICE LEVESON: Unless you got a system that is
- 24 Article 6-compliant.
- 25 A. Yes, and I carry with me everywhere the Human Rights Act Page 100

1	because it is so critical and crucial here.	1	Times with the risk of litigation that would be
2	How the public interest would be dealt with the	2	inordinately expensive, and the concern about making it
3	entire system would have to be founded on a generally	3	entirely contractually based is that the extremely
4	accepted definition of the public interest. The entire	4	wealthy could not be compelled to go down that route but
5	system has to be based on that, embodied in the	5	would be able to pursue whatever remedy it sought,
6	contracts and in the code. That's the only way forward.	6	unless there was some form of arbitral system that was
7	It has to be a system judged against everything that's	7	Article 6-compliant but that didn't give the opportunity
8	happened in the past. Would it have stopped these	8	simply to avoid it.
9	situations arising? That's been in the forefront of my	9	A. Sir, I think this is such an important area. I don't
10	mind. What could this new regulator are done to have	10	have an easy and quick reply but I have spent some time
11	stopped some of the evil practices which we've heard	11	looking through the Defamation Act 2009, the Irish
12	about and which this Inquiry has highlighted?	12	Defamation Act.
13	LORD JUSTICE LEVESON: So it wouldn't stop a member of the	13	LORD JUSTICE LEVESON: Yes, I was about to say I didn't
14	public pursuing litigation. What do you say to the line	14	think we had one.
15	that you have to choose? "Either you come to the PCC	15	A. No, we shall have Defamation Act 2012.
16	mark 1 or you had go to court. You can't do both."	16	Section 26 says actually lays a statutory test on
17	A. Two responses. The financial services ombudsman says if	17	the extent to which the publisher of the periodical
18	you come to the ombudsman, then you are not bound by our	18	adhered to standards equivalent to the standards laid
19	decision but the company that you're complaining against	19	down in effect by the Irish Press Council.
20	is. So you could have a system where the press are	20	So when such a case reached the courts, in
21	bound by the decision, but the member of the public	21	considering it, the judiciary would want to be assured
22	LORD JUSTICE LEVESON: You certainly could, but I don't know		that the individual concerned had utilised the services
23	whether your thinking has progressed that far with your	23	of the complaints and mediation service.
24	constituency.	24	LORD JUSTICE LEVESON: That's fine, but that does actually
25	A. I sense that this is a real opportunity for the third	25	mean, doesn't it, that this body is going to have to be
	Page 101		Page 103
1	column. I would want the complaints and mediation arm	1	recognised in some way in statutory form.
1 2	column. I would want the complaints and mediation arm to be fast, fair and free, so that people get immediate	1 2	recognised in some way in statutory form.  A. But the press is already section 12, freedom of
			· · · · · · · · · · · · · · · · · · ·
2	to be fast, fair and free, so that people get immediate	2	A. But the press is already section 12, freedom of
2 3	to be fast, fair and free, so that people get immediate response where they have failed to get that response	2 3	A. But the press is already section 12, freedom of expression.
2 3 4	to be fast, fair and free, so that people get immediate response where they have failed to get that response from the newspaper or magazine.	2 3 4	<ul><li>A. But the press is already section 12, freedom of expression.</li><li>LORD JUSTICE LEVESON: Well</li></ul>
2 3 4 5	to be fast, fair and free, so that people get immediate response where they have failed to get that response from the newspaper or magazine.  The third column, I think, is the area which	2 3 4 5	<ul> <li>A. But the press is already section 12, freedom of expression.</li> <li>LORD JUSTICE LEVESON: Well</li> <li>A. It's already in this essential law for journalists</li> </ul>
2 3 4 5 6	to be fast, fair and free, so that people get immediate response where they have failed to get that response from the newspaper or magazine.  The third column, I think, is the area which everyone has wrestled with, and I've tried to do the	2 3 4 5 6	<ul> <li>A. But the press is already section 12, freedom of expression.</li> <li>LORD JUSTICE LEVESON: Well</li> <li>A. It's already in this essential law for journalists I'm amazed that journalists feel free, because there is</li> </ul>
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1 to be set up so that it was independent, that it --1 the further developments that you have agreed or that 2 you're able to pursue, in order the better to inform my 3 LORD JUSTICE LEVESON: -- provided certain remedies, which 3 consideration of the future. 4 I think the Irish model does. A. (Nods head) 5 A. Yes. 5 LORD JUSTICE LEVESON: In other words, to such extent as you LORD JUSTICE LEVESON: Then presumably it would be 6 6 can use -- I won't say the sword, that puts it far too 7 sufficient for the legislation to identify the model and 7 high -- the small dagger that I hold, knowing of the 8 to leave the regulator to get on with the task of 8 concerns that I have and the principles that I have 9 organising codes, practices and the rest of it. 9 hinted at -- more than hinted at, made clear that I feel 10 Now, on that basis, would it not also be 10 strongly about -- then I have no difficulty with that. 11 11 advantageous to allow that regulator to set up an A. (Nods head) LORD JUSTICE LEVESON: I think that's probably as far as we 12 arbitral system, which, if not mandated, could be, 12 13 rather as you've identified the Irish model does, 13 can go this afternoon. 14 directive of those who wish to complain? 14 A. Yes, sir. I very much welcome your words. I think --15 A. Yes. It's -- it is, of course, in the reference that 15 I think you, in this Inquiry, have highlighted really 16 I've made to the Irish Press Council, only within the 16 what has been a great shame in the past: bad journalism. 17 Defamation Act 2009. There is no other sort of 17 But the overwhelming majority of journalists I know just 18 statutory, regulatory structure laid out in any other 18 wish we could eradicate what goes on at that level, and 19 Irish Act, as I understand it. I'm exploring this 19 what I'm really talking about -- what I've sensed in all 20 further at the present time. 20 my discussions is that there is a willingness to embrace 21 21 But you are quite right, because in schedule 2 it a profound and positive change in culture running right 22 sets out minimum requirements in respect of the Press 22 across the whole industry, and you are giving us an 23 23 Council, and it may well be this third column would need unrivalled opportunity to meet the need that is so 24 24 to satisfy those minimum requirements. But it doesn't 25 in any way mean we will have to wait, because there is LORD JUSTICE LEVESON: Lord Hunt, I hope that is so. I have Page 105 Page 107 already, I would regard, an unprecedented consensus in never shied away from saying that by far the greatest 1 1 2 2 proportion of journalistic activity in this country has favour of the proposed new architecture uniting the 3 3 political parties, my colleagues on the PCC and, most been to the very great benefit of the country, and 4 important of all, the industry itself. That's why 4 I have said that both in relation to the regional press 5 5 I think we have a unique historic opportunity. and also to national titles, but it would be a mistake 6 6 Once we've established this new structure, we can to think that my concern is limited to phone hacking, or 7 build on it. We can gain the respect of the public 7 that there aren't other practices which I have heard 8 through the exercise, for the first time ever, of proper 8 about which do not cause me real anxiety. 9 regulatory functions with the power to investigate, 9 A. Mm. 10 et cetera, and I think this could set a precedent for LORD JUSTICE LEVESON: If the industry is taking advantage 10 a future course of action on which -- you may well, sir, 11 11 of the time that the Inquiry takes to address these 12 have some vitally important views on how we could build 12 concerns, nobody will be more pleased than I will be to 13 13 on this structure, but we need a structure on which to be able to feel progress has been made and that 14 14 build which does not rely on the Press Regulation Act. a solution has been reached which can be embraced by the 15 LORD JUSTICE LEVESON: Yes, I understand that, clearly, and 15 industry rather than fought over for the next five years 16 you have clearly in mind also the need to satisfy the 16 to come. 17 public concern that has been expressed so vocally to me 17 But it does have to cope with the problems, because 18 and indeed otherwise. 18 those organisations and people who've spoken about those 19 19 We're not going to solve this this afternoon, but problems have a legitimate interest in ensuring that 20 what I am very keen that you should do is to keep the 20 they haven't gone through the pain of exposing 21 21 Inquiry informed about the progress that you are making themselves only to find that nothing really has changed. 22 22 and where the sticking points are, if there are any, and I hope you agree that that's not unfair. 23 23 to maintain the momentum that you feel you can maintain A. Well, if I just say, sir, that my objective will be nil 24 on the basis that you should expect that I may very well 24 satis nisi optimum, which you may recall is the motto of 25 25 request that you return to allow into the public domain a famous Premier League football club. It's a clarion Page 106 Page 108

1	call: to be satisfied by nothing but the best.	
2	LORD JUSTICE LEVESON: Well, that's easy to say; not	
3	necessarily straightforward to achieve.	
4	A. Thank you.	
5	MR JAY: Thank you.	
6	LORD JUSTICE LEVESON: Lord Hunt, thank you very much	
7	indeed.	
8	A. Thank you.	
9	MR JAY: May I raise a tiny different topic before you rise?	
10	LORD JUSTICE LEVESON: Yes.	
11	MR JAY: Evidence of Mr Thomas last week. He wishes to make	
12	some very minor corrections and clarifications.	
13	A letter of 24 January will therefore be put on the	
14	website in the usual way, setting out those matters.	
15	LORD JUSTICE LEVESON: Yes, I've read the letter. I agree	
16	with that approach.	
17	Thank you very much indeed. Tomorrow morning,	
18	10 o'clock.	
19	(5.04 pm)	
20	(The hearing adjourned until 10 o'clock the following day)	
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	Page 109	

	ī	1	·	·	Ī	<u> </u>
A	actionable 7:18	affairs 64:23	answered 50:22	approaching	attached 54:3	58:7
Abell 2:24 68:14	actions 5:5	affect 29:11	58:22	86:15	attacked 99:23	barriers 40:6,7
70:15	activities 46:24	afford 83:23	antagonise 25:15	appropriate 25:6	attempt 22:1	base 70:3
Abell's 60:10	activity 1:18	afternoon 88:10	26:10	appurtenances	24:20 53:14	based 49:18
abiding 86:1	22:24 108:2	97:15 106:19	Anthony 19:2	63:6	attendance 84:2	54:14 101:5
ability 40:17	adapt 95:1,3,12	107:13	antipathy 64:3	arbitral 102:18	attended 47:17	103:3
100:16 102:24	adapted 96:10	age 81:22	anti-democratic	103:6 105:12	57:17 75:1	basic 3:3 59:16
100:16 102:24	adapting 94:18	agencies 71:18	23:9	arbitration	79:8	72:14
able 2:3 17:7	add 71:16 83:10	agenda 93:23	anti-harassment	102:21	attention 20:8,24	basis 5:14 14:4
23:10 34:22	added 45:6 69:18	agents 5:7	35:25 52:8	arbitrator 14:20	21:24 71:4	38:11 78:2
46:20 47:11	88:4 89:16	ago 45:21 63:23	anxiety 87:8	architecture	attitude 30:21	105:10 106:24
51:20 67:25	adding 10:15	92:13 97:15	108:8	106:2	42:4	<b>BBC</b> 11:12 32:15
83:23 102:12	104:9	agree 27:4 38:16	anxious 73:11	area 75:17 102:5	attractive 44:4	34:7,8,20,22
102:14 103:5	additional 85:18	52:7 56:11	82:13	103:9	85:20	55:2
107:2 108:13	address 84:18	64:18 67:9	anybody 17:18	argue 72:24	attributes 71:11	bear 47:4 71:19
absence 72:12	108:11	70:6 73:25	38:3 39:7 48:1	argued 93:6	85:10	81:25
absolute 20:18	addressed 17:22	82:20 83:7	51:2 57:17	95:22	attribution	bearing 74:19
absolutely 7:1	add-on 46:24	84:22 85:5	72:17 76:21	argument 15:25	16:20 17:12	beef 2:10 5:5,20
10:8 11:22	adhered 103:18	92:17 94:4	86:12	39:9,22	attrition 17:17	behalf 3:24 93:7
13:13 14:12	adjourned	97:13 108:22	anybody's 98:25	arises 29:3 52:12	audit 70:24 78:1	behind-the-sce
19:17 35:18	109:20	109:15	anyway 26:6,9	arising 52:10	<b>audits</b> 77:18	22:24
42:10,10 43:23	adjudicated 16:7	agreed 19:12	apart 2:9	91:5 101:9	authorised 69:24	belief 20:16,18
49:21 57:15	adjudicating	62:20,23 75:4	apologies 1:8	arm 70:18,19,20	<b>autumn</b> 58:20	21:19 49:10
100:15	75:25	107:1	9:11 26:18	73:4 77:18	available 40:9	59:11 69:2
absolutist 28:16	adjudication	agreeing 33:21	27:7 28:12	78:6,23 79:2	90:16	76:9 94:15
absorb 102:14	15:24 16:19,23	agreement 65:18	apologise 18:8	83:7 89:10	average 17:5	<b>believe</b> 2:19 4:17
absorbing 99:6	17:3 26:23	65:20,22 66:7	apologist 73:11	95:9 102:1	aversion 63:13	20:13,21 38:21
abuse 46:11	27:15,15,17,19	85:24 86:1	apology 34:24	arms 77:8,15	64:3	47:24 63:16
abused 36:4	43:17 48:10	87:19 96:9	43:6	arm's 46:18	avoid 81:9 103:8	64:1,2 66:20
accept 53:14	adjudications	agrees 87:12	apparently 61:5	arrive 85:15	award 100:16	81:19 96:11,25
78:19 85:21	14:22 15:4,7,9	ahead 30:18	appeal 90:11	arrived 26:8	awarding 81:4	believer 37:8
91:4	15:16,18 17:8	67:15 69:15	92:19	60:19	102:10	believes 13:25
acceptability	28:10,12 47:13	70:13	appealed 45:22	arrogant 18:17	aware 60:18	94:10
53:23	adjudicative	alive 34:1	appear 71:24	article 49:11,11	61:12,16 62:19	belongs 40:2
acceptance 11:8	36:21 49:18,20	alleged 98:15	appeared 99:10	84:17 99:14	65:20 68:8	benefit 108:3
accepted 3:20	adjusted 54:17	allow 53:15 95:9	appears 31:12	100:24 103:7	75:20	best 4:3 50:19
101:4	administration 82:8	105:11 106:25	<b>appetite</b> 76:4	articles 62:4	В	65:4 67:16
access 40:1 70:25	82:8 admiral 73:13	<b>allowed</b> 82:6 94:7	82:13 88:6 89:19 90:1	83:16,21 84:13 articulated 2:18		69:14 72:10
accident 99:3	admirai 75:15 admire 68:5	allows 36:25			back 3:9 7:14	78:10 86:9,20 98:13 109:1
account 37:11	admire 68:3	alongside 22:2	<b>applaud</b> 55:25 89:21	artificially 15:18 aside 30:21	11:10 16:1,11	better 15:3,17
accounts 22:5,9	adopting 4:7	44:8 70:18	application 60:9	asked 10:5 13:9	24:16 26:13	58:2 75:24
accruing 31:13	advantage 31:13	amazed 104:6	00.15	18:22 19:3,11	30:4,19 49:3	94:15 95:1
accurate 25:19	53:12 94:17	amazing 45:14	90:17 <b>applied</b> 45:16	26:11 33:7,10	58:14 60:9	102:9 107:2
25:20	96:11 104:18	amenable 92:20	59:10	33:15,19 49:9	62:22 67:19 70:13 73:12	beyond 56:10
accurately 62:2	108:10	92:24	applies 28:5 76:2	49:10 50:17	93:16 95:10	big 19:13
achievable 81:22	advantageous	amend 95:4	apply 64:10	85:3 91:17	96:12	<b>bill</b> 65:7 66:3
achieve 28:6	105:11	amended 48:24	appoint 46:6	98:20	backed 71:2	75:21 76:5,9
87:2 109:3	adverse 55:15	amendment 3:11	appointed 30:8	asking 7:22	background	76:16 94:10,23
achieved 50:20 70:11	advertisement	45:4 69:16	32:16 35:19	44:23 50:14	1:14 61:21	bills 88:13,14
achieving 16:6	58:22,25 59:19	96:2	36:8,25	67:12 85:3	62:6,14 65:5	binary 51:4
79:18	61:12	amendments	appointing 46:7	100:9	back-up 96:17	<b>bind</b> 100:13
act 1:23 2:3 4:13	advertising	66:3 96:3	appointment	aspired 28:17	bad 8:22 9:1	binding 92:7
6:11 19:25	52:20	amicably 16:24	33:2,5 36:21	assent 96:5	107:16	birthright 63:24
37:6 41:20	advice 3:14 45:1	amount 4:12	58:21	assessments 70:4	badly 59:15	<b>bit</b> 20:1 21:3
64:11,12 65:13	46:23 71:7	amplified 3:21	appointments	assessor 60:22	balance 33:15	24:9 31:16,25
65:14 66:6	87:23 89:5	analysis 49:20	45:18 46:19	61:2	49:11 50:10	93:13
72:6 94:23	90:13,21 91:7	84:4	appoints 46:4	asset 100:8	68:16,18	Black 60:12,20
95:13,17,21	91:11 92:6	and/or 62:2	appreciate 30:25	assets 59:12	balancing 31:15	99:4
96:4 100:19,25	93:12	annotation 10:25	39:3	assist 23:13	49:18	blagging 1:23
103:11,12,15	advise 74:13	<b>annual</b> 1:24 78:2	approach 4:8	47:11	ball 5:9	<b>blank</b> 74:14
105:17,19	85:23	answer 5:22	36:16 74:12	association 62:5	Banking 60:3	block 84:20
106:14	advised 86:19	13:19 22:10	102:17,19	83:17,21 93:7	<b>Barber</b> 102:22	<b>board</b> 21:1,16
acting 5:15 14:20	advocate 69:23	25:6 27:5,9,12	109:16	assuming 5:14	barely 47:1	34:8 47:22
72:5	advocates 29:8	49:21 50:21	approached 86:5	assurance 55:18	<b>Barings</b> 73:13,22	50:5 53:24
action 45:14	advocating 94:1	52:4 86:8	approaches	assured 103:21	73:22	54:24,25 60:2
106:11	94:3 95:24	91:13 100:10	36:23	asylum 17:24	Baroness 45:17	60:3 87:13
	l	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
			<del></del>			

, , , , , ,	1, , ,	<b>50 11 50 10 5</b>	l <b>, .</b>	"		1004.550
boards 34:5	bulwark 63:25	50:11 73:13,21	cherished 64:4	colleague 98:6	92:10	42:24 55:9
bodies 37:1	<b>bundle</b> 1:5 9:9	91:17 92:22,22	children 99:14	colleagues 61:14	Commons 93:20	69:9,12 70:10
body 34:22 35:6	burden 98:11	103:20	chilling 33:25	65:21 66:1	communications	97:19 107:8
35:14,19 36:4	Buscombe 45:17	caselaw 40:14	<b>choose</b> 101:15	75:21 76:14	19:23	108:12
36:8,20,22,23	business 5:4	63:7	chosen 73:9	78:12 82:2	companies 32:20	conciliate 67:25
36:25 37:10	14:19 29:12,14	cases 21:2 42:16	Christopher	88:7 93:21	<b>company</b> 101:19	conclude 63:9
40:24,24 44:18	53:16 54:4,10	67:13	5:10 6:10 9:16	106:3	compassionate	concluded 62:11
46:17 56:14	buying 10:21	cast 66:11	23:14 24:14	collected 67:23	68:9	80:19 81:17
60:1,3 63:10	<b>B5</b> 9:6	category 37:2	26:11 29:1	College 57:19	compelled 103:4	93:1
70:23 75:8	<b>B6</b> 12:13,16	cathedra 28:3,20	38:25 39:6	Collins 23:20	compensation	concludes 97:21
77:6 79:15		28:24	62:21,22	column 102:1,5	46:24 81:5	conclusion 16:14
84:25 85:10,22	C	cause 7:9 108:8	chucked 7:3	102:14 105:23	100:17 102:11	35:3 70:22
89:3,7,8 90:15	cabal 98:22	caused 48:16	circulated 79:7	columns 20:18	competition	102:15
91:4 92:15	cabinet 58:6 62:7	celebrities 39:4,5	circumstances	95:7	52:21,22	conclusions 7:6
93:8 95:14,21	82:2	cent 17:16	6:22 8:10	come 15:11	complain 35:7	75:18 76:25
103:25	calamity 87:11	central 23:18,20	15:22 94:18	17:10,16 27:15	105:14	102:7
bonkers 9:25	calculations	centre 16:12	civil 19:25 20:2	37:6 48:16,23	complainant	concrete 24:15
10:4	30:17	ceremony 85:15	23:18 24:6	60:16 62:11	15:20 16:18	condemnation
book 63:7 88:16	Calcutt 16:11	certain 6:21 12:6	104:7	63:10 67:10,19	17:11	1:18.22 47:23
bore 4:6,20	62:8 67:11,13	71:24 73:8	clarifications	69:15 70:22	complaining	condite 92:4
bottom 14:16	96:19	77:11 83:15	109:12	71:3 81:24	101:19	conditions 6:25
17:19,22 18:6	Calcutt's 80:12	95:19 99:22	clarify 49:4	93:12,16 97:6	complaint 16:13	confess 57:15
18:7	81:12	104:25 105:3	clarion 108:25	101:15,18	16:21 35:1	74:10
<b>bound</b> 44:19	call 5:1,16 19:24	certainly 10:20	clarity 44:5	101:15,18	complaints 2:8	confidence 14:24
101:18.21	41:4 52:8	35:4 37:20	48:25	comes 16:21	14:20 15:11	36:8 38:25
boundaries	59:21 73:9	45:20 51:25	clause 2:16 3:19	52:16 61:24	46:22 51:9	39:1,6 54:5,5,6
29:22		55:10 66:19	4:3 47:21	75:22 86:6	55:4 62:5 68:1	54:22 56:6
bounds 24:16	85:22 109:1	70:2,17 84:11	clear 6:24 14:12	comfortable	70:18 73:1,4	configures 52:12
box 65:25	called 2:20 37:9	92:13 101:22	27:21 43:23	57:4	75:25 77:15	consensual 37:3
	40:25 60:1					
brave 100:2	73:23 74:22	102:13	47:20 53:20	coming 17:9	78:14 80:21	consensus 37:22
breach 6:1,5	83:2 92:22	cetera 50:7 72:15	57:20 60:10	23:24 24:25	81:4 82:3	38:1 75:5,16
43:3,10,11	97:6	78:25 81:5,5	63:14 66:24	74:20 93:18	87:22 91:5	78:16 87:2
47:20 72:3,5	calling 5:4	106:10	71:9 76:21,24	comment 18:4	95:8 98:10	96:9 106:1
89:11,14 91:18	calls 47:5 68:7	<b>chair</b> 60:1,12	78:10 79:13	68:19	102:1,10,17	consequence
breaches 10:6	candidate 59:1	74:8	85:9 107:9	commentary	103:23	2:14 88:21
83:9 98:15	capable 64:21	chaired 74:8	clearer 69:22	13:6 20:17	complementary	consequences
break 56:24	93:8 94:18	80:17	clearly 55:25	comments 66:15	2:11	86:17
bridge 73:14	captured 36:5	chairman 3:17	67:15 71:24	commercial	complete 46:16	Conservative
briefings 20:12	career 28:2	5:19 9:15	77:3 92:8	41:12 58:18	completely 82:12	32:22 99:1
brilliant 35:18	32:13 49:23	16:15 28:3	106:15,16	71:2 78:3	complexities	consider 10:16
<b>bring</b> 15:20	50:2 58:1 59:7	32:15,17 46:7	client 86:6	Commission 2:8	44:18	considerable
16:13 45:7	99:22,25	55:3 57:23	Clive 88:17	15:23 49:3	compliance	20:11 22:20
51:6 52:14	careful 38:15,16	58:19 60:19	close 29:25,25	50:5 56:12,12	70:24 72:20	considerably
bringing 20:11	68:24 72:7	challenge 95:1,4	closed 7:2	62:6 67:25	73:1 77:19,19	35:21
Briton 63:24	75:13	95:12	closely 67:12	78:14 79:23	77:22 78:1,6	consideration
<b>broad</b> 38:1 76:25	carefully 3:8	challenged 92:11	74:11	82:3,3 87:22	78:23 79:2,18	7:13,16,16
broadcast 34:2	25:7 76:8	challenges 82:9	club 108:25	Commissioner	89:10 95:8	42:16 107:3
34:21	102:8	challenging	code 2:15,17 3:3	2:7 6:21	104:13	considered 22:4
broadcasters	caring 68:9	90:10	3:6,10,11,15	commissioners	complicated	24:4 43:24
39:21,25 40:21	carried 27:22	Chancellor	3:17,18,20,22	19:14	61:9	considering 4:12
broadcasting	61:19	58:12	4:2,9 10:6 11:5	commitment	composite 9:9	8:10 31:11
32:14 39:11	carrot 41:13	change 2:16	47:20,21 49:3	33:7 68:6	computer 84:5	61:11 71:17
40:8,10 48:21	42:11,12 44:7	68:20 91:8	49:4 53:25	committed 4:15	concede 88:5	103:21
49:24	44:8,10,16,17	94:18 95:2,4	54:18,22,23	11:4 59:1,3	concept 4:11	consistent 26:19
broadsheets	44:18,19 75:19	95:12 107:21	55:6,19 56:14	committee 2:15	26:4 36:10	constantly 68:24
11:13,19	83:2,5 88:25	changed 13:15	60:3 68:21,24	3:3,6,12,15,17	100:16	73:12
brokered 22:8	carrots 36:20	13:16 108:21	69:2,11,18	3:18,20,23,25	concern 29:17	constituency
BSkyB 31:21	104:11	<b>changing</b> 94:19	70:8,25 77:20	4:2,10 5:19,22	55:12 78:24	99:25 101:24
budget 47:9	carry 53:16 84:4	96:10	78:4,21,24	7:2,7 26:13,16	93:24 102:24	constitution
build 75:23	87:14 100:25	characterise	79:3,5 81:3	41:19 49:3	103:2 106:17	46:13 56:14
106:7,12,14	carrying 35:24	10:23	94:19,19,20	54:19 75:15	108:6	constitutional
building 15:2	77:21	characterised	98:15 101:6	78:5 79:1	concerned 8:11	33:17 65:13,14
76:9 80:1	case 6:19 8:25	18:14	codes 48:22	80:17	29:4 37:21	95:19
<b>built</b> 40:14 45:8		characteristics	54:11,13,23	Committees	78:21 84:18	construction
54:14 75:8	10:20 18:23	85:10	55:5 105:9	56:14	90:8 97:17	87:4
<b>bullet</b> 1:15 2:1	22:25 37:11,12	cheap 45:3	coercive 79:17	common 4:5	103:22	constructive
79:12 80:5	41:17,22 47:18	check 72:14	collapse 91:15	commonplace	concerns 39:4	4:19 10:17
17.12 00.3	48:13,14,23	CHCCK /2.14	conapsc 71.13	Commonpiace	CONCEI 113 37.4	7.17 10.17
<u> </u>	•	•	•	•	•	•

oonstr 04 17	00mmo	covered 00.2	Dovid!: (0.15	dofini4: 02 11	dimenting 105 14	duovii ~ 01 2
construe 84:17	conveying 28:5	covered 92:3	David's 62:15	definitive 93:11	directive 105:14	drawing 81:3
construed 83:22	cope 108:17	96:5 <b>covering</b> 48:25	day 24:8 34:5 43:2 85:15	<b>degree</b> 20:10 30:7 74:15	<b>directly</b> 4:4 19:11 30:7	drawn 54:23 drill 23:25
consult 54:19 78:11	copy 58:25 corner 61:7	85:3	109:20	demand 84:2	director 19:23	drilling 24:2,2
consulted 41:25	corporate 73:9	coy 9:23	days 16:16 19:22	demanding 21:2	34:23	driving 66:13
56:17 67:16	correct 10:7 19:8	create 41:13 75:8	34:4,7,25 40:9	demands 2:10	disagree 67:8	Duchy 58:12
86:20 88:17	32:18,19,23,24	created 35:23,23	93:15	democratic	99:18	due 31:25 67:20
consulting 74:18	42:22 49:15	80:10 104:24	day-to-day 54:10	33:16 64:22	disappear 31:19	80:7
contact 60:17	53:9 58:14	creates 44:5	deal 13:5 14:5	depend 56:7	78:5	duty 39:21
contacts 2:15 4:2	60:13,24 68:4	55:12	15:14 45:23	89:13 90:18	disappointed	dynamic 47:12
23:6,11 24:11	77:8 79:19	creating 41:9	46:22 67:18,20	91:11	96:24	
24:11	80:10,11 81:6	93:8 104:9	80:11 83:22	depending 20:20	disappointment	E
contained 75:22	84:25 85:1,8	credibility 84:24	88:23	27:19	1:16	Eady 19:11
93:9 104:15	85:16,17 86:14	credible 56:5	dealing 68:7	derision 99:17	disaster 87:16	Eady's 19:12
container 58:2	89:8 90:24	criminal 53:2	75:25 92:17	describe 54:3	disbelief 7:5	earlier 28:1
content 80:4	correction 26:22	104:7	102:10	63:19 65:5	discharge 98:1	early 9:14 11:23
context 10:1	34:24	cringing 20:5	dealings 4:9 23:3	described 2:13	disclosing 6:5	20:13 21:8
26:18 33:21	corrections	critic 10:17	deals 69:1 77:15	37:5,17 38:7,7	discrimination	28:2 99:21,23
39:10	109:12	critical 50:18	93:2 98:9	39:15 62:8,12	11:6	easiest 80:11
continue 27:7	correctly 2:19	66:20,22,24	dealt 98:15 101:2	design 78:8	discuss 1:10	easily 36:12 55:6
37:19	6:12 13:12	101:1	<b>Dear</b> 9:19	designed 23:4	84:19	83:21 96:8,8
continued 59:7	18:14 45:6	criticised 83:12	death 99:18	desirability	discussed 47:13	easy 86:2 103:10
continues 13:24	78:7 88:11	criticism 1:19,20	debar 100:20	33:15 53:23	discussion 7:23	109:2
continuing 77:16	correspondence	3:8,13 48:10	debate 15:6 16:1	desk 30:13	7:23,25 48:15	economists 31:6
contract 43:3,9	3:16 82:7 84:1	50:16,21 54:2	19:13 47:25,25	Desmond 7:19	77:2 78:9	economy 52:18
43:19 44:20	cost 98:13	55:22	48:19,19 50:23	7:24 8:11 9:1	discussions 8:5	edges 67:5 77:5
78:3 80:6,25	cosy 98:22	crucial 101:1	66:3,21	<b>detail</b> 38:9 42:24	23:2 75:20	editor 5:1 9:15
86:12,21 87:20	couched 104:21	crumble 56:9	<b>debates</b> 48:5,6	58:5 75:2	82:1 87:4	10:19 11:23
87:21 88:2,23	Council 76:15	culture 34:11	49:2 65:16	deter 53:4,4	107:20	12:4 15:20
88:24 90:19,20	103:19 105:16	107:21	80:14	determined 66:5	disfavoured	17:6 29:5 30:2
91:12 92:25	105:23	<b>curb</b> 93:22	decade 40:15	84:7 98:9	31:16	54:18 55:2
95:5,9,11,16	counsel 79:20	curbing 64:21	decades 40:15	developing 63:7	disgruntled 91:1	72:1,6 102:23
100:13,14	85:23 90:21	curial 28:21,23	December 74:5	developments	dismissed 12:4	editorial 47:21
104:18	counted 21:12	curious 6:7	78:15	107:1	disputes 51:12	48:9 49:24
contracts 71:2	countenance	23:19	decency 40:12	devil 8:12 38:6,8	dissatisfied	100:2,6
83:7 101:6	80:9	current 60:12	decent 18:20	42:23	81:18	<b>editors</b> 5:1,2,4
102:13	countries 71:22	67:23 72:11	decide 44:14,14	devised 89:1	distinguished	5:16,21 17:6,8
contractual	71:23	77:12	46:5	dialogue 8:13	19:25	20:9,10,19
42:21,25 44:3	country 63:25	currently 36:2	decided 43:7	difference 16:9	disturbing 87:9	21:2,6,12,18
79:22 80:5,9	108:2,3	<b>customer</b> 68:15	deciding 55:4	28:18,23 57:14	division 3:10 doctor 19:24	25:15 29:17
81:14 82:19	<b>couple</b> 49:7	CV 32:13	decision 16:25	63:12 80:24		30:21 31:5,11
84:22 92:7,20	65:11	cynic 90:1	29:24,25 92:14	81:12,16 87:18	document 79:7	47:5,5,6,14
93:5,25 95:3	courageous	cynical 90:5	92:21 101:19	93:3,24	documentation	51:23 53:24
95:24 97:23 102:19	100:3 course 2:23 8:24	cynicism 90:7	101:21 <b>decisions</b> 92:11	different 2:23 5:9 7:3,19 29:8	84:5	54:8,15 55:8
			92:19	,	<b>documents</b> 32:9 70:25 79:16	56:15 74:6,21
contractually 103:3	13:25 14:15 19:2 21:1		decision-making	30:24 36:11,16 38:3 50:11		74:23,24 75:1
contradict 13:21	22:16,23 23:6	<b>Dacre</b> 55:18,21 <b>dagger</b> 107:7	70:3	51:15,16 76:1	dog 13:3 doing 5:16 20:3	77:20 79:8,16
contradicted	28:18 31:17,25		decisis 93:10	76:7 82:12	50:2,2 69:14	editor-in-chief 49:23
11:2	32:14 38:18	<b>Daily</b> 4:24 55:20 <b>damages</b> 42:4,5	declare 41:17,20	83:24 87:13	81:16 89:15	49:23 <b>Edward</b> 99:13
Contrary 44:13	39:20 59:25	42:9 43:4	decline 98:8	94:16 109:9	97:4	effect 3:25 4:9
contrast 84:10	61:1 66:25	84:24	dedication 68:5	difficult 41:8	domain 106:25	33:25 68:21
contra-distinct	67:20 68:18	Damocles 86:22	deep 99:21	44:9	dominated 99:1	97:9 103:19
39:11	75:13 80:7	96:14,15,18	defamation	difficulties 30:20	Donaldson 92:21	effective 35:15
Contributing	82:19 86:23	97:3	41:17,20 42:17	82:24 83:1	dotted 83:1	49:5 72:25
56:17	89:12 105:15	dance 11:14	64:11 75:21,25	difficulty 27:24	doubt 37:4 69:15	75:9
contrite 10:11	106:11	data 1:23 4:13	76:9,16 103:11	28:1 90:22	70:20 82:5	effectively
control 36:14	court 8:8 41:16	6:1,6,11 64:11	103:12,15	102:19 107:10	doubted 7:6	102:25
71:15	41:21 90:23	72:6	105:17	digit 28:13	<b>Downing</b> 20:3,24	effectiveness
controller 34:6	91:18 92:19	<b>Datafin</b> 92:22	defence 76:10	diminished	21:8 26:8	13:23
controlling	101:16	date 59:8	104:12	21:13 37:25	<b>Dr</b> 73:23	efficiently 98:15
66:11	courted 21:7	dated 32:11 57:8	define 44:10,17	dinner 22:6,7	draft 3:19 26:1	effort 4:12 20:11
controls 46:9	courting 20:11	<b>David</b> 57:1,5	defined 71:24	direct 2:15 3:14	76:8	eight 45:6 47:18
63:18 64:3,4,5	21:15	62:7,10 67:11	defining 26:4	68:3 73:6	drafting 26:4	either 46:11
64:8	courts 103:20	67:13 80:12	definition 5:23	direction 45:17	30:20 54:11,20	88:24 101:15
controversy	cover 33:13 58:5	81:12,17 82:15	44:17 69:23	45:23 82:4	drag 17:4	elaborate 20:6
48:17,18	59:17	96:19 99:14	101:4 104:15	95:15 99:9	draw 71:4	25:24 33:22
	l					

62:3 72:22	96:10	exercise 64:21	45:12 46:23	<b>fell</b> 28:17	football 108:25	freer 75:24
elections 20:19	equally 50:14	83:13 106:8	52:7	fellow 97:6	footing 43:1	frequently 39:9
emails 84:5	52:14 55:23	exercised 84:8	ex-growth 52:17	felt 8:18 45:16	forcing 84:21	fresh 70:23
embassy 30:11	66:23	exhausted 90:11	eye 31:8	45:20 50:15	forefront 101:9	85:21
embassy 50.11 embodied 101:5	equation 88:4	exhausted 50.11	cyc 31.0	61:14 62:13	foresee 86:3	Freudian 99:6
embrace 107:20	equivalent 35:25	existence 36:19		70:15 74:12	forget 16:14	friends 34:6,9
embraced 12:18	103:18	64:5 78:17	face 25:16	84:11,15 87:21	forgive 39:13	44:25
108:14	eradicate 107:18	existing 77:3	faced 94:21	<b>fifth</b> 45:4	87:6 98:22	front 9:5 20:17
emerge 66:4,5	error 86:15	exists 51:11	fact 7:14 12:7	<b>fight</b> 52:19 99:18	100:9	27:17,18 65:14
emerged 67:4	escaped 98:25	expanded 20:14	15:17 19:11	figures 47:22	form 11:5 37:6	front-page 27:12
emerges 66:23	especially 21:7	expect 27:17	28:8 35:17	48:9 74:7	66:10 75:7	28:9
emphasis 77:20	22:1 98:8	31:6 52:11	37:12 46:9	file 9:4,5 12:14	89:20 90:4	fruit 4:6,20
employed 39:10	espouse 42:21	106:24	64:25 96:23	12:15	94:16 102:18	full 15:23 32:6
employee 23:18	essential 41:2	expectations	97:17 98:6	final 4:21 10:13	102:20 103:6	51:3 57:4 63:8
empower 95:7	64:8 104:5	96:23	100:7	10:15 18:22	104:1	fully 37:13 43:24
<b>enable</b> 55:19	establish 96:8,15	expecting 25:2	<b>factor</b> 30:17	30:17 97:22	formal 27:14,15	function 35:14
91:17 97:25	96:22	expensive 44:25	78:18	Finally 92:4	57:9 72:13	functioning
enact 41:1	established	98:4,11 103:2	factors 89:13	finances 46:2	79:13	37:13
encourage 27:7	69:19 91:25	experience 28:4	facts 72:14	financial 61:20	former 55:1,2	functions 80:22
97:17	96:9 106:6	30:4 45:8	failed 22:3 102:3	101:17 102:23	formulation	80:23,24 81:2
encouraged	esteemed 63:24	46:12 48:20,23	failing 83:13	102:25	25:14	98:1 106:9
38:20 74:19	et 50:7 72:15	51:8 54:16	fails 43:17,17	<b>find</b> 6:7 12:19	forth 2:1	fundamental
encouraging	78:25 81:5,5	55:17 57:20,22	failures 18:3,9	31:14 66:13	forthright 1:17	82:13
45:15 78:16	106:10	57:25 68:3,23	18:12,18	75:4 86:8,18	1:22 53:21	<b>further</b> 7:9 8:5
endless 64:12	ethical 83:9	69:6 93:19	fair 1:19,20 3:8	97:19 108:21	fortunately 32:9	61:16 77:2
endorsed 78:13	event 93:22 97:8	99:7	11:7 12:6 17:1	finding 42:2	<b>forum</b> 49:5	78:9 86:17
energy 16:21	events 37:24	experienced	18:4,19 19:19	<b>fine</b> 24:21 43:18	forward 38:13	92:23 95:9
enforce 70:24	eventually 6:15	47:17	25:2 31:3 45:2	43:22 89:3,4,9	60:16 61:6,11	105:20 107:1
enforcement	everybody 21:21	expiry 12:13	48:5 49:20	89:12,15 90:9	61:16,23 62:11	future 61:19
83:8	52:14 55:7	explain 5:5 15:14	50:21 61:8	90:10 103:24	66:13,22 67:10	67:19 74:1,22
enforces 77:19	56:6 87:12,16	35:22 77:10	90:10 94:6	fines 41:1 71:1	67:17 70:17	84:18 97:4
engage 8:5 66:20	88:24	explained 3:9	99:17 102:2	79:15 81:5	74:14,20 75:5	106:11 107:3
engaging 8:13	evidence 4:14	46:23	fairer 75:24	finest 63:25 firm 58:17 59:6	75:17,22 76:11	
<b>engine</b> 73:15 <b>England</b> 61:17	5:15 6:8 7:6,8 11:23 24:1,13	explanation 5:3 5:17	faith 5:15,18	60:15,17 61:2	80:2 81:20,24 82:25 85:19	
enhance 14:1	26:12 27:21	<b>explore</b> 69:10	85:13 <b>fall</b> 28:21	firmer 27:8 43:1	86:20 87:19	gain 106:7 game 5:9
Enoch 99:24	29:3 32:12	exploring 36:18	falling 52:19	firmly 66:19	88:13 89:17	gante 5.9 gap 54:9
Enormous 20:8	46:25 54:20	42:23 105:19	family 40:12	firms 60:5	93:17 101:6	gather 67:7
enquiring 81:3	57:9 60:10	exposing 108:20	famous 108:25	first 1:11,15	102:13	general 2:3 30:3
enshrine 65:18	70:3 75:14	express 28:6	far 8:11 17:12	10:13 11:3	fought 108:15	31:18 32:25
95:19	77:11 78:22	33:17 43:19	25:12 62:24	18:8 26:16	found 12:20	33:1 34:23
enshrined 65:12	88:5 102:8	64:22 92:25	85:3 100:4	29:20 30:2	68:12 74:15	43:13 48:15
ensure 34:18	109:11	99:19	101:23 107:6	40:10 47:23	85:24	65:18 85:23
37:21 53:13	evidenced 5:12	expressed 1:16	107:12 108:1	55:23 61:20	founded 101:3	generally 16:15
68:11 69:11	evil 101:11	9:2 39:4 66:19	fascinated 75:18	67:24 80:16	four 8:9 74:25	101:3
73:1 89:1	evolution 14:7	80:2 106:17	fast 16:14 102:2	81:17 83:14	93:15	generate 14:23
ensures 71:23	evolving 98:5	expressing 43:24	fast-moving	106:8	fourth 4:18	genuine 68:10
ensuring 70:8	ex 28:3,20,21,23	102:24	54:10	Firstly 45:10	framework	getting 10:10
78:18 108:19	28:24	expression 12:8	favour 16:6	<b>fit</b> 37:1 94:13	35:11 36:24,24	23:23 37:17
entails 86:11	exactly 29:19	19:7 49:19	33:11 40:24	<b>fitting</b> 100:17	79:17 96:16	43:15 47:5
enter 50:5	37:6 50:13	50:10 88:9,15	42:21 50:22	five 56:20,22	104:16	79:9 83:1,6
100:14	51:1 82:9 86:3	88:21 104:3	51:3 68:15	74:25 86:13	frank 1:25 19:17	84:20
entered 3:16	94:2 95:23,23	extend 94:22	81:15 106:2	108:15	frankly 88:5	gigantically
entire 101:3,4	exaggerated	extended 20:9	fear 90:2 93:20	five-year 86:12	free 33:16 100:7	20:21
entirely 10:4	20:16,22	extent 21:17 29:5	feature 72:25	86:21,25	102:2 104:6	give 5:23,25 6:4
27:20 31:3	example 4:7	29:9 45:11	features 77:2	flavour 47:16	freedom 19:6	6:22 16:16
36:22 38:10,11	20:13 23:11	103:17 107:5	feel 22:12 24:15	Fletcher 57:1,5	33:8 49:18	23:9 24:15,22
38:16 49:18 52:7 53:25	24:15,17,19,22 29:14 31:9	external 30:4	24:21 40:17	flexible 95:23 flow 99:4	50:9 59:2,11 64:10 12 17	25:4 29:16
52:7 53:25 56:11 87:5	34:20 48:7	extraordinarily 35:15	50:5 63:5	focused 98:18	64:10,12,17 68:19 88:9,15	34:20 35:13
97:13 103:3	52:7 68:22	extraordinary	68:10,13 73:7	follow 44:15	88:20 95:20	36:15,17,20 30:5 22 40:1
entitled 14:9	99:16 100:16	47:7	84:13 95:14 104:6 106:23	91:20	104:2	39:5,22 40:1 41:5 42:12
44:19	examples 23:10	extreme 12:8	104:6 106:23	<b>followed</b> 87:23	freedoms 63:17	55:17 63:15
entry 40:6,7	48:8 65:6	extremely 9:1	feeling 8:23 9:1	following 14:2	63:20 64:5,6	86:13 93:11
envied 59:13	excellent 67:14	51:13 52:9	73:15 84:1	74:2 89:16	81:10	95:11 99:16
environment	excesses 45:13	102:24 103:3	feels 55:7	109:20	freelance 71:21	103:7
76:1 81:23	executive 32:16	ex-ante 35:16	feet 30:13	follows 59:3	freely 33:18	given 4:14 7:18
1	l	l	l	I	l	l '
l-						

						1 age 114
	l	1	1	1	1	1
15:10 25:4	32:22 33:23	68:11	house 32:21	implied 16:4	individual 73:5	institutions
31:10 32:10	35:22 39:9	hard-fought	65:17 66:17	87:21	77:21,25	100:14
42:20 66:2	45:5 46:21	47:3	93:19,20	<b>important</b> 38:13	103:22	instructed 60:16
82:9 84:25	49:6 56:18	hard-won 47:3	houses 37:18	42:11 56:6	individuals	instrument
88:10 95:15	93:2 98:7	hat 38:3 61:8	66:13 96:3	69:3 75:6	33:18 53:4	69:12
gives 57:24	grateful 100:10	hate 17:8 hawks 31:12	<b>huge</b> 42:18 46:13 49:24 54:17	78:18 91:23	individual's 49:13	instrumental 68:23
<b>giving</b> 6:8,13,17 75:14 81:4	<b>great</b> 14:5 15:14 37:7 39:1	head 18:17 67:6	63:12 80:24	103:9 106:4,12 impose 71:1	industrialists	insufficient
107:22	45:22 51:6	87:15 107:4,11	89:23 94:17	79:15 88:8	31:5	73:17,19
go 3:11,22 11:10	55:3 67:13	headline 13:3	96:16 98:17	imposed 35:23	industry 10:18	intense 52:19
15:23 16:10,19	83:22 87:11	20:17	hugely 42:11	88:14 95:18	53:12 55:7	intense 32.17
21:20 22:18,19	96:11 107:16	heads 67:24	43:1	imposes 89:3	60:6,8 74:7	intensity 32.21
27:14 30:18	108:3	head-hunting	human 56:8,8	imposing 81:5	78:11,14,19	intention 66.26
35:4 37:5	greater 29:17	61:2	100:19,25	imposition 64:20	86:23 98:5,12	interest 26:4,7,9
42:16 44:8	52:25 77:20	health 11:6	hung 40:12	imposible 54:12	98:17 106:4	41:9,11,12,17
48:24 51:20,21	greatest 100:8	healthy 34:12	Hunt 57:1,3,5,13	imprecision	107:22 108:10	41:20 42:17
56:13 58:4	108:1	46:15	57:23 59:18	22:21	108:15	48:1 59:23
59:15 60:9	greatly 65:16	hear 24:14 30:13	63:2 67:20	impressed 67:24	infinite 40:9	68:20 69:17,21
61:10 62:22,24	68:5	38:17 76:22	69:1 70:8	improve 13:23	inflate 15:18	69:21 70:4
83:20 84:16	Greenslade	heard 2:21 46:25	72:12 74:2	43:18	inflexible 94:25	101:2,4 108:19
96:12 100:4	12:24,25 13:18	53:10 77:11	76:23 77:10	improved 14:4	influence 20:17	interested 8:1
101:16 103:4	14:10 15:6,25	101:11 102:16	79:14 82:22	improving 68:25	20:21 22:13,14	10:17 22:5
107:13	16:10 18:14,22	108:7	83:2 84:16	94:19	23:4 24:20	29:8 49:9 51:5
god 26:1	61:5	hearing 7:17	85:2 87:6	inability 72:14	36:2 46:13	interesting 13:7
goes 14:19 37:12	Greenslade's	28:11 109:20	88:23 90:8	inappropriate	influenced 22:12	31:22 76:10
41:22 52:22	16:4 61:25	hearings 81:4	93:15 94:8	10:4	influencing	interests 16:22
97:22 98:20	grievance 68:10	heavily 34:2	97:2,22 99:4	incarnate 8:12	46:19	29:15 33:16
107:18	grounds 11:6	held 89:18	99:14 100:10	incentive 42:11	inform 107:2	interim 76:25
going 12:4 16:1	group 29:15 30:1	hell 13:20 65:8	107:25 109:6	42:18 85:18	information 2:7	internal 69:24
18:20 21:20	31:6,13 48:2,3	help 2:12 17:17		incentives 37:8	5:8 6:5,13,17	72:20 73:1
24:10,16 25:9	84:23	47:16 55:4	I	incident 9:24	6:21,23 7:14	77:20 82:7
27:7,19 30:1	groups 92:7	86:9	Ian 32:4,7	include 41:11	7:18 51:24	98:10
31:8 32:8,25	grow 98:11	helpful 4:1 37:15	<b>IBA</b> 54:12	65:10 76:5	52:2 55:6	internally 98:16
33:13 37:9	grown-ups 29:21	79:9	ICO 1:4 4:21	included 8:19	64:12 72:4,7	International
38:15 42:5,12	Guardian 12:11	heretical 17:2	idea 79:20 89:17	12:1 74:6	informed 54:15	30:10 43:5
42:15 43:7	12:23	Herne 76:13	ideas 61:16	76:16	57:16 106:21	interpret 46:24
45:23 46:17	guidance 81:4	hideous 27:16	76:20	includes 85:7	infringement	interpretation
47:18 50:19	guidelines 40:13	high 90:23 91:18	identical 11:20	including 33:16	64:17	84:12
52:21 53:3	40:14 48:21	107:7	identified 73:24	40:25 56:14	inherent 63:2	intervene 92:14
54:7 58:5	guiding 99:8	higher 42:9	88:6 105:13	60:21 71:11	inherited 26:2	intervention
65:15 73:19	guilty 9:3 22:20	98:14	identify 67:22	74:23,24,24	inhibit 43:11	35:16 45:12
77:16 80:23	Gus 26:2	highlight 102:12	77:2 87:8	78:12	innovative 80:1	52:8
85:2 94:8 95:6		highlighted	105:7	incomplete 7:8	inordinately	interventionist
97:6 98:3	Н	101:12 107:15	identifying 77:11	inconsistent	103:2	39:14
103:25 106:19	hacking 108:6	Hill 76:13	79:11	35:24 88:9	<b>input</b> 54:17,21	interview 12:11
good 5:15,18 8:6	half 32:15	hinted 107:9,9	illegal 5:13 17:24	increase 17:15	55:1	13:9,18 18:19
18:19 41:24,25	Halfway 19:1	<b>Hinton</b> 3:16	illegally 5:8	47:3	inquiry 5:7 9:2	18:19,24 33:6
42:14,14 48:18	hand 68:18	hired 5:7	illness 10:3	increased 70:24	23:14 27:21	45:11 49:22,25
55:1 65:9	handling 8:24	historic 106:5	imaginative	increasing 54:4	32:12 37:22,25	50:24 60:10,19
85:13	hanging 86:22	history 1:14	84:12	independence	45:7 47:11 51:6 52:24	60:25 61:4,25
goodness 64:15	96:19	40:16 53:7 61:9 70:14	imagine 25:12	17:21 56:12	51:6 52:24 53:12 57:4 7	interviewed
99:17 <b>goodwill</b> 85:14	happen 23:5	87:7 88:1	88:24 89:4	65:11,19,22 66:6,8	53:12 57:4,7 57:10 70:3	60:11,18 74:10 74:17
91:21	31:21 87:12		90:25		74:20 75:3	
governance 73:9	happened 8:21	98:25 <b>hitherto</b> 77:17	immediate 102:2	independent 34:11 36:25	74:20 75:3 78:17 87:12	<b>interviews</b> 1:24 60:15
government 21:9	12:8 19:3 23:12 101:8	hold 40:20 55:16	immediately 85:22	38:11 40:22	89:22,24 90:2	intolerably
21:19 22:13,13		107:7		45:18,19,22	97:11 101:12	98:11
23:22 24:6	happening 24:8 29:16 73:14	holding 81:4	impact 64:4 impartial 40:4	46:3,5 47:15	102:9 106:21	intrinsic 30:20
29:6,10 34:8	74:4	honest 47:25,25	40:19,21	50:15 59:22	107:15 108:11	introduce 80:20
38:21 80:20	happens 4:24	48:18	impartiality	60:21 61:1,20	inside 15:2 41:7	introduced 96:2
94:11	24:7,8,11	hope 10:15 36:1	40:11,12	68:18 75:9	41:10 56:17	intrusion 50:7
government/P	31:17 38:1	39:7 84:8 95:6	impatient 23:23	79:5 82:17	insight 16:11	invariably 20:4
38:12	75:14 87:16	99:7 107:25	impediment 6:13	95:23 105:1	insights 45:7	investigate 51:20
governor 55:2	happily 34:4	108:22	8:18 43:15	independently	insistent 2:10	83:9 106:9
governors 55:3	harassment 36:3	hoping 96:22	impingement	36:25	insofar 29:11	investigation
grace 14:6	71:6	hostile 21:18	63:16,19 81:10	indicates 48:8	instance 69:16	63:4 72:14
<b>Grade</b> 32:3,4,7	hard 15:14 30:15	hours 47:4	implicit 73:7	indication 5:6	89:6	84:4
, , , , , , , , , , , , , , , , , , ,			•			
ļ						

	1	1	l	l	l	l
investigations	61:21 63:22	103:24 104:4	104:8	52:6 53:7,10	97:15	Lordship 39:15
7:10	join 50:19 85:2	104:10,18,23	lawyer 42:6 62:4	53:18,20 55:9	longer 86:18	lose 20:19
investigative	<b>joined</b> 45:16	105:3,6 106:15	lawyers 42:1	55:14,21 56:3	look 9:4 15:13	loser 22:4
33:25 34:1	59:5	107:5,12,25	86:8	56:18,21 57:13	17:19 41:23	losers 22:5
83:8	joint 35:1 75:15	108:10 109:2,6	lay 60:23 79:1	57:22 58:10	44:25 49:3	lost 26:6,8 80:15
investigator 72:5	jolly 14:7	109:10,15	lays 103:16	62:21,25 65:10	50:18 56:3	lot 13:11,14,15
involved 30:7	Jonathan 34:21	justified 6:18	leader 21:11	66:9,18 67:3,7	70:13 74:1	13:16,20,21
52:14 60:5	journalism 34:1	44:10	leading 79:20	67:18 70:1	77:6 80:12	16:21 20:24
70:4 86:10	34:1 107:16	justly 63:24	League 108:25	72:1 73:21	looked 41:23	33:5 54:2
involving 37:11	journalist 40:13		learn 31:25	75:11 76:3,12	62:4 83:16	70:15 75:20
98:13	55:1	K	76:20 88:1	76:19 83:5,15	looking 9:22	83:17
in-depth 84:4	journalistic	keen 26:7 53:11	learned 44:25	83:19 84:14	12:14 18:8	lots 37:1
<b>Ipsos</b> 39:2	108:2	75:2 76:20,22	70:16	87:5,16 88:3	30:4,19 70:13	love 99:14
Irish 76:15,15	journalists 4:13	89:23 91:19	learnt 45:11	88:22 97:2,6	73:11,12 83:20	lunch 2:13 11:21
103:11,19	4:14 5:7 54:25	97:11 106:20	leave 30:21 54:9	97:13 100:12	103:11	11:24 12:5
105:4,13,16,19	64:9 104:5,6	keep 31:7 41:6	105:8	100:21,23	looks 76:7 88:14	24:9
Irish-type	107:17	41:14 58:3	leaves 36:21,23	101:13,22	Lord 5:25 6:3,4	
104:24	judge 41:23	89:22 106:20	46:4,10,12	102:16 103:13	12:19 19:3	<u> </u>
irritation 12:8	judged 101:7	kept 70:9	48:1	103:24 104:4	29:2,20 30:24	magazine 69:25
issue 1:4 3:3 4:21	judges 37:10	key 77:2 78:18	leaving 4:8	104:10,18,23	31:3,17,24	74:25 102:4
17:4 21:17	44:13	95:13	led 2:15,16 19:13	105:3,6 106:15	32:2,3,4,21	magazines 72:21
31:23 40:23 41:7 42:24	judgment 19:12 73:13	kill 30:22	81:19	107:5,12,25	33:23 35:22	77:24
		kind 4:4 8:13	left 3:22 8:16	108:10 109:2,6	36:10 37:19	magnificent
48:11 71:5,6	judicial 34:16	12:9 21:20	12:12,12 58:13	109:10,15	38:14,20 39:9	99:13
84:20 93:11	54:5 65:16	31:12,14 45:21	96:19	levy 89:16	42:7 44:6,9,13	Mail 4:24 55:20
94:14 99:24	92:4,9,10,12	kindly 9:12 57:6	legal 5:5 43:7	libel 41:22	44:22 45:2,5	main 7:16
issued 89:9	92:20,24 93:4 93:8	kinds 26:5	72:13 79:13,17	liberties 63:25	46:21 49:6,7	maintain 106:23
issues 19:6 33:2		know 4:22 5:22	legislation 6:2	liberty 63:23	49:15,17 50:4	106:23
48:15 55:5 76:1 84:19	judicially 34:19	10:24 11:4	14:1,13 35:23 65:19 66:10	licensed 34:3	50:12,14,25	major 21:9 22:4
89:2	judiciary 38:22 65:12,19 66:7	17:9 23:23		39:25,25	51:2,23 52:1,3	30:5 58:8,11
ITA 54:13	90:17 103:21	29:21,22 31:1	76:16 81:1 96:1,4,6 105:7	life 24:7 28:25 50:1 58:14	52:6 53:7,10 53:18,20 55:9	60:5 78:19
ITC 54:13	July 1:4	33:6,6 36:4	legislature 38:22	98:6	55:14,21 56:3	majority 45:18
itemised 81:13		41:25 42:20		lift 81:21	· ·	82:16 107:17
ITN 55:2	jurisdiction 28:22 35:2	47:24 49:14	legitimate 108:19	light 48:23 53:2	56:18,18,21	making 28:3
ITV 33.2 ITV 32:17	91:3	50:9 52:17	Lending 60:2	67:3	57:1,3,5,13,13 57:22,23 58:8	70:4 72:1
11 V 32.17	jurisdictional	55:22 66:4	length 46:18	limit 5:23	58:10 59:18	103:2 106:21
J	3:5	67:12 69:6	lengthy 93:19	limit 3.23	60:12,20 61:6	man 100:3
James 57:1,5	jurisprudence	73:14 96:23 101:22 107:17	Les 3:16	108:6	61:13 62:21,25	management 36:21
	93:14	knowing 107:7	lesser 7:11,13,15	limits 65:24	63:2 65:10	mandated
January 8:7 32:20 57:8	Justice 5:25 6:4		lessons 70:15	line 22:18 31:18	66:9,18 67:3,7	105:12
68:21 69:17	12:19 19:11	<b>knowledge</b> 54:10 69:5 73:17,19	88:1	40:11 47:14	67:18,20 69:1	manifested
109:13	29:2 30:24	known 29:18	Lester 19:2,3,10	83:2 101:14	70:1,8 72:1,12	72:13
Jay 1:3 6:10	31:3,17,24	50:1	76:13,20	links 29:10	73:21 74:2	manifold 26:3
12:21 28:1	36:10 37:19	knows 26:1	letter 6:20 7:21	Lionel 102:22	75:11 76:3,8	manuscript
29:1 32:3,5,6	38:14,20 42:7	KIIUWS 20.1	7:22 8:7 9:14	list 4:24 5:2 12:2	76:12,13,19,20	10:25
37:19 39:9	44:6,9,13,22	L	9:20 10:16	64:12	76:23 77:10	March 8:8 13:1
42:19 45:5	45:2 49:7,15	label 9:11	11:19 12:7,9	listened 68:6	79:14,21 82:22	13:15
49:6 56:20	49:17 50:4,12	<b>Labour</b> 21:11	109:13,15	listening 102:8	83:2,5,15,19	mark 101:16
57:2,3,23	50:14,25 51:2	lack 17:21	letters 82:5,7	litigation 100:18	84:14,16 85:2	mark 101.10 market 52:19
58:11 63:2	51:23 52:1,3,6	laid 82:4 103:18	let's 10:1 15:15	101:14 103:1	87:5,6,16 88:3	massive 64:13
67:19 70:7	53:7,10,18,20	105:18	37:10 41:16,21	little 14:18 28:4	88:16,22,23	matter 3:23 4:3
72:11 74:1	55:9,14,21	Lancaster 58:13	41:22	Liverpool 57:18	90:8 92:21	4:25 10:19
76:23 81:25	56:3,18,21	language 2:21	level 73:16 89:11	57:19	93:2,15 94:8	15:17 19:13
83:11 84:16	57:13,22 58:10	lap 13:3	107:18	living 69:11	97:2,2,13,22	30:7 34:23
88:23 89:25	62:21,25 65:10	large 15:10,11	levels 98:8	loaded 16:5	98:7 99:4,4	38:3 43:13
97:21,22 100:9	66:9,18 67:3,7	last-minute 96:3	lever-arch 9:5	21:24	100:10,12,21	78:9
109:5,9,11	67:18 70:1	late 14:3	Leveson 5:25 6:4	lobbed 25:3	100:23 101:13	matters 57:17
<b>job</b> 15:19,21	72:1 73:21	Latin 28:21	12:19 29:2	lobbying 30:15	101:22 102:16	83:3 109:14
16:18 18:20	75:11 76:3,12	laugh 14:25	30:24 31:3,17	31:7	103:13,24	Mawhinney's
20:3 28:4 30:9	76:19 83:5,15	law 25:11 30:8	31:24 36:10	local 48:3 98:8	104:4,10,18,23	76:8
49:17 50:12	83:19 84:14	30:12,16,19	37:19 38:14,20	99:25	105:3,6 106:15	McCann 8:25
52:11,13 59:10	87:5,16 88:3	44:11,15,15	42:7 44:6,9,13	located 78:23	107:5,12,25,25	meals 23:11,15
74:11	88:22 97:2,13	48:23 58:18	44:22 45:2	<b>London</b> 73:24	108:10 109:2,6	mean 2:4 9:23
jobs 55:16	100:12,21,23	59:5 61:17	49:7,15,17	long 26:1 27:19	109:6,10,15	12:9 15:5
John 21:9 22:4	101:13,22	63:22 64:8	50:4,12,14,25	28:25 53:6	Lords 32:21	18:18 22:16
30:5 58:10,11	102:16 103:13	92:18 104:5,7	51:2,23 52:1,3	62:22 69:8	93:20	23:16 25:19
1	I	1	I	l	I	

_						
21 20 21 40 12	10.4	57.05.69.0	70.21.06.2	41.7.70.10	. <b>66</b> ° 22 10 20	
31:20,21 49:12 51:5 53:1	19:4 <b>Michael</b> 32:4,7	57:25 68:2 <b>MORI</b> 39:2	70:21 96:2 97:25	41:7 72:18 75:1 85:7,9	<b>office</b> 23:19,20 63:22	ordinary 17:15 organic 70:9
54:19 59:18,20	middle 17:20	morning 2:19	needs 13:16	note 1:5 11:18	officers 47:19	organisation
66:25 76:4	mildly 8:10	109:17	69:22 77:4	notice 24:24	oh 9:10,11,13,17	14:21 17:17
103:25 105:25	mind 2:5 10:15	Mosley 18:23	79:17	86:13 98:25	12:18 18:7,8	46:14 73:20
means 34:17,20	47:4 65:25	19:4	negative 17:8	notion 2:5 16:12	22:16 51:3	89:14 104:19
41:4,9 59:22	70:8 71:19	motto 108:24	26:23 45:25	notions 27:22	56:21 57:22	organisations
72:17 79:18	74:19 82:1	mounts 17:10	negotiate 69:20	November 6:20	67:9	21:6 49:24
90:9	86:4 101:10	move 7:19 55:25	negotiates 14:21	number 6:15	OK 74:25	73:8 108:18
meant 15:7	106:16	66:3,22 82:4	neither 83:5	9:21 15:10,11	okay 12:11 24:3	organised 24:5
mechanics 90:9	minimalism 4:11	87:19	neutrally 10:1	15:18 17:15	25:1 28:18	organising 105:9
mechanism 8:14	minimalist 4:8	moved 16:14	never 5:9 7:18	21:12 26:19	33:20 39:17	original 16:11
51:10 88:18	minimum	28:13 32:20	12:8 28:10	28:3 49:23	40:23 86:11	27:11
95:24	105:22,24	34:10	47:17 52:24	67:20,23 71:19	88:23 90:8	originally 74:17
mechanisms	minister 19:21	moves 56:8	83:10,13 84:8	73:16 79:9	100:9	ought 42:12
69:10 72:20	21:15 22:15	MPA 7:20 8:20	84:11,15 87:2	87:9,10 88:12	<b>old</b> 7:8,15 15:6	51:20 52:14
73:2	24:18 25:11	MP's 27:5	92:12 108:1	89:13 102:16	23:7 92:19	outing 26:16
media 8:10 39:12	26:6 30:17	Murdoch 21:25	new 11:21 12:5	nutshell 58:1,3	93:22	outline 76:24
104:19	92:11	22:2,3,5	16:11 21:11		ombudsman	outlined 33:11
mediate 15:19	ministers 22:14	mustn't 99:21	40:24 46:17	0	61:21 101:17	70:16 92:1
mediated 16:22	minor 109:12	muzzle 93:22	56:14 63:10 65:7 70:21,23	oath 24:24	101:18	outset 66:15
mediating 4:2 102:10	minority 47:22 minuscule 47:2	N	77:14 79:20	obey 4:13	omnipresent 23:17	outside 56:16 63:22 84:24
mediation 16:6	minuscule 47:2 minutes 56:20,22	name 32:6 57:4	82:3 83:7 84:6	object 10:20	once 8:17 11:23	overall 79:6
16:12 70:19	minutes 56:20,22 misbehaving		84:25 85:10,22	<b>objection</b> 4:6 93:2,17	34:15 41:5	overstretched
73:4 77:15	14:4	61:6,11,22 84:25	89:3,7,10	93:2,17 objectionable	44:15 63:5	47:8
95:8 102:1	mischief 55:20	named 77:21	90:14 91:3,24	23:2 39:19	91:16 106:6	overwhelm
103:23	misrepresentat	names 55:10	92:8,8 94:20	objections 34:13	one-or-one 20:12	102:25
medical 12:10	50:8	nation 40:2	95:7,10,11,13	34:14	online 94:21	overwhelming
meet 31:4,5	missing 64:15	national 11:23	95:14 96:6	objective 65:6	open 46:4 65:25	82:16 107:17
91:25 96:22	mistake 11:8,14	20:9 48:4	97:25 98:3	108:23	opened 89:22	overworked 47:8
107:23	108:5	108:5	101:10 106:2,6	objectives 14:13	97:10	over-arching
meeting 1:4,10	misunderstand	nationally 40:1	news 3:4 30:10	71:25	opening 22:25	100:13
2:14 3:15 4:16	5:10	nation's 100:8	43:5 47:6	obligation 35:6	operate 15:15	owned 40:1
7:2,22,25	misunderstood	natural 21:14	newspaper 10:17	40:19,20	73:2,2 96:16	ownership 38:23
24:18 50:5	36:7	72:24	10:19,21 22:18	observational	operated 38:10	91:8
74:5,7,9,22	mitigate 42:5	Naturally 90:20	28:14 29:15	68:3	55:5	o'clock 47:6
78:15 79:8	mixture 100:6	nature 10:6 25:5	30:1 31:13	observe 46:20	operating 12:6	109:18,20
85:22	<b>Mm</b> 3:7 18:10	72:16	37:11,12 41:5	<b>obtain</b> 43:20	54:11	O'Donnell 26:3
meetings 47:12	25:17 38:5	near 5:2	41:21,22 42:3	72:8	operation 46:2	
47:18 89:18	53:17 88:22	nearly 20:2	43:16 47:19	obtained 71:13	52:12	P
member 37:13	108:9	necessarily 8:23	48:4,4 52:18	72:4 89:6	<b>opinion</b> 10:18	pack 34:5
41:24,25 45:5	mode 71:11	39:5 71:20	69:24 71:9,14	90:14 91:7	44:13 65:16	packed 34:8
58:6 100:17	model 39:14	95:6 109:3	73:8 84:23	obtaining 71:12	opinions 51:16	page 1:6 3:2 10:9
101:13,21	42:19,22,25 50:20 98:3	necessary 7:22	89:8 92:7 98:5	obvious 4:5	opportunity 66:2	10:14 11:7
members 37:8 42:14 46:3,5	50:20 98:3 104:24 105:4,7	15:22 20:25	100:1 102:4 newspapers 4:15	62:17 72:24	66:16 67:10 75:23 82:14	13:7 14:17,25
47:15 60:23,24	104:24 103:4,7	41:13 68:25 71:1 77:18	5:6 6:14,14	<b>obviously</b> 11:25 33:5,7 48:1	83:19 88:7	17:20,20,22 18:6 7 8 23
68:9 88:13,13	modelled 76:14	83:8 84:16	16:22 17:9	59:17	89:23 93:21	18:6,7,8,23 19:1 20:17
93:7	moderate 53:15	87:2 92:25	20:9,19 21:5	occasion 9:3	97:10 98:17	27:17,18 79:12
membership	moment 26:9	94:11	21:18 29:18	18:15 22:6	101:25 102:20	pages 28:13
36:20 89:17	33:13 37:20	necessity 78:20	40:5,17 42:13	Occasionally	103:7 106:5	paid 20:8 21:24
104:13	46:8 48:7	need 7:9 13:6,22	47:8 48:3	54:24	107:23	37:13
memorandum	59:17 63:11	24:24 25:23	52:17 53:4	occasions 24:4,5	opposed 11:5	pain 108:20
7:7	66:2 76:2	32:8 33:15	72:21 77:24	88:12 93:7	50:18 51:9	painful 41:4
memory 22:2	91:22	43:12,13 51:19	91:6,16,19	occur 10:6	75:11	painfully 34:17
25:20	momentum	52:23 61:15	98:7 99:22	occurs 71:22	opposite 99:9	Pandora's 65:25
mental 10:2	89:23 97:11	70:17,22 77:1	nexus 63:18	October 11:25	optimism 28:6	panel 50:1 60:19
mention 71:8	106:23	79:13 80:22	<b>night</b> 47:5,6	57:24	<b>optimum</b> 108:24	60:25
mentioned 33:20	money 52:16	81:1 87:14	nil 108:23	Ofcom 35:2,2	<b>option</b> 10:21	paparazzi 71:8
70:2 78:2 92:5	97:24	88:18 93:10	nine 47:18	54:13,23,23,24	38:8	paparazzo 71:12
merely 97:4	month 16:16	94:21 95:13,14	nisi 108:24	54:24,25	order 34:18	paper 26:2 30:21
met 22:6 71:25	17:5 21:14	100:4 105:23	nod 67:7	offences 1:23	39:25 43:15	72:2,2 73:2
74:15	68:22	106:13,16	Nods 67:6 107:4	offending 14:23	66:17 89:5	74:14
methodical	months 35:4,4	107:23	107:11	98:16	90:22 91:6,18	papers 14:23
34:18	37:25 38:18	needed 3:11 7:17	Nolan 34:10	offensive 11:10	95:3 107:2	21:25 48:7
<b>Meyer</b> 13:10	39:2 45:6	13:15 62:9	Northern 8:9	65:1	ordered 90:23	<b>paper's</b> 89:16
<u> </u>	<u> </u>	<u> </u>	1	<u> </u>	<u> </u>	<u> </u>

paragraph   10-13							
14:16:152-18   parsing 69:14   parsing 69:14   parsing 69:14   parsing 69:14   parsing 69:14   parsing 69:14   parsing 69:19			l	10.12.12.1=		.0.1	
S82:19-63-14   Section							
68.11   69.17   15   pay 7.29 20.33   person 42.24   38.27			· ·				
71.69   72.19   72.22   73.71   72.22   73.72   73.22   73.72   73.72   73.22   73.72   73.22   73.7							
2222 73.7   74.2 80.15   43.17 46.17   87.2 19.11   92.		-					
34.17 46.17   52.48 9.5   55.17 56.17   59.25 6.6   79.25 26.6   79.	,					, -	
Still 113							
paraphrase 9:00   polit 39:12   paying 8:19   pressed 12:14   posts 6:12   press 2:714:2   pressed 19:24:70:19   press 2:714:2   pressed 19:24:70:19   press 2:714:2   pressed 19:24:70:19   pressed							
Parcel 22:17					98:4	90:17 94:10	
70:12.79.6   PicC   1:71:23.19   3:5.25   8:14.19   prespectives   3:5.25   8:14.19   prespectives   3:5.25   8:15.13   6:16.21   2:15.21   3:15.23   6:16.21   3:15.23   6:16.23   3:25.28.25   6:16.24   3:25.23   6:16.24   3:25.23   6:16.24   3:25.23   3:35.15.17   prespectives   3:25.24   3:25.23   3:35.15.17   prespectives   3:25.24   3:25.23   3:25.25   3:25.	paraphrase 9:20	90:13 91:2		59:5 61:24	posts 61:12	presently 43:1	principles 33:8
pardon 99-4 Parliament 611         33:52.814.19         perspective 23-4         79:12 80:5.12         pon 11:13         22:12.21 233         prinate 98.7         prior 35:16         prior 24:17         prior 24:17         prior 24:17         prior 35:16         prior 35:16         prior 35:16         prior 35:16         prior 24:17         prior 24:17         prior 24:17         prior 35:16         prior 35:16 <th< td=""><td>parcel 22:17</td><td>paying 8:19</td><td></td><td>64:9 70:1,20</td><td>post-judgment</td><td>press 2:7 14:2</td><td>59:2,4 70:9</td></th<>	parcel 22:17	paying 8:19		64:9 70:1,20	post-judgment	press 2:7 14:2	59:2,4 70:9
Parliament 6:11   13:10:23 14:19   perspectives   83:24 92.4   potential 50:7   23:47.16   privacy 1:12   58:13,15 59:7   folc25 17:16   654:15:23   19:44.5 82.5   folc35 17:23   61:19 78:12   99:21 10:22   99:21 10:22   99:21   99:22   10:22   10:22   10:22   10:22   10:22   10:22   10:23   10:21   10:22	70:12 79:6	<b>PCC</b> 1:17 2:3,19	48:12 58:2		34:16	19:20,25 20:6	
375,18 58.6   375,18 58.1   375,18 58.6   375,18 59.6							
5813,15 597	Parliament 6:11		perspectives	83:24 92:4	potential 50:7	23:4,7,16	
663.15.23   194.5 28.25   671.6 82-2   104.79.21   power 215.   33.38.17 38.23   291.31.3 30.61.9   96.2   94.91.2.23   371.4 39.7   38.22   porterse 132.0   42.9 41.24 42.15   porterse 132.0   45.9 49.7   45.9	37:5,18 58:6	15:13 16:2,12	51:7		85:14	29:10 30:9,15	privacy 1:12
661.9 78:12   33:3 35:15,17   persuaded 61:7   90:6 93:19   33:2 35:16,17   94:91,12:3   33:14 39:7   94:91,12:3   37:14 39:7   94:91,12:3   37:14 39:7   72:14 24:15   45:15,12.1   86:93:16   45:94:72   72:14 24:15   72:24 21:18   72:24 21:19   72:24 21:18   72:24 21:19   72:24 2	58:13,15 59:7	16:25 17:16	persuade 29:6	pointed 6:12	<b>Powell</b> 99:24	31:8,16,22	19:6 25:11,16
996.93.19 94.91.2.23 951.3.17.21 94.12.4.22.15 96.22 95.13.17.22 95.13.17.21 96.3.17.21 96.3.17.21 96.3.17.21 96.3.17.21 96.3.17.21 96.3.17.21 96.3.17.21 96.3.17.21 96.3.17.21 96.3.17.21 97.18 6.9.3.71.6 98.6.9.9.25 98.6.9.9.25 98.6.9.9.25 98.6.9.9.25 98.6.9.9.25 98.6.9.9.25 98.6.9.9.25 99.22 99.22 99.22 101.15 106.3 79.15 106.3 99.22 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.22 101.15 106.3 99.21 99.22 101.15 106.3 91.20 101.15	65:4,15,23	19:4,5 28:25	67:16 82:2	10:4 79:21	power 21:5	33:8,17 38:23	29:13,13 30:8
99.1,12.23 96.12 96.13 9	66:1,9 78:12	33:3 35:15,17	persuaded 61:7		40:25 64:24	39:11,19 50:7	
96:2	90:6 93:19	35:24 36:2	persuasion 29:7		65:24 71:23	59:2,11,21,22	42:17 49:13,19
Post	94:9,12,23	37:14 39:7	38:22	points 13:5 17:23	79:11 80:6	59:23,23,24	72:4 76:1
parliamentary   45:5.12,14.18   79:22.92:18   79:12.97:7   63:23 64:10,7   72:5.88:13,13   78:5.22.14   79:5.98:6.99:25   5:21.544:26   77:23.58:19   72:13   79:5.88:13,13   78:5.83:10,12   79:5.82:1   79:5.83:10,12   79:5.83:14   79:5.82:1   79:22.23:14   79:5.8	95:13,17,21	41:24 42:15	perverse 13:20	45:9 49:7	84:2,3,7,9,11	60:1 61:15	80:17
45:19 46:22   45:19 46:22   45:19 46:25   45:19 47:12   45:19   45:19 47:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19   45:19 47:19	96:2	43:5,15,21	phenomenally	67:21 71:4	84:15 91:5	62:5,11 63:14	private 23:2,6,11
44:18 65:8,21   75:21 88:7   51:8,11.5   75:21 88:7   51:8,11.5   75:21 88:7   51:8,11.5   75:22 88:13,13   75:22 88:13,13   75:23 88:13   75:23 88:13,13   75:23 88:13   75:24   75:23 88:13	parliamentary	45:5,12,14,18		72:22 92:18		63:23 64:10,17	24:11,12,18
75:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 88.7   79:21 89:22 99:1	6:9 37:16	45:19 46:2,2	philosophical	106:22	106:9	64:21 65:22,24	33:18 44:20
98.6 99.25   92.10 54.26   72.13   72.13   polity 221.31.4   41.6 51.18.19   62.51.6 63.38   761.5 78.13   probable 44.2   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   80.21 81.24   22.22 23.4   70.24 72.13   7	41:18 65:8,21	46:21 47:12	16:9 93:17	polices 98:10	powers 3:10	66:3,8,11,17	72:5 88:13,13
part 22:16 24:6         57:23 58:19         photo 71:11         policy 22:13,14         62:5,16 63:3,8         76:15 78:13         probable 44:2         probable 95:12         probable 95:12         probable 95:12         probable 95:12         probable 45:2         probable 95:12         probable 45:2         prob	75:21 88:7	51:8,11,15	<b>phone</b> 108:6	policies 22:19	35:20 36:9	66:20 67:10	privilege 6:9
379-940:16   62:1,14 63:5   76:06 77:3,17   78:6 83:10,12   70:12 78:5   78:5 83:20 88:11   78:5 83:20 88:11   79:5 82:1   7	98:6 99:25	52:10 54:2,6	phone-hacking	29:17	41:6 51:18,19	68:15,19 71:23	privileged 20:12
46:6 48:2   48:17 53:3   78:6 83:10,12   77:17 79:5 82:1   79:5 82:1   99:22   101:15 106:3   Photographer	part 22:16 24:6	57:23 58:19	72:13	policy 22:13,14	62:5,16 63:3,8	76:15 78:13	probable 44:2
49:17 53:3   78:6 83:10,12   71:10,12 72:3   70:12 78:5   83:20 84:11   70:15 78:5   82:1   92:23 99:1   71:20   photographic 79:58 82:1   92:23 99:1   71:20   photographic 71:24   71:24	37:9 40:16	62:1,14 63:5	<b>photo</b> 71:11	22:22 23:4	70:24 72:13	80:21 81:24	probably 5:12
Provided P	46:6 48:2	68:6 77:3,17	photograph	24:20 29:7,9	77:7 79:17	82:3,9,18	6:12 7:21
Post	49:17 53:3	78:6 83:10,12	71:10,12 72:3	29:11 48:16	80:22,24,25	87:11,22 88:8	12:14 39:16
Poc	70:12 78:5	83:20 84:11	photographers	52:9	81:2,13 83:9	89:24 90:3	93:10,12 100:7
participants   PCC1 46:5 54:6   PCC2 37:9 38:10   S5:14   41:6 42:4,12   participants   PCC2 37:9 38:10   phrase 17:24   pick 37:19   picks 70:1   36:5,8 40:21   politicially 35:19   36:5,8 40:21   politicially 35:19   picks 70:1   piece 12:23   politicians 20:6   20:14 21:20   104:2 105:16   politicially 35:19   piece 12:23   106:20   106:2	79:5 82:1	92:23 99:1		political 24:7	83:13,15,21	93:23 95:20	107:12
participants   PCC1 46:5 54:6   PCC2 37:9 38:10   S5:14   41:6 42:4,12   participants   PCC2 37:9 38:10   phrase 17:24   pick 37:19   picks 70:1   36:5,8 40:21   politicially 35:19   36:5,8 40:21   politicially 35:19   picks 70:1   piece 12:23   politicians 20:6   20:14 21:20   104:2 105:16   politicially 35:19   piece 12:23   106:20   106:2	99:22	101:15 106:3	photographic	29:4 34:11	94:3 95:15	96:16,20 97:12	problem 6:16
85:14   41:6 42:4;12   pick 37:19   politically 35:19   3:6,11,15,23   101:20 103:19   problems 26:3,3   85:16   peddle 22:18   pick 70:1   picks	partial 7:4	PCC1 46:5 54:6		37:21 54:5	practical 4:5	99:8,12,17	53:3 54:1 86:6
participate   44:3 46:5   pedde 22:18   pedde 22:19   pedde 22:18   pedde 22:19   pedde 22:19   pedde 22:18   pedde 22:19   pe	participants	PCC2 37:9 38:10	phrase 17:24	106:3	<b>practice</b> 2:17 3:3	100:6,7,13	86:6 87:6
Participation   Peddle 22:18   Participation	85:14	41:6 42:4,12	pick 37:19	politically 35:19	3:6,11,15,23	101:20 103:19	94:10
participation 60:7         peers 99:1 particular 9:24 particular 9:24 11:12 21:6;24 12:16 225 particular 9:24 17:16 20:25 pitch 26:6	participate	44:3 46:5	<b>picks</b> 70:1	36:5,8 40:21	4:10 11:5 20:2	104:2 105:16	problems 26:3,3
Pierce 99:13	85:16	peddle 22:18	piece 12:23	politicians 20:6	20:14 21:20	105:22 106:14	26:5 51:15
particular 9:24 11:12 21:6;24 22:22 23:10 22:19 24:25 24:17 29:7,15 37:12 60:6 68:13 100:1 39:4 41:14 104:19 particularly         pipe 17:10 pitch 26:6 place 1:4 40:10 71:16 74:5 88:2,4 92:13 particularly         34:4 38:21 place 1:4 40:10 71:16 74:5 place 2:4 40:10 point 2:4:13 point 2:4:14 point 2:4	participation	peer 58:14	74:14	23:3,7 29:6,10	22:11 27:23	108:4	52:10 71:8
11:12 21:6,24	60:7	peers 99:1	<b>Pierce</b> 99:13	29:20,24 31:4	69:11 78:4,21	PressBoF 46:9	92:1 96:5
22:22 23:10   22:19 24:25   place 1:4 40:10   71:16 74:5   ponder 93:13   popular 44:13   105:9 108:7   practices 101:11   105:9 108:7   practices 101:11   105:9 108:7   practices 101:11   pressing 107:24   pressure 17:6.10   94:13 95:10.14   proceeded 3:18   practising 58:17   practices 58:18   practising 58:17   practices 58:18   practising 58:17   practices 101:11   105:9 108:7   practices 101:11   105:9 108:7   practices 101:11   pressing 107:24   pressure 17:6.10   94:13 95:10.14   proceeded 3:18   practising 58:17   practices 58:18   practising 58:17   practices 58:18   practising 58:17   precedent 54:14   proceeded 3:18   practising 58:17   precedent 54:14   pr	particular 9:24	people 15:10	<b>pipe</b> 17:10	34:4 38:21	79:3 81:3	53:21 60:12,24	108:17,19
24:17 29:7,15   26:10 27:4   71:16 74:5   ponder 93:13   popular 44:13   practises 58:18   practising 58:17   pressure 17:6,10 pressures 16:24   proceeded 3:18   practising 58:17   precedent 54:14   proceedings 53:2   proceedings 53:2 proceed	11:12 21:6,24	17:16 20:25	pitch 26:6	poll 39:2	98:14	61:1 74:8 99:3	proceed 82:15
37:12 60:6   31:6 35:7 39:3   82:2 83:14   popular 44:13   practises 58:18   pract	22:22 23:10	22:19 24:25	<b>place</b> 1:4 40:10	Polls 21:11	practices 101:11	pressing 107:24	85:5 89:20
68:13 100:1   104:19	24:17 29:7,15	26:10 27:4	71:16 74:5	<b>ponder</b> 93:13	105:9 108:7	<b>pressure</b> 17:6,10	94:13 95:10,14
104:19	37:12 60:6	31:6 35:7 39:3	82:2 83:14	popular 44:13	practises 58:18	pressures 16:24	proceeded 3:18
particularly   10:11 24:23   53:1 55:15   players 78:19   procious 14:18   68:2 69:4 72:8   33:5 34:10,19   74:7 85:7   37:16 46:6   66:15 74:19   83:1 84:20   players 78:19   procious 14:18   procious 14:19   procious 14:19   procious 14:19   proci	68:13 100:1	39:4 41:14	88:2,4 92:13	position 2:1,18	practising 58:17	24:12,12	37:25
10:11 24:23	104:19	45:19 48:25	104:8	2:23 6:10 7:4	precedent 54:14	presumably	proceedings 53:2
47:12 65:17	particularly	51:16 52:2	plausible 17:2	7:12 13:14	106:10	13:14 59:3,24	process 16:17
47:12 65:17		53:1 55:15	players 78:19	18:14 22:22	precious 14:18	68:2 69:4 72:8	33:5 34:10,19
91:1 94:21         85:2,20 87:20         19:20 20:7         46:10,12 54:3         28:22 36:12         92:6 105:6         60:9 75:6,9,19           102:22         102:2 108:18         24:22 30:11         56:4 62:2         predecessor 26:2         pretty 14:8 21:5         98:13           parties 14:22         perception 54:1         32:3 33:2,3,23         87:11 99:2,2         predict 19:5         25:20 50:1         processes 34:18           106:3         68:16,17 78:25         53:19 57:3,4         positions 44:2         preeminently         prevent 39:19         35:5 69:23           partisan 22:17         perfectly 5:5         58:1 69:13         positive 4:19         3:24         52:9         procure 5:7           22:17 39:20,21         81:22 85:25         72:21,23 74:3         48:20 79:9         prefer 59:21         previous 58:1         produce 48:22           40:5,18         94:22         77:10 81:25         86:16 87:3         preferable 59:15         60:15 92:5         54:13 55:6           party 23:21 24:4         89:6 90:14,23         108:12         positively 66:14         premier 108:25         pre-dates 59:7         producer 40:13           passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         possibility 97:4         prescribe 36:23         pre-publication         producer 54:15	47:12 65:17	60:20,23 82:16	pleasantly 75:3	28:9 31:15	precise 2:14	74:7 85:7	37:16 46:6
91:1 94:21         85:2,20 87:20         19:20 20:7         46:10,12 54:3         28:22 36:12         92:6 105:6         60:9 75:6,9,19           102:22         102:2 108:18         24:22 30:11         56:4 62:2         predecessor 26:2         pretty 14:8 21:5         98:13           parties 14:22         perception 54:1         32:3 33:2,3,23         87:11 99:2,2         predict 19:5         25:20 50:1         processes 34:18           106:3         68:16,17 78:25         53:19 57:3,4         positions 44:2         preeminently         prevent 39:19         35:5 69:23           partisan 22:17         perfectly 5:5         58:1 69:13         positive 4:19         3:24         52:9         procure 5:7           22:17 39:20,21         81:22 85:25         72:21,23 74:3         48:20 79:9         prefer 59:21         previous 58:1         produce 48:22           40:5,18         94:22         77:10 81:25         86:16 87:3         preferable 59:15         60:15 92:5         54:13 55:6           party 23:21 24:4         89:6 90:14,23         108:12         positively 66:14         premier 108:25         pre-dates 59:7         producer 40:13           passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         possibility 97:4         prescribe 36:23         pre-publication         producer 54:15	66:15 74:19	83:1 84:20		33:23 36:18	precisely 4:25	86:12 89:5	52:2 58:21
parties 14:22         perception 54:1         32:3 33:2,3,23         87:11 99:2,2         predict 19:5         25:20 50:1         processes 34:18           106:3         68:16,17 78:25         53:19 57:3,4         positions 44:2         preeminently         prevent 39:19         35:5 69:23           partisan 22:17         perfectly 5:5         58:1 69:13         positive 4:19         3:24         previous 58:1         previous 58:1           22:17 39:20,21         81:22 85:25         72:21,23 74:3         48:20 79:9         prefer 59:21         previous 58:1         produce 48:22           40:5,18         94:22         77:10 81:25         86:16 87:3         preferable 59:15         60:15 92:5         54:13 55:6           partner 58:17         performance         93:11         96:25 97:1         preference 81:8         previously 80:3         produced 38:2           party 23:21 24:4         89:6 90:14,23         108:12         positively 66:14         premises 84:3         pre-legislative         48:21           passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         109:19         possibility 97:4         prescribe 36:23         pre-publication         producet 71:15           passionate 59:10         periodical         point 1:3,15 2:1         97:15         95:17         primarily 41:12		85:2,20 87:20	19:20 20:7	46:10,12 54:3	28:22 36:12	92:6 105:6	60:9 75:6,9,19
106:3	102:22	102:2 108:18	24:22 30:11	56:4 62:2	predecessor 26:2	pretty 14:8 21:5	98:13
partisan 22:17         perfectly 5:5         58:1 69:13         positive 4:19         3:24         52:9         procure 5:7           22:17 39:20,21         81:22 85:25         72:21,23 74:3         48:20 79:9         prefer 59:21         previous 58:1         produce 48:22           40:5,18         94:22         77:10 81:25         86:16 87:3         preferable 59:15         60:15 92:5         54:13 55:6           partner 58:17         performance         93:11         96:25 97:1         preference 81:8         previously 80:3         produced 38:2           59:6         43:8,16,20         pleased 14:8         107:21         premier 108:25         pre-dates 59:7         producer 40:13           24:5         91:6,18         plus 24:16 71:4         82:11 97:17         prepared 6:22         41:19 76:5         producers 54:15           passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         109:19         possibility 97:4         prescribe 36:23         pre-publication         producet 71:15           passionate 59:10         periodical         point 1:3,15 2:1         97:15         95:17         price 1:11         professional           passionately         103:17         2:9 3:4 5:13         possible 3:18         present 22:7         primarily 41:12         19:23 54:11 </td <td>parties 14:22</td> <td></td> <td>32:3 33:2,3,23</td> <td>87:11 99:2,2</td> <td>predict 19:5</td> <td></td> <td>processes 34:18</td>	parties 14:22		32:3 33:2,3,23	87:11 99:2,2	predict 19:5		processes 34:18
partisan 22:17         perfectly 5:5         58:1 69:13         positive 4:19         3:24         52:9         procure 5:7           22:17 39:20,21         81:22 85:25         72:21,23 74:3         48:20 79:9         prefer 59:21         previous 58:1         produce 48:22           40:5,18         94:22         77:10 81:25         86:16 87:3         preferable 59:15         60:15 92:5         54:13 55:6           partner 58:17         performance         93:11         96:25 97:1         preference 81:8         previously 80:3         produced 38:2           59:6         43:8,16,20         pleased 14:8         107:21         premier 108:25         pre-dates 59:7         producer 40:13           24:5         91:6,18         plus 24:16 71:4         82:11 97:17         prepared 6:22         41:19 76:5         producers 54:15           passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         109:19         possibility 97:4         prescribe 36:23         pre-publication         producet 71:15           passionate 59:10         periodical         point 1:3,15 2:1         97:15         95:17         price 1:11         professional           passionately         103:17         2:9 3:4 5:13         possible 3:18         present 22:7         primarily 41:12         19:23 54:11 </td <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>35:5 69:23</td>							35:5 69:23
40:5,18       94:22       77:10 81:25       86:16 87:3       preferable 59:15       60:15 92:5       54:13 55:6         partner 58:17       performance       93:11       96:25 97:1       preferable 59:15       previously 80:3       produced 38:2         59:6       43:8,16,20       pleased 14:8       107:21       premier 108:25       pre-dates 59:7       producer 40:13         party 23:21 24:4       89:6 90:14,23       108:12       positively 66:14       premises 84:3       pre-legislative       48:21         24:5       91:6,18       plus 24:16 71:4       82:11 97:17       prepared 6:22       41:19 76:5       producers 54:15         passed 21:14       period 14:3 45:8       pm 1:2 56:23,25       possessed 83:10       prescribe 36:23       pre-publication       producet 71:15         passionate 59:10       periodical       point 1:3,15 2:1       97:15       95:17       price 1:11       professional         passionately       103:17       2:9 3:4 5:13       possible 3:18       present 22:7       primarily 41:12       19:23 54:11	partisan 22:17	perfectly 5:5	58:1 69:13	positive 4:19	3:24		procure 5:7
partner 58:17         performance         93:11         96:25 97:1         preference 81:8         previously 80:3         produced 38:2           59:6         43:8,16,20         pleased 14:8         107:21         premier 108:25         pre-dates 59:7         produced 38:2           party 23:21 24:4         89:6 90:14,23         108:12         positively 66:14         premier 108:25         pre-legislative         48:21           24:5         91:6,18         plus 24:16 71:4         82:11 97:17         prepared 6:22         41:19 76:5         producer 54:15           passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         possessed 83:10         prescribe 36:23         pre-publication         produces 15:23           26:9 49:2 96:4         86:21,25         109:19         possibility 97:4         prescriptive         63:6 71:7         producet 71:15           passionate 59:10         periodical         point 1:3,15 2:1         97:15         95:17         price 1:11         professional           passionately         103:17         2:9 3:4 5:13         possible 3:18         present 22:7         primarily 41:12         19:23 54:11	22:17 39:20,21	81:22 85:25	72:21,23 74:3	48:20 79:9	prefer 59:21	previous 58:1	produce 48:22
59:6       43:8,16,20       pleased 14:8       107:21       Premier 108:25       pre-dates 59:7       producer 40:13         party 23:21 24:4       89:6 90:14,23       91:6,18       plus 24:16 71:4       82:11 97:17       prepared 6:22       pre-publication       producer 54:15         passed 21:14       period 14:3 45:8       pm 1:2 56:23,25       possessed 83:10       prescribe 36:23       pre-publication       producer 54:15         passionate 59:10       periodical       point 1:3,15 2:1       97:15       95:17       price 1:11       professional         passionately       103:17       2:9 3:4 5:13       possible 3:18       present 22:7       primarily 41:12       19:23 54:11	40:5,18	94:22	77:10 81:25	86:16 87:3	preferable 59:15	60:15 92:5	54:13 55:6
party 23:21 24:4         89:6 90:14,23         108:12         positively 66:14         premises 84:3         pre-legislative         48:21           24:5         91:6,18         plus 24:16 71:4         82:11 97:17         prepared 6:22         41:19 76:5         producers 54:15           passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         possessed 83:10         prescribe 36:23         pre-publication         produces 15:23           26:9 49:2 96:4         86:21,25         109:19         possibility 97:4         prescriptive         63:6 71:7         product 71:15           passionate 59:10         periodical         point 1:3,15 2:1         97:15         95:17         price 1:11         professional           passionately         103:17         2:9 3:4 5:13         possible 3:18         present 22:7         primarily 41:12         19:23 54:11	-	performance			preference 81:8	previously 80:3	produced 38:2
24:5       91:6,18       plus 24:16 71:4       82:11 97:17       prepared 6:22       41:19 76:5       producers 54:15         passed 21:14       period 14:3 45:8       pm 1:2 56:23,25       possessed 83:10       prescribe 36:23       pre-publication       producers 54:15         26:9 49:2 96:4       86:21,25       periodical       point 1:3,15 2:1       97:15       95:17       price 1:11       professional         passionately       103:17       2:9 3:4 5:13       possible 3:18       present 22:7       primarily 41:12       19:23 54:11		43:8,16,20	pleased 14:8			pre-dates 59:7	producer 40:13
passed 21:14         period 14:3 45:8         pm 1:2 56:23,25         possessed 83:10         prescribe 36:23         pre-publication possibility 97:4         pre-publication possibility 97:4         pre-publication possibility 97:4         pre-publication produces 15:23         produces 15:23           passionate 59:10 passionately         periodical 103:17         point 1:3,15 2:1 2:9 3:4 5:13         97:15 possible 3:18         prescribe 36:23 pre-publication produces 15:23 product 71:15 professional primarily 41:12         primarily 41:12         19:23 54:11	party 23:21 24:4	89:6 90:14,23	108:12	positively 66:14	premises 84:3	pre-legislative	
26:9 49:2 96:4   86:21,25   passionate 59:10   point 1:3,15 2:1   passionately   103:17   passionate   103:17   possible 3:18   possible 3:18   present 22:7   primarily 41:12   professional primarily 41:12   profess		91:6,18	plus 24:16 71:4				producers 54:15
passionate 59:10 passionately         periodical 103:17         point 1:3,15 2:1 2:9 3:4 5:13         97:15 possible 3:18         95:17 price 1:11 primarily 41:12         professional primarily 41:12		period 14:3 45:8	<b>pm</b> 1:2 56:23,25	possessed 83:10	prescribe 36:23	pre-publication	produces 15:23
passionately         103:17         2:9 3:4 5:13         possible 3:18         present 22:7         primarily 41:12         19:23 54:11			109:19	possibility 97:4	prescriptive	63:6 71:7	product 71:15
	passionate 59:10		point 1:3,15 2:1		95:17		
64:1   permanent 14:7   8:12,23 10:11   30:8 37:3 49:2   23:16 59:5   primary 40:4   professionals	passionately			possible 3:18			19:23 54:11
	64:1	permanent 14:7	8:12,23 10:11	30:8 37:3 49:2	23:16 59:5	primary 40:4	professionals
		<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

60.2 5	nuovidad 20 12	61.11 60 04	work 20:2	20.7.61.10	02.0 0 20 02 4	wammaga4-4*
69:3,5	provided 32:13	61:11 68:24	rash 28:2	38:7 61:18 record 49:22	92:8,8,20 93:4	representation
Professor 12:24 12:25 14:10	38:9 57:6 58:25 89:24	77:6 82:25	rations 47:2 rattling 25:25	record 49:22 recorded 14:25	93:5 95:7,11 95:11 97:25	79:1 <b>represented</b> 61:2
16:4 18:13,22	91:13 97:12	Q	reach 28:8 85:25	records 84:5	98:1,9 101:10	representing
61:5,25	105:3	QC 19:2	reached 14:6	redacted 9:21	104:9,14,15,24	50:8
profound 107:21	provides 44:16	qualified 2:20	26:5 65:7	redress 35:10	104.9,14,13,24	request 6:14
programme	53:13	quantieu 2.20 quasi-regulation	102:7 103:20	43:3,4	regulators 34:5	106:25
11:24 55:19	providing 51:9	41:3	108:14	refer 20:5 58:22	48:22	require 70:25
programmes	77:25	Queen's 75:22	reaching 16:25	60:6 74:5	regulatory 42:19	79:16 84:6,12
48:23	provisions 64:9	79:20 90:21	reaction 96:25	93:14	58:18 95:21	104:14
programme-m	76:6	question 4:21,21	97:1	reference 12:10	105:18 106:9	required 48:22
54:16	<b>public</b> 7:3 14:23	13:19 16:5	read 9:11 10:22	76:15 105:15	reject 2:9	requirement
progress 28:15	24:11,12 26:4	18:11,11,13	13:6 100:5	referred 28:1,11	rejecting 16:3	40:4,11
106:21 108:13	36:7 38:24	21:23 22:10,20	109:15	referring 90:2	rejoin 8:14	requirements
progressed	42:17 47:15	24:13,24 25:2	readers 10:20	refined 54:17	relates 9:23,25	105:22,24
21:21 101:23	50:6,6,9 52:11	25:5 26:12	readership 52:18	reflect 78:24	<b>relation</b> 1:3 7:24	requiring 102:20
prohibit 43:11	52:13 53:14,22	27:5,6 29:2	ready 11:13	93:10	8:24 26:12	resolution 15:21
project 30:23	54:4,22 59:23	33:19 44:22	real 45:19 75:23	reflection 25:19	29:3,14 95:20	51:12
prominence	67:1 68:7,9,20	46:4 51:4	101:25 108:8	reform 41:19	99:3 108:4	resolved 16:6
26:18	69:8,12,17,21	52:12 53:18	reality 54:2	65:13,14 78:17	relations 8:19	43:10
prominent 26:25	69:21 70:4,10	77:5 79:22	really 7:4 11:10	78:20 82:13	relationship 44:3	resolving 14:20
27:10	78:24,25	83:25 91:14,15	11:17 40:8	89:24 97:12	relationships	resort 73:5
pronouncement	100:15,18	94:5 98:20	44:23 45:13	98:13	84:22 92:7	resource 40:1
28:20	101:2,4,14,21	100:9	47:2 52:16	refused 43:6	relatively 8:9	resourced 46:21
pronouncements	106:7,17,25	questioned 74:11	60:7 71:11	refuses 89:4 91:2	relevant 55:7	47:1 51:12,14
28:19	publication	questions 32:5	72:9 74:13	91:3	reliably 57:16	52:10
proper 73:5	26:19,22 35:16	32:25 57:2	84:18 92:15	regard 48:11	reliance 84:1	resources 51:19
82:17 84:4	35:17,20 36:3	97:22	107:15,19	63:11 64:16	relied 80:13	51:21 52:4
88:2 106:8	36:6,9 71:22	quibble 18:20	108:21	90:3 106:1	rely 64:8 93:11	83:25
properly 28:19	publications	quick 45:9	realm 23:8	regarded 14:2	104:13 106:14	respect 31:22
69:12 73:2	73:16 85:4,24	103:10	reason 1:10 8:6	regardless 59:19	relying 85:13	74:16 105:22
74:13 82:20	94:21 98:16	quicker 75:24	35:13 63:15	regime 36:13	remain 41:10	106:7
proportion	publicly 22:22	quickly 82:14	86:25 91:1	41:2 80:21	remaining 42:14	Respectfully
98:14 108:2	public's 49:13	97:5 98:15	reasonable 27:20	81:8,12,14,25	remains 99:2,2	11:14
proportionate	<b>publish</b> 43:17	quite 1:25 9:14	reasons 29:12	regional 20:10	remark 16:4	respond 66:14
89:12 90:10 <b>proposal</b> 77:14	published 27:18 35:8	13:7 15:14	33:11,13 42:20	98:8 108:4	remarks 28:5	68:8 82:10
86:11	publisher 41:16	25:8 26:7	reassurance 10:5 Rebekah 9:19	regrets 18:3,9,12 18:18	remedies 105:3	response 1:10 35:9 80:15
proposals 67:19	103:17	31:22 39:6 42:6 43:9,12	12:1	regrettable	remedy 17:11 103:5	81:18 102:3,3
74:10,20 75:2	publishers 37:8	44:9 45:22	recalcitrant	64:23	remember 8:6	responses 79:10
76:23 78:10	38:13 41:7	48:6 49:1	43:16 89:7	regular 14:4	9:15,24 10:12	101:17
79:6	44:4 46:17	53:20 55:6	recall 22:6 33:19	regulate 98:18	23:15 24:25	responsibilities
proposed 25:11	74:6 77:23	56:6 62:25	62:23 65:15	regulated 34:2	30:6 33:3	36:22
63:10 78:25	publishing 43:5	66:18 71:21	80:14 108:24	40:3	74:11	responsibility
98:3 106:2	71:10	76:3 77:3	received 62:7	regulating 51:8	reminded 73:12	49:25 73:18
proposition 16:3	pull 20:25 72:17	86:16 92:19	80:16 81:19	66:3	82:8	77:22 79:2
30:3 38:16	purely 37:3	97:5 100:2	91:11 96:4	regulation 33:10	remit 51:17	responsible 42:3
proprietor 24:19	purpose 48:24	102:11 105:21	recognise 47:9	33:12,20,22,24	removed 8:18	53:25 64:19
29:5 30:2 89:4	purposes 93:4	quote 63:21	90:7	34:12,14,15	renamed 98:1	71:10 72:1
90:13,15,25	<b>purse</b> 46:9	quoted 28:17	recognised 37:10	36:11 39:10,13	repaying 8:15	77:23,25
proprietors 21:2	pursue 68:17		37:14 80:7,8	39:18 40:10,18	repeat 25:21,23	responsive 69:8
21:7 25:15	100:18 103:5	R	104:1,24	41:3 50:23	repeatedly 1:25	69:12 70:10
30:22 38:12,23	107:2	<b>R</b> 66:21	recognises 36:19	51:3 59:14	replaced 77:4	rest 14:11 105:9
56:16 74:24	pursuing 101:14	race 99:24	43:19	60:8 61:15,19	replies 13:10	restrict 64:10
proprietorship	pushing 29:17	radical 78:17,20	recognition 6:16	63:13 64:7	reply 10:9,23	88:20
73:17	<b>put</b> 4:22 10:1	raise 49:8 67:21	38:9	66:21 69:24	15:1 103:10	restriction 104:7
propriety 24:16	17:3 21:13,23	109:9	recollect 57:22	86:23 90:4	report 1:11 4:23	restrictions 88:8
prospect 34:16	26:11 27:13	raised 4:6 13:5	recollection	93:3,16 94:16	4:23 5:11,12	88:15 104:23
protection 1:23	31:15 40:10	65:10 79:21	57:16,20 60:14	106:14	31:8 38:2	result 3:14 20:23
4:13 6:1,6,11	42:25 61:6,22	93:2 102:22	recommend	regulator 2:3,20	61:18 62:10	40:18
64:11 72:6	66:17 85:18	ramifications	70:10 90:3	34:17 62:1,9	67:14 76:8	resuming 8:18
protracted 16:17	87:3 88:13	43:23	recommendati	62:12,13,15,16	79:24 80:13,16	reticence 18:15
proud 57:19	89:17 93:17	range 39:3 60:20	47:19 80:12	63:3,6,8,9,11	80:19 81:14,17	reticent 18:2
provide 7:5	98:20,21,22	60:23 61:11	recommendati	64:16,19,24,25	reported 13:12	retired 54:25
46:23 51:23	109:13	63:8 67:13	1:11 16:13	77:14 82:20	20:20 76:18	retraction 43:6
79:16 86:8	puts 107:6	81:2 85:4	52:24 97:8	83:7 84:6	reports 62:7	return 70:20
87:1 104:25	putting 5:13	91:25	recommended	89:10 91:24	represent 50:6	106:25
	1	•	1	1	1	•

review 34:16	Roy 13:18 15:6	20:1 23:17	32:11 60:14,18	91:17,19	106:19	stand 25:18
61:20 68:24	15:25,25 16:10	30:9 58:7,11	September/Oc	104:20	somebody 22:8	55:23
79:4,5 92:5,9	royal 79:23 96:4	section 6:11,18	97:16	signed 32:11	23:20 30:9	standard 36:17
92:10,12,21,24	rule 54:7	12:15,20 28:19	sequence 70:7	42:14 45:21	31:7	standards 60:2,3
93:4,9	ruled 8:8	65:12 103:16	series 70:9 82:5	57:7 97:5	somewhat 2:23	64:20,24 69:6
reviewed 34:19	rules 69:3 70:9	104:2	serious 83:9	signing 85:15	4:8 88:5	70:18 77:19
reviews 1:24	92:15 104:13	sector 52:17	89:11	sillier 11:17	soon 28:7 94:24	78:6,23 89:9
revised 3:19	rulings 15:12,15	see 1:5,12 5:20	seriousness	<b>silly</b> 11:1,2,17,18	sophisticated	89:11 95:7,18
reword 94:5	running 46:14	9:7 10:23	89:13	similar 11:19	51:9	102:18 103:18
rewrite 49:4	107:21	11:23 13:7	servant 19:25	49:19 91:10	sorely 70:21	103:18
rewriting 55:19	<b>Rupert</b> 22:2,3,5	23:23 25:5	20:3 23:18	simple 65:6 78:1	sorry 1:8 9:11	standing 41:25
Reynolds 76:10	rushing 40:6	29:19,19 30:10	24:6	86:2 98:6	12:22 18:7,16	42:14 45:19
Reynolds-type		30:14 44:9,21	served 58:6	simply 19:12	21:4 40:6	stare 93:10
104:12	S	50:19,20 52:1	61:13	37:23 44:14	56:21 58:9	stark 84:10
rich 24:7	sacked 99:24	55:9 60:7	serves 22:2	53:15 90:2	76:3	start 27:18 69:2
rid 24:10 ridiculous 27:9	saddle 57:25	62:14 76:14	<b>service</b> 61:21 63:7 103:23	103:8 sin 23:7,8	sort 12:5 23:13	70:23 74:14
47:4,10	68:2	81:13 82:6 93:16,18 95:9	services 101:17	Sin 25:7,8 Singapore 73:23	28:12 34:23 42:19,21 44:16	75:6 80:18 85:21
right 1:8 8:16,17	safer 75:24	98:14 100:15	103:22	single 28:13	67:11 68:14	started 16:1
10:5,8 11:22	sanction 41:5,6 43:8 63:4	102:11	serving 53:24	single 28:15 sins 4:15	75:8 86:3	started 16:1 starting 84:20
13:17 14:14	sanctions 40:23	Seeing 45:13	54:8,18 55:8	sir 5:10 6:10	88:19 91:7	starts 87:17
16:8 19:22	sat 41:18	seek 17:17 29:5	56:15	9:16 23:14	99:11 105:17	starved 47:2
20:1 24:2 25:4	satis 108:24	66:10 86:8	set 1:14 2:1	24:14 26:11	sorting 16:24	state 14:6,6 58:7
27:25 32:1	satisfaction	93:22 95:19	25:16 36:13	29:1 37:5	sought 36:14	58:12 59:14
33:17 39:20	16:18 17:13,14	seeker 17:24	62:2,12 64:24	38:25 39:6	103:5	64:23 86:23
43:20 44:24	73:6	seeking 24:13	67:15 80:25	58:10,11 62:7	sound 15:10	statement 13:22
45:23 49:13,14	satisfactory	68:18 75:15	81:16 82:10	62:10,15,21,22	18:16	20:5 25:10,18
50:9 56:13	17:11 68:11	80:1 81:9,21	85:6 91:23	67:11,13 75:17	sounds 17:2	25:22 28:24,24
57:10,13 58:8	73:10	87:3 96:7	99:9 104:14	76:17 81:12,17	source 77:7	32:10 33:1
58:23 59:8	satisfied 109:1	seen 37:23 38:10	105:1,11	82:15 83:25	79:11 80:6	57:7,9 58:23
64:22 66:15	satisfy 105:24	41:12 51:7	106:10	87:18 88:12	so-called 82:21	63:15 67:21
67:17 70:5	106:16	56:5,16 59:14	sets 105:22	96:19 97:11	space 34:24	68:1 69:1 71:5
74:8,13 75:5,8	saw 74:21	65:5 96:1	setting 11:24	102:8 103:9	speak 4:4 47:23	74:3 76:24
75:16 78:4	saying 11:11	Select 5:19,21	87:21 109:14	106:11 107:14	speaking 48:12	81:11 82:10
80:2 85:13 86:16 90:11,21	14:5 27:14	7:1,7 26:13,16 75:15	settle 93:21 settlement 16:6	108:23 <b>sister</b> 3:25	62:4 <b>specialism</b> 58:19	<b>statements</b> 28:3 28:16
91:13 94:13	29:19 36:19 55:14 63:2	selection 22:14	16:23	sit 57:3	specific 6:25	states 59:1
95:10,25 98:2	65:8 75:11	self 51:5	seven 45:6 57:14	sitting 39:2	43:8,16,20	stating 62:16
99:19 100:17	84:10 97:23	self-regulation	shadow 75:7	situation 6:7	89:6 90:14,22	statue 63:21
102:12 105:21	100:3 108:1	33:9 49:10	Shakes 87:15	23:19 91:7,10	91:6,18	status 14:2
107:21	says 1:8,15 9:6	50:16 59:2,16	shame 107:16	situations 96:6	Specifics 1:12	statute 51:4
rightly 8:7 78:8	11:18 41:23	59:19,21,22	<b>share</b> 24:17	101:9	spectrum 40:2,8	64:13 67:17
rights 33:18	100:14 101:17	60:7 71:18	52:19,20 74:21	six 13:19 14:5	40:9 87:7	80:7,8,10
49:19 72:4	103:16	72:9,25 75:10	75:3 99:17	28:8	<b>speech</b> 33:16	81:16,20 93:9
100:19,25	scenario 90:25	77:13,21 82:17	<b>shared</b> 76:13	size 89:14	75:22	94:24
ring 61:8	scenes 14:19	82:21 89:20	85:11,11	skeptical 21:3,5	speeches 1:24	statutorily 37:14
rise 29:16 36:15	74:4	94:17,25 96:7	Shawcross 79:21	skewed 16:5	<b>speedy</b> 35:9,9,10	<b>statutory</b> 14:1,13
109:9	sceptic 35:12	98:10	87:23	slap 12:3	spent 103:10	33:10,12,20,21
risk 36:15 42:8	schedule 105:21	self-regulatory	Shell 8:9 41:7	slightly 29:8,17	sphere 29:4	33:24 34:14,15
53:22 55:12 103:1	scheme 35:23	60:2,4 79:23 81:25 92:15	72:18 75:1 85:7,9	30:24 36:11,16 92:4 100:12	94:22 <b>spin</b> 19:23	34:22 35:5,6 35:10,14,19,22
rivals 11:12	38:24	81:25 92:15 seminars 55:24	85:7,9 shelved 25:11	92:4 100:12 slip 99:6	spin 19:23 splashes 27:12	36:4,10,13
RJT13 1:8	school 57:17,18 scientist 73:23	66:16	shied 108:1	slips 11:15	split 31:23	38:9 39:10,13
road 65:8 86:18	scienust 73.23 scope 70:19	send 3:18 34:22	short 22:10	slow 35:11	spoke 8:9 23:21	39:18,21 40:18
95:10	scores 93:22	senior 73:16 74:7	28:17 53:5	slows 34:19	23:21	40:19,20 42:19
rob 102:19	scratching 18:17	74:24	56:24 86:2	small 66:21	spoken 91:22	48:21 50:22
robust 48:19	scrutiny 41:19	sense 4:5 16:20	shortlist 60:16	107:7	104:12 108:18	51:3 62:13
56:10	76:6	38:20 39:18	shortly 71:3	Society 61:17	spokesman 24:6	63:13,18 64:3
role 49:18,20	second 2:1 4:23	47:11,13 82:12	showed 39:2	<b>solely</b> 44:19	<b>sponge</b> 99:15,15	64:5,7,8,9,15
F 1 17	4:23 5:11,12	85:21 95:18	shrinking 52:18	<b>Soley</b> 88:16,17	sportsman 10:1	64:19,23,25
51:17	101010	101:25 102:9	side 45:25 47:14	solicitor 58:17	spring 95:22	80:20,21 81:8
rolling 86:12,21	12:13 13:7			solicitors 61:19	<b>staff</b> 35:17 45:14	81:12 87:1
rolling 86:12,21 room 48:1 73:15	35:13 41:17	sensed 107:19	47:15 60:21			
rolling 86:12,21 room 48:1 73:15 rosa 29:16	35:13 41:17 62:10 67:14	separate 70:18	61:3 66:4,6	solution 14:21	47:4 68:6,23	90:4 93:3,4,16
rolling 86:12,21 room 48:1 73:15 rosa 29:16 Ross/Brand	35:13 41:17 62:10 67:14 80:13,18 81:14	<b>separate</b> 70:18 77:18	61:3 66:4,6 68:13,20 75:19	<b>solution</b> 14:21 16:7 66:14	47:4 68:6,23 77:17	90:4 93:3,4,16 94:2 96:15,17
rolling 86:12,21 room 48:1 73:15 rosa 29:16 Ross/Brand 34:21	35:13 41:17 62:10 67:14 80:13,18 81:14 97:3	separate 70:18 77:18 separation 3:5	61:3 66:4,6 68:13,20 75:19 77:7	solution 14:21 16:7 66:14 68:11 86:7	47:4 68:6,23 77:17 <b>stakeholders</b>	90:4 93:3,4,16 94:2 96:15,17 97:24 103:16
rolling 86:12,21 room 48:1 73:15 rosa 29:16 Ross/Brand 34:21 round 17:5	35:13 41:17 62:10 67:14 80:13,18 81:14 97:3 Secondly 72:16	<b>separate</b> 70:18 77:18 <b>separation</b> 3:5 46:1,16	61:3 66:4,6 68:13,20 75:19 77:7 <b>sign</b> 45:20 83:1,6	solution 14:21 16:7 66:14 68:11 86:7 88:1 108:14	47:4 68:6,23 77:17 <b>stakeholders</b> 78:12	90:4 93:3,4,16 94:2 96:15,17 97:24 103:16 104:1,9,16
rolling 86:12,21 room 48:1 73:15 rosa 29:16 Ross/Brand 34:21	35:13 41:17 62:10 67:14 80:13,18 81:14 97:3	separate 70:18 77:18 separation 3:5	61:3 66:4,6 68:13,20 75:19 77:7	solution 14:21 16:7 66:14 68:11 86:7	47:4 68:6,23 77:17 <b>stakeholders</b>	90:4 93:3,4,16 94:2 96:15,17 97:24 103:16

	_	_		_	_	_
stay 41:15 48:13	70:23	sword 86:22	temptation	42:13,17,21,23	102:17	<b>truth</b> 57:9
stay 41.15 46.15 stayed 21:16	subsumed 71:13	96:14,15,18	52:22	42:25 43:14	throw 61:8	try 8:5 21:17
32:17	subterfuge 2:17	97:3 107:6	ten 34:25	44:3,8 45:25	Thursday 75:14	52:9 75:16
Stephen 70:15	subterranean	sworn 32:4 57:1	tendency 41:14	45:25 46:14	Tim 23:20	82:2 84:17
stick 42:12 83:3	23:1	system 16:5	tent 41:7,10,15	47:2 48:7,18	time 3:17 10:3	97:19
83:5	success 17:23	17:12,13,14	52:15	48:19 49:22,25	10:24 11:15	trying 18:17
sticking 106:22	22:9	50:18 53:13	term 9:14 10:2,3	50:21 51:2,11	12:12 19:20	20:25 23:15,25
stir 11:13	successful 16:14	56:5 59:25	12:13 22:25	51:14,16 52:23	21:8 28:25	56:3,4 70:13
stop 35:20 36:3,3	successfully 93:6	66:23 67:11,23	43:19 53:5,6	54:1,2,21 55:5	30:15 34:6	75:7 104:11
36:9 45:12	successor 40:24	72:11,16,25	terms 7:7 25:14	56:11,13,15	35:7 42:2	tune 11:15
51:4 101:13	60:3 89:7	75:24,24 77:12	61:5 62:15	57:13,14 58:2	50:11 61:10	turn 7:22 9:12
stopped 101:8,11	90:15 91:4	78:3 79:14,23	76:23 77:6	58:7,11 59:11	62:23 69:15,19	16:15 17:4,5
stopping 35:17	such-and-such	80:5,9 82:19	78:24 79:11	62:10,25 64:2	81:23 87:1,3	21:18
36:6	47:21	84:21,24 91:23	81:9 91:24	64:7,18 66:9	93:13,14 96:23	turned 21:8
stories 20:20	suddenly 62:19	93:25 94:1,3	98:22	66:18 67:4,5,9	98:5 100:3	two 14:16,22
story 36:6	96:5	94:20,25 95:3	terrific 43:9	68:13,20 69:22	102:23 103:10	21:10,22 28:24
straightforward	sued 43:5	96:17 97:23,24	test 69:17 103:16	70:12,14,21	105:20 106:8	28:25 30:5
102:21 109:3	suffering 10:2	100:23 101:3,5	104:11	71:16 73:11	108:11	32:15 39:2
strange 4:11	suffice 63:21	101:7,20	textbook 64:13	74:22 75:17	times 7:17 70:2	68:16 77:8,15
Street 20:3,24	sufficient 30:22	102:18,20	thank 17:19 29:1	77:7,11 78:8	87:9,10 102:23	86:17 93:6
21:8 26:8	63:1 67:5	103:6 105:12	32:1,2,3,8	78:15,18 80:2	103:1	95:7 97:22
strengthened	87:18 105:7	systemic 56:4	44:23 49:6	80:11,14,15,24	time-limited	101:17
3:20 48:10	sufficiently 56:9	89:11	56:18,19 57:6	81:22 82:4,16	97:2	two-page 79:7
strengthening	91:25 98:19		57:12 58:16	82:20 83:12	tinkering 67:4	type 29:9
94:19,20	suggest 2:10	T	59:9,17 60:9	84:22 86:9,16	77:5	
strengths 67:22	37:24 85:19	tab 1:5 9:12 10:9	61:24 63:1,13	87:18,20 88:16	tiny 109:9	U
stress 89:19	suggested 6:21	12:13,16,20	64:15 74:1	88:20 89:21,22	titles 8:9 55:10	UK 59:12 71:24
stressing 89:22	28:2 97:15	table 4:23 5:11	100:10,11	91:21 92:13,21	108:5	ultimately
stress-tested	suggestions 54:20	5:11,14 48:9	109:4,5,6,8,17	92:23 93:9,12	today 40:7 51:11	104:19,20
77:1 <b>strings</b> 46:10	summarise 65:8	60:21 61:3	Thatcher 58:7 Thatcher's 34:7	94:5,9,14,25 96:10,21 97:10	52:23 55:7 82:12	unacceptable
strings 40.10 strong 65:23	summarised	85:25 <b>tabloid</b> 11:15	theme 86:1	97:14 98:3,4	today's 81:22	63:16 81:10 uncertain 92:16
88:18	79:6	tabloids 14:3	themes 48:16	99:10,13 100:6	told 26:8 60:25	underpaid 47:8
stronger 65:24	summary 80:18	tabloids 14.3 take 2:6 3:24	thereabouts	102:5,12 103:9	61:14,25 66:12	underpinned
73:21	summon 70:25	16:16 32:22	55:11,12	103:14 105:4	90:16	78:3
strongly 11:4	Sun 9:15 11:4,8	33:22,24 34:3	thick 48:8	106:5,10	Tomorrow	underpinning
67:9 107:10	12:4	37:10 41:16	thing 2:12 4:3,5	107:12,14,15	109:17	79:14,22 87:1
structure 37:4	supping 29:22	42:3 45:4	4:19 15:20	108:6	tone 10:18	94:2
37:17 59:16	support 53:8	53:12 56:20,21	25:25 28:12	thinking 25:7	tools 52:9	understand
60:4 70:21	74:16 86:19	68:13 70:7	29:20 30:2	87:25 101:23	top 1:8 4:24 5:2	15:13 18:1
77:4 86:3,7,9	supported 21:15	74:12 88:7	31:21 36:14,14	thinks 13:10	13:7	38:5,5 43:2,12
86:19 96:8,21	33:10 99:23	93:21	45:10 56:9	94:13	topic 7:19 109:9	49:12 52:3,6
105:18 106:6	supporters 34:6	taken 2:24 31:15	91:23	third 4:16,17,18	tort 25:16	53:21 59:18
106:13,13	supporting	42:15 61:16	things 2:12 13:22	70:20 72:19	total 46:1	71:21 74:3
structured 37:2	97:18	72:3 73:18	21:11,21 23:13	79:12 80:5	totally 70:23	76:3 82:24
style 10:18	supportive 21:13	87:13 88:5	26:19,21 48:25	101:25 102:5	touched 72:12	86:2 91:16
sub 29:16	31:18 43:2	92:12	104:25	102:14 105:23	Toulmin 2:24	96:18 104:10
subcommittee	suppose 8:15	takes 108:11	think 2:5,14,18 3:13,18 4:16	Thomas 1:14,16	track 49:22	105:19 106:15
60:25 subcommittees	11:25 38:14 43:18 87:25	talk 64:7	4:18 5:10 6:16	2:9,16 3:4,22 4:8,17 5:12,15	transactions 5:13	understandable 87:5
56:15	89:25 91:15	talked 56:11 talking 22:24	7:4,20 8:1,3,11	6:13 109:11	transgressed	87:5 understanding
subject 30:6 31:7	98:21 100:7	23:2 36:12	8:17,17,20 9:2	thoroughgoing	11:20	69:20 78:22
38:17 50:16	sure 21:16 30:25	39:1,14 64:11	9:5,8,9 11:14	78:1	transgression	80:4,9 86:11
55:22 77:1	42:6 43:9	104:8 107:19	12:11,14 13:6	thoroughly 4:19	27:1,11,16	92:18
92:9 93:24	50:23 55:1	tangible 41:4	13:18 14:4	thought 4:1	transitional	understatement
submit 91:3	61:9 69:14	tapestry 24:7	16:3 18:16,18	10:16,24 20:25	98:12	9:3
subscribe 60:1	75:7,18 83:25	target 75:6,11	19:2 21:23	26:9 43:14	transparency	understood
subscribed 60:5	88:2,3 90:6	targeted 33:1	22:3,20,25	45:16,23 48:25	14:18	28:19 78:7
subscription	91:24 92:2	task 105:8	23:20 24:14,23	61:22 62:16	tremendous 67:9	88:10
8:20 91:2	surely 73:14	taste 40:12	25:2,20,23,25	93:6 97:20	tribunal 80:21	undoubtedly
subscriptions	surface 29:16	tasters 28:9	26:5 27:20	threat 17:3 86:23	tried 11:23 22:13	38:8 84:6
7:20 8:15	31:19	team 72:6 84:6	28:20 31:1,21	threaten 64:6	22:14 102:6	unfair 3:13 12:7
substance 93:25	surprise 88:6	teeth 40:25	31:24 33:4,21	three 32:17 35:3	trouble 21:9,10	39:7 108:22
<b>substantial</b> 40:25 84:23	surprised 45:10 45:13 75:4	television 34:2	34:12,25 35:3 35:10 36:7	57:25 68:2 84:19 89:1	34:21 53:7 <b>true</b> 7:12 97:23	unfairly 83:12
89:3	surprising 31:4	tell 15:2 telling 14:10	37:7,14 38:6	93:15	truly 51:8	unfortunately 10:2
substantially	suspect 28:5	temng 14:10 template 38:6	41:2,8 42:10	three-tiered	Trust 34:22	unilaterally
	=====================================	compian 50.0	11.2,0 12.10			amuci any
L						

86:24	wait 52:1 97:21	ways 36:11 40:3	107:18	18:7 22:21	<b>1990s</b> 20:13	<b>60/40</b> 68:14
unique 106:5	105:25	86:5 87:25	wished 29:5	59:15 87:25	<b>1993</b> 62:8,10	
uniting 106:2	Wakeham 61:6	96:21	wishes 96:22	wrote 8:7 99:13	96:20	8
unpleasantly	61:13,22	weaknesses	109:11	100:2	<b>1994</b> 19:21 21:9	<b>8</b> 49:11
35:11	Wales 58:8,12	72:11 77:12	withdraw 104:21		<b>1996</b> 19:22	
unprecedented	61:18	wealthy 102:25	withdrew 86:24	Y	<b>1997</b> 58:14,15	9
106:1	walk 43:7	103:4	witness 13:22	Yarmouth 32:22		<b>9</b> 9:6,9 12:18
unrivalled	want 4:22 18:16	wearing 38:3	25:10,21 32:3	yeah 1:13 8:17	2	80:18 81:13
107:23	19:24 24:21	web 84:21 92:6	32:10 33:1	9:13,22 10:10	<b>2</b> 54:6 56:12	<b>98</b> 17:16
updated 48:24	25:6,24 26:10	website 109:14	57:7 58:23	11:2,22 17:25	105:21	
<b>upper</b> 65:17	35:9,9 41:3,15	week 34:25 48:8	63:14 71:5	17:25 19:9	<b>2.00</b> 1:2	
urgent 78:20	44:14 51:19	109:11	76:24 81:11	25:19 26:14,17	<b>20s</b> 99:23	
urgently 70:22	52:13 60:7	weekend 47:7	92:5 99:11	26:24 29:19	<b>2001</b> 7:15	
use 9:25 10:3	61:10 62:24	weighed 19:6	witnesses 55:23	year 8:8 11:21	<b>2002</b> 7:14	
17:24 28:21	82:16 94:5	weight 39:22	65:11 71:1	11:24 12:5	<b>2003</b> 3:9 6:20	
66:10 72:7	95:8 102:1,13	weird 9:10	84:3 102:17	15:9,16 32:11	9:18 11:25	
89:23 97:11	103:21	welcome 107:14	wonderful 66:2	32:21 33:4	16:2 26:13,15	
107:6	wanted 2:8 3:10	well-known	66:16	47:3 57:8,24	27:23	
useful 99:15	5:19,22 81:21	32:14 58:17	Wong 73:23	74:6 76:17	<b>2004</b> 3:9 11:25	1
usual 53:16	82:15 86:13	went 3:15 7:14	word 9:25	years 6:15 7:15	32:16	1
109:14	wants 91:1	20:11 23:13	worded 90:20	13:19 14:5	<b>2005</b> 66:6	
utilise 82:14	war 87:10	32:21 35:2	91:12	20:15 21:10,22	<b>2006</b> 1:4 32:16	1
utilised 103:22	ward 14:1,13	42:1 57:19	wording 48:6	24:17 28:8,24	<b>2008</b> 7:21 8:7	1
utterly 22:3	warmly 89:21	West 14:3	90:18 91:16	28:25 30:5	<b>2009</b> 8:16 13:1	1
<b>T</b> 7	warning 25:4	we'll 30:14 31:24	words 3:19 14:11	32:15,17 45:21	13:15 27:23	1
V	36:17	56:21 63:10	68:14 69:18	50:3 54:14,16	103:11 105:17	1
valedictory 13:9	washing 40:11	67:19 69:15	74:19 91:4,13	57:14 58:15	<b>2012</b> 103:15	
<b>valuable</b> 46:23	Washington	70:20 71:3	107:5,14	61:14 63:22	<b>21</b> 26:15 74:2	
52:9 59:12	30:11	we're 9:23 27:21	work 2:6,11 31:9 31:11 35:25	65:4 86:13,17	<b>24</b> 109:13	
77:16	wasn't 3:23 5:21 6:13 8:25	32:8 33:13 39:13 58:5	37:2,22,23	90:6 92:13	<b>250</b> 15:16 63:22	
value 10:18 51:6	16:17 22:7	104:8 106:19	47:4,9 68:11	96:1 108:15	<b>26</b> 9:18 103:16	
valued 65:17 Vardi 60:17	25:2 37:23	we've 2:21 14:6	72:20 73:22	year's 89:16	3	
various 32:20	40:9 73:23	15:8 17:21	77:16 86:7	<b>yesterday</b> 2:24 60:11 68:14		
40:3	87:22,24 93:9	34:10 52:23	96:11,11,12	83:16	3 10:9 58:23	
vast 17:15	96:24	77:11 83:2	97:17	young 100:3	63:14 81:11	
vehicle 51:13	watch 31:11	87:10 101:11	workable 37:7	young 100.5	<b>3(1)</b> 65:12	
versus 49:13	Watchdog 13:3	106:6	worked 67:12	0	<b>3.24</b> 56:23 <b>30</b> 13:1 50:3	
viable 77:4	water 40:20	whatsoever	78:8	<b>00389</b> 1:6	60:14,18	
vice 81:9	watersheds	48:11	working 30:5	00307 1.0	<b>35</b> 58:15 65:4	
victims 50:7	40:13	whichever 30:1	works 15:13	1	90:6	
view 5:12 8:23	way 2:6,11 7:3	whip 32:22	38:24 66:23,24	1 9:12 68:21	<b>369</b> 1:7	
30:19 33:24	11:20 12:6	White 26:1 30:20	world 5:18 59:13	69:17 80:12	<b>389</b> 1:8	
34:3 46:20	14:18 15:24	Whitehall 26:1	worried 35:14	101:16	<b>39</b> 15:8	
51:5 52:20	20:8 21:24	who've 108:18	100:5	1st 68:22	<b>39320</b> 9:21	
53:10,22 62:1	22:12 24:13	wide 39:3 78:16	worries 37:16	<b>10</b> 1:5 2:16 3:19	<b>39323</b> 10:9	
65:1 67:22	28:11 31:5	91:25	worry 35:7,18,20	4:3 9:10 49:11		1
87:6 88:21	36:5 37:2	widely 41:13	36:1,2 100:4	68:1 109:18,20	4	1
90:5 93:1	38:13 42:7	74:18 78:11	worse 21:11,11		<b>4</b> 19:1.1	
	43:10 54:21	wider 63:3 87:7	21:12 90:4	<b>11</b> 47:6	<b>4</b> 19:1,1 <b>40</b> 50:3	
90:5 93:1 99:20 <b>views</b> 29:13	43:10 54:21 62:22 65:5	wider 63:3 87:7 widespread	21:12 90:4 97:7			
90:5 93:1 99:20 <b>views</b> 29:13 65:20,23 88:18	43:10 54:21 62:22 65:5 66:11 67:15,17	wider 63:3 87:7 widespread 94:14	21:12 90:4 97:7 worst 45:13	<b>11</b> 47:6 <b>12</b> 12:13,16,21	<b>40</b> 50:3	
90:5 93:1 99:20 <b>views</b> 29:13 65:20,23 88:18 99:19 106:12	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9	wider 63:3 87:7 widespread 94:14 widest 75:16	21:12 90:4 97:7 worst 45:13 worth 42:13	<b>11</b> 47:6 <b>12</b> 12:13,16,21 47:6 57:8 69:1	<b>40</b> 50:3	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23	<b>11</b> 47:6 <b>12</b> 12:13,16,21 47:6 57:8 69:1 104:2	<b>40</b> 50:3 <b>49</b> 15:9	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22	<b>11</b> 47:6 <b>12</b> 12:13,16,21 47:6 57:8 69:1 104:2 <b>13</b> 1:4 71:5,9	<b>40</b> 50:3 <b>49</b> 15:9	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15	40 50:3 49 15:9 5 5 9:4,7,9 12:18	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12 vitally 106:12	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20 89:15 90:21	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19 window 82:14	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13 wrestled 102:6	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23 19 8:8 72:19,22	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17 54998 79:12	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12 vitally 106:12 vocally 106:17	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20 89:15 90:21 91:12 92:12	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19 window 82:14 97:10	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13 wrestled 102:6 wrist 12:3	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23 19 8:8 72:19,22 73:7 81:2	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17 54998 79:12 55 28:19 59 6:11,18	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12 vitally 106:12 vocally 106:17 voluntary 59:25	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20 89:15 90:21 91:12 92:12 94:12,13,15,20	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19 window 82:14 97:10 Wirral 57:1,5	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13 wrestled 102:6 wrist 12:3 write 7:21 9:14	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23 19 8:8 72:19,22 73:7 81:2 1965 59:6	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17 54998 79:12 55 28:19	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12 vitally 106:12 vocally 106:17	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20 89:15 90:21 91:12 92:12 94:12,13,15,20 97:19 98:18,23	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19 window 82:14 97:10 Wirral 57:1,5 wise 30:18	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13 wrestled 102:6 wrist 12:3 write 7:21 9:14 written 12:23	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23 19 8:8 72:19,22 73:7 81:2 1965 59:6 1969 59:6	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17 54998 79:12 55 28:19 59 6:11,18 6 6 12:15,18,20	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12 vitally 106:12 vocally 106:17 voluntary 59:25 71:17 72:16	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20 89:15 90:21 91:12 92:12 94:12,13,15,20 97:19 98:18,23 101:6 102:9,11	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19 window 82:14 97:10 Wirral 57:1,5 wise 30:18 wish 25:15,21	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13 wrestled 102:6 wrist 12:3 write 7:21 9:14 written 12:23 35:8 69:3	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23 19 8:8 72:19,22 73:7 81:2 1965 59:6 1969 59:6 1977 58:13	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17 54998 79:12 55 28:19 59 6:11,18 6 6 12:15,18,20 6-compliant	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12 vitally 106:12 vocally 106:17 voluntary 59:25 71:17 72:16	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20 89:15 90:21 91:12 92:12 94:12,13,15,20 97:19 98:18,23 101:6 102:9,11 102:13 104:1	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19 window 82:14 97:10 Wirral 57:1,5 wise 30:18 wish 25:15,21 62:3 71:4	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13 wrestled 102:6 wrist 12:3 write 7:21 9:14 written 12:23 35:8 69:3 88:16	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23 19 8:8 72:19,22 73:7 81:2 1965 59:6 1969 59:6 1977 58:13 1980s 14:3	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17 54998 79:12 55 28:19 59 6:11,18 6 6 12:15,18,20	
90:5 93:1 99:20 views 29:13 65:20,23 88:18 99:19 106:12 vilification 99:12 virtually 62:19 85:4 virtue 2:7 64:20 visible 41:4 visit 84:3 visualise 36:12 vitally 106:12 vocally 106:17 voluntary 59:25 71:17 72:16	43:10 54:21 62:22 65:5 66:11 67:15,17 67:24 68:8,9 69:14,15,20 70:12,17 71:15 72:19 74:14,21 75:5,15,17 76:10 80:2,11 81:19 82:15 85:5 86:16,20 89:15 90:21 91:12 92:12 94:12,13,15,20 97:19 98:18,23 101:6 102:9,11	wider 63:3 87:7 widespread 94:14 widest 75:16 Wild 14:3 Wilkes 63:22 willing 85:5 88:25 willingness 85:21 107:20 win 20:19 window 82:14 97:10 Wirral 57:1,5 wise 30:18 wish 25:15,21	21:12 90:4 97:7 worst 45:13 worth 42:13 worthy 42:23 wouldn't 14:22 17:18 45:21 48:12,12,13 71:14 92:9 95:5,13 97:25 101:13 wrestled 102:6 wrist 12:3 write 7:21 9:14 written 12:23 35:8 69:3	11 47:6 12 12:13,16,21 47:6 57:8 69:1 104:2 13 1:4 71:5,9 14 71:6 15 24:16 32:11 74:5 78:15 15.32 56:25 16 1:5 17 57:24 1762 63:23 19 8:8 72:19,22 73:7 81:2 1965 59:6 1969 59:6 1977 58:13	40 50:3 49 15:9 5 5 9:4,7,9 12:18 5.04 109:19 50 74:23 51 15:9 53.1(a) 84:17 54998 79:12 55 28:19 59 6:11,18 6 6 12:15,18,20 6-compliant	