

1 Tuesday, 6 September 2011

2 (10.30 am)

3 LORD JUSTICE LEVESON: Good morning.

4 I don't consider this to be a court, but we will see
5 how we get on. There is no prohibition on the use of
6 live text-based communications, and at least at present
7 I am satisfied that its use does not pose a danger to
8 the interference or the proper conduct of this Inquiry.
9 Unless any difficulty arises, I am happy to make it
10 clear that the use of unobtrusive, hand-held, virtually
11 silent equipment for the purposes of simultaneous
12 reporting of proceedings to the outside world, as they
13 unfold, is entirely acceptable.

14 On 28 July I made it clear that the Inquiry would
15 start by focusing on the relationship between the press
16 and the public, and I referred to holding a series of
17 seminars so that the issues could be considered from the
18 perspective of all involved. I invited anyone who
19 wished to be identified as a core participant within
20 Rule 5 of the Inquiry Rules 2006 to notify the secretary
21 to the Inquiry prior to 31 August, and I said that
22 I would hold a preliminary hearing to address key
23 aspects of the way in which the Inquiry would be
24 undertaken. This is the first such preliminary hearing.

25 A number of applications have been submitted in

1 which different parties have sought to be designated as
2 core participants. Some of these applications
3 demonstrate a lack of understanding of the circumstances
4 in which it is appropriate to make such a ruling, the
5 effect of designation, and the extent to which those not
6 designated will or may continue to have a role in the
7 work that is undertaken.

8 Before hearing applications, which I will do
9 shortly, it is, therefore, appropriate to say something
10 more about how I am minded presently to proceed, subject
11 of course to hearing representations to the contrary.

12 The first important principle is to identify the
13 scope of what is being undertaken. The terms of
14 reference of the Inquiry are, as I have no doubt you
15 will all have noticed, widely drawn. It is worth
16 repeating that they are split into two, only the first
17 of which I am presently in a position to embark upon
18 prior to the conclusion of the police investigation and
19 the resulting prosecution, if there is to be one.

20 Part 1, and it's worth just repeating the terms, is
21 as follows:

22 "1. To inquire into the culture, practices and
23 ethics of the press, including:

24 "(a) contacts and the relationships between national
25 newspapers and politicians, and the conduct of each;

1 "(b) contacts and the relationship between the press and
2 the police, and the conduct of each;

3 "(c) the extent to which the current policy and
4 regulatory framework has failed including in relation to
5 data protection; and

6 "(d) the extent to which there was a failure to act
7 on previous warnings about media misconduct.

8 "2. To make recommendations:

9 "(a) for a new more effective policy and regulatory
10 regime which supports the integrity and freedom of the
11 press, the plurality of the media, and its independence,
12 including from government, while encouraging the
13 highest ethical and professional standards;

14 "(b) for how future concerns about press behaviour,
15 media policy, regulation and cross-media ownership
16 should be dealt with by all the relevant authorities,
17 including parliament, government, the prosecuting
18 authorities and the police;

19 "(c) the future conduct of relations between
20 politicians and the press; and

21 "(d) the future conduct of relations between the
22 police and the press."

23 This part of the Inquiry, therefore, splits into
24 four elements or modules. The first concerns the
25 relationship between the press and the public, and

1 extends not merely to the allegations of phone hacking
2 but also to other potentially illegal or unethical
3 behaviour.

4 It will require an understanding of the climate in
5 which the broadsheet and tabloid press are required to
6 operate, and to consider what limits, if any, there
7 should be on what intrusive behaviour is justifiable as
8 in the public interest, either for investigative
9 purposes or because of other public interest, however
10 that phrase might be defined.

11 The second concerns the relationship between the
12 press and the police, and the extent to which that has
13 operated in the public interest or has become too close.

14 The third deals with the relationship between press
15 and politicians. Without descending into a detailed
16 examination of the areas covered by part 2 of the
17 Inquiry, which follows the police investigation, it will
18 be necessary to achieve a sufficient narrative of events
19 to form the basis for the fourth module of the first
20 part of the Inquiry, namely recommendations as to the
21 way forward.

22 I have been asked to report on this part of the
23 Inquiry to the Secretary of State for Culture, Media and
24 Sport, and the Home Secretary, within 12 months. The
25 breadth of the Inquiry is such that I will have to be

1 extremely focused in relation to those areas on which it
2 will be necessary to hear oral evidence, and I will
3 expect everyone involved in the Inquiry to be similarly
4 focused.

5 We will limit our approach to the essential, on the
6 basis that if we are to travel along each avenue that we
7 could there is no prospect of concluding the work, even
8 in a very much longer period than that previously
9 envisaged.

10 Before the evidence starts I shall set out
11 a timetable, about which I shall ask for
12 representations, but I shall then require everyone to
13 adhere to it.

14 Again, subject to representations to the contrary,
15 I am presently minded to proceed by holding a series of
16 what might be described as teaching sessions to provide
17 to me and to the assessors key factual material on
18 matters that are relevant to the issues which the
19 Inquiry will be considering. Two will be held in
20 public, and concern the existing legal framework
21 governing the operation of the media, including the
22 relationship between Articles 8 and 10 of the European
23 Convention of Human Rights, data protection, freedom of
24 information, along with the law relating to
25 broadcasting, both at UK and at applicable European

1 level. This will cover both the criminal and the civil
2 law.

3 Another teaching session is likely to provide the
4 factual material that identifies the relevant regulatory
5 models, the structures and concepts, as well as dealing
6 with Ofcom and broadcasting regulation, including models
7 such as the Advertising Standards Agency, the
8 Information Commissioner, the Financial Services
9 Ombudsman, and any other relevant suggested model.

10 These are not intended to start the debate, but
11 merely to provide the present picture, the present
12 starting point.

13 The third teaching session is the only session that
14 I am presently minded to order to be held in private,
15 and that is to provide information as to the
16 technicalities of interception, both of mobile and other
17 phone calls, emails and other forms of covert
18 surveillance. Again it's simply so that I, along with
19 my assessors, can learn what can be achieved, albeit in
20 disregard of the law, in order that we can better
21 understand the issues.

22 These sessions are not intended to deal with matters
23 of opinion or potential solutions but are factual in
24 content only. Save in relation to the third, as I've
25 said, they will be held in public, and I hope that they

1 will be available either visually or at least in
2 transcript form to the wider public. That's not to say
3 that anyone else will be invited to participate in the
4 sessions. They are simply fact finding, as I have
5 described.

6 From the teaching sessions, I am presently minded to
7 proceed to a series of seminars of the type that
8 I mentioned on 28 July. For this purpose, I intend to
9 focus initially only on the first module of part 1, to
10 which I've just referred. That's to say the
11 relationship between the press and the public. At the
12 moment, I have three such seminars in mind, and in each
13 case their purpose is very different to the teaching
14 sessions. They will deal with broad public policy
15 issues, and provide an opportunity for experts to make
16 their thinking available to the Inquiry in a collusive
17 way. Because what I want is to invite experts to
18 present papers to spark debate which will inform me, the
19 assessors and, I hope additionally, the public.

20 Without presently seeking to draft the questions,
21 the first is likely to concern the competitive pressures
22 on journalists, or what might be described as the market
23 economics of the mainstream news media.

24 There has been some criticism of the fact that none
25 of the assessors has tabloid experience, and I intend

1 that this seminar should make good any deficiency in
2 knowledge or understanding of the pressures facing the
3 tabloid press, not least following the growth of social
4 media and the internet.

5 I would also wish to deal with issues such as the
6 structures in place that provide oversight to the means
7 whereby stories are obtained, and a check on the
8 legality and ethical propriety of the way in which that
9 story has been obtained. In that regard, the extent to
10 which money changes hands and the oversight of such
11 payments is also highly material.

12 The second such seminar is likely to be concerned
13 with press ethics and the law, or, to put the same point
14 another way, what is the balance between press freedom
15 and the rights of privacy, and what is the role of the
16 law or regulation in maintaining standards on the one
17 hand and defending the essential freedom of the press on
18 the other.

19 Are ethical principles common to all, or are there
20 differences? To what extent should journalists or their
21 editors be held accountable for their decisions about
22 what is perceived to be in the public interest?

23 The third seminar will cover regulatory structures
24 and examine the advantages and disadvantages of
25 different regulatory approaches, including

1 self-regulation. The issue extends to consideration of
2 what a different system might look like, whether it
3 could provide a reasonable system of remedies for those
4 whose rights have been impugned or those who wish to
5 assert that their rights have been impugned. It will
6 obviously include the risks of a consequential chilling
7 effect on the press; who should take the decision as to
8 the balance to be struck between competing public
9 interests, and to whom are such people accountable.

10 So that describes or sketches out my present view of
11 the seminars, which I hope will again be open to the
12 public and all concerned with the Inquiry, and will
13 generate public debate.

14 Again, subject to argument, I'm minded to seek to
15 use them to encourage not only interested professional
16 parties but also members of the public to provide the
17 Inquiry with evidence of their views, and I intend to
18 look for ways in which I might achieve that end. It's
19 only after these seminars, when we have seen what the
20 present position is and seen the views as to what the
21 future might look like, that we will then be ready to
22 take evidence and seek to provide the narrative both for
23 the thrust of what has been happening but also for the
24 wider recommendations that I have to make.

25 Furthermore, after the evidence has been concluded,

1 it's probable that I'll seek to embark upon a further
2 series of seminars to gather together the various
3 strings that have been floated in the preceding weeks
4 and months.

5 Either immediately following this work or
6 potentially concurrently with it, I shall embark on
7 a similar series of exercises in relation to the
8 relationship between the press and the police, and in
9 relation to the press and the political class. At this
10 stage I don't provide further detail as to those
11 seminars.

12 The reason I have gone into such detail in respect
13 of the press and the public first of all is because it's
14 where I intend to start, but it's also to underline not
15 only that certain applicants for core participant status
16 may well be focusing on the wrong module and need only
17 make application for part of the Inquiry, but also to
18 make the point that no-one should be applying for this
19 status on the basis that otherwise their point of view
20 will not be heard.

21 In at least one inquiry recently conducted, expert
22 evidence was provided by those with strong views on the
23 issues, and some such persons were also allowed to
24 submit written representations to the inquiry at its
25 conclusion, which the chairman made it clear he would

1 consider without obviously being bound by them. I am
2 prepared to consider a similar approach for interest
3 groups in this case.

4 So with that rather long run-up to the wicket,
5 I turn to the question of core participation.

6 At this stage I am concerned with core participants
7 for the first module, the press and the public.
8 A decision in favour of such status does not necessarily
9 mean that a party so designated will remain a core
10 participant throughout the Inquiry. Rule 5.3(b) of the
11 Inquiry Rules 2006 specifically provides that a person
12 shall cease to be a core participant on a specific date
13 that I specify.

14 Similarly, a decision not to award core participant
15 status does not preclude a further application at
16 a later stage of the Inquiry.

17 As to who should be a core participant, provided
18 such person consents I need only refer to Rule 5.2 of
19 the Inquiry Rules, which does not provide me with
20 an exhaustive list of what I might take into account
21 when making the decision, but does require me in
22 particular to consider whether the person played or may
23 have played a direct and significant role in relation to
24 the matters to which the Inquiry relates, whether the
25 person has a significant interest in an important aspect

1 of the matters to which the Inquiry relates, or the
2 person may be subject to explicit or significant
3 criticism during the Inquiry proceedings or in the
4 report or in any interim report.

5 As to this last feature, I remind everyone that my
6 remit in part 1 of the Inquiry is different to that in
7 part 2, which must follow any prosecution and which is
8 more concerned with who did what to whom and who knew
9 about it, rather than the wider issues to which I have
10 referred.

11 It's clear from some of the material that has been
12 submitted to the Inquiry that it's believed that core
13 participant status will provide rights to documents, to
14 making opening and closing submissions which, as to
15 closing submissions, I have dealt with, and the right to
16 cross-examine witnesses.

17 As to documents, the Rules do not specifically
18 provide for disclosure of documents to core
19 participants, and I know of no suggestion they have
20 an absolute right to see all the documents that the
21 Inquiry proposes to use, although fairness is likely to
22 require such disclosure both to core participants and
23 affected witnesses and their representatives.

24 In any event, the majority of documents will be
25 placed in the public forum. I intend, as I have always

1 made clear, that this Inquiry should be as transparent
2 as it is possible to make it.

3 Finally, in relation to Rule 10 of the Inquiry
4 Rules, it is clear that subject to exceptions, any
5 witness giving oral evidence will only be questioned by
6 counsel to the Inquiry. Rule 10, subsection 2, permits
7 me to direct that the legal representative of any
8 witness may be permitted to ask the witness questions,
9 and Rules 10.3 and 4 also gives me discretion to allow
10 core participants or other legal representatives to
11 cross-examine relevant witnesses.

12 Again, I will hear submissions on this topic,
13 probably at a subsequent preliminary hearing, but given
14 the pressure on the Inquiry I may well require these
15 issues to be raised with counsel to the Inquiry, who
16 will then be able to conduct such cross-examination as
17 he believes is appropriate, and at the very least
18 restrict other cross-examination. The process is, after
19 all, inquisitorial.

20 What I have been trying to say, therefore, is that
21 there is no bright line between core participants and
22 others affected by the Inquiry.

23 Before hearing representations, however, I ought to
24 say one other thing about the subject of costs. I am
25 aware that the ministers responsible for this Inquiry

1 intend to give directions in the form of a determination
2 under Section 40, subsection 4 of the Inquiries Act
3 2005. Until I have received those directions I don't
4 intend to make any order for funding, although I do
5 underline that Rule 21 of the Rules mandates that I must
6 take into account the financial resources of any
7 applicant, and if any applications for funding are to be
8 made, I shall require full details so as to ensure that
9 hard-pressed public funds are being deployed only in
10 accordance with the law, and the proper exercise of my
11 discretion.

12 I anticipate that the Solicitor to the Inquiry will
13 issue a protocol dealing with this issue very shortly.

14 I will make a decision about core participation
15 within the course of the next few days, but intend to
16 thereafter invite submissions as to funding requests
17 within seven days of that designation.

18 There will, as I have intimated, be a further
19 hearing before the end of the month to deal with this
20 and some of the matters to which I have referred this
21 morning.

22 So with those rather lengthy introductory remarks,
23 I am now very interested to hear from others, and more
24 specifically from those who wish in the light of what
25 I have said to pursue applications for core participant

1 status.

2 MR GARNHAM: Sir, my name is Garnham, I represent the
3 Metropolitan Police Authority -- sorry, the Police
4 Service. My friend represents the Authority.

5 Sir, I wonder if you might consider giving us a few
6 moments to take instructions in the light of the opening
7 remarks you have made? I for one would be glad of that
8 opportunity before making my submissions to you.

9 LORD JUSTICE LEVESON: I think that's extremely sensible,
10 and I should have suggested it myself. I shall rise for
11 a few minutes, and doubtless an opinion will be formed
12 when everybody is ready.

13 (10.50 am)

14 (A short break)

15 (11.07 am)

16 LORD JUSTICE LEVESON: Right. Well, I have got a list of
17 potential, so I'll start at the top and work through it.

18 Mr Sherborne?

19 MR SHERBORNE: My Lord, yes. Can I begin by introducing
20 myself and those I represent. My Lord, I am here on
21 behalf of two different groups of individuals. The
22 first is a group of high profile individuals whose
23 experiences of media reporting have been a matter which
24 the courts have already dealt with.

25 They are the McCanns, Gerry and Kate;

1 Christopher Jefferies, the man who was wrongly vilified
2 by the press over the murder of Joanna Yeates; and
3 Max Mosley, whose private life was shattered by the late
4 News of the World. Notorious cases which stick in the
5 minds of all of us, I am sure.

6 As I'll explain shortly, these applicants wish to
7 apply for core participant status this morning.

8 I suspect that little needs to be said about why, in my
9 submission, they plainly satisfy the criteria that
10 your Lordship indicated under paragraph 5.2 of the
11 Inquiry Rules.

12 The second group of individuals I represent, which
13 numbers potentially over 100, are the victims of the
14 illegal interception of private voicemail messages, or
15 phone hacking as it has now been termed.

16 Most of them have already issued proceedings against
17 News Group Newspapers and other newspapers, but some are
18 potential claimants. As your Lordship is aware, there
19 is a substantial number of claims, I think now in the
20 region of 40, which are currently before Mr Justice Vos
21 in the Chancery Division, and there is a trial in
22 relation to the general issues, issues which are common
23 to all those actions, as well as several specific lead
24 cases, as they are called, in January of next year.

25 I have heard what your Lordship said earlier, both

1 about the scope of the first module of part 1 of the
2 Inquiry, and various specific matters which were
3 concerns that were raised on behalf of my clients in
4 correspondence with your Lordship's team.

5 In that correspondence your Lordship did indicate
6 that he would be assisted by the phone hacking victims
7 and their experiences in part 1 of the Inquiry, even
8 though part 2 of the Inquiry, as I understand it, will
9 specifically deal with phone hacking.

10 It is for that reason that I am here for some of my
11 clients, although it is right to say that there is
12 a crossover, there are individuals who can assist not
13 just in relation to their experience of phone hacking
14 but more generally with the press. Examples of those
15 who, subject to the concerns that I am going to deal
16 with in a minute, would wish to be core participants as
17 well, for example, Sienna Miller and Hugh Grant.

18 As your Lordship will appreciate it would be
19 a lengthy exercise for me to name every single one of
20 what I might call the second class of phone hacking
21 victims. The Inquiry is aware of their identities.
22 They have been listed, as your Lordship will know, in
23 a series of letters which have been provided.

24 LORD JUSTICE LEVESON: Yes. One of them is listed under
25 anonymised initials.

1 MR SHERBORNE: Yes, my Lord, that is an individual called
2 HJK. That individual has been anonymised in the civil
3 litigation. That name could be provided to
4 your Lordship in due course but, for reasons which
5 I suspect are obvious, I am not going to name that
6 individual in court.

7 LORD JUSTICE LEVESON: No. What will be important, however,
8 is that we do know the names of every person for whom
9 you appear, for two reasons. First of all, so that we
10 know who are in fact core participants, and secondly, so
11 that the essential assessment can be made should any
12 application be made for funding, because the Act
13 requires me, the Rules require me to have regard to
14 resources and the means of the proposed participants.

15 But I am perfectly content to adopt a practice of
16 considering an application to retain anonymity. In the
17 extremely unlikely event that I took a different view
18 then I would alert you or those who instruct you and
19 then a decision could be made as to whether they wish to
20 remain potentially core participants, so that in other
21 words their anonymity would be preserved even if I was
22 concerned about that.

23 But my immediate reaction is that I am not
24 concerned, although I will need to know who they are,
25 and details, so that I can make appropriate decisions in

1 the event of applications being made.

2 MR SHERBORNE: I am grateful for that indication. As
3 I understand it, there is only one individual who seeks
4 to retain anonymity at this stage. The reason I don't
5 name all of my clients is, your Lordship appreciates, it
6 would take rather a lot of time since they number
7 potentially over 100.

8 LORD JUSTICE LEVESON: Yes, I don't ask you to do it and
9 make everybody listen, but I will want at some stage
10 a definitive list.

11 MR SHERBORNE: My Lord, yes.

12 Can I explain the basis on which I am here, so
13 your Lordship appreciates --

14 LORD JUSTICE LEVESON: Yes, that is probably valuable.

15 MR SHERBORNE: Perhaps I can ask your Lordship's view on
16 that when I am finished.

17 I am here today mainly instructed by Collyer Bristow
18 who, your Lordship knows, have since the outset sought
19 to represent these phone hacking victims as
20 a collective, which is one way of describing it. They
21 are victims who brought claims in the Chancery Division
22 or who are potentially claimants. And there is
23 a claimant group, Miss Tamsin Allen of Bindmans is the
24 co-ordinator and she is here today in that capacity, as
25 well as an instructing solicitor in relation to a number

1 of individuals who do wish also to be named as core
2 participants, and I will list those.

3 I am not going to, as I say, identify each and every
4 client, but can I just give your Lordship an idea of the
5 scope and interest of these parties as that is obviously
6 a matter that concerns the Inquiry.

7 They fall into two categories, and although there
8 are two categories they share two overriding features.
9 The first is, and can I be very clear about this,
10 a desire to assist the Inquiry as much as possible.
11 They obviously have nothing to gain financially from
12 doing so but they realise it's a matter, as
13 your Lordship said, of public interest, real public
14 interest, to ensure that lessons are learned from what
15 they have experienced at the hands of the media and that
16 others won't suffer the same treatment in the future.

17 They include all manner of people, from actors and
18 actresses whose names have already been associated with
19 the phone hacking litigation: Sienna Miller, Jude Law,
20 Hugh Grant, sportsmen and celebrities such as
21 Ulrika Jonsson, Abi Titmuss, politicians such as
22 John Prescott, Tessa Jowell, Simon Hughes, Mark Oaten,
23 and other notable figures; but they also include
24 well-known victims of crime and their families, ordinary
25 people who are thrown into the media spotlight as

1 a result of some awful event; some who became targets as
2 well, not because who they are but who they knew, agents
3 such as Sky Andrew or personal secretaries like
4 Joan Hammell.

5 So whilst in some ways it is a rather diverse list
6 of individuals, and your Lordship's team has had a list
7 from the various solicitors who they have instructed,
8 they have all united under one cause, and that is in
9 relation to the News Group actions which have been
10 brought, as I said, in the Chancery Division.

11 Having explained the identity of the group and the
12 scope there are, in my submission, effectively two
13 categories they fall into.

14 One, there are those who wish to apply this morning
15 to be core participants, and the second category are
16 those who, in the light of the assurances which
17 your Lordship has already given, and in response to the
18 further concerns which I intend to raise in a moment,
19 wish to have a short amount of time to discuss with
20 their respective lawyers and solicitors whether or not
21 they wish to apply to be core participants as well.

22 LORD JUSTICE LEVESON: Yes.

23 MR SHERBORNE: As I say, category 1 is a relatively small
24 number of individuals, and I will name them for the
25 purposes of the record, but category 2 is a very vast

1 number of individuals.

2 The concerns your Lordship will have seen from
3 correspondence we have raised, but in order that they
4 are heard in public, can I raise them very briefly.
5 Your Lordship has touched upon them in the opening
6 statement.

7 The first concern, and it's one shared not only by
8 the second category but also the first category of
9 individuals I have mentioned, is a concern to ensure
10 that the very material which was unlawfully obtained
11 from them through accessing their voicemails illegally
12 does not become public through this Inquiry.

13 For this reason your Lordship will know that there
14 are strict confidentiality provisions in the civil
15 litigation, which I'll come back to in a moment.

16 Now, your Lordship is obviously very familiar with
17 the Inquiries Act as well as the Rules which permit
18 restriction orders to cater for these very type of
19 concerns.

20 LORD JUSTICE LEVESON: There is no question of my giving the
21 oxygen of publicity to matters which should not be in
22 the public domain at all, and I will consider
23 appropriate orders to protect the privacy of those whose
24 privacy has been even arguably invaded. It's not for me
25 to decide.

1 Of course the value of the victims, if I use that
2 word without making a decision as to it, is that they do
3 provide a very important part of the narrative, of the
4 picture which has to be considered in the context of the
5 public interest.

6 MR SHERBORNE: My Lord, yes. You will appreciate that those
7 who are involved in the civil litigation; as I say,
8 I represent those who are also not involved and indeed
9 are not phone hacking victims, they are victims of media
10 misreporting, to put it neutrally. But in terms of the
11 civil claimants, they are keen to ensure that they have
12 protection which is at least consistent with the
13 protection that's already been put in place by
14 Mr Justice Vos in the Chancery Division. I raise that
15 so your Lordship is aware of those concerns.

16 LORD JUSTICE LEVESON: I would be keen similarly to ensure
17 that they have no less protection, but equally I will
18 want to see the material, and one of the issues that
19 will have to be decided quite soon is whether there is
20 really an issue as to whether I should see it, given
21 that I do make appropriate Section 19, I think it is,
22 orders.

23 MR SHERBORNE: My Lord, yes. I'll come back to it in
24 a moment, the Section 21 notices, which I will deal with
25 very briefly.

1 The second concern is again the matter your Lordship
2 has raised, and that is the prospect, which I understand
3 from what your Lordship said earlier is now an unlikely
4 one, which is that my clients might be permitted to be
5 cross-examined by the media and media organisations.
6 Your Lordship will appreciate this is not civil
7 litigation, my clients are not here out of financial
8 gain but to serve the public good, and in my submission
9 it would be extremely unfair for them, and
10 inappropriate, to be cross-examined by media
11 organisations.

12 LORD JUSTICE LEVESON: Well, you have heard what I have
13 said.

14 MR SHERBORNE: I have, and I raise those concerns so that
15 your Lordship can hear them in open court.

16 LORD JUSTICE LEVESON: That's fine. Or open inquiry, I am
17 not sure whether court is right, but there it is.

18 MR SHERBORNE: I'll drop the use of the word court, my Lord.

19 The final concern relates to legal representation.
20 I think your Lordship has already dealt with that in his
21 opening statement, and therefore I am not going to say
22 anything more about it.

23 Can I then turn briefly to the Section 21 notices?

24 LORD JUSTICE LEVESON: No, I think we will come back to
25 that, if that's all right.

1 MR SHERBORNE: Then I will come back to that indeed.

2 Can I then simply identify those within category 1,
3 namely those who are at this stage ready to make
4 an application for core participant status?

5 LORD JUSTICE LEVESON: Yes.

6 MR SHERBORNE: And leave category 2 individuals for the
7 moment out of the account.

8 LORD JUSTICE LEVESON: Okay.

9 MR SHERBORNE: Those who wish to apply are, firstly, there
10 are a number of politicians, Chris Bryant MP -- the
11 following individuals are all, as your Lordship will
12 appreciate, victims we say of phone hacking.

13 LORD JUSTICE LEVESON: Yes.

14 MR SHERBORNE: Some of them have already brought claims,
15 some are potentially claimants in that litigation.

16 There is Chris Bryant, Tessa Jowell, Denis MacShane
17 and John Prescott. Then there are other notable
18 individuals, Brian Paddick, whose identity is obviously
19 a matter of public record, Joan Smith, journalist and
20 Human Rights activist, Chris Shipman, the son of Harold
21 Shipman, and Tom Rowland, freelance journalist, all of
22 whom we say are victims of phone hacking.

23 There is the other individual your Lordship referred
24 to, who is termed HJK in the civil litigation.

25 Then there are two lawyers who have been, as

1 your Lordship may have seen from recent press reports,
2 we say specifically targeted in relation to their work
3 in the civil litigation and can assist on matters more
4 generally to do with the media, and that is Mark Lewis
5 of Taylor Hampton and Mark Thomson of Atkins Thomson.

6 LORD JUSTICE LEVESON: Yes.

7 MR SHERBORNE: Then finally in terms of those who are ready
8 today to apply, there are the McCanns, Chris Jefferies
9 and Max Mosley.

10 LORD JUSTICE LEVESON: Yes.

11 MR SHERBORNE: Can I take a moment to ensure that I have
12 named all those who are ready at this stage to apply for
13 core participant status? (Pause)

14 Unless your Lordship wished me to develop it any
15 further I was not going to deal with why, in my
16 submission, they fall within paragraph 5.2(a) or (b)
17 since I hope that is self-evident.

18 LORD JUSTICE LEVESON: Yes.

19 MR SHERBORNE: My Lord, that is in terms of what I wish to
20 say, that covers everything but the Section 21 notices.

21 LORD JUSTICE LEVESON: I think we will come back to the
22 Section 21 notices later. Let's deal with all the
23 applications for core participant status first.

24 MR SHERBORNE: My Lord, yes. Can I simply then say a few
25 words about category 2. In terms of timing, I wonder

1 whether your Lordship would permit a period of time in
2 which those who I have named under category 2 and those
3 who I have not named can have an opportunity to take
4 advice?

5 LORD JUSTICE LEVESON: Yes.

6 MR SHERBORNE: And then to make an application if necessary
7 at a hearing, I won't use the word court again, or
8 whether they could apply in writing.

9 LORD JUSTICE LEVESON: They can apply in writing. There is
10 an issue that will have to be addressed because I notice
11 that there are at least two other members of the Bar
12 here for other persons who will put themselves in the
13 category of victims, because there is going to have to
14 be a consideration of joint representation. I am sure
15 you are aware of the provisions.

16 MR SHERBORNE: My Lord, yes. In relation to what I might
17 call the hacking clients, or the hacking victims, those
18 who brought litigation, those who are potentially
19 bringing litigation and those who have not brought any
20 litigation or don't intend to but are victims
21 nonetheless, it is hoped that there may be one group
22 instructed to represent the entire class.

23 I am aware that there is at least one other counsel
24 here who represents one or two of the hacking claimants,
25 or perhaps more of the hacking claimants, but certainly

1 as far as my instructing solicitors are concerned, and
2 I believe the five firms of solicitors who have
3 instructed Collyer Bristow, and that represents I think
4 somewhere in the region of 90 per cent, maybe 80 to
5 90 per cent of the victims of the phone hacking
6 litigation, then I would hope that it could be dealt
7 with through that route, namely Collyer Bristow
8 representing all of the phone hacking victims as a class
9 for reasons obviously of practicality, efficiency and
10 funding.

11 LORD JUSTICE LEVESON: I will have to consider in relation
12 to anybody else whether their interests in the outcome
13 of the Inquiry are similar, the facts they're likely to
14 rely on in the course of the Inquiry are similar, and
15 whether it's fair for them to be jointly represented,
16 because then there is the question of whether
17 an agreement as to representation is forthcoming or
18 I have to make a ruling.

19 MR SHERBORNE: My Lord, yes, under paragraph 7.

20 LORD JUSTICE LEVESON: Yes.

21 MR SHERBORNE: My Lord, yes.

22 LORD JUSTICE LEVESON: All right.

23 MR SHERBORNE: Unless I can assist any further.

24 LORD JUSTICE LEVESON: No, thank you very much indeed.

25 MR SHERBORNE: I am very grateful, my Lord.

1 LORD JUSTICE LEVESON: Let's deal with the other victims
2 first, if there is anybody else here.

3 MR REED: My Lord, I am here on behalf of four individuals
4 instructed by three firms of solicitors. First,
5 Mr Stephen Coogan, the well known comedian and actor,
6 instructed through Schillings; secondly,
7 Mr Paul Gascoigne, the well known former professional
8 footballer, instructed through Steel & Shamash; thirdly,
9 Mr David Mills, a corporate lawyer and married to a well
10 known Member of Parliament, also instructed through
11 Steel & Shamash; and fourthly, Mr George Galloway, the
12 well known politician and former Member of Parliament
13 instructed through Farooq Bawja & Co.

14 All of my clients, my Lord, claim to have been
15 victims of voicemail interception at the hands of the
16 News of the World, but all of them have, throughout
17 their lives, been the subject of varying degrees of
18 press coverage, press intrusion, and to that extent they
19 feel they would have an input to both part 1 and part 2
20 of the Inquiry.

21 They all wish to do their public duty, as they see
22 it, and assist with the Inquiry. However, in the light
23 of what my Lord has said this morning, and the
24 guidelines as to the other ways in which they might
25 participate, I would invite my Lord to give them

1 an opportunity to take advice, in the light of what's
2 been said, and essentially stand over their application
3 as to whether they should be core participants, rather
4 than move that application today.

5 LORD JUSTICE LEVESON: Well, there would have to be
6 a consideration, if they applied, of Rule 7 of the 2006
7 Rules.

8 MR REED: Yes.

9 LORD JUSTICE LEVESON: Because it doesn't strike me that
10 there is any sufficient dissimilarity as to suggest that
11 there should be any more than one team. Because in one
12 sense the victims are central, and I put that word in
13 inverted commas for the purposes of this morning, to
14 what is being undertaken, but in another they are
15 outside of it, in other words they are not involved in
16 the process of regulation, they are not involved in the
17 press.

18 I believe they are an important part of the Inquiry
19 and I welcome their involvement and their assistance,
20 but I think there is only one group.

21 MR REED: My Lord, I am grateful for that guidance. Their
22 concern, if I could put it this way, is to ensure that
23 they are not shoehorned into one group, such as to say
24 that there is a victim submission. And there is no
25 reason to suppose, for example, that the suggestions or

1 the input as to how things might be run from Mr Coogan
2 would be for all purposes exactly the same as those of
3 Mr Galloway. Whether they can be dealt with by
4 submissions from a single set of legal representatives
5 remains to be seen. That's simply the point that I
6 was --

7 LORD JUSTICE LEVESON: I'd be very surprised if they
8 couldn't. There will be nuance, of course there will,
9 because each person will have been affected slightly
10 differently, and many might have slightly different
11 views. But do you know, I think we are probably grown
12 up enough to be able to cope with that.

13 MR REED: My Lord, that is their point. They wish to make
14 sure that their voice is properly heard and properly
15 represented.

16 LORD JUSTICE LEVESON: I understand that. Right, thank you.
17 Is there anybody else here that falls into that
18 category? All right.

19 I think, Mr Garnham, as you were the one that
20 suggested there was a break, you are entitled to go
21 next.

22 MR GARNHAM: Thank you, sir.

23 Together with Miss Christina Michalos I represent
24 the Metropolitan Police and its Acting Commissioner,
25 Mr Tim Goodwin.

1 LORD JUSTICE LEVESON: I think his name is Godwin, actually.

2 I am pretty sure of it.

3 MR GARNHAM: I'm so sorry. I think that means that I have
4 managed to get the names of both my clients, the
5 individual and the corporation, wrong in the space of
6 one two-minute submission.

7 LORD JUSTICE LEVESON: Very well. Doubtless it will get
8 better over time, Mr Garnham.

9 MR GARNHAM: Whatever they're called, they apply for core
10 participant status for all four elements of stage 1,
11 sir.

12 Am I right, sir, to be calling you sir rather than
13 my Lord?

14 LORD JUSTICE LEVESON: That's fine.

15 MR GARNHAM: Then I'll continue to do so.

16 LORD JUSTICE LEVESON: Anything provided it's polite.

17 MR GARNHAM: I will also try and manage that, sir.

18 The Met Police have played, sir, and continue to
19 play a central role in the phone hacking affair. They
20 have been the subject of both praise and criticism for
21 their role. You will be aware, sir, of the background
22 of their involvement, and I don't repeat that here. The
23 Metropolitan Police are keen to assist the Inquiry in
24 all aspects of its work, and in that regard I make the
25 application in respect of all four elements to your

1 part 1.

2 As to those in particular, I make these brief
3 submissions: the police have an important place in the
4 relationship between press and public. The police
5 frequently make use of the press in the course of their
6 investigations as a means of engaging the assistance of
7 the public. They have, we would submit, an obvious
8 interest in the proper regulation and the conduct of
9 that relationship.

10 As to the second element, the Metropolitan Police
11 play a clear role in the relationship between press and
12 police. It's an aspect of your inquiry which may lead
13 to criticism of the police and of the Met, and our
14 interest as a result in that aspect of the Inquiry is,
15 we would respectfully submit, obvious.

16 As to the third element, the press and politicians,
17 recent events in the phone hacking saga demonstrate the
18 role or at least the potential role of police and
19 especially the Met in the relationship between press and
20 politicians. We say that the Met Police have played
21 a significant role in that relationship in the past and
22 are almost inevitably going to play such a role in the
23 future that we have a sufficient interest within the
24 words of paragraph 5 of the Rules, and that it would be
25 right for us to be core participants thereto.

1 Your fourth stage is the recommendations falling out
2 of those, and for the same reasons we would invite you
3 to say that we should be core participants there as
4 well.

5 In those circumstances, I ask for core participant
6 status for the whole of your work.

7 LORD JUSTICE LEVESON: Thank you very much, Mr Garnham,
8 I understand.

9 MR PHILLIPS: Sir, I represent the Metropolitan Police
10 Authority. My name is Phillips, I am instructed by
11 Eversheds. The Authority is the regulator of the
12 Metropolitan Police Service, it's a statutory body and
13 it exists to ensure that there is an effective,
14 efficient and accountable police service in London.

15 Now, sir, what you have said this morning has cast
16 a great deal of light, as far as we are concerned, on
17 the way in which you intend to proceed. So what I am
18 about to do in this submission is to enact the
19 independence of the regulator from the regulated, the
20 police service. I am not going to be making
21 an application for core participant status. As
22 I understood what you said, you were only going to
23 consider today applications in relation to the first
24 module of part 1.

25 LORD JUSTICE LEVESON: Yes.

1 MR PHILLIPS: In due course the regulator of the
2 Metropolitan Police will, we believe, have a genuine
3 interest in part 2, the relationship between the press
4 and the police. If one looks at the terms of reference
5 in part 1, there are essentially regulatory issues
6 there, and I expect us to make such an application as
7 and when that time arrives.

8 LORD JUSTICE LEVESON: When you say part 2, do you mean
9 module 2?

10 MR PHILLIPS: Yes.

11 LORD JUSTICE LEVESON: I have had to be rather careful.

12 MR PHILLIPS: As a matter of fact, sir, we also expect to
13 seek that status for part 2 as and when it arrives.

14 LORD JUSTICE LEVESON: Yes.

15 MR PHILLIPS: Sir, so far as today and the first stage,
16 module 1, part 1, is concerned, may I simply say this:
17 we have listened very carefully to what your Lordship
18 has said, in particular about there not being a bright
19 line between core participant status and the position of
20 those who have a genuine interest in the Inquiry.

21 I hope you will take it from me that we have such
22 a genuine interest, even now, at this stage. We are
23 here, we are ready to assist, if that would help the
24 Inquiry, with documentation, with evidence, whatever
25 other form of help the Inquiry would like.

1 But for the moment, sir, we press no application.
2 As I say, I expect you will hear from us in that regard
3 when it comes to module 2 of part 1.
4 LORD JUSTICE LEVESON: I understand that. Mr Phillips, let
5 me make it abundantly clear that if the Metropolitan
6 Police Authority feel, even though they may not have
7 been asked for specific evidence, that they do have
8 evidence that touches upon part 1 that they would like
9 to submit through some witness, then they are extremely
10 welcome to do so.
11 MR PHILLIPS: Thank you very much.
12 LORD JUSTICE LEVESON: I am open to all the assistance that
13 I can gather from whomsoever in this room is able to
14 assist me.
15 MR PHILLIPS: Thank you.
16 LORD JUSTICE LEVESON: Thank you very much.
17 MR PENNY: Sir, I represent Mr Yates.
18 In light of the opening remarks that you have made
19 this morning, I adopt the same position on Mr Yates'
20 behalf, namely that he will reserve his position so far
21 as the second module to part 1 is concerned.
22 LORD JUSTICE LEVESON: I quite understand that.
23 MR PENNY: And in due course in all likelihood we will make
24 an application in relation to part 2.
25 LORD JUSTICE LEVESON: To module 2?

1 MR PENNY: Part 2.

2 LORD JUSTICE LEVESON: Part 2.

3 MR PENNY: I reserve his position also in relation to module
4 2 of part 1.

5 LORD JUSTICE LEVESON: Yes. I understand that, thank you.
6 Thank you very much indeed.

7 MR DAVIES: My name is Rhodri Davies, I am instructed by
8 Linklaters on behalf of a company called NI Group
9 Limited, perhaps better known as News International.

10 LORD JUSTICE LEVESON: I've never heard.

11 MR DAVIES: I am very pleased to hear that, sir.

12 LORD JUSTICE LEVESON: It's not entirely accurate.

13 MR DAVIES: It confirms the open-mindedness of the Inquiry.

14 LORD JUSTICE LEVESON: Yes.

15 MR DAVIES: We have listened very carefully to what you said
16 about the approach of the Inquiry, and on behalf of
17 News International we consider that we should proceed
18 with our application to be a core participant.
19 That application is made on behalf of
20 NI Group Limited, which is the precise name of the
21 company. The NI of course stands for
22 News International, and until 31 May this year it was in
23 fact called News International Limited, and it may be
24 easier to call it that.
25 It is the company which owns News Group Newspapers

1 Limited, which publishes the Sun and which used to
2 publish the News of the World, and it also owns Times
3 Newspapers Limited which publishes The Times and The
4 Sunday Times.

5 So News International is the point at which the
6 ownership of those four newspapers comes together. It
7 is also an active company in its own right, it's not
8 just a paper link in the corporate chain.

9 Now, all four of those newspapers are of course of
10 great importance to the Inquiry, and the Inquiry is of
11 great importance to them. But what we are proposing is
12 that we will make one application on behalf of
13 NI Group Limited to be a core participant, and that by
14 doing that we will avoid the necessity for any
15 application on behalf of the lower companies or the
16 individual titles.

17 So we hope that that will assist the Inquiry to
18 obtain the focus which you referred to this morning, and
19 will indeed be in conformity with Rule 7 of the Inquiry
20 Rules.

21 That single point of focus may have to accommodate
22 a diversity of opinions and evidence but we will try and
23 keep it through one channel.

24 LORD JUSTICE LEVESON: Yes, I understand the potential
25 issues because I can readily recognise that those who

1 are responsible for the editorship of The Times and The
2 Sunday Times may have a slightly different view, from
3 their broadsheet perspective, to those who operate the
4 tabloids. And I can't believe that we can't cope with
5 that within the elasticity of approach that I intend to
6 try to adopt.

7 MR DAVIES: That's most helpful, sir, and that's what we are
8 trying to do.

9 What I should make clear is that I am making this
10 application on behalf of the corporate person, I am not
11 making the application on behalf of any of the
12 individuals who are either currently or have been in the
13 past employed by News International or the papers.

14 It may be, it probably will be, that some or many of
15 them will give evidence to the Inquiry at some stage.
16 It may well be that we, the News International team,
17 will represent most of them. But there may be some who
18 either want or need their own representation, and
19 I don't wish to say anything which prejudices that in
20 any way. That's a matter for them.

21 LORD JUSTICE LEVESON: Okay.

22 MR DAVIES: So my application is for NI Group Limited. So
23 far as the justification of that application is
24 concerned, I think I can be fairly brief.

25 LORD JUSTICE LEVESON: I think you can be extremely brief.

1 MR DAVIES: Yes. I was not going to go through the Rules,
2 but you know, sir, that we are specifically referred to
3 throughout stage 2 of the Inquiry, and of course we have
4 to recognise that although we are not specifically
5 referred to in stage 1, the backdrop to stage 1 and the
6 impetus for this Inquiry derives very largely from
7 events concerning the News of the World.

8 LORD JUSTICE LEVESON: Yes, largely but not entirely.
9 Because if one goes to the 2006 Information
10 Commissioner's report, there are a large number of other
11 titles that are at least alleged to have been involved
12 in behaviour which is at least potentially the subject
13 of the Inquiry.

14 MR DAVIES: Yes. I'm by no means seeking to concentrate
15 attention entirely on us, but nonetheless we can't
16 escape the fact that there will be a good deal of
17 attention on us. And that relates not only to part 2
18 but also to the narrative which you have referred to
19 this morning, which is the backdrop to part 1.

20 Of course in relation to part 1, as the continuing
21 publishers of three very major newspapers, we have
22 a considerable interest in the future regulation of the
23 press, in relation to the police, in relation to, and
24 all the matters upon which the Inquiry will be making
25 recommendations.

1 LORD JUSTICE LEVESON: Mr Davies, although I will be
2 reserving the decision to provide something in writing,
3 you are pushing at an entirely open door.

4 MR DAVIES: In that case I will stop pushing and sit down.

5 LORD JUSTICE LEVESON: Thank you very much.

6 Mr Chawla.

7 MR CHAWLA: Sir, I am Mukul Chawla, I am representing

8 Mrs Rebekah Brooks, instructed by Kingsley Napsley.

9 I intend to be very brief, but can I just set out
10 her career history so that you have that, sir.

11 Mrs Brooks was first employed by the News of the
12 World in 1989, before becoming a features writer, and
13 then deputy editor of that newspaper in 1995. She
14 served in that capacity until 1998. She was then
15 appointed deputy editor of the Sun newspaper, becoming
16 editor of the News of the World in 2000. She then
17 became editor of the Sun in 2003 in which capacity she
18 served until 2009. She was appointed in 2009 as chief
19 executive of News International Limited, as it was then
20 known, and she resigned from that post on 15 July 2011.

21 It is public knowledge that she was arrested on
22 17 July 2011, and it is also public knowledge that she
23 has in the past given evidence, both oral and written,
24 to various select committees of Parliament.

25 LORD JUSTICE LEVESON: Yes.

1 MR CHAWLA: That is the basis upon which the application is
2 made.

3 LORD JUSTICE LEVESON: The first part of the Inquiry is
4 a much more general analysis, and specific or individual
5 criticism is unlikely to flow from the first part of the
6 Inquiry, not least because of the ongoing investigation.

7 To what extent is your client in a different
8 position, bearing that in mind, from others in editorial
9 positions on tabloid newspapers?

10 MR CHAWLA: To no real extent. In terms of what she can
11 provide, she is in a position to provide information
12 which may be similar not necessarily in content but in
13 subject matter terms to a number of different editors.
14 But in terms of how significant that information is,
15 that obviously is a matter of perhaps interpretation.

16 LORD JUSTICE LEVESON: Well, I understand that, but what
17 I am really getting at is that, as a witness, she would
18 doubtless be entitled and will have the right to legal
19 representation. I am just wondering whether, in her
20 case, it goes beyond the need for that representation --
21 which I recognise -- into core participant status for
22 this part of the Inquiry.

23 MR CHAWLA: This part of the Inquiry is not as acute as
24 subsequent parts.

25 LORD JUSTICE LEVESON: I recognise that entirely, which is

1 why I have been rather careful to delineate it.

2 MR CHAWLA: I understand that.

3 LORD JUSTICE LEVESON: Therefore I do need to know whether

4 you are making an application to be a core participant

5 on this module of this Inquiry.

6 MR CHAWLA: So far as the relationship between the press and

7 the public?

8 LORD JUSTICE LEVESON: Press and the public.

9 MR CHAWLA: I don't press for that at this stage.

10 LORD JUSTICE LEVESON: All right.

11 MR CHAWLA: But ...

12 LORD JUSTICE LEVESON: Well, I appreciate that what I have

13 said today might have come a little bit out of the left

14 field. I think that's an entirely appropriate stance,

15 if I might say so. But obviously you will have the

16 chance to reflect upon it during the course of the next

17 day or so, and if you take a different line, then

18 provided you tell me very quickly, or tell the

19 appropriate Secretariat, then I'll consider it.

20 But speaking for myself, my immediate reaction is

21 the one that we have just shared.

22 MR CHAWLA: I understand.

23 Would you just give me a moment?

24 LORD JUSTICE LEVESON: Certainly.

25 MR CHAWLA: Thank you very much, sir.

1 LORD JUSTICE LEVESON: Thank you very much indeed,
2 Mr Chawla.

3 MR CHRISTIE: Richard Christie, appearing on behalf of
4 William Jonathan Rees, who is the only private
5 investigator on the list that is before your Lordship
6 today.

7 The position so far as we are concerned, looking at
8 the information that was provided to us this morning, is
9 that it seems to us, certainly in relation to module 1,
10 where you have said that matters will be addressed not
11 just of phone hacking but allegedly illegal and
12 unethical behaviour --

13 LORD JUSTICE LEVESON: Yes.

14 MR CHRISTIE: -- that our client would be well served as
15 a core participant at that stage.

16 LORD JUSTICE LEVESON: Why?

17 MR CHRISTIE: My Lord, because we respectfully submit that
18 it is likely, looking at 5.2(c), that there may well be
19 suggestion that implicates him or makes significant
20 criticism of him, and therefore we respectfully submit
21 that it would be right that he be a core participant.

22 LORD JUSTICE LEVESON: Why do you think I am going to
23 descend to that sort of level of -- I think the current
24 buzz word is -- granularity?

25 MR CHRISTIE: Well, I suppose we don't know, we simply don't

1 know what is going to be raised. But what you have
2 raised this morning is the prospect of illegal and
3 unethical behaviour --

4 LORD JUSTICE LEVESON: Yes, but what I am thinking of is
5 finding out what's been going on and whether it's
6 appropriately being addressed through regulation or
7 otherwise. I won't be looking at who did what to whom,
8 because if I were to do that then I might never finish.

9 MR CHRISTIE: Well, we appreciate that.

10 LORD JUSTICE LEVESON: I think your solicitors wrote
11 a letter which deals with his personal circumstances.

12 MR CHRISTIE: Yes.

13 LORD JUSTICE LEVESON: But if I were to start investigating
14 individual cases, I will rival Lord Saville.

15 MR CHRISTIE: We accept that proposition.

16 There is one other aspect of it, of course, which we
17 respectfully submit is particularly important to his
18 case, namely that his case -- and I use that in its
19 widest sense -- has featured on Panorama and on the
20 Radio 4 Report and in a large number of national
21 newspapers. It is our contention that much of the
22 material that has been used for those programmes has
23 come from unused material in criminal cases.

24 Now, under Section 17 of the CPIA, Criminal
25 Procedural Investigations Act of 1996, if he were to

1 disseminate that material, having received it in the
2 course of a prosecution of him, he would be liable to a
3 maximum sentence of two years' imprisonment.

4 LORD JUSTICE LEVESON: Yes, but now you are not talking
5 about where he may be criticised, you are talking about
6 his wish to criticise the police or somebody else.

7 MR CHRISTIE: My Lord, with respect, as I understood it,
8 I thought that was something you would be wanting to
9 enquire about, namely the press and the public.
10 Potentially, under the regulatory scheme that we have at
11 the moment, an individual accused could be held
12 responsible but the press are not responsible --

13 LORD JUSTICE LEVESON: I entirely agree, I entirely agree.
14 And again, I mean really it's the same point that I was
15 making with Mr Mukul Chawla, that I have no doubt,
16 I think Mr Rees wasn't the subject of a Section 21
17 request but was asked whether he wished to assist.

18 MR CHRISTIE: My understanding is that he was the subject of
19 that but I may be misinformed.

20 LORD JUSTICE LEVESON: I don't think so, because the letter
21 from your own solicitors asked whether he would be
22 prepared to assist the Inquiry. Lots of people weren't
23 merely asked to assist the Inquiry, they were told that
24 they were going to. So I think you will find that I am
25 correct.

1 But that's not the point. I have no doubt at all
2 that Mr Rees has potentially valuable information, both
3 in relation to -- or possibly in relation to what he has
4 done as a private investigator, I don't know, but also
5 potentially in relation to this feature that you are
6 elaborating upon. But that's rather different, and for
7 that purpose he will doubtless need some legal advice,
8 but there is no point in flooding me with 50,000 pages
9 worth of documents, because that takes this Inquiry into
10 a different area.

11 For that purpose doubtless he will require some
12 legal advice if he is prepared to make a statement. But
13 that's different from being a core participant. I am
14 not ruling on it, I am merely testing it.

15 MR CHRISTIE: No, my Lord, I understand. As I say our
16 principal concern, even allowing for what your Lordship
17 has said, if you are going to be exploring illegal and
18 unethical behaviour, given the allegations that have
19 been made, and you are also going to be exploring the
20 ethical extent to which money has changed hands, given
21 what has appeared already in the press and has also been
22 raised in Parliament by a number of MPs, including
23 I understand the leader of the Opposition, it seems to
24 us that there is going to come a point in part 1, module
25 1, where Rule 5.2(c) is likely to be engaged as far as

1 Mr Rees is concerned, and we wish to have him as a core
2 participant because of that.

3 But if my Lord thinks that it is unlikely that we
4 are going to be descending into that sort of
5 particularity, and that if he came as a witness he would
6 be best served by legal representation at that stage,
7 then of course we would have to bow to how your Lordship
8 sees the Inquiry proceeding.

9 LORD JUSTICE LEVESON: In one sense you are right because
10 I'll make a decision and everybody will be stuck with
11 that, subject to anybody who wants to go elsewhere to
12 challenge what I say. But if you are pressing your
13 application, then I understand it, and I will consider
14 it. Thank you.

15 MR DINGEMANS: Sir, my name is Dingemans, I am instructed by
16 Rosenblatts on behalf of Northern & Shell, publishers of
17 the Daily Express, Sunday Express, Daily Star and
18 Daily Star Sunday. And it's my application for
19 designation as a core participant in the first module of
20 part 1 of your inquiry.

21 The basis of the application is that as publishers
22 of these newspapers, Northern & Shell has a significant
23 interest in important areas of the matters to which the
24 Inquiry relates within Rule 5.2(b).

25 Sir, you have set out in detail the scope of module

1 1. Can I just identify some particular areas of
2 significant interest: press and public relations. We
3 represent part of one side of that relationship. So far
4 as seminars are concerned, comparative pressures on
5 journalists, of course Northern & Shell is the employer
6 of a number of journalists. Press ethics and the law,
7 the interest is obvious. Regulatory structures,
8 Northern & Shell has a particular and indeed in some
9 respects unique approach to that since January of this
10 year.

11 So far as taking evidence is concerned, as you know,
12 sir, Northern & Shell, along with many other members of
13 the print media, have been asked to assist and serve
14 notices.

15 LORD JUSTICE LEVESON: Yes.

16 MR DINGEMANS: In those circumstances we respectfully submit
17 that we fall plainly within the purpose of the
18 designation of core participant status.

19 There are, so far as I am aware, no reported
20 decisions about the principles governing the exercise of
21 that discretion, but there are examples of existing
22 practice. We respectfully submit the governing
23 principles of the Inquiries Act is fairness and
24 transparency, and we submit that to discharge those
25 duties the Inquiry should give the media interest that

1 I represent an opportunity to be heard about all the
2 matters engaged in module 1.

3 So far as the proper issues of Rule 7 representation
4 is concerned, a joint representation, we do respectfully
5 submit that the interests of Northern & Shell are
6 distinct from other print media organisations, we are
7 a distinct and competing organisation, have different
8 approaches and different business models. We do submit
9 that all the titles that I represent can be properly
10 accommodated within that joint representation, but it
11 would be difficult to envisage further joint
12 representation.

13 We do also make this concluding submission: that
14 designating a party as a core participant does not mean
15 that you, sir, will abandon your powers to manage in
16 a proportionate way the participation of any core
17 participant.

18 LORD JUSTICE LEVESON: Mr Dingemans, you are absolutely
19 right about that.

20 MR DINGEMANS: I am grateful, my Lord. Those are my
21 submissions.

22 LORD JUSTICE LEVESON: Thank you very much indeed.

23 MR GLEN: My Lord, I am David Glen, I appear on behalf of
24 Guardian News and Media Limited. My Lord, I will be
25 relatively brief. I adopt, at least in their

1 generality, much of the submissions made by Mr Dingemans
2 a moment ago.

3 Guardian News and Media Limited is the publishing
4 company of the Guardian and the Observer newspapers,
5 obviously very well known in this country. It's also
6 the publisher of the Guardian.co.uk website, a popular
7 website operated by the UK newspaper, and the Guardian
8 Weekly, the international edition of the newspaper.

9 My Lord, this application is, as Mr Dingemans was
10 for Northern & Shell, made under Rule 5.2(b) regarding
11 a significant interest in important matters. And in
12 light of your Lordship's guidance on module 1 and the
13 aspects that that is likely to entail, we would say that
14 the Guardian's interest in those areas is central, in
15 both senses of the word, for obvious and self-evident
16 reasons.

17 I don't propose to go through those in great detail
18 but simply as to the issues that arise, and also as to
19 the narrative which, as your Lordship has said, he
20 wishes to explore which underpin that.

21 LORD JUSTICE LEVESON: I certainly need to identify
22 a narrative upon which I can build the rather more
23 theoretical aspects of part 1 of this Inquiry.

24 Thank you very much indeed.

25 MR MATHIESON: My Lord, my name is Keith Mathieson, I am

1 with the solicitors RPC, and I represent Associated
2 Newspapers Limited which is the publisher, as I am sure
3 you know, of the Daily Mail, the Mail on Sunday and
4 the Mail Online website.

5 You should, my Lord, have received from us yesterday
6 a letter in which we told you that we were minded to
7 apply for core participant status.

8 LORD JUSTICE LEVESON: Yes.

9 MR MATHIESON: The basis of that letter was that we are
10 a major newspaper publisher, we therefore have
11 a significant interest in the matters to which the
12 Inquiry relates, in particular the future regulation of
13 the industry. Our application for core participant
14 status therefore, in common with the applications by the
15 Express and the Guardian, would be made pursuant to
16 Rule 5.2(b).

17 What we said in our letter of yesterday was that we
18 were not in a position to make a formal application for
19 core participant status at this stage. The only reason
20 for that is that a number of key people have been away
21 and, in particular, the editor in chief of the
22 Daily Mail and the Mail on Sunday doesn't return to the
23 office until tomorrow.

24 LORD JUSTICE LEVESON: So you are not making an application
25 today?

1 MR MATHIESON: We are not making an application today but I
2 hope you don't mind hearing from me, my Lord, because I
3 do anticipate that subject to instructions we will be
4 making an application. What I would like to invite you
5 to agree is that we may make that application in writing
6 within the next few days. I anticipate it will be made
7 quite quickly.

8 LORD JUSTICE LEVESON: What do you say about the concurrence
9 of interest? I can see there might be a difference, and
10 I am just thinking the matter out aloud, between
11 a broadsheet and a tabloid approach, and there might be
12 different dynamics and different pressures. But what do
13 you say in relation to the point made by Mr Dingemans
14 that actually it would be difficult to visualise a joint
15 representation between, for example, the Express and
16 the Mail?

17 MR MATHIESON: Well, my Lord, I have no instructions on the
18 issue of joint representation.

19 LORD JUSTICE LEVESON: No.

20 MR MATHIESON: It would seem to me that there would be some
21 strange bedfellows if you were to order --

22 LORD JUSTICE LEVESON: That's different.

23 MR MATHIESON: It may be, my Lord, but at the moment my
24 client has chosen to seek separate representation from
25 other groups, that is something to which obviously you

1 may wish to return and we will make submissions at that
2 stage.

3 LORD JUSTICE LEVESON: I understand that, and I am conscious
4 of course that neither of these organisations will be
5 seeking to, I anticipate neither will be seeking to do
6 so on public funds, and therefore one has to have
7 regard, because one has to have regard to that overall
8 issue.

9 Do you agree with Mr Dingemans that it ought to be
10 possible to organise this in a way that, while allowing
11 each of the newspapers to express their own submission
12 and their own view, does not necessarily add
13 dramatically to the length of the Inquiry?

14 MR MATHIESON: Well, my Lord, really without instructions --

15 LORD JUSTICE LEVESON: You can't say.

16 MR MATHIESON: I can see the force of that suggestion, but
17 I wouldn't at this stage like to commit my clients to
18 a particular line. I am sorry if that's unhelpful.

19 LORD JUSTICE LEVESON: Well there it is, all right. Thank
20 you very much.

21 Anybody else?

22 MR HEAWOOD: My Lord, I am Jonathan Heawood, director of
23 English PEN, the writers' association. My Lord, we are
24 representing ourselves.

25 We heard your opening remarks and listened to them

1 very carefully about the nature of core participant
2 status, and we are certainly not here to argue for
3 a status which is utterly inappropriate. We believe it
4 is appropriate to at least make the case for this status
5 as an interest group with a strong history of expertise
6 around freedom of expression. If you think that there
7 are other ways in which we can assist the Inquiry, we
8 would of course be delighted to do so.

9 I will explain a little bit about what English PEN
10 is. It's the founding centre of an international
11 writers' association which has 144 centres now in over
12 100 countries. Our members are writers, journalists,
13 publishers, editors and so on around the world. We have
14 90 years' experience of working with and on behalf of
15 writers whose freedom of expression has been threatened
16 by state or non-state actors, and our case list of
17 imprisoned and persecuted writers features 647 cases for
18 the first half of this year alone.

19 We are sadly familiar with the constraints that
20 state regulation places upon individual authors,
21 journalists, editors and publishers, and our work on
22 behalf of these beneficiaries leads us to be very
23 concerned about the impact of changes to the regulatory
24 framework, not only on the British media but on the free
25 press in other parts of the world. Britain is often

1 held up as an exemplary jurisdiction by other regimes;
2 for instance, Turkey has often referred to some of our
3 provisions around seditious libel as a means of
4 justifying its own repressive speech crimes such as
5 Article 301 of the Turkish penal code.

6 LORD JUSTICE LEVESON: I don't think you need be concerned
7 that I am not acutely conscious of the vital importance
8 of an independent free press with a right to express
9 itself.

10 MR HEAWOOD: I am very glad to hear that, obviously you have
11 made that very clear in your remarks today and on
12 previous occasions and it's there in the terms of
13 reference of the Inquiry. But I would argue that, as
14 an organisation with real expertise in that area
15 internationally, we have a particular stake in helping
16 the Inquiry to understand some of the dangers that
17 different regulatory frameworks may pose.

18 LORD JUSTICE LEVESON: But I wonder whether that's not
19 achieved -- and this is a question, not a decision -- by
20 you providing us with evidence, with opinions, backed by
21 whatever you want, and potentially then saying "Well, we
22 would like to make, having attended and listened" --
23 because everything I do, I intend to do in public, save
24 only for the one element I mentioned and it is likely to
25 be streamed onto the web so that you won't even have to

1 be here -- then it may be appropriate for you to make
2 an application to put in some written submissions at the
3 end.

4 I just wonder whether that doesn't adequately cope
5 and sufficiently cope with the very important interests
6 that you represent.

7 MR HEAWOOD: I hear the point very clearly. I might say
8 that you have also spoken about the need to involve the
9 public in the process and, as a charity representing the
10 public interest in human rights more generally, not
11 merely freedom of expression, I would say we have
12 a particular stake in that process and we are able to
13 bring that public interest to bear.

14 There are a couple of other points, if I may, to
15 just make briefly?

16 LORD JUSTICE LEVESON: Of course.

17 MR HEAWOOD: In this country English PEN has worked with
18 Index on Censorship, from whom I think we will hear in
19 a moment, on a number of campaigns to promote freedom of
20 expression, for instance in relation to religious
21 hatred, the repeal of various "dead letter" laws around
22 blasphemous libel, et cetera, and we are currently
23 working with Index on Censorship and Sense about Science
24 to campaign for reform to the common law of defamation
25 which has led, as I am sure you know, to a draft

1 government bill on this topic.

2 We would be very concerned if this Inquiry in any
3 way were to derail the important work which we believe
4 the Government has undertaken in this area and which
5 55,000 members of the public have supported through an
6 online petition. So again that's another reason why we
7 would like to have a core status in the process.

8 Just on that point, we are also very conscious that
9 the regulatory regime, in particular the wider media
10 legal framework, affects not only what you might think
11 of as traditional authors and publishers and newsgroups
12 represented in this room, but also, in today's digital
13 publication era, millions of individual producers and
14 consumers of media. Libel is currently affecting,
15 inadvertently affecting, scientific publishers and
16 scholarly publishers in areas where clearly the law was
17 designed to mitigate some of the dangers of
18 irresponsible journalism.

19 So that's another bit of expertise, but I completely
20 take your point that we may bring that expertise to bear
21 in other ways; and you may take the same view about my
22 final point, which is that we are currently working with
23 an advisory committee chaired by Sir Stephen Sedley to
24 look at ways of balancing interests of Article 10 and
25 Article 8 as it relates to libel through the means of --

1 LORD JUSTICE LEVESON: I hope Sir Stephen produces something
2 worthwhile before I have concluded, because I will read
3 it with great interest.

4 MR HEAWOOD: We are publishing an interim report on
5 6 October.

6 LORD JUSTICE LEVESON: Thank you very much. There's a plug.
7 Right.

8 MR HEAWOOD: I would just say, to conclude, our experience
9 of working internationally to promote freedom of
10 expression, our understanding of the complex
11 relationship between media law and non-traditional
12 authors and publishers, and our understanding of the
13 resolution of conflicts between Articles 8 and 10 do
14 mean that we would bring considerable strengths to this
15 Inquiry; but I completely take your view that whether
16 that takes the form of core participant status or some
17 other status is, of course, a matter for your decision.

18 LORD JUSTICE LEVESON: Well, there is no doubt that your
19 assistance will be of great value, the question is how
20 it's best ordered, and I take the point. Thank you very
21 much indeed.

22 MR HEAWOOD: Thank you.

23 LORD JUSTICE LEVESON: Yes.

24 MR KAMPFNER: Sir, John Kampfner, chief executive of Index
25 on Censorship. I will seek not to detain you or the

1 others here unduly. In conjunction with my colleague
2 and a trustee, Mark Stephens of FSI Law, I would like
3 very briefly to submit -- and following on from my
4 colleague Mr Heawood of English PEN -- the reasons why
5 Index seeks to apply for core status specific to areas 2
6 and 3 of the first part of your Inquiry.

7 We submit that in our 40 years of work specifically
8 with news media in this country and around the world we
9 are able -- you spoke, sir, of helping to build
10 a narrative for your part 1 -- of assisting you in that
11 regard.

12 We bring specific expertise in the following areas:
13 in the question, as the UK's leading free expression and
14 one of the world's leading free expression
15 organisations, of navigating the different paths between
16 free expression, privacy, navigating a new path in terms
17 of determining public interest, and preventing any
18 otherwise well-meaning legislation or new rules from
19 becoming a chilling effect on press freedom.

20 We therefore see our role as helping you and
21 others, notwithstanding the experience of your panel and
22 those you have chosen to assist you in navigating the
23 different courses between Articles 8 and 10.

24 As I wrote in April of this year in one of several
25 press articles relating to these vexed issues, free

1 speech is not threatened by good journalistic practice,
2 it is defended by it. So it is with regard to helping
3 you navigate this extremely difficult and tortured path,
4 as an objective but experienced organisation with
5 insight to that, with a significant interest as per
6 part B of your criteria for applying for core status,
7 but as an organisation that is neither regarded as
8 perpetrator or victim in any of the recent phone hacking
9 questions.

10 So it is really with regard to our expertise
11 specifically in the navigating of a path between press
12 freedom and high media standards that we respectfully
13 submit specific core status.

14 LORD JUSTICE LEVESON: Just before you sit down,
15 Mr Kampfner, that you can assist us -- in the same way
16 that I made it clear to Mr Heawood, I have absolutely no
17 doubt that you have expertise and information which will
18 prove of enormous value -- I have no doubt. But I do
19 question, without deciding it as yet, whether that
20 requires core participation status, which is those
21 intimately involved in the actual events, rather than
22 the assistance of experts, which was one of the reasons
23 for the seminars that I have spoken about, that it might
24 be of great use for your organisations if not to be
25 involved presenting a paper, to be present, and to

1 provide us then with evidence which would form part of
2 the Inquiry and be able to assist us in that way.

3 That's the balance that I have to strike so as to
4 make sure that I keep the Inquiry moving forward but
5 make sure I get all the help from all those who know
6 what they are talking about, to get a result that
7 actually not only meets all the competing requirements
8 of the terms of reference but also does the job in a way
9 that doesn't undermine freedom of expression and the
10 rights of a free press, but equally doesn't impinge
11 adversely and inappropriately on the Article 8 rights of
12 individuals.

13 So, in other words, your very natty form of words in
14 your article earlier this year are entirely where I am
15 at, but I just wonder which is the best way that you can
16 assist us.

17 MR KAMPFNER: Sir, that is understood and I am very grateful
18 for your remarks.

19 Just to clarify, our application is for, as I think
20 you --

21 LORD JUSTICE LEVESON: I understand.

22 MR KAMPFNER: -- that it would be presumptuous of us to be
23 applying for core status in areas where we do not have
24 a unique expertise --

25 LORD JUSTICE LEVESON: I am sorry, so which are the two

1 areas that you said?

2 MR KAMPFNER: If I understood your opening remarks properly,
3 sir, these are areas 2 and 3 of your first module,
4 namely concerning press freedom and determinations of
5 the public interest and also media regulation.

6 LORD JUSTICE LEVESON: Yes. Those are seminars 2 and 3,
7 I think.

8 MR KAMPFNER: Within the first module.

9 LORD JUSTICE LEVESON: All right. I understand. Thank you
10 very much.

11 Anybody else? Right, well, a number of people have
12 to think about a number of things, and it's only fair to
13 give them the opportunity to do so. It's clear that
14 some of the applications are bound to succeed, others
15 one will have to think about a little bit, and I will
16 take a few days just to do that, and that will also give
17 anybody who wanted the chance to take instructions and
18 allow people to return from holiday to do so.

19 Right. Is there anything else on that aspect?

20 Now, you wanted to raise something on Section 21.
21 If anybody has now ceased to be interested, then don't
22 consider it necessary to stay on. I am perfectly happy
23 to allow people a natural break and to give the
24 shorthand writer two minutes as well. Three minutes.

25 MR SHERBORNE: I am not encouraging anyone to leave.

1 LORD JUSTICE LEVESON: No, I wasn't, I was merely saying
2 that they shouldn't feel obliged to have to stay.
3 I will stay.

4 MR SHERBORNE: I don't see anyone rising immediately.

5 LORD JUSTICE LEVESON: I am going to rise and give the
6 shorthand writer three minutes, so I will rise.

7 (12.15 pm)

8 (A short break)

9 (12.20 pm)

10 LORD JUSTICE LEVESON: You see, you were wrong. There has
11 been a thinning out of the ranks.

12 MR SHERBORNE: It's not a bad turnout.

13 My Lord, can I then deal with the Section 21 notices
14 that were sent out to a large number of my clients,
15 I think probably somewhere in the region of 40 of them,
16 in relation to documents arising in the civil
17 litigation?

18 LORD JUSTICE LEVESON: Yes.

19 MR SHERBORNE: Now, I think it's fair to say that the
20 recipients understand the spirit in which those notices
21 were sent out. Your Lordship's team has made absolutely
22 clear that the formality is very much a creature of
23 timing, if I can put it that way.

24 However, as I hope was appreciated from the response
25 to your Lordship's team from the representative of the

1 claimant hacking group, Miss Allen of Bindmans, as well
2 as Mr Thomson of Atkins Thomson, the concern is that my
3 clients feel unable to comply with the notices, and can
4 I emphasise that they are very keen to comply.

5 LORD JUSTICE LEVESON: This is because of the
6 confidentiality provisions in Mr Justice Vos' order.

7 MR SHERBORNE: Yes, my Lord. One of them, rather quaintly
8 called the confidentiality club, allows only for highly
9 sensitive material that's been produced either by the
10 Metropolitan Police or from the notes of Mr Mulcaire,
11 and other sources, that that should only be seen by the
12 lawyers who are involved representing the claimants.

13 LORD JUSTICE LEVESON: Now, who is responsible for seeking
14 that order?

15 MR SHERBORNE: That order was in effect agreed between the
16 parties at one of the first case management conferences.

17 LORD JUSTICE LEVESON: All right, I understand that.

18 MR SHERBORNE: Can I explain why it's there?

19 LORD JUSTICE LEVESON: It doesn't matter. I understand why
20 it might be there, and I understand that for the
21 purposes of the civil litigation it's clearly very
22 important. Equally, I respect the confidentiality of
23 the issues between your clients and News International
24 entirely, and I do not intend to allow the Inquiry to
25 become a vehicle for disseminating material which would

1 otherwise be confidential. That's absolutely not my
2 purpose.

3 But it is critically important for me to obtain --
4 and I have used this word many times through the course
5 of the morning -- a narrative, because the normal course
6 of an inquiry would be that there is an event, a judge
7 is appointed to look at it, he finds the facts, reaches
8 conclusions of fact, and goes on to make
9 recommendations.

10 By reason of the ongoing police investigation that
11 can't happen here, because if I trample all over the
12 detailed facts I run the risk of undermining any
13 investigation or potential prosecution, if there is to
14 be one, as to which I make no comment at all, I simply
15 don't know. I am not prejudging anything.

16 Therefore I have to proceed, because of the public
17 interest, in a slightly different way, and some may say
18 this slightly puts the cart before the horse, that
19 I have to think about what we ought to be doing before
20 every single fact has been fully unpicked.

21 Now, that requires me to have sufficient of a story
22 to build an examination of the very important issues
23 that are thrown up by this Inquiry. I need your help,
24 and I will need the help of everybody who has expressed
25 themselves as concerned, to do that.

1 Therefore, what I would say in relation to the
2 documents, because they are there, they are available,
3 you have them, is that I do not believe it ought to be
4 beyond the wit of man for you and for News International
5 to be able to agree that my team can see the documents,
6 subject to orders that I can make, I think it's under
7 Section 19 of the Act, in order to replicate the
8 confidentiality which legitimately you sought at the
9 time of your litigation, not knowing that this was
10 coming up the ladder, but which now I would want to
11 suggest ought to be extended to allow us to provide the
12 story.

13 Now, that's not to put in the public domain who did
14 what to whom, because that is absolutely part 2. But it
15 is to provide an account of extent and nature of
16 interference upon which one can build to consider the
17 other features to which I have referred.

18 MR SHERBORNE: Yes. Can I say this: we understand entirely
19 your Lordship's reasoning, and we are keen, as I think I
20 said right at the outset, to assist in the process,
21 whether one looks at the cart and the horse together or
22 puts the horse before the cart, or whatever, it doesn't
23 matter. From our perspective we are keen to assist.

24 And your Lordship is right, and we suggested this in
25 correspondence, that we believe the pragmatic approach,

1 the most effective way of dealing with this, is for
2 your Lordship's team to apply to Mr Justice Vos to be
3 allowed to be part of the confidentiality club, or to
4 allow us to be released from the obligation. But as it
5 stands, that obligation is in place.

6 LORD JUSTICE LEVESON: Why can't you and News International
7 agree?

8 MR SHERBORNE: Because it's not simply, my Lord, between us
9 and News International. It's the Metropolitan Police,
10 it's Mr Mulcaire, it's ...

11 LORD JUSTICE LEVESON: I have the Metropolitan Police here
12 too.

13 MR SHERBORNE: Yes, but it's not just the three parties. I
14 would love to say it was simply three organisations and
15 between us we could put our heads together and come up
16 with a solution, and indeed that is probably the
17 solution that we need to reach. But the fact is that
18 there are other parties who are involved in litigation.
19 There is Mr Edmondson, who your Lordship may have heard
20 of, who was a senior news editor of the News of the
21 World at the relevant time. There is Mr Mulcaire, the
22 private detective, who was also a party to those
23 proceedings.

24 So there are a number of individuals who are
25 represented in the litigation, all of whom were present

1 at the case management conference, and indeed at all of
2 the case management conferences, and those provisions
3 were agreed and ordered by Mr Justice Vos. Now whether
4 this is something that can be varied by agreement by all
5 the parties, or whether it would be, we say, more
6 effective, particularly given issues of funding, if
7 I can put it delicately in that way, for your Lordship's
8 team, for the Inquiry, to apply to Mr Justice Vos, in my
9 submission that would be the most efficient and
10 cost-effective way of dealing with this.

11 LORD JUSTICE LEVESON: When is there another hearing due?

12 MR SHERBORNE: On 7 October.

13 LORD JUSTICE LEVESON: That's a month away.

14 MR SHERBORNE: As I understand it, Mr Justice Vos, whether
15 he is physically within the building as we speak,
16 certainly I am told by Mr Reed he is sitting today, but
17 he certainly explained to us just before the long
18 vacation that if it was necessary to make any
19 applications, given the rather changing nature of the
20 phone hacking scandal, if I can put it that way, that if
21 we needed to apply to him during the course of September
22 he would be there to do so.

23 Of course there is also the Senior
24 Master Weingarten, who has also been tasked with
25 procedural matters which don't necessarily have to be

1 dealt with, so for example by Mr Justice Vos.

2 So if there is agreement between all the parties
3 then it might be able to be dealt with on paper.

4 I am told by Mr Reed that Mr Justice Vos is sitting
5 this week and next week. As I say, he said he is
6 available in September to deal with these matters.

7 LORD JUSTICE LEVESON: That's all very possible, but I am
8 a bit concerned that if I ask counsel for the Inquiry,
9 and Mr Jay will speak for himself, to seek to intervene,
10 then he has to issue a summons to intervene, that has to
11 be heard and agreed upon. Then he has to issue
12 a summons to do whatever he wants to do.

13 I understand the point.

14 MR SHERBORNE: I'm in a difficult position. I represent 80
15 to 90 per cent of the hacking claimants but I don't
16 represent everyone, so I am sure there are people who,
17 if they were here today, would say "We would like to see
18 an application notice and we would like to understand
19 the scope of what is being asked for."

20 That is obviously very different. That is something
21 that would come more effectively, if I can put it that
22 way, from the Inquiry, than it would simply from my
23 speaking to those representing News International. Of
24 course we have Mr Davies here, who is representing the
25 corporate structure in relation to the Inquiry, but

1 there is another team that represent News Group
2 Newspapers, who are the defendants in the hacking
3 claims.

4 LORD JUSTICE LEVESON: Let's see what he has to see and
5 let's see also what Mr Garnham has to say.

6 Can you help me on this or not?

7 MR DAVIES: Not a great deal, sir, because I was not
8 expecting it to be raised. As Mr Sherborne has just
9 said, there is a different team and indeed a different
10 firm of solicitors representing the papers in that
11 litigation.

12 I can say that we are very keen to co-operate with
13 this Inquiry. We have two concerns, one is not to
14 breach Mr Justice Vos' order.

15 LORD JUSTICE LEVESON: I can understand that.

16 MR DAVIES: And the other of course is not to prejudice the
17 investigation which the police are currently carrying on
18 and any prosecutions which arise out of that.

19 As we understand it, the Inquiry I think is going to
20 pose a protocol for dealing with documents.

21 LORD JUSTICE LEVESON: Yes.

22 MR DAVIES: And we were hoping that we would be able to
23 agree, if that's the word, or at least indicate that we
24 were happy with that in the fairly near future. I think
25 I can say that in principle, if we can agree that

1 approach with the Inquiry, I think there is unlikely to
2 be any difficulty in News International, if necessary,
3 approaching Mr Justice Vos and saying "Will you relax
4 your order to allow us to comply with it?"

5 LORD JUSTICE LEVESON: All right, thank you.

6 MR DAVIES: But that's as much as I can say now.

7 LORD JUSTICE LEVESON: Thank you.

8 I think you are just about to get some instructions.

9 MR GARNHAM: Sir, we don't see any difficulty in
10 documentation being supplied to you and to the parties
11 in the civil proceedings, save only the confidentiality
12 clause in those proceedings, but it would strike us that
13 the obvious way to deal with it is for an application to
14 be made by one of the parties, News International or the
15 claimants in those proceedings, referring to the
16 Section 21 notice they have received from this Inquiry
17 and asking for a relaxation sufficient to accommodate
18 it.

19 LORD JUSTICE LEVESON: That's what I'd rather hoped. And of
20 course if people are represented by different people
21 then I can't bludgeon them today.

22 MR GARNHAM: Sir, with respect, you only need one common
23 representative, and may have that in front of you today
24 who could make such an application. If it turns out
25 there is opposition to it by others not here, then that

1 can be dealt with by Mr Justice Vos.

2 LORD JUSTICE LEVESON: He is bothered about the costs. All
3 right, I understand the point.

4 Well, Mr Jay, what's the approach to this? I need
5 to cut the logjam in some way.

6 MR JAY: Yes. Sir, there is the pragmatic solution and then
7 there is a legal analysis.

8 LORD JUSTICE LEVESON: Let's try the first one first, shall
9 we?

10 MR JAY: Yes, well the pragmatic solution I suppose is that
11 someone swiftly makes an order to Mr Justice Vos.

12 LORD JUSTICE LEVESON: An application.

13 MR JAY: Yes, an application to Mr Justice Vos, one assumes
14 on a consensual basis involving everybody we've heard
15 today.

16 The legal analysis is: is it necessary? Because
17 there is a distinction between a party's own documents.
18 In relation to the claimants, the Section 21 notice
19 targets only their own documents. And documents which
20 they have received pursuant to another party's
21 disclosure obligations in a civil litigation.

22 On the face of the confidentiality directions in
23 Annex C of Mr Justice Vos' order, I say only on the face
24 of it, and obviously one needs to understand the context
25 in which the order was made, and we don't understand the

1 full context, Annex C, page 15 of Mr Justice Vos' order:

2 "The following directions apply to future disclosure
3 given in current or future claims."

4 Then 1, before receiving any further disclosure of
5 documents in the action solicitors then have to give
6 an undertaking.

7 There is a further undertaking in paragraph 2, sir,
8 on page 16 which includes an obligation, for example,
9 under (c):

10 "Not to show copies of any disclosed document to any
11 third party."

12 The disclosed document is the document the claimant
13 will have received from other parties to the civil
14 litigation. On the face of it, it doesn't appear to
15 cover the claimants' own documents.

16 LORD JUSTICE LEVESON: So in other words, Mr Sherborne's
17 documents, his clients' documents, he can give to us,
18 and News International can give their documents to us.
19 What Mr Sherborne can't do is give News International
20 documents, and what News International can't do is give
21 the claimants documents.

22 MR JAY: On the face of it, and maybe you will hear further
23 submissions about it, that is what these confidentiality
24 directions mean.

25 LORD JUSTICE LEVESON: All right.

1 MR JAY: It's their more natural and ordinary meaning. If
2 it is said that the confidentiality bites more widely,
3 so that there is a sort of club -- which is the analogy
4 used -- which catches a party's own documents, that
5 would be rather a strange result.

6 Of course I would add this: disclosure to the
7 Inquiry team doesn't mean that the documents are placed
8 in the public domain. Of course the Inquiry will
9 consider its powers under Section 19, indeed its duties
10 under Section 19 to protect the confidentiality of
11 material, and, sir, you have already indicated that you
12 are fully alive to that.

13 So if Mr Sherborne and Mr Davies could assist you
14 further as to the true construction of Annex C of the
15 confidentiality provisions ...

16 LORD JUSTICE LEVESON: There you are. Mr Sherborne, you
17 have seen Annex C before?

18 MR SHERBORNE: I can assist. Perhaps I can explain. What
19 has happened in the course of the civil claims is that,
20 as a result either of pre-action disclosure --
21 Norwich Pharmacal orders or third party applications --
22 the parties have received disclosure from the
23 Metropolitan Police of the notes that were obtained from
24 Mr Mulcaire when he was arrested. Those documents have
25 been disclosed by the claimants in the proceedings, so

1 they in effect become the claimants' own documents, so
2 they are covered by Annex C.

3 LORD JUSTICE LEVESON: No, no, no, I understand that, and
4 therefore one would have to go to the
5 Metropolitan Police in relation to any document which
6 you have got hold of because somebody else has given
7 them to you.

8 MR SHERBORNE: Not only that, rather unusually of course, we
9 have then shared with every other claimant the notes
10 that were provided in relation to each separate
11 claimant. So all of the claimant group have each
12 others' disclosure. So again that forms part of the
13 disclosure and is covered by the confidentiality club.

14 So that is why one simply can't say "There is no
15 problem here because you give your own documents",
16 because in this case the claimants' own documents
17 include not just the notes obtained from the police, so
18 disclosure obtained from the police, but also all of the
19 other claimants' documents. That's why we would fall
20 foul of Annex C.

21 The other point is: it's not about the public
22 domain. As your Lordship will have noticed from the way
23 in which the annex and the order is framed, it's about
24 disclosure to anyone. There are very strict provisions
25 as to who can and who can't see it, and they are not

1 simply aimed at preventing this material getting into
2 the public domain.

3 LORD JUSTICE LEVESON: Well, it strikes me that it should be
4 not beyond the wit of man to issue a summons before
5 Mr Justice Vos to vary this order insofar as it permits
6 disclosure.

7 MR SHERBORNE: Yes, and of course that is the procedure that
8 we suggest in our correspondence. We accept that that
9 is the right way to do it because we are keen to assist.
10 What we can't do is simply stand here and for me to say
11 "Well, it's not covered by those provisions", because it
12 is.

13 LORD JUSTICE LEVESON: I understand that. I am sure that if
14 you were to draft a summons and allow counsel, Mr Jay,
15 to see it, I am sure that we would provide some
16 supportive material. I can't believe Mr Justice Vos
17 would be at all difficult about it. In the meantime, if
18 Mr Garnham alerts the Metropolitan Police, whoever is
19 dealing with it within the police, and Mr Davies alerts
20 News International, the different firm of solicitors and
21 different counsel who are involved in that, and makes it
22 clear that I am getting very aerated about this topic,
23 because I haven't got the time, I need to move on, then
24 I am sure that a very short summons will deal with those
25 applicants who are less concerned about my Inquiry than

1 you all are.

2 MR SHERBORNE: My Lord, yes. I hate to raise such delicate
3 matters as funding, but of course your Lordship will
4 appreciate that at the moment we are in -- I am told
5 that funding shouldn't be an issue, for reasons I won't
6 venture.

7 LORD JUSTICE LEVESON: I would have been surprised if it was
8 an issue, given the circumstances, and I have no doubt
9 that Mr Justice Vos will exercise his discretion in due
10 course appropriately.

11 MR SHERBORNE: My Lord, yes. I appreciate those sentiments.

12 LORD JUSTICE LEVESON: I think that's what your solicitor
13 had worked out. Yes.

14 MR SHERBORNE: Can I raise one matter simply so that I have
15 aired this?

16 LORD JUSTICE LEVESON: Yes.

17 MR SHERBORNE: It relates to a class of other documents
18 which your Lordship has asked for in the Section 21
19 notices. It relates to some of my clients but not all
20 of them.

21 Your Lordship will appreciate that the specifics of
22 each of the hacking claims are obviously different. In
23 relation to some there is evidence that phone calls were
24 intercepted, voicemail messages were listened to, or
25 numbers were obtained; but in relation to others there

1 is evidence that articles were published based on the
2 information that was illegally obtained.

3 In the Section 21 notices your Lordship has asked
4 for the articles which form part of some of those
5 claims. Now, what your Lordship may not appreciate is
6 that Mr Justice Vos has specifically ordered, in
7 relation, for example, to Sienna Miller's claim -- and
8 it relates to others such as Jude Law, Kelly Hoppen,
9 Gavin Henson, Hugh Grant, Jemima Khan, and those where
10 there is evidence that articles have been published
11 based on the material obtained -- that Mr Justice Vos
12 specifically ordered, when he came to give judgment in
13 the Sienna Miller action, that News Group Newspapers was
14 not entitled to re-publish these articles, which are no
15 longer available online or anywhere else, despite the
16 fact that those articles had appeared in the public
17 domain. So that is a sensitivity I ought to raise at
18 this stage.

19 As your Lordship has indicated, this is simply
20 a question of documents being provided to the Inquiry
21 team and that those documents should go no further.

22 Of course at some stage your Lordship may be asked
23 to rule on Section 19 notices.

24 LORD JUSTICE LEVESON: I have no doubt.

25 MR SHERBORNE: Can I just raise that, because it is a matter

1 which has concerned some of the clients that I have just
2 mentioned.

3 LORD JUSTICE LEVESON: I understand that and I repeat what
4 I have said, I think, before: I have no intention of
5 allowing this Inquiry to disseminate material, the
6 privacy of which is either established or may be
7 established, and thereby thwart the legitimate claims
8 being made by those involved in civil litigation.

9 MR SHERBORNE: I am very grateful for those assurances.

10 LORD JUSTICE LEVESON: Right. Thank you very much indeed.
11 Is there anything else that anybody wishes to raise?

12 The position is this: that for ease of organisation
13 the Inquiry is likely to be held in court 73, which is
14 I think one floor down from this, although I will not
15 sit on the bench but probably one lower, further down.
16 The advantage of court 73 is that the desks are all
17 movable, as here, so that we can reorganise it somewhat
18 and make it rather less formal than presently a court
19 is. But I hope that I can reassure everyone that,
20 although I will conduct this Inquiry as an Inquiry with
21 a degree of formality, I am not conducting a trial, and
22 this will not run along the lines of a trial.

23 I think there is likely to be a further directions
24 hearing before the end of the month. We will publish
25 the dates of our various teach-ins and seminars. In the

1 meantime I encourage everybody to do what they can to
2 submit the evidence that we have sought as quickly as
3 possible, because I am very keen to get on. I am
4 conscious that I am putting all sorts of people under
5 pressure, and a number of people have said "Ah, well,
6 people are away and therefore it's difficult to get
7 evidence together". If I get evidence in tranches,
8 I can live with that. What I can't live with is nothing
9 for six weeks and then a hundredweight of paper which
10 has to be assembled and amassed and appreciated.

11 Anything else?

12 I'll provide a decision in writing on the various
13 applications today.

14 In relation to funding, and this is particularly so
15 for the victims, it's very difficult for me to see why
16 a Rule 7.4 order isn't going to be made, therefore
17 I would urge you to strive to reach some agreement about
18 representation, and I have no doubt at all that if the
19 Inquiry team can help in any way they will. Ultimately
20 I'll rule on it, but it's important that they do that,
21 and it's important that some consideration be given to
22 the statutory or regulatory requirements to which I must
23 have regard if an application is made for funding,
24 because that would obviously have to be considered on
25 a per person basis, which is why I need to know who

1 everybody is, and it's probably comparatively clear that
2 some people will fall rather more readily into
3 a potential claim for funding than others. But I am not
4 ruling upon it because I have not yet had
5 a determination from the ministers under Section 40,
6 although I am expecting it.

7 Thank you all very much for your attendance. Thank
8 you.

9 (12.45 pm)

10 (The hearing adjourned)

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