

<p>1 Tuesday, 4 October 2011                  2 (10.30 am)                  3 LORD JUSTICE LEVESON: We will have a break in the                  4 mid-morning to give the pressed shorthand writers                  5 an opportunity to recover their strength.                  6 This is the second hearing intended to identify the                  7 way forward for the conduct of this Inquiry. There has                  8 been some concern expressed about the adequacy of                  9 notice. I am sorry about that and I have no doubt that,                  10 as we get into the Inquiry, the dissemination of                  11 knowledge will become rather swifter and more timeous,                  12 but while we are all trying to find our way it is                  13 inevitable that things have to be done at rather shorter                  14 notice than might otherwise be desirable.                  15 I am grateful to those who have raised further                  16 issues beyond those identified by Mr Jay. What I think                  17 we will do is we will go through the issues that he has                  18 identified and then deal with anything else that might                  19 arise.                  20 I will at some stage want to identify the need for                  21 further of these hearings but I am keen to underline                  22 that the process, which I am determined should be open,                  23 transparent and fair, is not intended to generate                  24 satellite issues which, with the greatest of respect,                  25 seem more designed to pin me down than really to take</p> <p style="text-align: center;">Page 1</p>	<p>1 nonetheless, wish to receive the same documents as core                  2 participants at the same time as they receive them.                  3 So those who fall into that category at the moment                  4 are Trinity Mirror, Mrs Rebekah Brooks, the Metropolitan                  5 Police Authority and the Telegraph Media Group.                  6 We have received correspondence and submissions from                  7 them and those have been provided to you.                  8 LORD JUSTICE LEVESON: This refers back to my observation                  9 that I did not intend there to be a bright line between                  10 those who were core participants and those who were not.                  11 MR JAY: Yes.                  12 LORD JUSTICE LEVESON: What I was there referring to was the                  13 ability of anyone to suggest questions to you which you,                  14 as counsel to the Inquiry, might wish to pursue, and the                  15 ability of others to ask if I will receive submissions                  16 at the conclusion of the Inquiry --                  17 MR JAY: Yes.                  18 LORD JUSTICE LEVESON: -- which I made clear, certainly to                  19 a number of those who applied for core participant                  20 status, will likely be received favourably.                  21 MR JAY: Yes.                  22 LORD JUSTICE LEVESON: But there is a limit to that if the                  23 Inquiry is not to become entirely unwieldy.                  24 MR JAY: Yes. It is clear from the rules that the core                  25 participants enjoy a certain status, of course they are</p> <p style="text-align: center;">Page 3</p>
<p>1 forward the issues with which I have to grapple.                  2 In some regards, it may be worthwhile pinning issues                  3 down but that is a different matter.                  4 I intend to conduct this Inquiry fairly. I am going                  5 to consider the issues fairly. Analysis of previous                  6 decisions of mine in the Court of Appeal criminal                  7 division, the Court of Appeal civil division or, indeed,                  8 the House of Lords will not assist in the ultimate view                  9 that I take because I have identified from the outset                  10 the issues with which I have to grapple and the way in                  11 which I intend to approach them.                  12 Everybody will have to take that on board, and they                  13 will then have to see whether the way in which I deal                  14 with the evidence and the ultimate report that I write                  15 fits the description that I have just provided.                  16 So with that general observation which is not                  17 intended to be a prescriptive analysis but merely to                  18 reflect my concern as I have read the various letters                  19 that have passed between different people, let us start.                  20 Mr Jay?                  21 Submissions by MR JAY                  22 MR JAY: Sir, I have circulated a note and some draft                  23 protocols. I have a checklist, as it were, or agenda                  24 for you today. The first issue is the status of those                  25 who have not been designated core participants but who,</p> <p style="text-align: center;">Page 2</p>	<p>1 designated under Rule 5, but in terms of their status in                  2 respect of which the rules make this explicit, they have                  3 certain rights or privileges in the context of oral                  4 evidence, this is Rule 10, and they also have rights,                  5 subject to your controlling that right, to make oral and                  6 closing statements under Rule 11.                  7 LORD JUSTICE LEVESON: Yes.                  8 MR JAY: The rules do not state whether core participants                  9 can make submissions on draft protocols, whether they                  10 can see witness statements in advance, whether they can                  11 see documents in advance, but that is a matter for you.                  12 There is, as it were, an overriding objective in the Act                  13 under Section 17 that you act fairly, and that is the                  14 guiding principle of course.                  15 It appears --                  16 LORD JUSTICE LEVESON: Therefore, do I understand that                  17 inquiries conducted under this legislation before have                  18 arranged for core participants to receive all these                  19 documents in advance --                  20 MR JAY: Yes.                  21 LORD JUSTICE LEVESON: -- in order the better to prepare for                  22 the Inquiry.                  23 MR JAY: Yes. The question arises, I suppose, whether you                  24 have power in relation to other persons and entities who                  25 are not core participants in the strict sense, either</p> <p style="text-align: center;">Page 4</p>

<p>1 because they haven't applied or because you have already                  2 decided that they are not, whether you have power to say                  3 that they should, nonetheless, receive advance notice of                  4 documents, et cetera, and witness statements.                  5 It appears too to us, but it is a matter for your                  6 discretion, that you are master of your own procedure                  7 and you could, if you so chose, say, in relation to                  8 perhaps a limited number of persons, "Yes, they may                  9 receive documents in advance". There is nothing, as we                  10 see it, in the rules which prevents that course, but nor                  11 is there anything which mandates that course.                  12 Doubtless, you will receive submissions about it but                  13 those are, insofar as there are any principles the                  14 principles which will determine your decision once you                  15 have heard those submissions.                  16 So that is the first issue which arises today. So                  17 the second issue, perhaps more prosaically, the draft                  18 protocols, because we have received submissions as we                  19 sought them on the protocols, of which there are three                  20 now in draft, the assessor's protocol, which was subject                  21 to some debate at the last hearing, but it was expressly                  22 agreed that it would not be finalised until you heard                  23 submissions today.                  24 LORD JUSTICE LEVESON: Yes.                  25 MR JAY: So you indicated on that occasion that you were</p> <p style="text-align: center;">Page 5</p>	<p>1 messenger but the point is made, will you be giving                  2 advance notice of your intention to seek a report? We                  3 say that is entirely a matter for you.                  4 Then it is the Guardian, paragraph 7 of their                  5 submissions, this point: will you be defining the                  6 specific nature and ambit of an assessor's expertise?                  7 Our only observation on that is that it is a matter for                  8 your judgment as to whether an assessor is --                  9 LORD JUSTICE LEVESON: This is one of the issues that does                  10 cause me concern that I am going to start getting myself                  11 into all sorts of arguments about whether I have asked                  12 for something that does fall or doesn't fall within the                  13 expertise, whereas, actually, at the end of the day,                  14 I have to get on with it and be fair.                  15 MR JAY: Yes.                  16 LORD JUSTICE LEVESON: When I have sat with other assessors                  17 in other jurisdictions nobody has ever asked me the                  18 question about what question I asked an assessor and                  19 what answer I gave. Ultimately, provided I am fair and                  20 I make it clear that if I have received some expert view                  21 which is different to the evidence, that people have                  22 a chance to deal with it, that seems to me where I ought                  23 to be going.                  24 MR JAY: Paragraph 4.3 of the draft protocol specifically                  25 contemplates, as must be right, consistent with</p> <p style="text-align: center;">Page 7</p>
<p>1 minded to make an addition to paragraph 3(b) of the                  2 assessor's protocol.                  3 LORD JUSTICE LEVESON: In an area of their expertise --                  4 MR JAY: Yes.                  5 LORD JUSTICE LEVESON: -- which really came into --                  6 because 3 is subject to paragraph 2, then it is really                  7 for the purpose of avoiding doubt.                  8 MR JAY: Yes.                  9 LORD JUSTICE LEVESON: The proof of the pudding on all this                  10 will be in the eating, won't it?                  11 MR JAY: Very much so. News International, paragraph 2 of                  12 their submissions, they enquire whether advice from                  13 assessors includes oral advice? Advice is dealt with,                  14 sir, under paragraph 5 of the draft protocol and, as                  15 drafted, it certainly does not exclude oral advice.                  16 Then News International raise a point, but they will                  17 no doubt develop it: will the parties be given advance                  18 notice of your intention to seek a report from                  19 an assessor under clause 4 of the protocol? It wasn't                  20 News International. It may have been the Guardian,                  21 actually. My note is faulty. It doesn't matter from                  22 whom it emanates. We will hear who makes the                  23 submission.                  24 LORD JUSTICE LEVESON: Yes, well, we will, won't we?                  25 MR JAY: I am identifying the substance rather than the</p> <p style="text-align: center;">Page 6</p>	<p>1 obligations of fairness, that you receive submissions or                  2 observations on any report submitted by an assessor.                  3 There is nothing to stop the party from saying "Well,                  4 you shouldn't have solicited that report because                  5 a particular assessor is simply not competent to provide                  6 it to you." Let us see whether that happens, but                  7 whether you need to do it in an anticipatory way and                  8 define "nature and ambit of an assessor's expertise" in                  9 advance, is a matter for you, but your provisional view                  10 is that that would probably be unnecessary.                  11 LORD JUSTICE LEVESON: I am just concerned that, as I say,                  12 we are going to move off the main track --                  13 MR JAY: Yes.                  14 LORD JUSTICE LEVESON: -- into sidings which can be                  15 extremely tortious.                  16 MR JAY: Yes, with an Inquiry which has to complete within                  17 a year, we need to keep to a motorway but keep to the                  18 speed limit because the speed limit will define whether                  19 we are acting fairly.                  20 LORD JUSTICE LEVESON: That is a very challenging assertion,                  21 these days.                  22 MR JAY: If we go at 150 miles an hour we may not be acting                  23 fairly but if we, as you rightly say, get diverted, we                  24 will take three years and defeat the purpose of this                  25 Inquiry. We do have to get on with it.</p> <p style="text-align: center;">Page 8</p>

<p>1 So I move on having identified the issues which                  2 others will adumbrate in advance, perhaps in greater                  3 detail, to deal with the documents protocol which has                  4 excited only one observation on my reckoning and this is                  5 uncontroversial really. In paragraph 15 of the                  6 documents protocol which is in your bundle page 14D,                  7 sir, Associated Newspapers have suggested that we have                  8 a third category after the "or", what is going to be                  9 a second "or":                  10 "Confirm in writing that no redactions in respect of                  11 the documents or information provided are sought."                  12 That is an acceptable amendment and we will make                  13 that amendment subject to your confirmation and anybody                  14 else's contrary submission.                  15 The funding protocol has --                  16 LORD JUSTICE LEVESON: Just before you move from that                  17 protocol, we did receive a communication which dealt                  18 with the document management system.                  19 MR JAY: Yes, we did.                  20 LORD JUSTICE LEVESON: I have no doubt that has been taken                  21 on board.                  22 MR JAY: It has.                  23 LORD JUSTICE LEVESON: Are you satisfied that the point can                  24 be sufficiently addressed of the concerns?                  25 MR JAY: I think it can. To be absolutely frank, I haven't</p> <p style="text-align: center;">Page 9</p>	<p>1 MR JAY: Yes, we have.                  2 LORD JUSTICE LEVESON: Nobody has commented on the draft                  3 funding protocol.                  4 MR JAY: No.                  5 LORD JUSTICE LEVESON: Right, okay. So this is now "Comm                  6 on briefing seminars".                  7 MR JAY: Yes, or the subjects covered by the briefing                  8 seminars, as News International put it. So the                  9 position, as you know, under Rule 11 is that there is                  10 express provision for making opening statements. At the                  11 moment, it should probably be most appropriately made at                  12 the commencement of the formal segment of the Inquiry                  13 itself.                  14 The way it is likely to work, subject to your view,                  15 is that I will make an opening submission which would                  16 take, as presently advised, about half a day. I won't                  17 hold myself to that but that is my current thinking.                  18 Then the core participants can make submissions, both in                  19 writing and orally. The submissions in writing can                  20 cover, frankly, any matter which any particular core                  21 participant wishes to cover. Naturally, they have                  22 a second bite of the cherry at the end in the closing                  23 statements and they also are likely to be able to make                  24 oral submissions, but you may wish to control, restrict                  25 the length of time for the making of oral submissions.</p> <p style="text-align: center;">Page 11</p>
<p>1 applied my mind to all the technicalities, but I will                  2 check during the course of the morning that there is no                  3 point I need to specifically draw to your attention                  4 about the practical proposals which are there suggested.                  5 I think it is Trinity Mirror, isn't it, who made those                  6 suggestions?                  7 LORD JUSTICE LEVESON: Yes, but using their expertise from                  8 another Inquiry.                  9 MR JAY: So it was the MPA. It is page 108. I am grateful.                  10 LORD JUSTICE LEVESON: Thank you very much. Yes, it is                  11 Eversheds.                  12 MR JAY: Yes.                  13 LORD JUSTICE LEVESON: I have no doubt that members of the                  14 Inquiry team will talk to solicitors who obviously have                  15 expertise in the document management system and make                  16 sure we can take whatever benefit that can be obtained                  17 from their expertise.                  18 MR JAY: Thank you.                  19 The next issue, and this time I am sure I have got                  20 it right, it is News International who have made the                  21 point, paragraph 3 of their submissions. They enquire                  22 as to the time for making submissions on the subjects                  23 covered by the --                  24 LORD JUSTICE LEVESON: We have finished the protocols, have                  25 we?</p> <p style="text-align: center;">Page 10</p>	<p>1 LORD JUSTICE LEVESON: I am going to be restricting quite                  2 a lot of time and put lots of stuff into writing.                  3 MR JAY: Yes.                  4 LORD JUSTICE LEVESON: Yes.                  5 MR JAY: So, in answer to News International's question,                  6 well they can say precisely what they like at that point                  7 and it need not be limited, of course, to the subjects                  8 covered by the briefings and seminars, it can be as wide                  9 ranging as they see fit.                  10 You also, it seems to us, have power, at any stage                  11 of the Inquiry, to invite submissions from counsel to                  12 the Inquiry or any core participants on any specific                  13 issue.                  14 LORD JUSTICE LEVESON: Let me just give you some thinking on                  15 that --                  16 MR JAY: Yes.                  17 LORD JUSTICE LEVESON: -- and test out what I have                  18 previously said. The purpose of the briefings was to                  19 provide both the background in relation to the general                  20 law and in relation to the regulatory framework so that                  21 everybody understood the broad situation as it exists                  22 now.                  23 MR JAY: Yes.                  24 LORD JUSTICE LEVESON: The briefing provided by Mr Warby                  25 last week was an example, and there is to be another one</p> <p style="text-align: center;">Page 12</p>

<p>1 tomorrow, the other of the two, and there are some notes                  2 available and we will doubtless put something out about                  3 it, because it is not just to tell everybody here, most                  4 of whom know a great deal about these areas of law and                  5 perhaps rather less about regulation, but also the wider                  6 public, so that people can understand where we presently                  7 are.                  8 The purpose of the seminars is equally to spark off                  9 a discussion of the issues.                  10 MR JAY: Yes.                  11 LORD JUSTICE LEVESON: I certainly intend, not only that the                  12 seminars will be capable of being watched subsequently                  13 but also the transcripts and summaries are available to                  14 raise the issues and invite what would, I suppose,                  15 strictly be the submission of evidence from the public                  16 but really engage the wider community and journalists                  17 who aren't involved in this particular Inquiry                  18 personally --                  19 MR JAY: Yes.                  20 LORD JUSTICE LEVESON: -- in the debate. Therefore,                  21 anything that anybody has to say, if anybody suggests                  22 that, for example, I don't believe anybody will, but if                  23 they did, that Mr Warby got the law wrong, then, by all                  24 means, they should do so and they can make a submission                  25 about that at any time.</p> <p style="text-align: center;">Page 13</p>	<p>1 The evidence will be what one hears, actually,                  2 downstairs, rather than in this room, from the large                  3 range of witnesses who will be called.                  4 MR JAY: Yes.                  5 LORD JUSTICE LEVESON: Anyway, we will hear what people say                  6 Right.                  7 MR JAY: The next issue, and this is a further point from                  8 News International, paragraph 4 of their submissions,                  9 they raise a query as to the level of detail into which                  10 we are going to go in establishing the narrative for the                  11 purposes of part 1 of your Inquiry.                  12 LORD JUSTICE LEVESON: Yes.                  13 MR JAY: I say nothing more about that, save to note that                  14 the Inquiry, at this stage, is into the culture,                  15 practices and ethics of the press. "Culture" is as                  16 detailed or as general as one chooses to make it, but we                  17 have already indicated we have to have regard to other                  18 considerations.                  19 I have no further submissions to make about that                  20 matter.                  21 LORD JUSTICE LEVESON: We will hear what Mr Rhodri Davies                  22 has to say about that.                  23 MR JAY: List of issues, this is a point from                  24 Associated Newspapers. They would like a list of issues                  25 to clarify and explain the terms of reference. It is</p> <p style="text-align: center;">Page 15</p>
<p>1 MR JAY: Yes.                  2 LORD JUSTICE LEVESON: If they think that the way in which                  3 we ultimately invite public views on the seminars is                  4 unbalanced, without trying to weigh these to a nicety,                  5 then again, they can make submissions.                  6 MR JAY: Yes.                  7 LORD JUSTICE LEVESON: I have no problem about that at all.                  8 MR JAY: Yes. Subject to your view, the right time to make                  9 submissions on the subject of the briefings and seminars                  10 and more generally is likely to be in the opening                  11 statement contemplated by Rule 11, so we have them in                  12 one piece. There is unlikely to be a burning need for                  13 anybody to comment in the interregnum between closing                  14 seminars and starting the evidence gathering sessions of                  15 the Inquiry.                  16 LORD JUSTICE LEVESON: It depends, doesn't it, because                  17 people will doubtless listen to the seminars and, if                  18 there is some concern before we put something out,                  19 I mean the seminars will go out as they are, we can't                  20 change them.                  21 MR JAY: Yes.                  22 LORD JUSTICE LEVESON: But, as we seek to reflect them, then                  23 I don't mind when that comes, because that is not                  24 evidence. It is part of the record of the enquiries, as                  25 I think I have said before, but will not be evidence.</p> <p style="text-align: center;">Page 14</p>	<p>1 right that in some inquiries, in many inquiries, indeed,                  2 there has been such a list of issues. Whether it is                  3 necessary in this particular Inquiry is, we say,                  4 entirely a matter for you.                  5 LORD JUSTICE LEVESON: But this Inquiry, as I think I have                  6 said before, is different to many inquiries. An Inquiry                  7 might be set up to investigate some disaster, the                  8 King's Cross fire, the Hillsborough, the Mid Staffs, all                  9 these inquiries are generated by events and the Inquiry                  10 will generally be to find out what happened and to learn                  11 lessons.                  12 The first problem is that a lot of the precise                  13 detail, which is normally the starting point for                  14 an Inquiry and is naturally the starting point, is or                  15 may be tied up in the investigation being undertaken by                  16 the police. Therefore, to some extent, as has been                  17 observed and as I have said, the Inquiry puts the cart                  18 before the horse because, if one were to wait for the                  19 end of the police investigation, we wouldn't start for                  20 a time to be measured in, well, not weeks and probably                  21 not months. I don't know. I simply don't know. That                  22 shouldn't be taken as my providing some indication of                  23 knowledge which I don't have, because I don't have the                  24 knowledge.                  25 MR JAY: Absolutely.</p> <p style="text-align: center;">Page 16</p>

<p>1 LORD JUSTICE LEVESON: Therefore, I am required by the terms  2 of reference, which are far more detailed than in other  3 inquiries, to look at some specific issues now, before  4 the investigation can go into the sort of detail that  5 would be necessary, which would have to await the  6 conclusion of any police investigation.  7 MR JAY: Yes.  8 LORD JUSTICE LEVESON: To try to go into further explanation  9 seems to me to be rather difficult and, to some extent,  10 I have to wait and see what evidence is generated and  11 what I can get to grips with and how far I can go  12 without causing that prejudice.  13 MR JAY: Yes.  14 LORD JUSTICE LEVESON: I think I made clear that I had  15 invited the Director of Public Prosecutions to make  16 submissions as to how far I can go before I run the risk  17 of potentially causing prejudice to a current criminal  18 investigation.  19 MR JAY: Yes.  20 The next matter or series of matters concerns the  21 handling of the Inquiry itself and the production of  22 witness evidence. I think these points all come from  23 the Guardian. The first point: will there be advance  24 notice of the order in which witnesses will be called  25 and, if so, how much notice? Well, the answer is: we</p> <p style="text-align: center;">Page 17</p>	<p>1 solidify until we have the complete picture.  2 LORD JUSTICE LEVESON: Where are we on responses to the  3 notices for evidence and the requests for evidence,  4 because there are two things.  5 MR JAY: It would be right to say that all recipients, on my  6 understanding of Section 21 notices, have engaged with  7 the Inquiry. Some have asked for an extension of time,  8 which have been granted. There are no specific matters  9 which cause us concern and which we need to draw to your  10 attention at this stage.  11 LORD JUSTICE LEVESON: Okay.  12 MR JAY: I should say that some newspapers did not ask for  13 extensions of time and provided their evidence on the  14 date we originally sought and worked extremely hard to  15 do so. I am not saying for one moment that other  16 newspapers are not working equally hard.  17 LORD JUSTICE LEVESON: No, let me make it abundantly clear,  18 I am very grateful to everybody. I am particularly  19 grateful to those who hit the deadline, not because I am  20 trying to be macho about this, but because we have to  21 get on and, absent the material, we can't get on.  22 MR JAY: Yes.  23 LORD JUSTICE LEVESON: So I am very grateful to those who  24 have done so and I am equally grateful to those who are  25 working to do so within extended times and I am very</p> <p style="text-align: center;">Page 19</p>
<p>1 will give as much notice as we can. It goes without  2 saying we won't be telling witnesses the night before  3 that they are on the stand, as it were, the following  4 morning.  5 LORD JUSTICE LEVESON: I don't think we have stands in this  6 country, Mr Jay.  7 MR JAY: That is true.  8 LORD JUSTICE LEVESON: Nobody should draw inferences about  9 the way in which we will try to organise the time from  10 the way we have organised these hearings. The fact is  11 that I will want to set out a broad way forward with  12 some identification of the time available, not least so  13 that people can understand the restraints that will  14 inevitably have to follow from that available time.  15 MR JAY: Yes.  16 LORD JUSTICE LEVESON: That will include, not merely the  17 skeleton of how we will break up the next nine months,  18 but also, I hope, an identification of the witnesses and  19 how long we think they will take, but that inevitably  20 must wait the collection of the evidence because we  21 can't make decisions until we know where we are.  22 MR JAY: Yes. Not all the evidence is in, so the precise  23 witnesses who are going to be called to give oral  24 evidence and their sequence -- although we may have some  25 ideas, but those ideas certainly aren't going to</p> <p style="text-align: center;">Page 18</p>	<p>1 keen to receive things as and when they are ready,  2 rather than have it all bundled up in one great pile if  3 that is not inconvenient.  4 MR JAY: Yes. Unless I hear otherwise, during the course of  5 the morning, on that specific matter, namely compliance  6 with the Section 21 notices, there is nothing I need to  7 bring specifically to your attention. It is all being  8 dealt with behind the scenes and on an amicable basis,  9 but if that is wrong I will be told.  10 LORD JUSTICE LEVESON: I hope if it ceases to be amicable  11 I will be told.  12 MR JAY: Yes.  13 LORD JUSTICE LEVESON: Everybody has to help. I am very  14 sorry, that is the nature of the beast and it isn't in  15 anybody's interests that this takes longer than it need  16 take, whatever. There are issues that have to be  17 addressed and we all have to address them and, to that  18 extent, if different groups have different ways of  19 working and want to suggest approaches, then I am very  20 prepared to receive them.  21 MR JAY: Yes. So thank you.  22 The next issue is: will there be advance notice of  23 the lines of questions which, in particular, counsel to  24 the Inquiry will be posing of witnesses?  25 Our provisional view, again, subject to further</p> <p style="text-align: center;">Page 20</p>

<p>1 submissions and your view, is that there won't. Rule 9                  2 of the Inquiry Rules 2006, in Mr Beer's book is at                  3 page 477, makes it clear that the areas of evidence must                  4 be addressed in witness statements. This Inquiry has                  5 chosen to use the Section 21 procedure but the                  6 principles are the same.                  7 Subject to Rule 9, the Inquiry is not presently                  8 minded to give advance notice of lines of questions,                  9 nor -- and this is a related point but slightly                  10 separate -- advance notice of documents to be put to                  11 witnesses.                  12 There is a practical issue here that, if we are to                  13 identify on a rolling basis lines of questions and                  14 documents to be put to each witness, that task is likely                  15 to prove extremely difficult to the Inquiry as presently                  16 constituted and, frankly, we are going to get bogged                  17 down and we need to be fleet of foot, frankly, and we                  18 are not minded to submit to you that this is a request                  19 which should be acceded to.                  20 LORD JUSTICE LEVESON: Yes. It is always open to anybody to                  21 suggest questions to you --                  22 MR JAY: Yes.                  23 LORD JUSTICE LEVESON: -- which is a rather different                  24 proposition. Equally, it is open to a core participant                  25 to apply for permission to ask questions, although</p> <p style="text-align: center;">Page 21</p>	<p>1 of question which counsel to the Inquiry, for whatever                  2 reason, decided not to pursue". So it would be                  3 an application made on the hoof which, with the witness                  4 there, you will have to determine on the hoof. So the                  5 advance notice, which will be given to everyone else in                  6 those circumstances, will be very short notice. One                  7 can't rule out that possibility.                  8 LORD JUSTICE LEVESON: No, I understand that, but obviously                  9 it would be sensible if, when we have declared who is                  10 going to be called to give evidence and given                  11 appropriate notice, that, if anybody has any burning                  12 issues that they think you might miss, that they should,                  13 first of all, alert you: "Will you be dealing with that,                  14 this and the other?" You will simply be able to look                  15 down the list and say "yes, no, yes, no, yes, no" or                  16 "yes, yes, yes" or whatever.                  17 MR JAY: Exactly. So the length of the notice is going to                  18 be a bit of a movable feast depending on when the issue                  19 is being addressed, but as I have said, one can't rule                  20 out the possibility of applications being made at the                  21 last moment.                  22 LORD JUSTICE LEVESON: No, I see that.                  23 MR JAY: The next issue, and this is likely to be                  24 uncontroversial today, the standard of proof which you                  25 should be applying to your determinations of fact under</p> <p style="text-align: center;">Page 23</p>
<p>1 subject to Rule 10.1.                  2 MR JAY: Yes.                  3 LORD JUSTICE LEVESON: Subject to that provision, it makes                  4 it clear that only counsel to the Inquiry and the                  5 Inquiry panel, which in that case is me and me alone,                  6 may ask questions of that witness.                  7 MR JAY: Yes, that is right and this leads to the final                  8 point, I suppose, that is made in this context: will                  9 there be advance notice of applications by other counsel                  10 under Rule 10 to put questions to witnesses?                  11 Well, the answer is given that you must rule on the                  12 application by other counsel to put questions to                  13 witnesses, notice will have to be given. But the length                  14 of that notice will depend on the nature of the                  15 application being made and a range of other factors.                  16 LORD JUSTICE LEVESON: That also applies to the                  17 representative of a witness who is not a core                  18 participant.                  19 MR JAY: Yes.                  20 LORD JUSTICE LEVESON: Rule 10.3.                  21 MR JAY: It is not impossible, if I can give you                  22 a hypothetical example, that counsel to the Inquiry                  23 conclude their questions of a witness and then someone                  24 else immediately makes an application to you orally and                  25 says, "Well, I would like to pursue the following lines</p> <p style="text-align: center;">Page 22</p>	<p>1 section 24 of the Act. I put forward some suggestions                  2 based on what was determined in another enquiry, the                  3 Baha Mousa Inquiry, and the ruling of Sir William Gage                  4 is available on his website, the matter is subject to                  5 detailed submissions and then a detailed ruling. We                  6 have made some suggestions really on the back of that,                  7 but a number of people have said it's not necessary or                  8 appropriate that you decide that issue today. Let us                  9 return to it another day.                  10 LORD JUSTICE LEVESON: I am very comfortable about that.                  11 What I have done is alert everybody to the way in which                  12 I may have to approach certain issues.                  13 MR JAY: Yes.                  14 LORD JUSTICE LEVESON: Whether there is to be argument about                  15 whether I can or can't or whether it is appropriate or                  16 not, to some extent, perhaps, needs to await events.                  17 I think the reason for mentioning it at this stage was                  18 merely to put it on the table.                  19 MR JAY: Yes. So it is on the table. We will leave it                  20 there for consideration.                  21 LORD JUSTICE LEVESON: I know that was a matter that                  22 Mr Caplan was concerned about, not that Ms Palin                  23 wouldn't have dealt with the problem entirely                  24 appropriately. Yes.                  25 MR JAY: The final point which I think I have to raise, and</p> <p style="text-align: center;">Page 24</p>

<p>1 this is another uncontroversial point, is that we said                  2 in the note that it was the Inquiry's present intention                  3 that the evidence gathering session will be televised                  4 and, subject to the view of the broadcaster,                  5 simultaneously broadcast. We invited submissions and                  6 observations about that and no one has expressed any                  7 objection to that proposed course.                  8 LORD JUSTICE LEVESON: Yes.                  9 MR JAY: At that stage and in a neutral and, I hope,                  10 expository fashion those are my submissions.                  11 LORD JUSTICE LEVESON: All right. Let us see where we go to                  12 from here. With such a bewildering array of talent,                  13 where to start? I think I am going to leave                  14 Mr Sherborne towards the end because he can hear what                  15 everybody else has had to say and then deal with points                  16 where he may take a different view to some of the other                  17 core participants as it emerges, so that doesn't intend                  18 to show you any discourtesy.                  19 MR SHERBORNE: I am grateful.                  20 LORD JUSTICE LEVESON: Similarly, I think, probably, with                  21 the police. Right. Mr Rhodri Davies, you are on.                  22 Submissions by MR DAVIES                  23 MR DAVIES: Thank you, sir.                  24 Could I say at the beginning that, in view of what                  25 you said earlier, we, of course, don't doubt the</p> <p style="text-align: center;">Page 25</p>	<p>1 discuss emerging findings. So there will be ample                  2 opportunity for you and the other core participants to                  3 comment on the direction in which I am minded to travel                  4 and to make submissions if you think that I need to tilt                  5 the rudder so many degrees to the left or right or go in                  6 the opposite direction. I don't mind that, but to start                  7 to unpick otherwise creates a satellite area of work,                  8 which I am sure you will understand, is simply not                  9 practical.                  10 MR DAVIES: Yes. As I said, it is a small point.                  11 Paragraph 5 is governed by the extent to which you                  12 consider it necessary and proportionate and we entirely                  13 understand that.                  14 LORD JUSTICE LEVESON: Absolutely.                  15 MR DAVIES: That is the first point.                  16 LORD JUSTICE LEVESON: The reason I am saying what I am                  17 saying is because, the more reassurance I can give                  18 everybody about how I am trying to do this and how                  19 I want to make as much open as I can make open, how                  20 I want to be as transparent as I can and how I want                  21 everybody's help and I absolutely will be fair, then the                  22 better and then perhaps people will stop chipping away,                  23 but maybe they won't.                  24 MR DAVIES: Well, if I move on from that point, sir.                  25 LORD JUSTICE LEVESON: Yes.</p> <p style="text-align: center;">Page 27</p>
<p>1 commitment of the Inquiry to be open, fair and on time                  2 and it is our hope and intention that we will assist not                  3 hinder that process.                  4 If I just take the points that were raised in the                  5 note that we put in.                  6 LORD JUSTICE LEVESON: Yes.                  7 MR DAVIES: The first one was a very short one on                  8 paragraph 5 of the assessor protocol, and Mr Jay                  9 helpfully said that oral advice was certainly not                  10 excluded and all we are really looking for is                  11 an understanding that that includes any advice that is                  12 given orally as well as advice given in writing.                  13 LORD JUSTICE LEVESON: Yes, let me make it abundantly clear,                  14 I am not going to start -- I can't start trying to                  15 reduce every word I speak to the assessors into writing                  16 so that everybody knows everything that has been said.                  17 To that extent, I understand the concern that has been                  18 expressed but I am looking at the experts for their                  19 expertise and, in large part, that is going to be to                  20 help identify what lines of Inquiry should be sought                  21 with the witnesses and then give me the benefit of their                  22 years of expertise, when I think about specific issues.                  23 Now, nothing that I say, that I conclude, will not                  24 be available to you and I have already made it clear                  25 that I intend to hold seminars or, in other ways,</p> <p style="text-align: center;">Page 26</p>	<p>1 MR DAVIES: The next point and, in fact, this goes for quite                  2 a lot of the rest, might really be headed "Timetable"                  3 because the next point we have raised, and I know it is                  4 a point that has been raised by other core participants,                  5 is the point at which we should make sustained                  6 submissions, which may, in due course, be revised but at                  7 least start, on the areas which you are covering in the                  8 seminars and the briefings, as to the state of the law,                  9 regulation, the shape that future regulation might take                  10 and so on.                  11 LORD JUSTICE LEVESON: I see. Then I have misunderstood and                  12 that is fair enough. It is not that you are very keen                  13 to make submissions that somebody has made a mistake.                  14 MR DAVIES: Not specifically, no.                  15 LORD JUSTICE LEVESON: It is that you want to be able to                  16 make submissions in the general area.                  17 MR DAVIES: Yes.                  18 LORD JUSTICE LEVESON: So, actually, Mr Jay is right that we                  19 are really talking about what you would say in opening                  20 submissions.                  21 MR DAVIES: That was the point which we were looking for                  22 some clarification on, as to how and when we can best                  23 help the Inquiry. I mean, there are points which we                  24 might want to elucidate on the law but, as we have                  25 understood it, and I think this follows from what you</p> <p style="text-align: center;">Page 28</p>

<p>1 said this morning as well, the object of the seminars                  2 and certainly the briefings is not from anyone from one                  3 of the core participants, certainly not from the                  4 newspaper side anyway, to get up and make a great speech                  5 about how they see the future. It is to stimulate                  6 debate and get lots of contributions.                  7 LORD JUSTICE LEVESON: Absolutely.                  8 MR DAVIES: Nonetheless, there has to come a point at which                  9 we say, "This is the way we think it should go".                  10 LORD JUSTICE LEVESON: Absolutely, and I am happy for that                  11 whenever you wish. Certainly, it will be helpful to                  12 have it set out at the beginning, not least because one                  13 can then examine the evidence against the possible                  14 solutions if there is a problem.                  15 MR DAVIES: Yes.                  16 LORD JUSTICE LEVESON: To the extent that the                  17 representatives of the media have a common view about                  18 areas, then -- whether or not I agree with it, that is                  19 not quite the point -- I am very, very pleased to learn                  20 it, because I am very conscious that, whatever I do come                  21 up with, if it is different, has to work and it is not                  22 merely the assessors that will tell me "Well, that idea                  23 is hopeless". You also will tell me what you think will                  24 work in the spirit of trying to use the opportunity to                  25 protect article 10 but mindful of everybody's</p> <p style="text-align: center;">Page 29</p>	<p>1 second week in November.                  2 I would be very interested to hear whether anybody                  3 thinks that is too soon, too far away or what. The                  4 purpose being that five weeks or whatever time that is                  5 going to be taken up reading, assimilating, preparing                  6 a detailed plan and ensuring that, when we start, we                  7 start and don't stop. In other words, we keep going so                  8 that we would move straight from opening submissions                  9 into evidence.                  10 MR DAVIES: Yes.                  11 LORD JUSTICE LEVESON: Now, that is not a timeframe that you                  12 have been told before because, to some extent, it has                  13 been one that I don't say has been forced upon me                  14 because, as those who help me have learnt, forcing                  15 things on me doesn't normally work, but it is suggested                  16 as a realistic timeframe, so I would be grateful for                  17 your view about that and indeed, everybody else's view                  18 about that.                  19 MR DAVIES: I think it would be premature for me to comment                  20 on the hoof on that, except that, certainly, I would be                  21 surprised if it was too soon and I am not going to say                  22 anything beyond that spontaneously.                  23 LORD JUSTICE LEVESON: In a few minutes I will give the                  24 shorthand writers a break and you will have the chance                  25 to think about that.</p> <p style="text-align: center;">Page 31</p>
<p>1 obligations under article 8.                  2 MR DAVIES: Yes, that is certainly the balance we would want                  3 to explore. It sounds as if we should treat opening                  4 submissions as at least an initial deadline or target                  5 for those sorts of submissions.                  6 LORD JUSTICE LEVESON: Yes.                  7 MR DAVIES: That, of course, I am afraid, immediately raises                  8 in my mind the question as to when that is going to                  9 occur.                  10 LORD JUSTICE LEVESON: When, that has been the subject of                  11 great debate because my anxiety to start sooner rather                  12 than later is being temporised by the reality of those                  13 who advise me of the nature and extent of the task that                  14 everybody has to face, dealing with the evidence as it                  15 comes in and ensuring that the thing can be presented                  16 coherently and of a piece, and the point is made that,                  17 as days pass, different things are being said and                  18 different evidence is emerging which actually may cast                  19 a different light, and my attempt to underline the ever                  20 approaching end of this tunnel met with concerns that,                  21 if we start travelling down it too soon, we may come off                  22 the rails.                  23 So the present thinking is -- and I am not                  24 committing myself to this -- but the present thinking is                  25 that we are unlikely to be able to start before the</p> <p style="text-align: center;">Page 30</p>	<p>1 MR DAVIES: Yes. Perhaps I could raise another point which                  2 is, in a way, related to that which I am afraid is not                  3 in my note, because it hadn't struck me earlier, but you                  4 have made it clear, sir, that the Inquiry is starting                  5 with relations between the press and the public.                  6 That is entirely understandable. However, there are                  7 other aspects of the terms of reference, particularly in                  8 relation to press and police and press and politicians.                  9 Some of the witnesses, particularly from the media,                  10 will be relevant, one imagines, to all three areas.                  11 Thinking, as we have been, about matters of concern to                  12 witnesses and of fairness to them, that raises the                  13 question, which maybe there isn't an immediate answer                  14 to, as to whether people may be expected to give                  15 evidence more than once or whether the evidential phase                  16 when it starts will deal with all those aspects in one                  17 go.                  18 LORD JUSTICE LEVESON: They won't necessarily deal with all                  19 of them because I think you will probably know that the                  20 Section 21 notices have not been addressed to the                  21 issues, as I understand it, in relation to the police or                  22 the politicians.                  23 MR DAVIES: Yes, that is right.                  24 LORD JUSTICE LEVESON: Therefore, we have to get on with                  25 doing that but it was critical that people addressed how</p> <p style="text-align: center;">Page 32</p>



<p>1 we were going to start. So there may be some witnesses                  2 but not, I think, many who may be asked to come again.                  3 What I hope to do, shortly, is to, as it were, start the                  4 next phase off so that there may be some degree of, as                  5 it were, concurrent rather than consecutive evidence.                  6 For the principal, most significant witnesses I would                  7 hope to avoid requesting multiple appearances --                  8 MR DAVIES: Yes.                  9 LORD JUSTICE LEVESON: -- but I do not exclude the                  10 possibility because, otherwise, the plan of action will                  11 just lose its momentum.                  12 MR DAVIES: Yes.                  13 LORD JUSTICE LEVESON: Would that cause your clients any                  14 difficulty?                  15 MR DAVIES: It will cause, I am sure, the obvious                  16 difficulties that busy people would prefer to prepare                  17 things once and do them once but those are probably not                  18 difficulties which weigh very heavily in the scales as                  19 against the importance of the Inquiry.                  20 LORD JUSTICE LEVESON: Yes, but the preparation would be                  21 different, wouldn't it?                  22 MR DAVIES: It will.                  23 LORD JUSTICE LEVESON: I take the point and, indeed, people                  24 have busy lives. I am very, very conscious of that and                  25 the people who are most concerned with some of these</p> <p style="text-align: center;">Page 33</p>	<p>1 Now, we would we welcome any guidance that it is                  2 possible to give as to how the Inquiry is intending to                  3 attain that. Obviously, there is a lot of material                  4 already in the public domain in one way or another but                  5 putting it all together is an enormous task, but there                  6 is a lot out there.                  7 So at one end, the tribunal can no doubt work with                  8 that. At the other end, it could hear fresh evidence of                  9 primary facts and make findings of primary fact as to                  10 what happened when. Then there is obviously a great                  11 deal of territory in between. As a party who is                  12 necessarily quite closely engaged in some of the history                  13 it would help us to know, if at all possible, at what                  14 level the Inquiry intends to pitch its enquiry into the                  15 narrative.                  16 LORD JUSTICE LEVESON: Your question contains within it the                  17 answer to your question. It is impossible to identify                  18 the level of detail and certainly impossible until                  19 I have had submissions from the Director of Public                  20 Prosecutions as to the extent to which he is concerned                  21 that what I might do could prejudice proceedings.                  22 I think I identified the need for that very early on.                  23 All I can say is that I am mindful of the issue, but                  24 equally until I have the evidence, until I know what is                  25 out there and how best I can tell the story, it is quite</p> <p style="text-align: center;">Page 35</p>
<p>1 issues are those at the very top of very important                  2 enterprises.                  3 MR DAVIES: Yes.                  4 LORD JUSTICE LEVESON: So I am alert to it and I will do                  5 what I can to minimise inconvenience but I won't                  6 prejudice the way in which we can do the thing                  7 coherently to that end.                  8 MR DAVIES: Yes. We wouldn't suggest that matters of                  9 inconvenience should obstruct the process of the                  10 Inquiry. That is very important.                  11 LORD JUSTICE LEVESON: No.                  12 MR DAVIES: Then the next point we have raised, which Mr Jay                  13 referred to and, again, refers really to the evidence,                  14 is how far the tribunal is minded to go at this stage in                  15 creating the narrative of events. Now, I fully                  16 understand this may be a very difficult question to                  17 answer but, as you have mentioned this morning, there is                  18 the difficulty that the police enquiries are ongoing and                  19 no one can trample over the ground which they are                  20 covering in a fashion which could prejudice their                  21 enquiries.                  22 On the other hand, as you also mentioned, the                  23 Inquiry has to have a narrative of events in order to                  24 provide the background and context for the                  25 recommendations which it makes in due course.</p> <p style="text-align: center;">Page 34</p>	<p>1 difficult to see the detail. So I take your point.                  2 I understand it. I do not intend to prejudice any                  3 criminal investigation or prosecution. That has been                  4 a touchstone which I have identified from the very                  5 beginning, but how far I can go before I enter into                  6 forbidden territory, without knowing what is out there,                  7 and how far the Director thinks I can go, is very                  8 difficult to go further. Sorry about that.                  9 MR DAVIES: Not at all. I appreciate it is a difficult                  10 question.                  11 The last point we raised, I think, hardly needs to                  12 be made in the context of what has been said already                  13 this morning. It is really just the question of the                  14 extent of notice to individual witnesses because, even                  15 for those at the top of their profession, giving                  16 evidence in this Inquiry will be a fairly daunting                  17 experience, because there will be a Lord Justice of                  18 Appeal chairing it, six assessors, live television,                  19 documents flashing up on screens with no prior notice                  20 and, perhaps, witnesses being asked to comment                  21 immediately, and it will be quite stressful.                  22 I think as much notice as can be given, this, I am                  23 sure, applies to all witnesses, will be welcome. On the                  24 other hand, having heard you and Mr Jay, I am sure that                  25 fairness is going to be the right way --</p> <p style="text-align: center;">Page 36</p>

<p>1 LORD JUSTICE LEVESON: As much notice that can be given will                  2 be given.                  3 MR DAVIES: Yes.                  4 LORD JUSTICE LEVESON: You can rest assured that my                  5 expertise may not extend to all aspects of the work of                  6 the press but it certainly does extend to the pressures                  7 of giving evidence in any forum and I well understand                  8 the difficulties that even the most robust might face.                  9 So such assistance as can be provided to allow witnesses                  10 to prepare appropriately will be given, but there are                  11 limits to that, obviously.                  12 MR DAVIES: Then the last point is really the reverse side                  13 of that coin. Mr Jay's note at paragraph 18.2, in                  14 relation to witness evidence, raises two objectives: the                  15 need to conduct the Inquiry searchingly and                  16 expeditiously and overriding considerations of fairness                  17 to the witness. Now, again, this probably hardly needs                  18 to be said but, since those two have been singled out,                  19 we were a little concerned that there is a third                  20 consideration which is fairness to anyone who may be                  21 adversely affected by the evidence given by the witness.                  22 So I am sure this will happen, but that embraces things,                  23 like suggesting lines of questioning to counsel to the                  24 Inquiry and also the opportunity to ask questions                  25 directly.</p> <p style="text-align: center;">Page 37</p>	<p>1 five minutes sufficient -- just to provide a break, and                  2 I have taken you quite slowly because a number of the                  3 issues are raised by a number of the others, so                  4 hopefully, the answers that we have discussed, that we                  5 have analysed, help some of them too. We will just take                  6 five minutes.                  7 (11.35 am)                  8 (A short break)                  9 (11.40 am)                  10 MR DAVIES: You will be pleased to know I don't have                  11 anything to add and there is nothing that I can sensibly                  12 say now about the date. We will have to discuss it with                  13 our clients and see if they have any particular comments                  14 and, of course, if they do we will come back.                  15 LORD JUSTICE LEVESON: Of course, but there is nothing that                  16 your solicitors say "My God, that's impossible" or "Too                  17 late or too soon" for any reason?                  18 MR DAVIES: Nobody has said it is too soon, but nobody has                  19 yet told me that it is impossible.                  20 LORD JUSTICE LEVESON: Thank you very much, indeed. That is                  21 very useful, thank you.                  22 Let us carry on going down the core participants who                  23 are newspaper groups. Ms Palin?                  24 Submissions by MS PALIN                  25 MS PALIN: Sir, may I first apologise for the late filing of</p> <p style="text-align: center;">Page 39</p>
<p>1 LORD JUSTICE LEVESON: Yes, I ought just to deal with that.                  2 The rules make it abundantly clear that:                  3 "If the evidence of a witness directly relates to                  4 the evidence of another witness, the recognised legal                  5 representative of the witness to whom the evidence                  6 relates may apply to the chairman for permission to                  7 question the witness."                  8 I will follow that, but all questioning is going to                  9 have to be very tightly curtailed.                  10 MR DAVIES: Yes.                  11 LORD JUSTICE LEVESON: I won't let unfairness creep in but                  12 the idea that there is going to be a free-for-all should                  13 not gain credence, because there isn't.                  14 MR DAVIES: No. We are very conscious that this is                  15 an Inquiry not an adversarial litigation.                  16 LORD JUSTICE LEVESON: That is the point and, whereas I will                  17 want to be fair to the competing interests, I have to                  18 keep very focused on what I am doing.                  19 MR DAVIES: Yes.                  20 LORD JUSTICE LEVESON: Thank you.                  21 MR DAVIES: Unless I am told there is anything I have                  22 missed, that is all I wanted to raise.                  23 LORD JUSTICE LEVESON: All right. I will give you a chance                  24 to ask that question and to ask about any submission you                  25 want to make about the starting date by having -- is</p> <p style="text-align: center;">Page 38</p>	<p>1 our written representations yesterday morning and any                  2 inconvenience caused thereby?                  3 I am grateful for the guidance that Mr Jay has set                  4 out in his note for the clarifications that the Inquiry                  5 has given this morning. In the light of what has been                  6 said, I am not sure that there is anything that I need                  7 to add, save perhaps for a small observation in relation                  8 to our request for a list of issues. I hope that that                  9 wasn't seen as an improper or inappropriate pinning                  10 down.                  11 LORD JUSTICE LEVESON: Ms Palin, if I think you do something                  12 inappropriate there won't be any coded message about                  13 that. No, I quite understand why, in this difficult                  14 area, people are trying to pin down a number of issues,                  15 and I don't take that as inappropriate or improper, but                  16 everybody has to appreciate the problems that I face --                  17 and that if I face, you face -- in trying to address the                  18 rather widespread nature of the issues that are                  19 identified in terms of reference, which are rather more                  20 comprehensive than might be the case if one is                  21 investigating the death of somebody in custody, which                  22 won't identify in itself where the issues that are                  23 relevant to the investigation of that death in custody                  24 will arise.                  25 Do you see the point?</p> <p style="text-align: center;">Page 40</p>

<p>1 MS PALIN: Yes, sir. I hope it was apparent from my                  2 submissions that we recognise that it may be a premature                  3 exercise, at this stage before you have had                  4 an opportunity to review the evidence. I am not going                  5 to press it today. I simply flag that it would be                  6 a document that my clients would find useful or of great                  7 assistance in understanding how you interpret your terms                  8 of reference.                  9 I think that is, I am afraid that is it, unless                  10 there is anything else I can assist you with.                  11 LORD JUSTICE LEVESON: That is fine.                  12 Submissions by MR DINGEMANS                  13 MR DINGEMANS: Sir, can I just address three matters?                  14 The first is topics or partly picking up the list of                  15 issues matter. We entirely accept that this is a wide                  16 ranging Inquiry and different in type from those                  17 investigating a specific incident, but the need,                  18 therefore, for parties, especially core participants and                  19 witnesses to know the topics that are being addressed is                  20 increased. It is not intended to create further work                  21 for the Inquiry, but if the Inquiry identifies topics as                  22 it goes along, it is then very helpful for those to be                  23 shared with the core participants because, otherwise, we                  24 would be like ships in the night and may miss particular                  25 areas.</p> <p style="text-align: center;">Page 41</p>	<p>1 doorstepping.                  2 Unless doorstepping is identified as a specific                  3 topic, it is not covered by your terms of reference, in                  4 the sense that doorstepping isn't picked up, it is                  5 plainly included within that. And we respectfully                  6 submit that it would be helpful if the Inquiry has                  7 developed any thinking along those lines to say, it                  8 would be helpful to address these following points,                  9 simply to share that.                  10 LORD JUSTICE LEVESON: Let me share my immediate reaction to                  11 your question, albeit at the risk of travelling on                  12 virgin snow, which is to say this: that the Inquiry                  13 covers the ethics of the press and, therefore, what is                  14 appropriate and what is not appropriate is very much                  15 within the terms of reference. So you mention                  16 doorstepping. I could mention -- is the phrase                  17 "blagging" -- and other mechanisms whereby information                  18 is obtained. One might talk about a number of issues,                  19 all of which fall within the code of practice which                  20 require to be considered as part of the picture that                  21 leads to the creation of an approach to the interests of                  22 the public.                  23 MR DINGEMANS: Again, sir, we respectfully agree --                  24 LORD JUSTICE LEVESON: I am pleased about that.                  25 MR DINGEMANS: -- but the proposition is that it is helpful</p> <p style="text-align: center;">Page 43</p>
<p>1 LORD JUSTICE LEVESON: That is a different point entirely.                  2 I hope that all those involved in this Inquiry will                  3 liaise very closely with counsel to the Inquiry to                  4 ensure that this particular vessel proceeds in                  5 an orderly fashion. I anticipate that there may be real                  6 value in meetings outside the formal hearings of the                  7 Inquiry between counsel to try to identify the best ways                  8 forward in specific areas and I take the view, I hope                  9 accurately, that everybody sees the value in getting                  10 a result from this Inquiry which moves this debate on                  11 and, therefore, that everybody will work to try to find                  12 that solution and, therefore, the more that can be done                  13 collusively, collaboratively, the better and that                  14 applies to the Inquiry team, and I hope applies to all                  15 of you and to counsel to the Inquiry.                  16 MR DINGEMANS: We respectfully agree but do make the                  17 proposition that knowing topics will certainly assist                  18 and that is not, in any sense, meant to require anybody                  19 to waste time.                  20 LORD JUSTICE LEVESON: What do you mean by "knowing topics"?                  21 MR DINGEMANS: For example, if one is dealing with issues on                  22 the relationship of the press and the public, then there                  23 are a number of different issues that are raised. For                  24 example, there is the phone hacking, which gave rise to                  25 the terms of reference but there is the practice of</p> <p style="text-align: center;">Page 42</p>	<p>1 to identify, for example, those specific matters which                  2 have occurred to the Inquiry, which has access to                  3 materials that the core participants don't, because it                  4 is collating all the material, it will then share it,                  5 and in those circumstances, the collaboration that you                  6 ask for is likely to be more readily available.                  7 LORD JUSTICE LEVESON: I quite agree. We will hear what                  8 Mr Jay has to say about that at the end but my immediate                  9 reaction is that that is exactly the sort of thing that                  10 I would expect to happen without it being a formal                  11 identification of a list which then everybody has to                  12 comment on and grows barnacles.                  13 MR DINGEMANS: It is not intended to be a hindrance to your                  14 discharge of duties.                  15 LORD JUSTICE LEVESON: Okay, good.                  16 MR DINGEMANS: The second area is lines of questioning. My                  17 learned friend Mr Jay said it wasn't proposed to give                  18 lines of questions to witnesses. We respectfully submit                  19 that there are two overarching principles in the                  20 Inquiries Act 2005. The first is fairness and the                  21 second is structures designed to elicit the truth.                  22 Not giving notice of lines of enquiry to witnesses,                  23 we submit, would be about as unfair a procedure as could                  24 possibly be imagined and it was plainly, sir, not your                  25 intention to adopt an unfair procedure because when you</p> <p style="text-align: center;">Page 44</p>

<p>1 were having exchanges with my learned friend for                  2 News International you immediately said the aim was to                  3 give as much notice as possible.                  4 But to call witnesses who receive notices on the                  5 8 August, who prepared statements and who are then going                  6 to be put -- and I will come finally to television                  7 cameras in a minute -- but they are then put on public                  8 display, without any notice of the areas on which they                  9 are going to be questioned, we respectfully submit would                  10 be simply wrong and it would not enable you, sir, to get                  11 at the truth because you are very likely to have a whole                  12 series of witnesses terrified by the experience, anxious                  13 to avoid causing any problems, et cetera, and in                  14 circumstances where they will not know what they are                  15 dealing with.                  16 LORD JUSTICE LEVESON: I hope nobody is going to be                  17 terrified by the experience.                  18 MR DINGEMANS: Sir, you will have seen enough witnesses in                  19 your time to realise some enjoy it, some play to the                  20 gallery and some are terrified by the experience.                  21 LORD JUSTICE LEVESON: Yes, I am not suggesting many will                  22 fall into the first category, I will stop anybody                  23 falling into the second category. Yes, I suppose it is                  24 a question of the granularity of the information.                  25 MR DINGEMANS: If there is to be none and, sir, you are to</p> <p style="text-align: center;">Page 45</p>	<p>1 questions on your witness statement, is a substantial                  2 comfort and one which, we respectfully submit, is                  3 implicit in the structures within the Inquiries Act.                  4 How unfair is it for the witness to think that they are                  5 coming to give evidence on a detailed witness statement                  6 to be met with a whole series of different questions                  7 about which they have had no notice?                  8 LORD JUSTICE LEVESON: Well, it depends again the level at                  9 which you are talking.                  10 MR DINGEMANS: Again, I entirely accept that and my aim is                  11 not to add to my learned friend's burdens. It is                  12 certainly not, but it is to protect people who are going                  13 to give witness statements and I represent some                  14 witnesses but my learned friends around the tables will                  15 represent others, but to call a person who thinks it may                  16 be the witness statement only, even telling them that is                  17 likely to provide massive reassurance. Then to say,                  18 "And also topics, for example, doorstep", if that                  19 has been identified as a topic or something else, we                  20 respectfully submit is so obvious that it almost goes                  21 without saying, which is why this is my second point.                  22 LORD JUSTICE LEVESON: Why doesn't it appear in the Act?                  23 MR DINGEMANS: Because the Act says "fairness". The Act                  24 says "fairness" and the proposition that you would call                  25 a person to be subjected to public questioning, without</p> <p style="text-align: center;">Page 47</p>
<p>1 rule that we are to have none, we respectfully submit                  2 that would infringe all of the principles of the Act and                  3 it is plainly not your intention to be unfair and, of                  4 course, no one is trying to add to the immense burdens                  5 on my learned friend, but to put a witness up who has                  6 provided a statement dated 16 September at some stage in                  7 the future, with no idea about the areas that they are                  8 going to be asked, what might occur overnight in the                  9 bath or might have been suggested informally by someone                  10 else, we respectfully suggest would be plainly wrong.                  11 LORD JUSTICE LEVESON: It depends on the level of detail                  12 that one is talking about. If somebody has made a very,                  13 very lengthy statement, covering a wide ranging number                  14 of issues, then it may be -- I am not deciding it,                  15 I will think about it -- appropriate to say, "Well,                  16 actually, as far as we are concerned, 60 per cent of                  17 this statement can be taken as read or 80 per cent of                  18 the statement can be taken as read. The areas upon                  19 which we are interested to ask questions are A, B, C, D,                  20 the general areas of the statement". I would have to                  21 think about that. On the other hand, some witnesses                  22 will have given very focused evidence on specific                  23 issues, in which case that isn't going to be necessary.                  24 MR DINGEMANS: But even to that witness the proposition that                  25 you are going to be asked -- I am going to ask you</p> <p style="text-align: center;">Page 46</p>	<p>1 any notice, we respectfully submit would infringe all                  2 the principles of --                  3 LORD JUSTICE LEVESON: It happens all the time in crime.                  4 MR DINGEMANS: Even in crime people have at least some idea                  5 of the broad areas.                  6 LORD JUSTICE LEVESON: They have made a witness statement                  7 and they are cross-examined on a wide range of issues                  8 and, indeed, I was personally involved in an Inquiry,                  9 acting for a witness in that case, in which the word                  10 I used to describe what had happened to him was                  11 "hijacked".                  12 MR DINGEMANS: The potential unfairness of that has been                  13 mitigated by the Criminal Procedure Rules, which require                  14 notice now if your character is going to be assassinated                  15 and you are a third party. Is it not, in a situation                  16 which is not adversarial, even more important to                  17 discharge duties of fairness to witnesses?                  18 LORD JUSTICE LEVESON: I am actually more interested to make                  19 sure that I get considered evidence, which is a slightly                  20 different point. I hear what you say.                  21 MR DINGEMANS: My third submission is --                  22 LORD JUSTICE LEVESON: You are going to be told to say                  23 something else now. Hang on.                  24 MR DINGEMANS: Sorry, may I just ... (Pause)                  25 My third point has now gone.</p> <p style="text-align: center;">Page 48</p>

<p>1 LORD JUSTICE LEVESON: Splendid. Right. We have a very                  2 interesting submission or representative who -- no,                  3 Mr Glen must be next. He is the next core participant,                  4 Mr Glen.                  5 Submissions by MR GLEN                  6 MR GLEN: I am grateful, sir. I think the Guardian had                  7 three points in our letter on Friday. Several of those                  8 have fallen by the wayside. The standard of proof                  9 point, I think our concern, at this stage, was this,                  10 that it was potentially premature.                  11 LORD JUSTICE LEVESON: I am very comfortable to defer that.                  12 What I wanted to do was to put on the table some of the                  13 issues that are involved, right?                  14 MR GLEN: I am grateful. It may be that the civil standard                  15 is appropriate. It is just, at this stage, until the                  16 level of the detail of the Inquiry --                  17 LORD JUSTICE LEVESON: It is not just whether it is civil or                  18 criminal, it is also to what extent it is appropriate                  19 for me to be able to approach issues on the basis that,                  20 without making a finding of fact, that X has happened in                  21 Y circumstances, it is appropriate for me -- I am not                  22 prepared to say it hasn't happened and it is appropriate                  23 for me to approach issues, such as recommendations, on                  24 the basis that I must guard against that risk. You see                  25 the different point?</p> <p style="text-align: center;">Page 49</p>	<p>1 grateful for the steer that your Lordship will give as                  2 much notice as possible on that regard.                  3 But in terms of lines of questioning and indications                  4 of documents, again, I don't think what we were                  5 contemplating in our letter was a bulleted list of                  6 questions, as one may be prepared by counsel for the                  7 Inquiry the night before they come into the hearing, but                  8 we would submit that this is an area where the witness                  9 should be provided with at least the outline areas or                  10 subject or issues which he or she is likely to face                  11 questioning on.                  12 Similarly, in relation to documents, particularly                  13 given in this case, as I understand it, the witness will                  14 be -- the document concerned will be flashed up on                  15 screen electronically, and so, just in terms of                  16 recognition of documents, as much as anything else, and                  17 again, it may not be possible to provide a universal or                  18 a completely comprehensive list, but if there are                  19 particular documents which the Inquiry wants to speak to                  20 a particular witness about or obtain evidence in                  21 relation to, we would say that would be helpful, in                  22 these circumstances, as things are said.                  23 It is a relatively pressurised environment for                  24 a witness to walk into. A lot of the witnesses, as                  25 your Lordship has said, are busy people. The Section 21</p> <p style="text-align: center;">Page 51</p>
<p>1 MR GLEN: Absolutely. Our concern was that the notion of                  2 suspicion, or the Inquiry were raising concerns based on                  3 suspicions should be used in relatively tightly confined                  4 circumstances, as the Baha Mousa ruling.                  5 LORD JUSTICE LEVESON: Yes, but Baha Mousa is -- it is                  6 a different sort of Inquiry and very different                  7 circumstances, which is of the traditional sort, rather                  8 than the type that I have, and recommendations as to how                  9 individuals should be treated are themselves different                  10 from the wide ranging issue that must encompass areas                  11 which, inevitably, aren't specifically the subject of                  12 complaint, create different problems.                  13 MR GLEN: Yes. That may be a submission for another day                  14 when we know more about the --                  15 LORD JUSTICE LEVESON: Yes.                  16 MR GLEN: Sir, can I just pick up on this advance notice to                  17 witness point that Mr Dingemans has been making                  18 submissions in relation to? It is a submission which we                  19 would support. Obviously, there is a need for                  20 flexibility in how the Inquiry goes about its work. One                  21 can see the instance of a witness being recalled at                  22 relatively short notice or a new witness being, having                  23 to come in and fill in a gap in evidence, in which case                  24 notice requirements may have to be amended or just the                  25 best that can be done in the circumstances, and we are</p> <p style="text-align: center;">Page 50</p>	<p>1 notices themselves are relatively wide ranging in                  2 a number of cases. They cover quite a lot of ground.                  3 Some of it relatively historical, in terms of it goes                  4 back -- several dates are given in 2005 as the starting                  5 point.                  6 LORD JUSTICE LEVESON: I wonder why that is.                  7 MR GLEN: I wouldn't want to speculate, sir.                  8 LORD JUSTICE LEVESON: Yes.                  9 MR GLEN: But to that extent, and witnesses may be giving                  10 evidence, which is in some respects secondhand, that                  11 people in their organisation know about but which they                  12 are providing the evidence to the Inquiry for, and in                  13 those circumstances we would say, in terms of the                  14 appearance of the evidence which those witnesses give to                  15 the Inquiry, indications of the issues which they are                  16 likely to face questioning on is going to enhance the                  17 evidence gathering process. It is not a question of                  18 witnesses being tripped up or hijacked, as your Lordship                  19 said. The woe would be, if a witness was hijacked, they                  20 would give partial or incomplete evidence which doesn't                  21 actually make sense or wasn't correct, and that can't be                  22 in the interests of the Inquiry going forward.                  23 As I said, sir, it is not a question of -- we are                  24 not seeking a bulleted list of questions, but issues                  25 which a particular witness is likely to face questioning</p> <p style="text-align: center;">Page 52</p>

<p>1 on, and indications to whatever level of particularity                  2 the counsel to the Inquiry feel able to give, we would                  3 say, would be beneficial to the Inquiry as well as the                  4 witness.                  5 The second point in relation to that, sir, is in                  6 relation to this idea of suggestions to counsel to the                  7 Inquiry of supplemental areas of questioning, areas                  8 which counsel to the Inquiry may not be intending to go.                  9 If issues have been provided to the witness and the                  10 other core participants, as to what the witness is                  11 likely to face, we would say that process is likely to                  12 be enhanced as well, in the sense that you will be able                  13 to identify immediately if there is a particular issue                  14 which counsel to the Inquiry are not intending to pursue                  15 but which another core participant considers relevant or                  16 believes would be helpful for the witness to answer                  17 questions in relation to.                  18 The alternative, I guess, is that --                  19 LORD JUSTICE LEVESON: One can't have a system whereby                  20 everybody is exchanging details about what the witnesses                  21 may deal with because, otherwise, we would never get                  22 anything done. You are not really suggesting, or are                  23 you suggesting, that counsel should be telling all the                  24 core participants, that, "Well, we are going to call                  25 this witness on this topic, or these topics", or are you</p> <p style="text-align: center;">Page 53</p>	<p>1 just said by that word, retains flexibility but equally                  2 keeps the momentum of the Inquiry moving forward.                  3 MR GLEN: I am grateful. If it is going to be that flexible                  4 in terms of this supplemental questioning process, which                  5 may not arise very much at all.                  6 LORD JUSTICE LEVESON: It won't.                  7 MR GLEN: No.                  8 LORD JUSTICE LEVESON: It may arise but I won't necessarily                  9 say it will happen. Not because I am wanting to shut                  10 people out. It is because of what we have to cover.                  11 MR GLEN: I quite understand.                  12 LORD JUSTICE LEVESON: Yes.                  13 MR GLEN: Sir, I would just reiterate the point about                  14 advance notice. If issues can be highlighted, even in                  15 their broad sense to witnesses --                  16 LORD JUSTICE LEVESON: I understand the point.                  17 MR GLEN: Sir, I think that is everything.                  18 LORD JUSTICE LEVESON: Fine. Thank you.                  19 Submissions by MR VINALL                  20 LORD JUSTICE LEVESON: Now, before one moves off from the                  21 press, Mr Vinall, you are in the rather interesting                  22 position that you are not a core participant, presumably                  23 having taken a decision on part of Trinity Mirror not to                  24 be a core participant.                  25 MR VINALL: That is right, sir.</p> <p style="text-align: center;">Page 55</p>
<p>1 saying that they ought to say, "Well, it's going to be                  2 that area, that area or the other area and these are the                  3 documents we are going to be referring to", what are you                  4 talking about?                  5 MR GLEN: To a degree on that front, we would say that there                  6 should be an element of transparency in the process, in                  7 the extent that there is the power or the ability for                  8 another core participant to ask counsel to the Inquiry                  9 to ask questions of a particular witness, not their                  10 witness.                  11 LORD JUSTICE LEVESON: Yes, I understand. Indeed, that is                  12 open not merely to core participants. I have made that                  13 clear, but that need be no more than once the witness's                  14 statement has been seen and it will be clear which                  15 general area the witness is going to be coping with, for                  16 core participants to say, "Well, I hope you are going to                  17 be dealing with subjects A, B and C", and then you will                  18 listen to the evidence and, if you think there is                  19 something really pressing to add, then you will be able                  20 to ask me or have a word with counsel, because I don't                  21 suppose these things will go without breaks and, if                  22 necessary, then say to me, "Well, actually, there's this                  23 area additionally", to which I will say "All right, you                  24 have five minutes to cover that topic."                  25 That sort of ruling, if one dignifies what I have</p> <p style="text-align: center;">Page 54</p>	<p>1 LORD JUSTICE LEVESON: It may be you or it may be another                  2 non-core participant has made the point that they relied                  3 upon my observation that there isn't a bright line and                  4 that was to do with suggesting lines of Inquiry and                  5 possibly arguing for the right to be able to put in                  6 closing submissions, and that's where I intended to make                  7 the thing rather more open and I was particularly                  8 addressing there interest groups such as PEN, but there                  9 must be a limit and, whereas I am happy to hear you now,                  10 I think it quite difficult to see -- or I would be                  11 interested to hear how you put the proposition that you                  12 should have all the benefits of core participant status                  13 by seeing all the documents, by being able to make                  14 submissions on protocols and the like and not become                  15 a core participant.                  16 There is a slightly different argument for somebody                  17 who had refused core participant status to, or whose                  18 core participant status will be clear later but isn't                  19 now, that is why I put those off, but you are in                  20 a rather different position.                  21 MR VINALL: Sir, I certainly don't want to attempt to take                  22 out of context your remark about the bright line and you                  23 did make it clear --                  24 LORD JUSTICE LEVESON: I did.                  25 MR VINALL: -- first of all that -- plainly, sir, there is</p> <p style="text-align: center;">Page 56</p>

<p>1 a continuum of degrees of interest that various people,                  2 various parties and nonparties to this Inquiry have and                  3 indeed. You did make it clear, sir, in your opening                  4 remarks that one does not need to be a core participant                  5 to have one's point of view heard by the Inquiry --                  6 LORD JUSTICE LEVESON: Yes. That is right.                  7 MR VINALL: -- which is -- as I am demonstrating now.                  8 LORD JUSTICE LEVESON: I am not sure how far, but to have                  9 your point of view in the ultimate issues, of course,                  10 that's why I say making submissions at the end in                  11 writing would be fine, but the level of participation is                  12 a slightly different question.                  13 MR VINALL: Sir, you asked me how I put it.                  14 LORD JUSTICE LEVESON: I do, yes I will let you.                  15 MR VINALL: As both Mr Jay and you have already noted this                  16 morning, the overriding criteria for this Inquiry is                  17 fairness and it is my submission that there are certain                  18 classes of documents, clearly not every document that                  19 the Inquiry has, but there are certain classes of                  20 documents where, in my submission, fairness to my client                  21 does require that it should have notice of what is being                  22 said by the core participants and by the Inquiry team.                  23 LORD JUSTICE LEVESON: I am not so sure about that because                  24 you could have applied to be core participants. Now,                  25 you didn't and that's fair enough, because core</p> <p style="text-align: center;">Page 57</p>	<p>1 you have given and then I will move on to why I say that                  2 it is both fair to my client and in the interests of the                  3 official disposal of the Inquiry's business that we                  4 should be allowed to see the material and have                  5 an opportunity of commenting on it without having to                  6 become a core participant.                  7 The reason we are different from the various                  8 examples that you have given, sir, is that, plainly, the                  9 interest of Trinity Mirror doesn't need any further                  10 elaboration. It goes beyond that. We have an interest                  11 not only in the outcome of the enquiry but in the                  12 Inquiry's processes.                  13 LORD JUSTICE LEVESON: Then all you are saying, Mr Vinall,                  14 is very clear. What you are saying is, "We actually                  15 qualify to be core participants and that makes us                  16 different." Well, if you do, do it.                  17 MR VINALL: Sir, it is not so much that we qualify to be                  18 core participants, that will be a matter for you, sir,                  19 but what we are undoubtedly, is we have been served with                  20 Section 21 notices requiring documents to be provided by                  21 Trinity Mirror. So when there is discussion about the                  22 protocol for how documents of that kind are to be                  23 handled, then the interest -- they are our documents                  24 too.                  25 LORD JUSTICE LEVESON: But there are 130-odd people who have</p> <p style="text-align: center;">Page 59</p>
<p>1 participants don't need to turn up every day. They will                  2 turn up when they want to turn up and they won't turn up                  3 when they don't feel it is in their interests to do so.                  4 I won't be asking everyone in turn, do you want to say                  5 anything, do you want to say anything? I expect core                  6 participants, if they have something to say, at some                  7 stage, to find a way of saying it, which I think they                  8 will.                  9 Now, I am a bit concerned as to how far your                  10 submission goes because a consequence might be that                  11 a member of the public says:                  12 "Well, I'm also very interested in this. I am                  13 absolutely fascinated by the problem of the relationship                  14 between the press and the public or the press and the                  15 police. Therefore, I would like the opportunity to                  16 comment on the protocols and to see the documents."                  17 A reporter could easily take that view. A professor                  18 of journalism may take that view. This Inquiry has                  19 interested a vast range of people, as the press releases                  20 that I read demonstrate, many with very different views.                  21 Now, are they to say, "Well, we're interested, we                  22 would like to know"? Am I then to listen to them?                  23 Where does it end?                  24 MR VINALL: Let me, first of all, explain why I say that my                  25 client is in a different position from the examples that</p> <p style="text-align: center;">Page 58</p>	<p>1 been served with such notices. Are each one of them                  2 entitled to come along and say "I want to say something                  3 about this protocol"?"                  4 MR VINALL: Sir, in my submission, I don't want to deal                  5 with -- I don't know who the 130 people are.                  6 LORD JUSTICE LEVESON: No.                  7 MR VINALL: I am not going to seek to identify where the                  8 line should be drawn. I simply seek to persuade you,                  9 that, sir, wherever the line is to be drawn, we are on                  10 the right side of it.                  11 LORD JUSTICE LEVESON: You probably need to persuade me                  12 where the line ought to be drawn, don't you? If you                  13 want to say that you are on the right side of it?                  14 MR VINALL: Sir, we -- I have dealt with the question of                  15 documents and the fact that our documents are going to                  16 be provided to the Inquiry. Similarly, a number of                  17 Trinity Mirror's employees are going to be called to                  18 give evidence, and so whatever -- a number of issues                  19 have been raised before you today about how witnesses                  20 are going to be dealt with. Trinity Mirror has                  21 an interest in how those issues are resolved and it is                  22 not, it is not -- we are not going to be making                  23 submissions on every point but there may be points which                  24 are made, either being raised by the Inquiry team, or                  25 raised in submissions made to the Inquiry by other</p> <p style="text-align: center;">Page 60</p>

<p>1 parties, which do affect Trinity Mirror's interests and,                  2 in my submission, it is appropriate that Trinity Mirror                  3 should see those submissions where they affect its                  4 interest.                  5 Sir, if you accept that, there is then a decision to                  6 be made as to whether one considers what fairness                  7 requires, case by case, document by document, or whether                  8 it is not easier for everybody, if you simply add my                  9 clients to the list of those parties who are to receive                  10 the documents, which are provided to core participants,                  11 so that where there is an issue -- and it may not arise                  12 very often -- where there is an issue where                  13 Trinity Mirror can help the Inquiry, can move the                  14 process --                  15 LORD JUSTICE LEVESON: So you are saying this doesn't relate                  16 to evidence because, of course, you won't be involved in                  17 that. This relates to issues of procedure.                  18 MR VINALL: It certainly relates to issues of procedure.                  19 LORD JUSTICE LEVESON: Are you saying it relates to the                  20 evidence as well?                  21 MR VINALL: It is too early to say but certainly my                  22 application, the examples I have given to you, sir,                  23 relate to matters of procedure, because those are the                  24 matters which the Inquiry has been dealing with today.                  25 When it moves on to the evidence, no doubt there will be</p> <p style="text-align: center;">Page 61</p>	<p>1 which has then fed into the submissions that Mr Jay has                  2 made to you today. Everybody else in the room knows                  3 what those submissions have been and what that                  4 dialogue --                  5 LORD JUSTICE LEVESON: So you want to see the submissions by                  6 other core participants?                  7 MR VINALL: Yes, sir, certainly we do.                  8 LORD JUSTICE LEVESON: They may have something to say about                  9 that.                  10 MR VINALL: Perhaps my understanding was, sir, that those                  11 submissions were being disclosed to other core                  12 participants.                  13 LORD JUSTICE LEVESON: Yes, but they may have something to                  14 say about whether they are disclosed to somebody who                  15 isn't a core participant.                  16 MR VINALL: Well, they may be, sir, but certainly, in my                  17 submission, insofar as Trinity Mirror was to seek to                  18 make submissions to the Inquiry about how certain                  19 somethings should be done, then we would expect that to                  20 be circulated to other interested parties and we don't                  21 see why the converse should not apply.                  22 Sir, going back for a moment to the point about                  23 floodgates and what is it that makes us different from                  24 that sort of general point or whatever, I think I noted                  25 from Mr Jay's submissions that, so far at least, there</p> <p style="text-align: center;">Page 63</p>
<p>1 matters of evidence as well so, yes, the relief I seek                  2 from you, sir, does cover --                  3 LORD JUSTICE LEVESON: Then what is the difference between                  4 you and a core participant?                  5 MR VINALL: Sir, the difference is that we are not seeking,                  6 for example, to make an opening statement. We are not                  7 seeking the other benefits of core participation. We                  8 are simply asking to be kept in this loop, so that where                  9 perusal of the material, what other people are saying                  10 does raise an issue where we have a distinct perspective                  11 or a distinct interest, that we are able to bring that                  12 perspective to the Inquiry's attention.                  13 We say that is fair to my client and it is also                  14 likely to help the Inquiry to do its business.                  15 Now, obviously, the Inquiry hears matters in public.                  16 It would, in my submission, be open to Trinity Mirror to                  17 come along to a hearing like this to sit at the back and                  18 listen and, where something is raised, to write a letter                  19 to the Inquiry team saying "This was said in court by                  20 Mr Jay today. Here is what we would like to say about                  21 it".                  22 In my submission, that is not the most efficient way                  23 of going about things, nor is it necessarily the most                  24 transparent because, plainly, there has been                  25 a significant amount of dialogue between the parties</p> <p style="text-align: center;">Page 62</p>	<p>1 are only three other parties who have made a submission                  2 to you along the same lines as I am making. Insofar as                  3 other people want to make that submission then, no                  4 doubt, the Inquiry will consider it.                  5 But my submission to you would be that this is                  6 an Inquiry into the press. Trinity Mirror is a very                  7 significant player in that market.                  8 LORD JUSTICE LEVESON: I agree. I agree.                  9 MR VINALL: So what you are going to say, sir, is, well, why                  10 don't we become a core participant? Sir, certainly the                  11 flavour that one gets from reading the opening remarks                  12 that you made at the hearing and also, to some extent,                  13 that you made on the core participation was that the                  14 Inquiry was keen not to have a proliferation of core                  15 participants with a separate representation and to try                  16 to streamline the Inquiry.                  17 LORD JUSTICE LEVESON: You are absolutely right, but I am                  18 not sure that doing what you want me to do achieves that                  19 aim because the core participants will be restricted in                  20 what they can do, not because I want to cut anybody off                  21 but because I have to maintain a momentum and I am just                  22 not sure where we are on a hybrid.                  23 I am not saying the rules prohibit it. But I do                  24 think that there is a hybrid position which is going to                  25 get us into potentially difficult areas. I was keen,</p> <p style="text-align: center;">Page 64</p>



<p>1 for example, and the individual groups like PEN were                  2 a very, very good example. They have a very clear                  3 focus. They have a very important contribution to make                  4 but it is not a contribution which needs core                  5 participant status and that is why I was keen to                  6 emphasise that you would be able to suggest questions to                  7 counsel when you know who the witnesses are, that you                  8 would be able to ask to put in written submissions at                  9 the end, having heard whatever you have wanted to hear                  10 or read it online.                  11 That is why there is no bright line, but I just                  12 wonder whether you are not pushing that to say, "Well,                  13 actually it is not that there is no bright line, there                  14 is no line at all".                  15 MR VINALL: Sir, plainly there is a line and as I say, we                  16 are not seeking the full panoply of benefits that core                  17 participation gets. We are not seeking to come along to                  18 all of these hearings with representation. What we are                  19 seeking is simply to be informed, not only of the                  20 material that appears on the website, as and when it                  21 appears, but to be called on the issues at a time when                  22 we can meaningfully comment on them.                  23 LORD JUSTICE LEVESON: I think that is core participant                  24 status. If you want to be -- do you see? Because the                  25 submissions at the end will be in the light of everybody</p> <p style="text-align: center;">Page 65</p>	<p>1 to a participant: you have to either jump one way or the                  2 other. You have to either be a core participant with                  3 all that that entails or essentially be shut out of this                  4 process entirely.                  5 LORD JUSTICE LEVESON: It need not entail much at all. It                  6 need not entail your coming on every day if you don't                  7 want to. There won't be any compulsion or register. It                  8 is simply a matter of how you want to engage in the                  9 process. Anyway, obviously, once I have decided this                  10 you will decide whether or not you want to make                  11 an application depending on how I decide.                  12 MR VINALL: I am -- those are my submissions.                  13 LORD JUSTICE LEVESON: Thank you very much indeed,                  14 thank you. Have I run the line of the media? Before                  15 I do, does anybody want to say anything from the media                  16 about submissions being shared with those who are not                  17 core participants?                  18 MR CHAWLA: Sir, before that happens can I just raise the                  19 submission I make, because that may touch upon the view                  20 that is expressed?                  21 LORD JUSTICE LEVESON: All right, I will come back and ask                  22 people again.                  23 Mr Chawla, I understand that and maybe I should deal                  24 with you and Mr Phillips next and see where we are.                  25</p> <p style="text-align: center;">Page 67</p>
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<p>1 who has read all the evidence and the evidence will be                  2 going contemporaneously, streamed for people to follow                  3 and you will listen to such witnesses as you want but                  4 the extra thing you want to do is to be able to                  5 proactively to engage, rather than reactively to                  6 suggest, and I am not sure that is not the difference.                  7 I don't rule on it. I am merely saying that is what                  8 concerns me.                  9 MR VINALL: Sir, just to summarise really and perhaps put in                  10 slightly different words the point that I would make.                  11 I would respectfully adopt the distinction that you have                  12 drawn between engaging proactively and reactively, but                  13 also to say that there is the, sort of, public face                  14 documents that appear on the website, that it is                  15 becoming increasingly clear that there are also -- the                  16 inner workings that are going on behind the scenes,                  17 submissions that are being made and correspondence with                  18 the Inquiry, the iterative process by which Mr Jay's                  19 note for this hearing was produced, for example, drafts                  20 of documents being circulated, and these are things                  21 which affect my client, the way its documents will be                  22 handled, the way its witnesses will be treated and                  23 which, unless it is given an opportunity to see those                  24 documents, it has no opportunity of influencing.                  25 In my submission, you shouldn't, with respect, say</p> <p style="text-align: center;">Page 66</p>	<p style="text-align: center;">Submissions by MR CHAWLA</p> <p>1 MR CHAWLA: Sir, I can be quite short but can I preface my                  2 remarks with this, this is not a review of your decision                  3 as to core participation.                  4 LORD JUSTICE LEVESON: Yes.                  5 MR CHAWLA: But as a preface, I ought to set out that                  6 Mrs Brooks, whom I represent, is determined to assist                  7 this Inquiry, not because she is required to do so but                  8 because she believes she has both important evidence and                  9 information which will substantially inform and assist                  10 this process, and she brings to it a unique and                  11 important perspective.                  12 Sir, in the notice that she was served with, she has                  13 been asked to deal with 19 specific topics. That may be                  14 a standard list, I don't know. Neither she, nor                  15 I suspect the Inquiry, regard that as an exhaustive list                  16 but those are triggers, effectively to assist the                  17 Inquiry.                  18 But within part 1 of the Inquiry, which of course is                  19 what we are concerned with at the moment, and within the                  20 three -- the first three modules, the public, the police                  21 and the politicians, there will inevitably be occasions                  22 when the Inquiry will be making decisions and forming                  23 considerations about matters on which Mrs Brooks has                  24 a direct and substantial interest. For example, the                  25</p> <p style="text-align: center;">Page 68</p>
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<p>1 proposed approach towards standard of proof may be one                  2 of those. I am not going to say anything more about                  3 that at the moment, conscious as I am that the topic is                  4 going to be deferred. Equally, the question of putting                  5 in the report concern arising out of a suspicion is                  6 another topic upon which we are likely to have                  7 submissions.                  8 But equally, there are other areas upon which she                  9 has no special interest or particular contribution to                  10 make, such as -- broadcasting of these proceedings or                  11 public funding, being two examples on which she has no                  12 representations to make, with the result that our                  13 request is this -- and it is not quite the request that                  14 has just been made -- but, where issues arise on which                  15 Mrs Brooks has a direct interest, and those will                  16 probably be evident to the Inquiry team, that she is                  17 given the opportunity through us to make whatever                  18 representations are appropriate and to see the documents                  19 or the classes of documents touching upon that issue.                  20 For our part, we are entirely content --                  21 LORD JUSTICE LEVESON: Are you talking here about procedural                  22 issues or evidential issues?                  23 MR CHAWLA: I am talking about both, both procedural issues                  24 and evidential issues. So far as procedural issues,                  25 such as the approach that the Inquiry should take to</p> <p style="text-align: center;">Page 69</p>	<p>1 the rules and you may make the point, and I haven't                  2 thought about it, that, absent your being present or                  3 somebody on behalf of your client being present on every                  4 day, how will you know if the witness gives evidence                  5 directly relating to your client?                  6 MR CHAWLA: The answer, actually, is simple: we wouldn't                  7 know. We wouldn't know until we saw the transcript                  8 unless we were here every day, unless, of course, we had                  9 advance notice of issues that may touch upon that. We                  10 have no --                  11 LORD JUSTICE LEVESON: The problem is: we won't necessarily                  12 know, will we?                  13 MR CHAWLA: No, that is the difficulty, but what I am                  14 seeking to do is -- frankly, what I am seeking to do is                  15 to prevent the needless expenditure on attendance and                  16 work which is completely unnecessary by trying to focus                  17 on what we need to focus upon, and it is only if we can                  18 do that, and I don't say this in terrorem, and I hope                  19 you understand that, that we or she is in the best                  20 position to assist the Inquiry.                  21 On any view, she has significant material to provide                  22 to the Inquiry, even of her own recollection of events.                  23 LORD JUSTICE LEVESON: Yes.                  24 MR CHAWLA: But the difficulty that arises is that, unless                  25 she or I or my solicitor are present throughout the</p> <p style="text-align: center;">Page 71</p>
<p>1 standard of proof, for example, we certainly will have                  2 a contribution to make. But also, in terms of                  3 evidential issues, there are likely to be, both within                  4 News International and outside News International,                  5 substantial contributions which touch directly on her.                  6 Some may name her directly. Some may not.                  7 But where she is going to be assisting the Inquiry                  8 then if she, for example, has no knowledge of those, her                  9 assistance is likely to be limited to the point of being                  10 negligible.                  11 We don't envisage that this is an exercise which                  12 will consume additional time, so far as the Inquiry is                  13 concerned. If anything, the objective is simply to more                  14 clearly focus upon what matters and what doesn't.                  15 Therefore, what we ask for both, in terms of                  16 procedural and evidential issues, is for her to be given                  17 the opportunity through disclosure of such information                  18 as may be appropriate, and by that, I don't mean                  19 necessarily all of the information that is going to the                  20 core participants, but such information that affects her                  21 position in the modules that the Inquiry is dealing with                  22 and for her to be able to make whatever representation                  23 is appropriate on that material.                  24 LORD JUSTICE LEVESON: There is a slightly wider issue that                  25 you raise, which is specifically addressed in 10.3 of</p> <p style="text-align: center;">Page 70</p>	<p>1 Inquiry or every moment of it, and in a position to say                  2 to Mr Jay, "Can we invite you to deal with this or that                  3 or the other", our contribution is -- I was going to say                  4 meaningless, it is almost meaningless.                  5 LORD JUSTICE LEVESON: No, it is not but I say that it is                  6 impacted.                  7 MR CHAWLA: Yes, it is diminished very substantially.                  8 So the position is this: that while we do not make                  9 the request that has just been made, that we should have                  10 necessarily all of the materials supplied to the core                  11 participants, bearing in mind her position, we do ask                  12 that consideration be given that, where material touches                  13 upon her and, as I say, that may be self-evident to                  14 counsel to the Inquiry, that we are provided with it.                  15 For our part, and I make this clear, in the knowledge of                  16 meetings that have already occurred with the Inquiry                  17 team and those who instruct me, that we are perfectly                  18 content for the Inquiry team to make that judgment as to                  19 what the team, who, of course, will be in the best                  20 position to judge, believe that it is in our interests                  21 to have.                  22 LORD JUSTICE LEVESON: All right.                  23 MR CHAWLA: The position essentially is this: that, as is                  24 apparent, she is likely to have a very particular                  25 perspective to offer, which is different to the core</p> <p style="text-align: center;">Page 72</p>

<p>1 participants who, after all, are either, in terms of                  2 individuals, victims, as they have been described, or                  3 organisations.                  4 LORD JUSTICE LEVESON: Yes. But, I mean, that flows back to                  5 one of the reasons that is relevant to my decision, that                  6 the individual victims provide a perspective which                  7 impacts on the wider consideration of the balance                  8 between article 8 and article 10, whereas your                  9 perspective is rather different and is much more                  10 relevant in relation to the individual who did what to                  11 whom, as opposed to the wider philosophical issues which                  12 I have to address.                  13 MR CHAWLA: Sir, I don't want to go back to the submissions                  14 that I have previously made and upon which you have                  15 ruled. I don't quite agree with that approach --                  16 LORD JUSTICE LEVESON: No, I know. There it is.                  17 MR CHAWLA: -- I am afraid, but that is water under the                  18 bridge.                  19 LORD JUSTICE LEVESON: Yes.                  20 MR CHAWLA: There has already, and it is unfortunately, in                  21 our submission, been a default position adopted, for                  22 example, in relation to today's hearing, which is                  23 unfortunate, which is simply this: we were provided with                  24 Mr Jay's helpful note for today's hearing very shortly                  25 before it went on the web yesterday. We asked for the</p> <p style="text-align: center;">Page 73</p>	<p>1 Trinity Mirror. I now know for example that we were                  2 given the attachments to the note that Mr Chawla was                  3 not, but the point we are relying on is exactly the                  4 same: fairness. In my submission, our position is even                  5 more obvious, if I can put it that way.                  6 We came to the last hearing expecting to make                  7 an application for core status and accepted what you                  8 said to me, which that this wasn't the moment for                  9 module 2. We are then slightly surprised to discover                  10 that our regulated force had been given CP status for                  11 all modules of part 1 but there we go.                  12 What we did, very clearly, was to flag up, as you                  13 just indicated, that we would be making an application                  14 for module 2, because as the regulators the whole issue                  15 of the relationship between the police, our force, the                  16 Metropolitan Police Service and the press is directly                  17 within our sphere of interest.                  18 LORD JUSTICE LEVESON: I understand that, and I recognise                  19 that, but I won't rise to the bait that you should be                  20 surprised about the position of the police, which is                  21 rather different, but the regulatory position of those                  22 affecting the police specifically touches the second                  23 limb. I recognise that and I think the point is well                  24 made that, if I am devising protocols that actually                  25 cover the whole Inquiry, then you ought to have a chance</p> <p style="text-align: center;">Page 75</p>
<p>1 attachments to it, the protocols and we were told we                  2 couldn't have those.                  3 LORD JUSTICE LEVESON: I understand that because there                  4 hasn't yet been a decision as to a hybrid position and,                  5 so that's not an adverse side effect. You have actually                  6 picked up the point really quite early. This is the                  7 second directions hearing that I have held, so I am not                  8 prepared to say that is adverse. I am prepared to say                  9 that it identifies the point.                  10 MR CHAWLA: It does, but we would be concerned if that had                  11 become -- and I am sure it hasn't -- but if that had                  12 become a de facto default position because, in our                  13 submission, that would not, in fact, enable the Inquiry                  14 to get the assistance that it deserves.                  15 LORD JUSTICE LEVESON: Okay, thank you. I understand.                  16 Mr Phillips, you are in a different position --                  17 MR PHILLIPS: Yes.                  18 LORD JUSTICE LEVESON: -- because you have accepted the                  19 position of the MPA is different, but you make the                  20 point, well, because these protocols are likely to                  21 impact on everything then I am going to march back in at                  22 some stage, I think, or I will try to, I should have                  23 a chance to say something about them.                  24 MR PHILLIPS: Yes. Our position is that we are in                  25 a distinct situation from Mrs Brooks from</p> <p style="text-align: center;">Page 74</p>	<p>1 to say it. If the likelihood is that you will be                  2 there --                  3 MR PHILLIPS: Indeed.                  4 LORD JUSTICE LEVESON: -- and I take the point.                  5 MR PHILLIPS: It is simple fairness, and what we would say,                  6 going forward, is again very simple. If there is                  7 something which will or might affect our interests then,                  8 given that the Inquiry is plainly on notice of our                  9 position, we ought to be told about it and involved in                  10 it.                  11 So far as these protocols are concerned, it is                  12 obvious that they affect all of the modules of part 1,                  13 at the very least they may extend, in due course, beyond                  14 it, but Mr Jay's note is very clear on that.                  15 So they affect us, and we made points on them but                  16 actually, sir, what has happened today makes our                  17 submission on this the more urgent, because you have                  18 confirmed today what you said on 6 September that it is                  19 possible that module 1 and module 2 will run                  20 concurrently.                  21 LORD JUSTICE LEVESON: At some stage, yes.                  22 MR PHILLIPS: Yes. Also you have said, as I understood it,                  23 that there would be openings at the beginnings of                  24 modules and closings at the end, so that the difficulty                  25 my clients have is this: at the moment they are outside</p> <p style="text-align: center;">Page 76</p>

<p>1 the pail. They are told, however, that their bit or the                  2 bit in which they claim to have a significant interest                  3 might start before the current module has ended and, at                  4 that point, they will at least be invited, if they get                  5 CP status, to make an opening. In other words, sir,                  6 they will have to run very, very, very fast to catch up                  7 with everybody else, if they have been --                  8 LORD JUSTICE LEVESON: I don't suppose they will be running                  9 fast because I think they will be running alongside us,                  10 given the amount of stuff that will be in the public                  11 domain, so I don't think you will be having to play                  12 catch up. But what it may mean, and I am prepared to                  13 say this, that I think that I ought to revisit the                  14 moment that I invite people to apply for core                  15 participant status for the other modules, if only so                  16 that there is a degree of clarity in the position, and                  17 I do recognise, and I do accept that, in relation to the                  18 protocols, it will be worthwhile having your input into                  19 them.                  20 MR PHILLIPS: Yes. Sir, I have one or two specific points                  21 to make on that, if I may. May I just come back to this                  22 point about the timing of any application for CP status                  23 for module 2, because we were slightly disturbed to be                  24 told by one of your legal team that the moment for such                  25 applications was at the end of module 1. You will see</p> <p style="text-align: center;">Page 77</p>	<p>1 you are right and, for what it is worth, as I probably                  2 made clear in our exchanges, I agree with you.                  3 MR PHILLIPS: Sir, can I just touch on two specific points                  4 on the protocols. The first is to repeat the offer we                  5 made in correspondence, that if we can assist the                  6 Inquiry legal team with the technical issues on the                  7 document management system, we are very ready to do                  8 that, as indeed we are to assist on all aspects of your                  9 work. But the reason for raising it now is that the                  10 relevant solicitor with the experience on the Mid Staffs                  11 Inquiry is here, sitting behind me, and I know she would                  12 be happy to talk to your team if that would assist                  13 today.                  14 LORD JUSTICE LEVESON: That is wonderful.                  15 MR PHILLIPS: The second point --                  16 LORD JUSTICE LEVESON: I will find the person to whom she                  17 should speak.                  18 MR PHILLIPS: Thank you, sir.                  19 The second point, and it is a quick point, again,                  20 made in Eversheds' email of 30 September, but I don't                  21 think it is something that anybody has mentioned so far                  22 and it may be we have simply misread the document, but                  23 it relates to paragraphs 15 and then 18.2 of Mr Jay's                  24 note. 15 begins with the words:                  25 "The chairman will decide which witnesses will be</p> <p style="text-align: center;">Page 79</p>
<p>1 already how that would cause very considerable                  2 difficulties.                  3 LORD JUSTICE LEVESON: No, I won't embark upon any aspect of                  4 module 2 without making sure that those who may be core                  5 participants in module 2 have had ample opportunity: (a)                  6 to make applications; and (b) to participate effectively                  7 in that part of the Inquiry. That much, I would hope,                  8 would be self-evident.                  9 MR PHILLIPS: Yes. Sir, that's the concern. As I say, in                  10 the intervening period, however long it is, our concern                  11 is to ensure that anything that might affect our                  12 interests is shared with us, so that we can make our own                  13 contribution. Now, I am not asking, exactly the same                  14 way as my learned friend Mr Chawla, I am not asking for                  15 some formal system but I am asking, please, that the                  16 Inquiry and its legal team keep that in mind.                  17 Again, we are happy to rely on their judgment, but                  18 this is not some new development in the world of                  19 inquiries. It is very common in public inquiries, I can                  20 say, from my own experience, that certain documents,                  21 certain draft protocols are shared more widely than                  22 simply with the core participants, precisely with these                  23 future points or other points in mind. We are not, we                  24 hope, adding significantly to the burden here.                  25 LORD JUSTICE LEVESON: No, I take the point and I am sure</p> <p style="text-align: center;">Page 78</p>	<p>1 called to give oral evidence and which evidence may be                  2 read out", et cetera.                  3 18.2 says:                  4 "Counsel to the Inquiry will use their judgment on                  5 a case-by-case basis as to whether a witness will be                  6 required to give oral evidence to the Inquiry on all or                  7 some of the matters covered in a witness statement. All                  8 of the part of the statement will be taken as read or                  9 some or all of the statement will be summarised."                  10 To us, there seemed to be an inconsistency there                  11 between the chairman having the decision on 15 and                  12 counsel to the Inquiry having the judgment decision or                  13 judgment call, if I can put it that way, under 18.2. It                  14 may be, as I say, that we have misread it but that is                  15 the way we saw those two paragraphs and we saw there                  16 being an inconsistency. If we are right, then some                  17 minor amendment is presumably required.                  18 I don't think we have a strong view one way or                  19 another. There is an inconsistency, but it might be                  20 something worth looking at.                  21 Sir, so far as -- if I can just go back to the                  22 beginning and the question of fairness and our position                  23 now. As you can probably tell, it was with some degree                  24 of self restraint that I didn't press on to make                  25 an application for CP status last time. We are,</p> <p style="text-align: center;">Page 80</p>

<p>1 I should repeat, ready to make that application for                  2 module 2, as and when the Inquiry asks us to. We very                  3 much hope that it will be early enough in your process                  4 so that we are not prejudiced when and if, as I hope we                  5 will, we join the Inquiry as a CP for module 2.                  6 But in the meanwhile we ask, please, that there be                  7 no repeat of what happened in the run-up to this                  8 hearing -- we appreciate that the Inquiry is getting                  9 going, there are many, many things on your agenda and                  10 your team's agenda -- to have in mind fairness in                  11 relation to us, our declared position in relation to                  12 module 2 and to include us if our interests might be                  13 affected.                  14 LORD JUSTICE LEVESON: Yes, I would have to formally ask for                  15 those who were interested in module 2, because it may be                  16 that other police bodies may be, I am not saying there                  17 will be but there may be.                  18 MR PHILLIPS: Sir, all I can say is: I am ready to apply now                  19 but I can see that that is not what you want. All I am                  20 then saying is, if it is to be later, then let it not be                  21 too late, ie so as to prejudice --                  22 LORD JUSTICE LEVESON: I take that point and it may be that                  23 there is no harm to be done in getting on with it. But                  24 I will think about that.                  25 MR PHILLIPS: Thank you.</p> <p style="text-align: center;">Page 81</p>	<p>1 LORD JUSTICE LEVESON: No, a club to beat me with, yes.                  2 MR GARNHAM: I would rather use it as a club to join.                  3 LORD JUSTICE LEVESON: Yes.                  4 MR GARNHAM: So finally, we would have submissions to make                  5 were it to be proposed that material that we submitted                  6 to the Inquiry was to be circulated other than to core                  7 participants. The submission has been made by a number                  8 of those making submissions recently to that effect and                  9 we are a little guarded about the consequences of that.                  10 One obvious example is that there may come a time when                  11 you require confidentiality undertakings from core                  12 participants.                  13 LORD JUSTICE LEVESON: There is no doubt that I am going to                  14 require confidentiality from everybody who sees anything                  15 that doesn't enter the public domain.                  16 MR GARNHAM: Sir, that then tests this point rather well.                  17 If it is going to be proposed that material goes outside                  18 the confidentiality circle, then that would be of                  19 considerable concern to us. It may be, however, that                  20 you broaden the circle to include some of my learned                  21 friends, who anticipate receiving material on a basis                  22 other than the fact that they are core participants.                  23 LORD JUSTICE LEVESON: Yes, the question is whether I ought                  24 to create a new category of, one could call them --                  25 I know the word is used in the Act, but in a different</p> <p style="text-align: center;">Page 83</p>
<p>1 LORD JUSTICE LEVESON: Thank you. Right. Mr Garnham?                  2 Submissions by MR GARNHAM                  3 MR GARNHAM: Sir, we make no submission on the draft                  4 protocols. Save in respect of two matters, we make no                  5 submission on what Mr Jay said in opening at this                  6 hearing. Those two exceptions are this: firstly, as to                  7 start time for the oral evidence stage. Sir, you                  8 suggested a provisional view as to when it might start.                  9 We would like to reflect on that and take instructions.                  10 LORD JUSTICE LEVESON: Yes.                  11 MR GARNHAM: If we have anything to say we will communicate                  12 in writing what that is.                  13 The second exception is the point raised by                  14 Mr Dingemans about notice of the issues to be covered in                  15 questioning. We would respectfully agree with you, sir,                  16 that it is a matter of degree or, to use your word, of                  17 "granularity", but we would support what Mr Dingemans                  18 says as to the need to indicate at least the broad                  19 topics upon which witnesses are going to be asked                  20 questions, if a fair procedure is to be adopted which we                  21 know is your aim.                  22 Finally, sir --                  23 LORD JUSTICE LEVESON: I never thought of the use of the                  24 word "fair" as a club.                  25 MR GARNHAM: Club to beat or club to join, sir?</p> <p style="text-align: center;">Page 82</p>	<p>1 context -- interested parties who can see certain                  2 material but who are not core participants.                  3 MR GARNHAM: It may be that that is what you are being                  4 invited to do, sir, and I wouldn't want to say anything                  5 about that on my feet off the cuff, but it might simply                  6 be that we might want to make submissions about that                  7 because I can see a possibility that such an arrangement                  8 would bring with it only benefits and no obligations and                  9 we would want to be careful to make sure that that is                  10 not the effect.                  11 LORD JUSTICE LEVESON: I take your point.                  12 MR GARNHAM: In other words, sir, I simply seek to reserve                  13 the Met Police's position on that newly floated proposal                  14 and it would need to be a two way street, sir, in this                  15 sense: that we were given -- we, like all the core                  16 participants, were given sight of the submissions made                  17 by other core participants for the purposes of this                  18 morning's hearing. We were not given sight of                  19 submissions made by non-core participants, so, for                  20 example, I was not aware of Mr Phillips's submissions                  21 until this morning, nor those from Trinity Mirror and,                  22 one can see the logic of that.                  23 LORD JUSTICE LEVESON: In the form of letters.                  24 MR GARNHAM: Yes, and one can see the logic of that, if this                  25 was intended to be mutual disclosure between core</p> <p style="text-align: center;">Page 84</p>

<p>1 participants, but if it is to be something wider than --                  2 LORD JUSTICE LEVESON: No, I agree with you. That is why                  3 I am concerned about the width and the breadth of what                  4 Mr Vinall has suggested.                  5 MR GARNHAM: Yes, all I submit is it needs to be thought                  6 through carefully and we would want to make submissions                  7 on it.                  8 LORD JUSTICE LEVESON: Yes, in my effort to want to make                  9 sure that I heard all those who were interested in those                  10 areas where they were interested, I may have created                  11 an issue, which I just have to grapple with and say --                  12 MR GARNHAM: You may say no, sir, but if you are                  13 contemplating saying yes, then we may have submissions.                  14 LORD JUSTICE LEVESON: All right, I have it, thank you very                  15 much, Mr Garnham. I think we have come to Mr Sherborne.                  16 Submissions by MR SHERBORNE                  17 MR SHERBORNE: I am very conscious of the time and I am also                  18 conscious of the fact that Mr Jay needs to speak after                  19 I do. So I will keep this very brief, if I may.                  20 LORD JUSTICE LEVESON: If I go over, I will go over. Do you                  21 know that has happened to me before?                  22 MR SHERBORNE: I am sure it has, sir, I am sure it has                  23 happened to me as well. If I can help you, I will try.                  24 Sir, you have had the written submissions that I have                  25 put in.</p> <p style="text-align: center;">Page 85</p>	<p>1 wish to make witness statements should have the                  2 opportunity to but there is no reason why, in discussion                  3 with the team, you shouldn't focus on a number of                  4 specific witnesses who illustrate the different problems                  5 and allow us to start with, perhaps, a comparatively                  6 small number and, if others then want at some later                  7 stage to come into the picture and it is appropriate                  8 that they give oral evidence, as opposed merely to                  9 having their statements put in, then that can be                  10 organised as well. You don't have to have proved every                  11 single one of your clients before we can press the                  12 button.                  13 MR SHERBORNE: No, sir, we anticipated that and we have                  14 spoken to the Inquiry team. We are putting together                  15 a number of individuals. I think a comparatively                  16 smaller number, certainly, than 46 but, of course, that                  17 does take time and, therefore, what I would urge at this                  18 stage is that, if a provisional date is going to be                  19 fixed, at least, as I say, in provisional terms, it is                  20 one that is later on in November rather than earlier.                  21 LORD JUSTICE LEVESON: So you won't be impressed to know                  22 that my original anxiety was to press for slightly                  23 earlier?                  24 MR SHERBORNE: No, I am sure that will fill everyone behind                  25 me and who represents the victims with a certain amount</p> <p style="text-align: center;">Page 87</p>
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<p>1 LORD JUSTICE LEVESON: Yes.                  2 MR SHERBORNE: Can I take you very briefly through a few                  3 points we have made? There is the familiar cri de                  4 coeur, as regards warning. I am not going to repeat                  5 that, we have all dealt with that this morning. But                  6 coming specifically, if I may, to the start date for the                  7 oral hearing, I am not seeking to pin you down, but I am                  8 seeking to deter you from entering the tunnel that you                  9 referred to, quite as quickly as may be envisaged,                  10 because once we are in, I agree, we are in until we get                  11 to the glorious light at the other end.                  12 Now, in terms of specific dates, perhaps like other                  13 representatives here, I can take further instructions                  14 but I would not be doing my duty if I didn't point out                  15 to you, sir, something I hope is already obvious, which                  16 is that we are unique. Unique in lots of different                  17 ways, no doubt I will address you, but unique,                  18 particularly, in relation to the number of individuals                  19 that I represent, which does create, as you will have                  20 seen from my note, and I hope it is self-explanatory,                  21 a number of logistical difficulties, if nothing else, in                  22 preparing for hearings in witness statements and so on,                  23 all of which --                  24 LORD JUSTICE LEVESON: Mr Sherborne, what I would hope is                  25 all the witnesses who -- all the core participants who</p> <p style="text-align: center;">Page 86</p>	<p>1 of fear.                  2 LORD JUSTICE LEVESON: Only because you know as much and as                  3 well as everybody else the territory that has to be                  4 travelled before next summer.                  5 I am not going to be overly constrained but I am                  6 very keen to keep the focus because I am conscious that                  7 whatever I come up with is likely to generate a debate,                  8 a debate among the media who may or may not be polite,                  9 a debate among the political groupings, and                  10 a reconsideration of the way, perhaps, I don't know, in                  11 which regulation, self regulation, whatever comes out,                  12 is organised, which everybody is going to want to get on                  13 with, which is why this part of the Inquiry has to be                  14 before the normal timing, which would wait until all the                  15 police had finished whatever they wanted to do.                  16 So it strikes me, and I would be grateful if anybody                  17 wanted to disagree with me, that the imperative is not                  18 merely a pressure to do what I have been asked to do, it                  19 is because it is actually very important to achieve                  20 something broadly within, from what is now about a year                  21 on, the basis that the summer is not going to                  22 overconcern those who will want to think about what                  23 I say but that, once we get back to next autumn, then                  24 I would have thought this was a topic that remained on                  25 the agenda that we have to address.</p> <p style="text-align: center;">Page 88</p>
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<p>1 So it is easy to say, well, another week here or                  2 another week there, but it is the knock on consequences                  3 that trouble me.                  4 The reason I have gone into that is not to be                  5 definitive but to encourage everybody to be aware of the                  6 reasons for the pressure, to such extent as they are not                  7 already aware and to say this is not just a question of                  8 my wanting to demonstrate that I can do it quicker than                  9 anybody else. It isn't that at all. There is no doubt                  10 that if I spend three years on it, I would perhaps do it                  11 slightly differently, perhaps produce a result that was                  12 slightly different, probably not extensively different                  13 but slightly different. If I spent five years on it,                  14 again, one could turn every single stone over and look                  15 at everything, but I am not sure that serves the                  16 interests of the public.                  17 MR SHERBORNE: No, it is certainly appreciated, as far as my                  18 clients are concerned, that the Inquiry is pressing on                  19 with this, given the amount of public concern there is                  20 about the matters which are being inquired into it. All                  21 I am simply saying is that, whilst I understand the                  22 principle about one week here and one week there, I do                  23 know that one week here and there at this stage, before                  24 we start the process, will certainly assist, as far as                  25 my clients are concerned, in being prepared. Because</p> <p style="text-align: center;">Page 89</p>	<p>1 from the note, wish to make detailed submissions in                  2 relation to various subjects which are covered by the                  3 briefings and the seminars. I understand that the                  4 appropriate time to do that will be at the beginning of                  5 the oral hearing.                  6 LORD JUSTICE LEVESON: That is a perfectly appropriate time                  7 or at any stage that you could put something into                  8 writing. I do hope that the voice of those who may have                  9 criticisms in the way the press has operated will not be                  10 silent during the seminars.                  11 MR SHERBORNE: Sir, I hope not but the speed with which they                  12 have been arranged makes it difficult to gather voices                  13 as quickly as effectively as one would like. I am not                  14 going to repeat the familiar refrain.                  15 LORD JUSTICE LEVESON: No.                  16 MR SHERBORNE: On the protocol, sir, you will have seen, the                  17 only point I raise, and I am very conscious, sir, you                  18 will appreciate I am involved in the litigation in the                  19 Chancery Division, Mr Justice Vos is conducting in                  20 relation to hacking claims, again, sir, you raised on                  21 the 16th -- or I raised on 6 September, sir, that you                  22 have well in mind that there should be no treatment of                  23 documents or information in any way inconsistent with                  24 the way that Mr Justice Vos has dealt with it. I know                  25 the Inquiry team is very clear on that.</p> <p style="text-align: center;">Page 91</p>
<p>1 once we do start and I presume, without necessarily                  2 knowledge, that it will be the core participant victims                  3 who will be giving evidence first.                  4 LORD JUSTICE LEVESON: That would be my wish, because                  5 I think it is probably the right way to start.                  6 MR SHERBORNE: Of course.                  7 LORD JUSTICE LEVESON: But I am not suggesting that, if they                  8 don't, they have missed the bus, another one will come                  9 along, but I am worried about time.                  10 MR SHERBORNE: I understand that. I understand that. Shall                  11 I move on then very --                  12 LORD JUSTICE LEVESON: I would have thought the opening                  13 submissions would take some time, in any event, not                  14 overly. You have heard from what Mr Jay has said, but                  15 if there are going to be comments on general things,                  16 then we will have to read things and be elaborated upon                  17 so there may be a day or so that you will have in                  18 addition.                  19 MR SHERBORNE: I am sure I will be very busy during that                  20 day. That moves me very neatly on to the next point                  21 which was in relation to the briefings and the seminars.                  22 I think, sir, you and Mr Jay have really addressed this                  23 in the context of News Group Newspapers or                  24 News International, whichever corporate body it is,                  25 which is represented here but we, as you will have seen</p> <p style="text-align: center;">Page 90</p>	<p>1 LORD JUSTICE LEVESON: I am not --                  2 MR SHERBORNE: And the protocol certainly reflects that.                  3 LORD JUSTICE LEVESON: Good.                  4 MR SHERBORNE: Then finally, I think it is simply the                  5 question which goes beyond anything that is in Mr Jay's                  6 note and that is, as you will have seen from my note,                  7 that there are two further individuals who wish to apply                  8 for core participant status. I don't know whether you                  9 wish me to deal with that before the adjournment or                  10 whether you would rather hear from Mr Jay in response to                  11 everyone's submissions and that I come back once again                  12 and deal with the point on my own and perhaps with very                  13 few people here. I leave that to you, sir.                  14 LORD JUSTICE LEVESON: The applicants for core participant                  15 status need not be within the wider group because that                  16 is just a matter for me. Nobody else would have an                  17 interest in that.                  18 MR SHERBORNE: I am happy to make that then after Mr Jay has                  19 responded.                  20 LORD JUSTICE LEVESON: All right. Is there anything else                  21 you want to say, Mr Sherborne?                  22 MR SHERBORNE: No, sir, not unless you wish me to do so.                  23 LORD JUSTICE LEVESON: Mr Jay, do you have very much to say                  24 on the various topics that have been raised this                  25 morning.</p> <p style="text-align: center;">Page 92</p>

<p>1 MR JAY: 10 or 15 minutes.                  2 LORD JUSTICE LEVESON: I think we had probably better say                  3 2 o'clock then. Thank you very much.                  4 (1.05 pm)                  5 (Luncheon Adjournment)                  6 (2.00 pm)                  7 LORD JUSTICE LEVESON: Right.                  8 MR DAVIES: I wonder if I could just deal with the point                  9 which was raised this morning about whether material put                  10 in by a core participant should go outside the core                  11 participant's group.                  12 LORD JUSTICE LEVESON: Yes.                  13 MR DAVIES: So far as we are concerned, we are proceeding on                  14 the basis that the Inquiry is transparent and anything                  15 we say to the Inquiry either is or will become public,                  16 with the exception that there may be things which we                  17 specifically say we think ought to be confidential to                  18 the Inquiry team, not to the circle of core participants                  19 but to the Inquiry team, and there is a model for that                  20 in the protocol about redacting documents, both in                  21 relation to the documents themselves and to submissions.                  22 So our position is that, unless we specifically ask                  23 for confidentiality for something, we don't mind who it                  24 goes to. We regard it as public.                  25 LORD JUSTICE LEVESON: That is very helpful. Thank you very</p> <p style="text-align: center;">Page 93</p>	<p>1 LORD JUSTICE LEVESON: More than that, because it is one                  2 thing to be required to read a document in the context                  3 of a room of this size with lots of people watching                  4 you --                  5 MR JAY: Yes.                  6 LORD JUSTICE LEVESON: -- and it is quite another to be able                  7 to consider its ramifications, work out where it fits in                  8 the great scheme of things and decide what one can say                  9 of one's own knowledge or otherwise about that document.                  10 MR JAY: Yes.                  11 LORD JUSTICE LEVESON: So that would lead you to say that,                  12 if there are documents to be put to a witness which did                  13 not emanate from the witness, the witness ought to have                  14 had the opportunity to see them.                  15 MR JAY: Yes.                  16 LORD JUSTICE LEVESON: That is fair for the witness but also                  17 important for a slightly different reason, that the only                  18 reaction could be "Well, this is very interesting,                  19 I have seen this document, I will have to go away and                  20 think about it or research it", or whatever, and it is                  21 inconceivable that one could say, "I'm very sorry, you                  22 can't research it, you can't think about it, you have to                  23 answer now", because, even if one did say that, and I am                  24 not suggesting that I would, the answer becomes                  25 valueless if the evidence is later undermined by</p> <p style="text-align: center;">Page 95</p>
<p>1 much. Does anybody else want to say anything on that                  2 topic?                  3 Right. I was going to come back to deal with the                  4 question of other applications for core participant                  5 status later. So, Mr Jay, let us hear what you have to                  6 say about these various matters. You choose your order                  7 and then we will see where we get to.                  8 Reply submissions by MR JAY                  9 MR JAY: The big point is prior notice, advance notice,                  10 either of questions put by counsel to the Inquiry or by                  11 anybody else or documents which are going to be put to                  12 witnesses. There are two considerations here. First of                  13 all, what basic standards of fairness require as vouched                  14 by the Inquiry Rules 2006 because there are some clues                  15 there as to what fairness requires and then, secondly,                  16 what prudence and common sense requires.                  17 May I deal with the latter first because it may be                  18 more straightforward, that one can see that there may be                  19 difficulties if points are put to witnesses which are                  20 new to them, in other words, points which have not                  21 arisen in their witness statements or which do not arise                  22 out of their documents. If a document is put to the                  23 witness which is someone else's document, no advance                  24 notice has been given, time may be taken while the                  25 witness injects the document.</p> <p style="text-align: center;">Page 94</p>	<p>1 research that does take place on the document.                  2 So it is in the spirit of a sensible resolution that                  3 people do know broadly the areas about which the                  4 question is being asked and that covers both documents                  5 then, doesn't it, and areas, not the questions                  6 themselves, but --                  7 MR JAY: Yes, topics or areas.                  8 May I deal with that because there may be                  9 a difference between topics and areas which are covered                  10 already in a witness statement and topics and areas                  11 which have not been covered in a witness statement.                  12 Matters which are outside the scope of a witness                  13 statement and which counsel to the Inquiry or anyone                  14 else wishes to ask a witness about, the rules probably                  15 require that advance notice of those matters should be                  16 given to the witness. That is implicit in Rule 9.                  17 LORD JUSTICE LEVESON: That is an identical point to the                  18 point you just made about the witness.                  19 MR JAY: Yes.                  20 LORD JUSTICE LEVESON: Because how could you expect the                  21 witness to be able to deal -- the truth is, I suppose,                  22 although there might be exceptions, that if the                  23 statement from the witness doesn't deal with something                  24 that the Inquiry wishes it to deal with, then the rules                  25 really provide for the panel to say -- for me to ask the</p> <p style="text-align: center;">Page 96</p>



<p>1 witness, would you like to deal with this topic please?                  2 MR JAY: Yes, notice of that should be given. That is what                  3 the rules require.                  4 LORD JUSTICE LEVESON: But you do that, hopefully, in good                  5 time.                  6 MR JAY: Yes. Matters -- topics or areas which are already                  7 covered in a witness statement, and after all, the model                  8 which this Inquiry is using under Section 21 of the Act                  9 is to require witnesses to answer a list of questions.                  10 The list of questions constitute the topics or areas.                  11 Basic standards of fairness do not require, in our                  12 submission, that the witness be told which paragraphs in                  13 the witness statement he or she is going to be asked                  14 about. However, there may be a different reason for                  15 warning a witness of matters which will be covered in                  16 oral evidence, notwithstanding that they are in                  17 a witness statement. In other words, the witness should                  18 be focusing on paragraphs 3, 7 and 9 and should not be                  19 too concerned about other paragraphs in the witness                  20 statement, since that will enable the witness to prepare                  21 more effectively the night before or whenever to answer                  22 the questions. But that is not a fairness                  23 consideration. It is a prudential consideration.                  24 LORD JUSTICE LEVESON: I take the point, but if you have                  25 asked someone to deal, and I take Mr Chawla's example,</p> <p style="text-align: center;">Page 97</p>	<p>1 MR JAY: Yes, that is right. So the Inquiry then will be                  2 giving advance notice -- how much advance notice is                  3 going to depend, but as much as possible is all I can                  4 say at this stage -- be giving advance notice on topics                  5 and areas to be covered by a witness in oral evidence                  6 arising out of his or her witness statement. If that                  7 advance notice is also given to the other core                  8 participants then the other core participants can say                  9 whether or not there are other areas which they may wish                  10 to be covered with a particular witness.                  11 LORD JUSTICE LEVESON: Then you have to make a decision, as                  12 I understand the rules, do you want to do it or not?                  13 MR JAY: Yes.                  14 LORD JUSTICE LEVESON: If you say not then they have to make                  15 a decision --                  16 MR JAY: Absolutely.                  17 LORD JUSTICE LEVESON: -- whether they want to take up the                  18 time by asking me and explaining why it is so critical                  19 to the Inquiry.                  20 MR JAY: Yes. Absolutely. There is nothing to stop and,                  21 indeed, I would invite it, core participants at any                  22 stage and as early as possible, in relation to any                  23 witness, identifying the topics or areas which, they                  24 say, should be covered with or by a witness, indicating                  25 to us the, as it were, the subject matters which should</p> <p style="text-align: center;">Page 99</p>
<p>1 19 topics, and 15 of them, we are content, simply form                  2 part of the evidence to the Inquiry --                  3 MR JAY: Yes.                  4 LORD JUSTICE LEVESON: -- they may or may not be contentious                  5 in any way but they are not features upon which the                  6 Inquiry want to focus and "focus" is the watch word for                  7 all the reasons that I have been talking about.                  8 MR JAY: Yes.                  9 LORD JUSTICE LEVESON: Then we get the best value out of the                  10 witness if we say, actually, the specific topics that we                  11 want to ask are going to be topics 13, 15 and 17.                  12 MR JAY: Yes.                  13 LORD JUSTICE LEVESON: So that would not be to say that                  14 a witness couldn't be asked about other areas, not least                  15 because another core participant might apply to do so.                  16 MR JAY: Yes.                  17 LORD JUSTICE LEVESON: So it couldn't be taken as                  18 a guarantee that you should ignore the rest of the                  19 statement, but that, as far as the tribunal, the Inquiry                  20 is concerned, we would be focusing on that.                  21 MR JAY: Yes.                  22 LORD JUSTICE LEVESON: If you have learnt that, because you                  23 have been asked that, actually, we would like to ask                  24 questions on topic 16 as well, well that can be                  25 transmitted in addition.</p> <p style="text-align: center;">Page 98</p>	<p>1 be covered because then that will start the ball                  2 rolling.                  3 LORD JUSTICE LEVESON: Yes.                  4 MR JAY: We won't necessarily come back to them immediately                  5 but it will ensure that in good time the relevant ground                  6 is covered.                  7 LORD JUSTICE LEVESON: My concern is that, whether I accept                  8 the language used, I think it was by Mr Dingemans, about                  9 witnesses or not, that for some the giving of evidence                  10 is, indeed, a difficult exercise and I will want to make                  11 that exercise as easy an experience as possible on the                  12 basis that this isn't a trial. I am simply looking at                  13 a series of issues to obtain a series of                  14 recommendations. To that extent, possibly I ought to                  15 say that if counsel is aware that a particular witness                  16 is particularly anxious or nervous, although I would not                  17 wish to take very long, I would not have an objection,                  18 whether or not it is within the rules, to a request to                  19 introduce the witness through his or her own counsel --                  20 MR JAY: Yes.                  21 LORD JUSTICE LEVESON: -- simply to get used to talking in                  22 court and answering questions. So I wouldn't have                  23 a problem about that. It is not a request to make for                  24 every single witness but I can well understand there                  25 could be some witnesses for whom that would be</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 an important way of trying to allow the witness to relax                  2 to such extent, if possible.                  3 MR JAY: Yes.                  4 LORD JUSTICE LEVESON: I am not unmindful of the pressures                  5 of giving evidence.                  6 MR JAY: Yes. It is the role of counsel to the Inquiry, to                  7 the best it can, not to unsettle witnesses.                  8 LORD JUSTICE LEVESON: I wasn't for a moment suggesting that                  9 you would approach it differently, but with the best                  10 will in the world, you will not have quite the same                  11 relationship with the witnesses --                  12 MR JAY: No, no.                  13 LORD JUSTICE LEVESON: -- as his or her counsel has and I am                  14 not suggesting that it should be taken as a tactic --                  15 MR JAY: No.                  16 LORD JUSTICE LEVESON: -- that as a matter of routine every                  17 single witness should be introduced by his own counsel                  18 so that there can be some slow easy runs scored. I am                  19 not saying that.                  20 MR JAY: No.                  21 LORD JUSTICE LEVESON: But I am actually recognising the                  22 humanity of the position. I am sure that everyone who                  23 is acting for a core participant understands the point                  24 I am making. So I would be surprised if Mr Garnham was                  25 making the application.</p> <p style="text-align: center;">Page 101</p>	<p>1 That is the advance notice point, and it may be the                  2 best way forward is for me to finalise the note which is                  3 still, I suppose, in draft form, to incorporate the                  4 advance notice points so that they are made explicit and                  5 then a final version of the note, which was provided to                  6 the parties at the beginning of last week can then be                  7 placed on the website. The same will apply, of course,                  8 to the protocol. They will cease to be draft protocols.                  9 LORD JUSTICE LEVESON: I will ask everybody about that in                  10 a moment. I think that might be the way forward.                  11 MR JAY: It will be understood that the note and the                  12 protocols can always be amended at any stage.                  13 LORD JUSTICE LEVESON: Yes, I would equally hope it would be                  14 understood that, if there was a particular concern, that                  15 informal discussions with the Inquiry team should always                  16 be used.                  17 MR JAY: Yes.                  18 LORD JUSTICE LEVESON: So if a specific problem arose then                  19 I would hope that it would be resolved within the spirit                  20 of the concepts we have been discussing without it                  21 necessarily having to be considered as a matter of                  22 construction of the document.                  23 MR JAY: Yes. The note and the protocols are just guides,                  24 as you are indicating then, that they shouldn't be                  25 construed as black letter law.</p> <p style="text-align: center;">Page 103</p>
<p>1 MR JAY: Sir, I wasn't contradicting what you were saying.                  2 I was endorsing it. But I was also hoping to reassure                  3 people that, although searching questions will, I hope,                  4 be posed by counsel to the Inquiry, otherwise one's job                  5 will not have been fulfilled, it is fully understood                  6 that, with some witnesses, care will be taken, at least,                  7 in the initial parts of a piece of questioning.                  8 LORD JUSTICE LEVESON: Mr Jay, I have no doubt about it and                  9 I am not at all concerned about the approach that any                  10 counsel adopt, not least because, if I think they have                  11 gone too far, I will stop them.                  12 MR JAY: Yes.                  13 So that covers advance notice. I should make it                  14 clear, if it isn't already obvious, that Rule 10 and                  15 feeding lines of questions to counsel to the Inquiry by                  16 core participants, or anyone else, that serves a rather                  17 different role than the role of having to act fairly                  18 towards witnesses and giving them advance notice of                  19 questions. Counsel to the Inquiry will benefit from                  20 well directed lines of enquiry, pointing us in the                  21 direction of documents, if they aren't already obvious                  22 to us, better to enhance the discharge of our duties                  23 under the rules in the Act.                  24 LORD JUSTICE LEVESON: Yes.                  25 MR JAY: Perhaps that is so obvious it goes without saying.</p> <p style="text-align: center;">Page 102</p>	<p>1 Then the point made on behalf of Mrs Brooks, when                  2 there is material which touches on her, it is said that                  3 her team should be provided with it. It does place                  4 practical burdens on the Inquiry but we will do the best                  5 we can to address --                  6 LORD JUSTICE LEVESON: Is the answer to this -- there is                  7 an obligation under 10.3 to -- perhaps it is not                  8 an obligation on me, it is merely an ability of the                  9 legal representative, but the only way a legal                  10 representative of a witness to whom evidence relates                  11 will know that the witness has given evidence directly                  12 relating to that evidence of the other witness is if                  13 they are in court, unless they have been alerted.                  14 MR JAY: Yes. Or unless, and this is not altogether                  15 desirable, the transcript, which will be publicly                  16 available, in any event is drawn to the attention of                  17 Mrs Brooks' legal team and then they make an application                  18 to recall the witness for the purpose of exercising. It                  19 is not a right under Rule 10.3, but inviting you to                  20 exercise your discretion in their favour under Rule 10.3                  21 for further questions to be posed, in order to avoid                  22 that uncomfortable state of affairs because we do not                  23 want witnesses to be recalled if possible some form of                  24 advance notice may be given.                  25 LORD JUSTICE LEVESON: Yes. Merely to alert of the risk.</p> <p style="text-align: center;">Page 104</p>

<p>1 MR JAY: Of the risk, yes.</p> <p>2 LORD JUSTICE LEVESON: The point being that that risk does</p> <p>3 not arise if, for example, there is generic evidence of</p> <p>4 what was happening in a particular news room of which</p> <p>5 Mrs Brooks was the editor, unless it impacts on her, but</p> <p>6 if it does impact on her, because somebody says she did</p> <p>7 something or she authorised something, I am inventing</p> <p>8 it, I am not making any allegation, then that is</p> <p>9 something that is specific about which her legal</p> <p>10 representatives may have a right to apply under 10.3.</p> <p>11 MR JAY: Yes.</p> <p>12 LORD JUSTICE LEVESON: Again, as long as that is broadly</p> <p>13 understood, then I don't want to create a structure</p> <p>14 which is formalistic, time consuming and potentially</p> <p>15 difficult to operate.</p> <p>16 MR JAY: But if, speaking entirely hypothetically, there</p> <p>17 were a document which touches on Mrs Brooks, which</p> <p>18 document should be put to her in cross-examination, well</p> <p>19 then we have already, as it were, agreed that advance</p> <p>20 notice would be given to her of documents which aren't</p> <p>21 her own documents. So it is already catered for.</p> <p>22 LORD JUSTICE LEVESON: That bit is catered for, yes.</p> <p>23 MR JAY: So the final point is whether there is</p> <p>24 an inconsistency in the note between paragraph 15 and</p> <p>25 paragraph 18 and subparagraph 2. There isn't or at</p> <p style="text-align: center;">Page 105</p>	<p>1 LORD JUSTICE LEVESON: All right.</p> <p>2 MR JAY: Finally, can I endorse from our perspective a point</p> <p>3 you made before lunch, that it already appears to us</p> <p>4 that this Inquiry could take, in an ideal world in which</p> <p>5 we do not live, three or four years. That is not what</p> <p>6 your terms of reference require. Your terms of</p> <p>7 references, as you know, and have said several times</p> <p>8 now, quite rightly, mandate that a report is prepared</p> <p>9 within about a year. The difference between a one year</p> <p>10 and three year Inquiry, in terms of contents of your</p> <p>11 report is not likely to add to very much. You are going</p> <p>12 to be able to do, one would hope, 90 or 95 per cent of</p> <p>13 the job in terms of its quality in one year as you could</p> <p>14 in three years and the extra 10 per cent.</p> <p>15 LORD JUSTICE LEVESON: I might disagree with the</p> <p>16 percentages.</p> <p>17 MR JAY: The point I am making is that the extra two years,</p> <p>18 by which time, not merely will we all be exhausted but</p> <p>19 the drivers -- if change is required -- the drivers for</p> <p>20 such change may well be diminished. It will render the</p> <p>21 exercise largely self defeating, so there is that --</p> <p>22 LORD JUSTICE LEVESON: Certainly altered if not diminished</p> <p>23 MR JAY: So there is that concern. Of course, we understand</p> <p>24 that fairness has to be a touchstone of this Inquiry and</p> <p>25 that fairness cannot be ignored or short circuited, but,</p> <p style="text-align: center;">Page 107</p>
<p>1 least there wasn't intended to be because paragraph 15</p> <p>2 is dealing with the issue of whether witnesses will be</p> <p>3 asked to give oral evidence at all or to whether their</p> <p>4 witness statements will simply be taken as read or</p> <p>5 summarised. Paragraph 18 is designed to cater for the</p> <p>6 situation where the witness is giving oral evidence but</p> <p>7 how is that oral evidence to be adduced? Because in</p> <p>8 some witnesses it is being suggested the evidence will</p> <p>9 be led in the -- if I can say the old-fashioned way --</p> <p>10 with other witnesses, much of their evidence will be</p> <p>11 taken as read and that will be a judgment call for</p> <p>12 counsel to the Inquiry.</p> <p>13 LORD JUSTICE LEVESON: Yes, I hadn't read them as being</p> <p>14 inconsistent. I had read it as making the broad</p> <p>15 decision as to oral or not oral, once it is oral it is</p> <p>16 down to you.</p> <p>17 MR JAY: Yes.</p> <p>18 LORD JUSTICE LEVESON: That does raise the question about</p> <p>19 a witness in respect of whom I make a decision "not</p> <p>20 necessary to give oral evidence". Of course, once it is</p> <p>21 put on the web and everybody can read it, it would be</p> <p>22 possible for somebody to say, "Well, actually there are</p> <p>23 issues that this witness ought to deal with", and then</p> <p>24 one can deal with those, as and when.</p> <p>25 MR JAY: Exactly.</p> <p style="text-align: center;">Page 106</p>	<p>1 again, we don't live in an ideal world and I do ask the</p> <p>2 core participants to allow us a degree of latitude. But</p> <p>3 against that background we hope that the Inquiry will be</p> <p>4 concluded within the timetable which has been ordained.</p> <p>5 LORD JUSTICE LEVESON: Yes. There was a submission that we</p> <p>6 ought to change something we said in the protocols.</p> <p>7 MR JAY: I suggested an agreed amendment to paragraph 15 of</p> <p>8 the documents protocol and paragraph 3(b) of the</p> <p>9 assessor's protocol. I wasn't aware that there were any</p> <p>10 other points which hadn't been covered. We don't think</p> <p>11 there were any other points.</p> <p>12 LORD JUSTICE LEVESON: Do you say anything about the</p> <p>13 position of Trinity Mirror, Mr Vinall's application,</p> <p>14 specifically?</p> <p>15 MR JAY: I could but whether I should is another matter.</p> <p>16 There are no submissions of law which I need make.</p> <p>17 LORD JUSTICE LEVESON: I am concerned that I am removing the</p> <p>18 line, not merely seeking to define it as blurred rather</p> <p>19 than bright.</p> <p>20 Thank you. Now, this isn't contentious litigation.</p> <p>21 It might be contentious but it's not litigation, so if</p> <p>22 anyone wants to add anything to that which we have just</p> <p>23 said they are free to do so.</p> <p>24 The area that has been the subject of the greatest</p> <p>25 discussion just now has been the point that, I think,</p> <p style="text-align: center;">Page 108</p>

<p>1 Mr Dingemans, you raised. Others adopted it and took it                  2 on board. It seems to me that, if we amend the note in                  3 the way that Mr Jay has just suggested, I would not want                  4 to become formalistic about it, but does that                  5 essentially address the concern that you were raising?                  6 MR DINGEMANS: My Lord, sir, yes, it does and I am very                  7 grateful to both you, sir, and my learned friend Mr Jay                  8 for addressing our concerns in that way.                  9 LORD JUSTICE LEVESON: I want to address everybody's                  10 concerns. Good. Thank you.                  11 Ruling                  12 LORD JUSTICE LEVESON: I will make a series of decisions.                  13 I don't believe this needs a judgment. I will announce                  14 that we shall, sooner rather than later, invite                  15 applications for core participant status in relation to                  16 the remaining modules of this part of the Inquiry.                  17 Where we believe a prenotified direct interest may be                  18 engaged, we will seek to engage with it, but I think in                  19 relation to Mr Chawla's submissions, in reality now we                  20 have moved past the stage of the protocols, that really                  21 deals with the evidential matters to which we have just                  22 been referring.                  23 I am grateful to Mr Vinall for Trinity Mirror and,                  24 indeed, for those representing the Telegraph for writing                  25 about the generic issues which concern them. I do                  Page 109</p>	<p>1 MR VINALL: But I would be very grateful, sir, for                  2 an indication whether such a application, if I were to                  3 be expected to make, could be made in writing --                  4 LORD JUSTICE LEVESON: No, that could be made in writing but                  5 everyone will have to understand there is only a certain                  6 amount of room in the room downstairs and, therefore,                  7 people have to be, work close, cheek by jowl, if we                  8 increase the numbers, but I am sure that we will manage                  9 whatever we have to do.                  10 What I said about any new core participant applies                  11 to any -- nobody need attend at a time when they don't                  12 think it is going to be significant to them. It is just                  13 not that sort of investigation. I am not sure you will                  14 be able to miss much, Mr Phillips -- Mr Davies, but that                  15 is a different point.                  16 Is there anything else that anybody wants to raise                  17 generally? I now have some applications to listen to                  18 and I will listen to them but if nobody else wants to                  19 raise anything.                  20 Yes, Mr Chawla?                  21 MR CHAWLA: Just this, I raised two issues in terms of what                  22 I might generally call disclosure, the evidential and                  23 the procedural. We are anxious when any procedural                  24 questions arise, so for example, matters such as                  25 standard of proof, that we have an opportunity to be                  Page 111</p>
<p>1 intend to take such steps as it is open to me to ensure                  2 that those who wish to make closing submissions can at                  3 least put something in to the Inquiry in writing and the                  4 Inquiry will also be prepared to engage if specific                  5 requests are made, but I believe that for Trinity Mirror                  6 to have the role that it seeks, it is, in all but name,                  7 becoming a core participant. I would be prepared to                  8 consider an application for that status, accepting that,                  9 by becoming a core participant, any person is not                  10 necessarily required to attend at any time or to take                  11 any part in the Inquiry that it does not wish to take.                  12 But I believe to have the extensive involvement that                  13 Mr Vinall sought requires the position to be                  14 regularised, not least because, otherwise, I have to                  15 create another set of rules in relation to disclosure of                  16 documents for a third group. That is not the public and                  17 not the core participants and that adds a layer of                  18 complexity, which I think is appropriate to avoid.                  19 No pressure, Mr Vinall, but you will just have to                  20 think about that and decide what your clients -- or your                  21 clients will decide what they want to do.                  22 MR VINALL: Sir, I am very grateful. I am certainly not in                  23 a position to give you the answer today.                  24 LORD JUSTICE LEVESON: I am certainly not expecting you to                  25 That is why I said no pressure.                  Page 110</p>	<p>1 heard and if there are draft protocols we would wish to                  2 be included within those.                  3 LORD JUSTICE LEVESON: Well, what I will do is, as we                  4 develop those ideas, I put those on a case-by-case                  5 basis.                  6 MR CHAWLA: Yes, thank you very much.                  7 UNKNOWN SPEAKER: I don't know if you are aware, but I have                  8 asked to be a core participant. I didn't know about the                  9 hearing on September 6th until two days before.                  10 LORD JUSTICE LEVESON: You want to be a core participant?                  11 UNKNOWN SPEAKER: Yes.                  12 LORD JUSTICE LEVESON: I will deal with that in a moment but                  13 not now because there is no need for everybody else to                  14 attend, because it is essentially a discussion between                  15 the core participant potential and the Inquiry, so it is                  16 not necessary for all the other core participants to be                  17 present to listen to that because they won't have                  18 a voice in whether I am satisfied within the meaning of                  19 the Act.                  20 UNKNOWN SPEAKER: But because I flew here and I have been in                  21 correspondence with the Inquiry, I just thought I would                  22 show myself.                  23 LORD JUSTICE LEVESON: Okay. Don't go. Right. Is there --                  24 anybody who now no longer wishes to take part or listen                  25 may depart without any discourtesy.                  Page 112</p>

<p>1 What can I do for you?                  2 Application to become a core participant                  3 UNKNOWN SPEAKER: Well, I had submitted evidence to the                  4 press standards Inquiry for the culture -- that was held                  5 by the Culture, Media and Sport Select Committee, and                  6 I had hoped because of that I would be made aware of                  7 what was going on here, because I live in Massachusetts                  8 and they did have my email but, as I said, I found out                  9 about the hearing on 6 September only two days before,                  10 otherwise, I would have appeared and asked.                  11 I currently don't have a solicitor and your team                  12 asked me to contact Collyer Bristow to see if they would                  13 represent me.                  14 LORD JUSTICE LEVESON: On what basis do you seek to be                  15 a core participant?                  16 UNKNOWN SPEAKER: Because I have been libelled by nearly all                  17 of the core participants, with the exception of the                  18 Trinity and the Guardian, and I was first libelled                  19 across the Scottish press including all the editions --                  20 the Scottish editions of the English papers, over                  21 litigation commenced in Scotland, and then it was in                  22 England -- harassment litigation and it was essentially                  23 commenced because the police didn't investigate my                  24 allegations about the other parties.                  25 So, actually, my application is a little bit with</p> <p style="text-align: center;">Page 113</p>	<p>1 UNKNOWN SPEAKER: Yes.                  2 LORD JUSTICE LEVESON: In England and in America?                  3 UNKNOWN SPEAKER: Right, but the litigation in America is                  4 over -- if I just go back for a minute to Scotland where                  5 it started -- so what happened was, I was taken to court                  6 without notice using false allegations and false                  7 evidence by the other parties and it got in the press.                  8 LORD JUSTICE LEVESON: Hang on. So I am trying to                  9 understand. The person who commenced proceedings                  10 against you in Scotland was not a member of the press.                  11 UNKNOWN SPEAKER: No.                  12 LORD JUSTICE LEVESON: I see. So it is the way in which it                  13 was reported.                  14 UNKNOWN SPEAKER: Right.                  15 LORD JUSTICE LEVESON: Right, I understand.                  16 UNKNOWN SPEAKER: Which was horrible because that is how I                  17 got into the public domain and under the rules of the                  18 Scottish court, that wasn't meant to happen. I went to                  19 Scotland later but, of course, I could get no                  20 information, but these articles remain on the internet,                  21 on the Scotsmen, on the Times, on the Telegraph, they                  22 are all over to this day.                  23 Then these people commenced litigation in England                  24 here under the Harassment Act 1997.                  25 LORD JUSTICE LEVESON: That is, again, not a member of the</p> <p style="text-align: center;">Page 115</p>
<p>1 the police, in that their failure to investigate caused                  2 me to be defamed and libelled. Also when it started in                  3 Scotland the issue was taken under common law, under                  4 harassment common law, and under the rules of the                  5 Scottish court nothing should have gotten in the press                  6 unless the other party was present, so I was taken to                  7 court without notice and I believed somebody --                  8 something funny happened.                  9 LORD JUSTICE LEVESON: In Scotland is this?                  10 UNKNOWN SPEAKER: Yes, this started in Scotland. This does                  11 cover Scotland as well, doesn't it? I think so.                  12 LORD JUSTICE LEVESON: Yes, but only in a very limited way                  13 because Scottish law is different to English law and                  14 lots of people have pointed out my lack of expertise in                  15 relation to media law, if they wanted to include                  16 Scottish law I would agree with them.                  17 UNKNOWN SPEAKER: It also covers the English law as well.                  18 They actually have the law in America because I have                  19 issued a claim in Boston because of all of these --                  20 LORD JUSTICE LEVESON: In America?                  21 UNKNOWN SPEAKER: In America.                  22 LORD JUSTICE LEVESON: So you now have claims in Scotland?                  23 UNKNOWN SPEAKER: No, I don't have a claim in Scotland.                  24 LORD JUSTICE LEVESON: The litigation in Scotland has                  25 finished?</p> <p style="text-align: center;">Page 114</p>	<p>1 press.                  2 UNKNOWN SPEAKER: Again, not a member of the press.                  3 LORD JUSTICE LEVESON: So your complaint is about the way in                  4 which your proceedings have been reported --                  5 UNKNOWN SPEAKER: Exactly.                  6 LORD JUSTICE LEVESON: -- in Scotland and England?                  7 UNKNOWN SPEAKER: Exactly, which were then syndicated to                  8 America. I don't know if it is because I am American or                  9 the other party is well known but that is what my claim                  10 in America is about, because I am in all the databases                  11 in America and there are libellous articles and, because                  12 of that, I think the Inquiry -- I think, what people                  13 have to understand here is that wherever the English                  14 language is spoken around the world, particularly                  15 because of the internet, you know, the bad practices of                  16 the British press are everywhere.                  17 LORD JUSTICE LEVESON: I understand that, and the impact of                  18 the internet is something which I should be considering                  19 in the context of this Inquiry but I am not quite sure                  20 why that brings you within the definition contained                  21 within paragraph 5.2 of the Inquiry Rules 2006, such                  22 that I should designate you as a core participant                  23 because, although I understand you have an interest, it                  24 doesn't immediately strike me that you are a person who                  25 has played a direct and significant role in relation to</p> <p style="text-align: center;">Page 116</p>

<p>1 the matters to which the Inquiry relates or whether you                  2 have a significant interest in the important aspect of                  3 the matters to which the Inquiry relates, because I am                  4 not considering specifically the law of libel, as far as                  5 I'm aware, or that you are going to be criticised. I am                  6 sure you are not going to be criticised in the course of                  7 my proceedings.                  8 So I understand why you are asking. I am just not                  9 sure you fit; do you see?                  10 UNKNOWN SPEAKER: No, I see, because I know this all started                  11 as a phone hacking issue. However, as, sort of, the                  12 Press Standards Inquiry from the culture minister of the                  13 Select Committee started at looking at the bad standards                  14 of the press, it became something about phone hacking                  15 and I have noticed that the core participants aren't                  16 just phone hacking victims.                  17 There are the McCanns and there's Max Mosley and                  18 I am probably most similar to the McCanns because they                  19 have been libelled and they were libelled over                  20 an investigation but I have actually been libelled over                  21 court proceedings, which is a very serious matter.                  22 I mean, you know -- and I put -- and I am representing                  23 myself most of this time and I put a lot of time into it                  24 and to get libelled over the outcome of proceedings                  25 right here in the Queens Bench, which then gets</p> <p style="text-align: center;">Page 117</p>	<p>1 people who complain they have been libelled in court                  2 proceedings, but the problem about that is what is said                  3 in court is privileged -- anyway.                  4 UNKNOWN SPEAKER: I don't mean that -- the privilege.                  5 I mean the outcome of the proceedings, certainly with no                  6 right of reply.                  7 LORD JUSTICE LEVESON: But my Inquiry is rather different                  8 from that being conducted by the Department of Culture,                  9 Media and Sport Committee in the House of Commons and                  10 I am absolutely -- I have taken over a great part of                  11 their remit but not necessarily all of it.                  12 UNKNOWN SPEAKER: But I must say from module 1 that you were                  13 looking at the culture standards and ethics to the                  14 press. What has happened to me completely fits.                  15 LORD JUSTICE LEVESON: All right. But that is not to say                  16 you can't submit evidence to the Inquiry and we will                  17 consider it and, if necessary, if I consider it is                  18 sensible, I can require you to come and give evidence                  19 and it strikes me that that is probably the better thing                  20 for you to do. So for you to submit a statement to the                  21 Inquiry and we will then decide whether it is worthwhile                  22 your coming to speak about it.                  23 UNKNOWN SPEAKER: But I don't quite understand then why my                  24 situation is different than the McCanns, for instance.                  25 LORD JUSTICE LEVESON: Well, I think there are a number of</p> <p style="text-align: center;">Page 119</p>
<p>1 syndicated to America. This is a very serious issue.                  2 LORD JUSTICE LEVESON: I understand the point but the                  3 involvement of the other people you mention strikes me                  4 does have slightly different ramifications.                  5 UNKNOWN SPEAKER: Well, obviously, I would have to -- you                  6 know, I believe otherwise and the fact that I have been                  7 libelled by nearly all the core participants with very                  8 little --                  9 LORD JUSTICE LEVESON: But the one thing I am not going to                  10 be doing is deciding that sort of issue because I am                  11 forbidden from the terms of my reference in going into                  12 areas which are the subject of the police investigation                  13 and, therefore, it is unlikely that I would be devoting                  14 time and attention to specific complaints. There are                  15 the generic issues that those who are already designated                  16 core participants generate and it may be that one subset                  17 of one subset of those also hits you, but that's                  18 slightly different. Okay.                  19 UNKNOWN SPEAKER: But I believe, from everything I read of                  20 the people who submitted evidence to the Culture Media                  21 and Sport Committees Inquiry, it appears I am the only                  22 one and it is quite a unique case that I have. I was                  23 libelled in court proceedings by nearly all members of                  24 the press.                  25 LORD JUSTICE LEVESON: I think there are a fair number of</p> <p style="text-align: center;">Page 118</p>	<p>1 differences because I think the interplay between the                  2 McCanns and the press may very well go beyond the                  3 assertions within certain sections of the press that                  4 impact upon what happened to the McCanns' daughter, and                  5 I think it goes beyond that and quite a distance beyond                  6 it. The issue is that, at the end of the day, I have to                  7 make a series of decisions. There have been a number of                  8 people who have complained about their treatment at the                  9 hands of the press. If I were to make every single one                  10 of them a core participant well, it would not be                  11 possible, sensibly, to do so.                  12 UNKNOWN SPEAKER: No, I understand that but this is really                  13 a public interest issue. You know, I am having court                  14 proceedings here and I can't get a correction in the                  15 paper. I mean, what is the point -- and to tell you                  16 I was served these papers in Massachusetts, dragged back                  17 here, defamed and libelled. I cleared up and that's it.                  18 I just keep on getting libelled.                  19 This Inquiry has to look at why in this country it                  20 is impossible to get a right of reply and I have said                  21 this many times that, you know, in America you are less                  22 likely to get libelled and everybody knows this, even                  23 though there is a first amendment and the first                  24 amendment gives you a lot of freedom but with that                  25 freedom the press is more responsible. They will give</p> <p style="text-align: center;">Page 120</p>

<p>1 everybody a right of reply. It doesn't matter who you                  2 are and in this country I get defamed and libelled, no                  3 right of reply and then they syndicate the articles and                  4 I get defamed and libelled in my own country. It is                  5 really outrageous and I really think the Inquiry has to                  6 look at this.                  7 LORD JUSTICE LEVESON: I actually repeat what I have said                  8 before. I think that you raise an interesting and                  9 possibly significant matter. I would suggest that you                  10 put your account -- I am sure you probably have done --                  11 into writing in some way and send it to the Inquiry team                  12 and, as I have said, anybody is entitled to submit                  13 evidence to the Inquiry and then I will consider it and                  14 if I feel that it fits, it fits a hole, then I will ask                  15 you to give evidence if I think it right.                  16 But your concern is a specific one, which                  17 I understand. I have a far more generic series of                  18 issues to resolve.                  19 So if you need -- you have the address of the                  20 Inquiry?                  21 UNKNOWN SPEAKER: (Nodded)                  22 LORD JUSTICE LEVESON: Well, I encourage you to make                  23 a statement and we will see where it goes from there.                  24 UNKNOWN SPEAKER: I see, so does that -- can I submit                  25 something else to them or are you making a ruling about</p> <p style="text-align: center;">Page 121</p>	<p>1 and I am not enquiring, it doesn't matter. I would have                  2 to consider each case on its merits in relation to the                  3 rules and I am not allowing anything else to influence                  4 me.                  5 UNKNOWN SPEAKER: Do I have a right of appeal?                  6 LORD JUSTICE LEVESON: Of appeal?                  7 UNKNOWN SPEAKER: Yes.                  8 LORD JUSTICE LEVESON: I have not ruled yet, but you can                  9 apply to the Divisional Court or to the Administrative                  10 Court by way of judicial review if you consider that                  11 I have made an error of law or exercised my discretion                  12 in a way in which it could never be reasonable for me to                  13 exercise it. That is the only basis upon which you can                  14 challenge a decision if it is adverse to you.                  15 UNKNOWN SPEAKER: I hope you understand why I believe                  16 I should be a core participant.                  17 LORD JUSTICE LEVESON: No, actually, I don't think that you                  18 really need to be a core participant at all. I think                  19 you do need to provide evidence to the Inquiry which we                  20 will then consider, but I don't think that that gives                  21 rise to a necessity on your part to be a core                  22 participant to the enormous number of overarching issues                  23 with which this Inquiry is concerned.                  24 (Judgment given)                  25 LORD JUSTICE LEVESON: You don't need to stay if you don't</p> <p style="text-align: center;">Page 123</p>
<p>1 my application?                  2 LORD JUSTICE LEVESON: Yes. I will make a ruling about your                  3 application. Not just yet because I will hear Mr Jay                  4 first, but then I will make a ruling and then you can                  5 deal with it as you think is appropriate.                  6 MR JAY: It is a matter for your discretion under Rule 5, in                  7 my submission.                  8 LORD JUSTICE LEVESON: Yes. You have heard what                  9 I have said.                  10 MR JAY: Yes.                  11 LORD JUSTICE LEVESON: It is not said this lady -- she                  12 hasn't played a direct or significant role, it doesn't                  13 seem. She may have an interest in an aspect of matters                  14 to which the Inquiry relates, but she is obviously not                  15 going to be the subject of explicit criticism. Is that                  16 right? Is that analysis fair?                  17 MR JAY: Yes, it is.                  18 LORD JUSTICE LEVESON: Thank you. Do you want to say                  19 anything else? I will give you the last word, you see.                  20 UNKNOWN SPEAKER: It is the last word? I know your team is                  21 aware that my opponent has been Mr Sherborne. So I hope                  22 this isn't influencing --                  23 LORD JUSTICE LEVESON: No, it is not at all. All I knew was                  24 that there was a reason why the team of core                  25 participants couldn't act for you. I didn't know why</p> <p style="text-align: center;">Page 122</p>	<p>1 want to or you can stay or whatever.                  2 UNKNOWN SPEAKER: I always like to hear what Mr Sherborne                  3 has to say.                  4 Application by MR SHERBORNE                  5 MR SHERBORNE: Sir, as I indicated I have an application on                  6 behalf of two further individuals for core participant                  7 status. Both of whom are victims of hacking by News                  8 Group Newspapers as well as other media wrongdoing. Can                  9 I simply name them? The first is Charlotte Church and                  10 the second is Jacqui Hames. I can provide further                  11 details, if necessary, but I hope that, given what                  12 I have said about their experiences, their suitability                  13 as core participants is self-explanatory under the                  14 Rule 5.2 of the Inquiry rules.                  15 That takes the group of core participant victims to                  16 48.                  17 LORD JUSTICE LEVESON: Yes. What I think I will ask you to                  18 do, Mr Sherborne, is to reduce in writing in a short                  19 letter the particular details touching upon those two                  20 persons.                  21 MR SHERBORNE: I am more than happy to do so. We would have                  22 done it in advance, except this, unfortunately, had to                  23 be done at very short notice, but I can deal with it in                  24 writing.                  25 LORD JUSTICE LEVESON: I am not being critical but I think</p> <p style="text-align: center;">Page 124</p>

1 some further and better particulars are appropriate.  
 2 MR SHERBORNE: Yes, sir. Yes, I understand.  
 3 LORD JUSTICE LEVESON: Anything else?  
 4 UNKNOWN SPEAKER: Can I just ask one thing? The Inquiry --  
 5 in the first module for press -- you were looking at the  
 6 rights of the press, nearly all of the victims are phone  
 7 hacking victims and I know that is how the Inquiry  
 8 started but I just, you know, wondered why there isn't  
 9 a broader spectrum of victims.  
 10 LORD JUSTICE LEVESON: I think there is a broader spectrum  
 11 of victims, actually, because not all those who have  
 12 been designated core participants are phone hacking  
 13 victims. There are none who are simply victims of  
 14 libel, I don't believe. I think it goes beyond that but  
 15 I have no doubt, as I cast my memory back to the list  
 16 that there are, indeed, a number who interplay with the  
 17 media in different ways. I haven't declined your  
 18 application on the basis that you weren't a phone  
 19 hacking victim.  
 20 Thank you all very much indeed.  
 21 (3.05 pm)  
 22 (The hearing concluded)  
 23  
 24  
 25

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