

<p>1 2 (2.00 pm) 3 LORD JUSTICE LEVESON: Yes, Mr Jay. 4 MR JAY: Thank you. 5 Mr Thomas, before we look at RJT54, may I ask you 6 this general question: did your office consider 7 contacting any of the targets or victims of those in 8 Mr Whittamore's books? 9 A. My understanding is that about 30 or 40 were approached, 10 primarily with a view to giving evidence about the 11 circumstances where their personal data had been 12 obtained, and I recall that I think most of these were 13 what you might call celebrities, but not all. Some were 14 private individuals in private life. I don't know if 15 you want to name names -- 16 Q. No. 17 A. -- but two or three of the names still stay in my mind. 18 I was told that they'd been visited and that witness 19 statements had been obtained, and indeed some of those 20 later, three years later, came forward when we produced 21 our reports to give their story as to how they had been 22 targeted. 23 But what we did not do, which I think is implied in 24 your question, is go to all victims. Can I say this: 25 first of all, there were obviously a large number. It's Page 1</p>	<p>1 LORD JUSTICE LEVESON: But who was independent? 2 MR JAY: Yes. 3 A. I think we were both very proud of independence, I'm 4 sure, but -- I would have stressed, and always do, our 5 independence, but I suspect Christopher Meyer was also 6 saying that he felt independent, but I can't be sure to 7 whom that word is attributed. 8 Q. Okay. 9 A. Probably to him, because it says "from newspapers and 10 politicians". 11 Q. Fair enough. I won't deal with the contempt part and 12 the Attorney General: 13 "Can't undermine obligation to obey law." 14 Is that right? 15 A. Yes. 16 Q. And then in inverted commas: 17 "Not our role to enforce law, not arm of ICO." 18 That must be Sir Christopher speaking; is that 19 right? 20 A. Yes, I'm sure it was. 21 Q. He's making the point there that he's not really 22 a regulator, isn't he? 23 A. He's not a prosecutor to enforce the criminal law, but 24 this was a point that came out then, I think, and 25 certainly came out in subsequent conversations with the Page 3</p>
<p>1 only now saying this with hindsight -- there was no 2 discussion, but you have to be very, very careful when 3 you approach victims. If -- to give you an example, if 4 a letter had gone from my office saying, "Dear 5 Mr so-and-so, we think you've been targeted by a private 6 investigator", if his wife or his family saw that 7 letter, that could have raised all sorts of questions. 8 We were an office which was very, very concerned with 9 personal privacy, and so if I'm being asked about that, 10 I would say if you are going to approach victims, you 11 have to do so very carefully indeed. 12 Q. Okay. May I ask you, please, now about RJT54, which is 13 your contemporaneous note. 14 At the start, it says: 15 "Good relationship. Confidential meeting. 16 "'Independent' and mean it. From newspapers and 17 politicians." 18 A. "From". 19 Q. "From newspapers and politicians." 20 A. You have to understand this is my hastily written 21 handwritten note during the meeting. 22 Q. Of course. 23 A. But I can recognise my own handwriting. I can't always 24 recognise exactly what I was trying to say or who said 25 the various things. Page 2</p>	<p>1 code committee, the PCC and others, and the line -- and 2 it's even now in their evidence to this Inquiry. The 3 line is: "We can't deal with these matters because 4 they're covered by the criminal law", and I just did not 5 buy that line. 6 If you look at the code of -- the Editors' Code, 7 there are various parts of that which overlap with the 8 law, describe legal requirements and other terms. The 9 section on the code which deals with subterfuge, some of 10 that addresses matters which would be illegal under the 11 Regulation of Investigatory Powers Act. Some of that 12 financial information would be illegal under the 13 Financial Services and Markets Act. 14 So certainly then on many occasions I challenged 15 this line: "We can't deal with these matters because 16 they're covered by the law already." There's more than 17 one way to skin the cat. 18 Q. But was Sir Christopher telling you, rightly or wrongly, 19 the PCC is not going to enforce the law because this is 20 part of the criminal law, which it is the ICO's 21 responsibility to enforce? Is that what he's trying 22 to -- 23 A. Well, lower down the page, if you see RT, my note: 24 "Not expecting PCC to investigate or take action 25 against 400 journalists." Page 4</p>

<p>1 So I was quite clear, that wasn't the reason I was 2 there to see him. I was there because I wanted the 3 practices put to a halt for the future. That was my 4 objective. I wasn't asking him to investigate. This 5 was evidence which he might have used in general terms 6 to condemn what was going on, but I did not expect, and 7 nor did he expect, that we were going to hand over the 8 case and let him somehow take action against those 9 journalists implicated in the Motorman affair.</p> <p>10 Q. Absolutely. Can we see what he was offering to do, if 11 anything? You have a little box around the next bit: 12 "Code can't deal with unidentified victims." 13 And that feeds into a point you make later on. Is 14 he saying to you there, or did you understand him to be 15 saying to you: "This is outside the code because, as we, 16 the PCC, don't know who the victims are, we can't even 17 begin to take any steps under the code"?</p> <p>18 A. Let me just pause for a moment. It was a meeting that 19 does stick in my mind. At the meeting, I was there with 20 Phil Jones, who was one of the assistant commissioners, 21 and he was there with Guy Black, who was then, I think, 22 the director of the PCC, and I've never had a meeting 23 where the atmosphere changed so rapidly halfway through 24 the meeting.</p> <p>25 The first half of the meeting, I think they just</p> <p style="text-align: center;">Page 5</p>	<p>1 I don't recall one way or the other what that note 2 meant, but I think those are the two possible 3 interpretations: either the proprietors knew all about 4 it, or they had no knowledge of it. I simply don't 5 know. I'm not suggesting either way what that note 6 means.</p> <p>7 Q. Then it says, does it: 8 "Constructive -- 'fellow regulators'." 9 A. Yes, that was the atmosphere certainly in the second 10 half of the meeting, that we had to work together to 11 tackle this problem.</p> <p>12 Q. Is that the term he used there? It's in inverted 13 commas? 14 A. Somebody used that phrase, me or him, I don't know. 15 I think it's reflected in my email.</p> <p>16 Q. We'll come to the email? 17 A. Well -- 18 Q. Tab 11, RJT6. 19 A. No, it's -- yes, there is -- that phrase does appear in 20 the emails. Perhaps we'll come onto that, but 21 I actually said: 22 "But they seemed to be increasingly ready, as the 23 meeting progressed, to work with us as 'fellow 24 regulators' with a strategic response." 25 Q. You made it clear that you weren't expecting them to</p> <p style="text-align: center;">Page 7</p>
<p>1 didn't quite know why we were there, didn't really see 2 very much seriousness, but the whole -- as we started 3 just in general terms to tell about the nature and the 4 scale of the activities, going back to that speaking 5 note --</p> <p>6 Q. Yes.</p> <p>7 A. -- which you asked me about before lunch, and I shared 8 some of that with him -- I've never seen a meeting where 9 the whole the atmosphere changed so fast and they took 10 us very seriously in the second half of the meeting, so 11 much so that they asked us to go back in again about ten 12 days later for a second meeting.</p> <p>13 So I just want to get that point across, you know, 14 and this perhaps is reflected a bit in my handwritten 15 notes when he talks about not being surprised but maybe 16 surprised at the scale of the activity, it being 17 a watershed, the scale of the problem, endemic, and that 18 I hope is reflected in the short email which I sent soon 19 after that meeting back to the office.</p> <p>20 Q. Yes, and you stopped at "knowledge of proprietors". 21 What did you take that to mean? 22 A. I don't know. Sorry, yes, I could have gone onto that. 23 I don't know whether he or me or anyone was saying the 24 proprietors know about it or didn't know about it. 25 I can't help you on that. That's simply my note and</p> <p style="text-align: center;">Page 6</p>	<p>1 take action against 400 journalists. You were looking 2 for willingness to adopt a general solution which had 3 two limbs: condemnation and general censure; is that 4 right? 5 A. Yes.</p> <p>6 Q. And code amendment? 7 A. And that entirely reflects the speaking note which 8 I took along with me to the meeting.</p> <p>9 Q. At the end: 10 "Maybe problems. Dialogue over details. 11 Constructive spirit." 12 But in the result, the code amendment didn't take 13 place until 2007, did it? 14 A. You are jumping ahead. Do you want to go through the 15 story sequentially or ...? 16 Q. We will, but just so that we -- 17 A. There was no code amendment, as I understand it, until 18 least 2007. I think there -- some detailed changes were 19 made.</p> <p>20 Q. Did you ever get the condemnation and general censure 21 out of the PCC in your view? 22 A. Not in the terms I was hoping. I wanted loud, strident 23 condemnation. It goes back to the point which the 24 chairman asked me about: are they regulators or what are 25 they? And I certainly expected -- from my experience,</p> <p style="text-align: center;">Page 8</p>

<p>1 a regulator is someone who tries to put a stop to bad 2 practice, to unacceptable practice, and I had hoped that 3 at the very least, they would be very loud and noisy in 4 saying, "This is absolutely unacceptable." 5 What we got was a speech from his Christopher Meyer, 6 and that is exhibited. He did mention it in his speech, 7 and I think there's some indication from the 8 correspondence -- there were some exchanges on it, but 9 it was nothing like the -- and I said this to him on 10 several occasions directly and it's recorded -- there 11 was not the sort of loud condemnation that I had 12 originally expected. 13 Q. Yes. 14 A. Having said that, something did have an effect upon the 15 media, as far as I can see. 16 Q. The email says at RJT6, 00364, in the main paragraph: 17 "This might lead to some sort of general 18 condemnation, although there are some difficulties in 19 amendment to the code." 20 So your expectations weren't that high, were they? 21 A. Well, you're reading into every email a sort of precise 22 legal interpretation and this was, you know, done at 23 5 o'clock that evening from my home, I expect. 24 I was fairly optimistic because the meeting -- the 25 atmosphere had changed in the second half and he had</p> <p style="text-align: center;">Page 9</p>	<p>1 hopes that, you know, that would produce something 2 worthwhile, and that seemed to sort of grind to a halt 3 in April of 2004 and I only have the documentary 4 material on that. I can't speak personally to that. 5 But I came back on the scene vis-a-vis the PCC 6 in December. I'd had lunch with Christopher Meyer. At 7 that lunch, I discovered that the guidance note had not 8 progressed and that his language, I think, was "run into 9 the sand", and we revived it -- 10 Q. Just look at the document. There is reference to the -- 11 A. Yes. It's RJT7. 12 Q. Yes. 00365. 13 A. Yes. 14 Q. 8 December 2004: 15 "I was, however, extremely concerned to hear that 16 the advice note that Tim had drafted on Data Protection 17 Act, journalism and the PCC code had run into the sand. 18 You explained that media lawyers had thought the advice 19 had oversimplified the position. I'm very disappointed 20 to hear this." 21 Then the next paragraph: 22 "My concern is that unless the attention of 23 journalists and editors is drawn to the real possibility 24 of committing criminal offences under the Act, there's 25 a real risk that the all too widespread practice of</p> <p style="text-align: center;">Page 11</p>
<p>1 said, "Come back and see me again in a couple of weeks' 2 time." 3 Q. Yes. 4 A. So he wasn't giving commitments, no, and I think that 5 language, you know, might lead to it, what I was looking 6 for, but I couldn't say to anybody that we had secured 7 a firm commitment on those lines. 8 Q. The second meeting was on 2 December, I think; is that 9 correct? 10 A. Yes, and there I don't think anyone's been able to find 11 any notes of that meeting at all, I'm afraid. 12 Q. No. 13 A. I don't have the same vivid memory of the first meeting, 14 but certainly the very general terms was that, you know: 15 "Yes, you've raised an issue. We need to look at this. 16 You know, we need to look at it." I'm not saying they 17 were committing themselves to any particular course of 18 action. 19 Q. No, nothing much happens then for a whole year. If we 20 go to RJT7 -- 21 A. No, I think quite a lot -- wait a minute. Yes -- 22 Q. PCC -- 23 A. In the first half of 2004, Phil Jones, who I mentioned, 24 and his team were exchanging emails with the PCC and 25 were trying to draft this guidance note and we had high</p> <p style="text-align: center;">Page 10</p>	<p>1 paying to obtain confidential information about people 2 in the public eye will continue unabated." 3 So we'd reached the position where one practical 4 proposal had run into the sand and the PCC had done 5 nothing. That's true, isn't it? 6 A. Well, that's putting it very sharply. Clearly both 7 sides, my team and their team, were trying to put 8 together a guidance note, but it hadn't materialised by 9 the end of 2004. 10 Q. But a whole year had elapsed. These were potentially 11 very serious matters. The PCC hadn't given the general 12 censure or condemnation which you indicated was at least 13 a possibility and -- well, looking to the other side of 14 the coin, it was pretty clear to you that they weren't 15 going to help you much. Isn't that true? 16 A. Again, that's putting it too strongly. I didn't lose 17 all faith. The evidence shows that I went back a number 18 of times to the PCC throughout 2005, 2006 and 2007, and 19 tried to keep -- engage their interest with it. But it 20 is true to say that I thought their response was less 21 strident and I think I used the word "disappointing" 22 more than once in this context. I thought they could 23 and should have done more. 24 Q. Thank you. Sir Christopher -- 25 A. Although he kept saying to me: "What more should we do?"</p> <p style="text-align: center;">Page 12</p>

<p>1 Q. Sir Christopher writes to you on 5 December, under tab 2 13, RJT8. 3 LORD JUSTICE LEVESON: Hang on, that's before this letter, 4 is it? 5 MR JAY: The following week. 6 LORD JUSTICE LEVESON: No, this is 8 December. 7 MR JAY: Yes, and then tab 13 is -- did I say the 5th? 8 I meant the 15th. 9 LORD JUSTICE LEVESON: Yes, because before we leave 10 8 December, you again repeat the fact that you've 11 perceive the PCC as a regulator: 12 "As you know, I am strongly of the view that the PCC 13 and the principles of self-regulation will be shown in 14 a poor light." 15 A. Yes, absolutely. 16 LORD JUSTICE LEVESON: Yes. 17 A. And I see from the correspondence they've tabled that 18 they took it quite seriously and said to the various 19 media organisations: "Look, he's getting aggressive 20 here", if I can paraphrase. 21 LORD JUSTICE LEVESON: 15 December you wanted, Mr Jay? 22 MR JAY: Yes. 23 LORD JUSTICE LEVESON: 367? 24 MR JAY: 367. Says: 25 "I've asked Tim to resurrect the guidance note and</p> <p style="text-align: center;">Page 13</p>	<p>1 come from the PCC at some stage. 2 Q. What we do see happening at RJT9, if I can take this 3 reasonably economically -- 4 A. Yes. 5 Q. -- is you send Sir Christopher, quite rightly, a copy of 6 your report on 10 May 2006, and you explain to him -- 7 A. He was one of about a hundred people at that stage. 8 Q. Of course. 9 A. It was more a standard letter. 10 Q. His reply, though, under our tab 17, RJT 12 -- 11 A. Yes. 12 Q. We can draw our own inferences from this: 13 "Thank you for sending me a copy of your report." 14 This is page 00378. 15 "It was an interesting read. I'm sending you a copy 16 of our annual report which we've just published, along 17 with the text of a speech I gave last night in which 18 I refer to your remarks about the PCC. I think that as 19 a next step it would be helpful if we organised 20 a meeting so that we can explore what more it is that 21 you think the PCC can do. You will appreciate that your 22 call for us to act came rather out of the blue. We have 23 no material to work with other than what you put into 24 the public domain in your report." 25 What did you think of that at the time, Mr Thomas?</p> <p style="text-align: center;">Page 15</p>
<p>1 to consult Phil Jones and to take final comments from 2 the industry before putting the draft to the commission 3 for approval in February. If goes without saying the 4 Commission cannot condone criminal behaviour and if the 5 note raises awarenesses about what journalists must do 6 to comply with the Act, then that will be most welcome." 7 Did anything further happen? There are no documents 8 which indicate whether they did or not. 9 A. I think that particular guidance note did surface, 10 I think -- I have to go back and check the records, but 11 I believe that the note was made public by the PCC 12 probably in the spring of 2005 and I think it was 13 substantially in the shape that we had agreed to. 14 It was a useful guidance note but I suppose I was 15 a little concerned that it buried the Section 55 16 warnings into a wider context of talking about the Data 17 Protection Act and its application of the media more 18 generally, and I think even now I would say that it was 19 a shame it didn't just focus on Section 55 in the way 20 that our own note, which we produced, I think, in 2006 21 or 2007, what we call a good practice note, that was 22 a very, very clear one and a half pager as to how the 23 press should take seriously Section 55. 24 And I had hoped, because I thought it would have 25 greater authority, that something like that would have</p> <p style="text-align: center;">Page 14</p>	<p>1 Speaking frankly, as I'm sure you will? 2 A. I can't tell you what I thought at the time. I can tell 3 you what I think now, which is probably the same as 4 I thought at the time. 5 Q. What's that? 6 A. I thought "interesting read" was a fairly strong 7 understatement. I thought we put a lot of work in 8 getting that report put together. I had shared material 9 with him beforehand. The report was not directed just 10 at the press, but nevertheless it was fairly emphatic in 11 its content and its style. We were proud of that 12 report. It was a very special report, the first time 13 ever we'd gone to Parliament, and I felt that to 14 describe it merely as "an interesting read" was 15 a considerable understatement. I'm probably guilty of 16 the same offence myself now. 17 And I think to say it "came out of the blue" was 18 surprising because we had had the two meetings with him 19 and we had collaborated at official level to try and get 20 a guidance note together, and I think also that is 21 perhaps also an indication of the line coming back all 22 the time: "What do you want us to do? Tell us exactly 23 what to do." 24 My line was: "Well, you are the self-regulators. 25 You're the ones who are supposed to be working out what</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 is needed to stop the press getting into unacceptable 2 territory. It's not my job to tell you what your job 3 it." 4 I had some ideas and I had some thoughts and I was 5 not slow to share some of those, but I was a little 6 surprised by the letter. But my style was always to try 7 and keep on the right side of people and to carry on 8 that constructive dialogue, so I didn't write back and 9 say, "What a dreadful letter." 10 Q. You were doing the best with someone who really was 11 making it clear he wasn't going to help much. 12 A. Well, he gave me his speech and at the end of his 13 speech, there's two paragraphs. The speech was on 14 25 May, only about two weeks after our report had come 15 out, and he mentioned it and I can't quarrel with the 16 wording that's in the speech. Who was there for the 17 speech? I mean, how many people? Was it publicised? 18 Was it really got out to far more people? 19 For all I know, behind the scenes Christopher Meyer 20 was ringing up every editor, every proprietor and 21 saying, "Come on, guys, you really have to change all 22 this together", and maybe he was, but there wasn't much 23 visibility in terms of the PCC condemning the activity. 24 Q. Of course -- 25 A. Having said that again, things did get better from that Page 17</p>	<p>1 down. There wasn't that much direct contact with the 2 PCC, but we were frankly outraged and very disappointed 3 at the result of the case and I was very clearly focused 4 on: "We can't let people get away with this." 5 LORD JUSTICE LEVESON: It's interesting, if one looks at the 6 speech that Sir Christopher gave -- and in case we don't 7 come back to this particular speech, it's page 379. At 8 page 380: 9 "Here I return to a familiar theme of the PCC. We 10 make an enormous effort to preach the gospel of 11 self-regulation around the UK." 12 Then at 381: 13 "It's in the industry's own best interests to 14 bolster self-regulation in this way." 15 And then finally, 388: 16 "As I look forward --" 17 This is discussing with you and your concerns about 18 the practice of offering money for confidential 19 information. 20 "I look forward to discussions with Mr Thomas about 21 what more he thinks the PCC can do about this within the 22 self-regulatory framework." 23 So if you believed they were regulators, at least 24 you had some support for that view. 25 A. Yes, indeed, and if I could just, chairman, point out Page 19</p>
<p>1 point onwards. 2 Q. By this stage, the issue was stale to this extent: that 3 the underlying material in Mr Whittamore's books went 4 back to 2003, much earlier, so the tempo had really been 5 lost, to some extent, hadn't it? 6 A. Sorry, what had been lost? 7 Q. The tempo. We were three years after -- 8 A. I don't think so, no, because we were bringing -- or the 9 CPS were bringing the main prosecution. We were waiting 10 for the outcome of that. That wasn't until 2005. Then 11 we got the very clear advice from our counsel that it 12 would not be in the public interest for us to pursue the 13 matter any further. 14 We're now into the autumn of 2005 and my timeline, 15 which is attached to my first witness statement, 16 indicates I attended at least two, maybe three meetings 17 and that led to the first steps being taken to produce 18 the report. 19 Q. Yes, okay. 20 A. And the report was drafted primarily in-house. It then 21 went outhouse for a skilled writer to improve this 22 presentation of the report, and we published that in 23 May. 24 Q. Okay. 25 A. So I don't say -- I don't accept at all the tempo slowed Page 18</p>	<p>1 the last sentence of that paragraph: 2 "But clearly it would not be viable simply to 3 duplicate the criminal law in the code of practice." 4 That was the line I was getting all the time: "We 5 can't deal with this because it's part of the criminal 6 law." And I have to repeat, I just did not if buy that 7 because not only -- 8 Q. We understand, Mr Thomas -- 9 A. It's actually an important point because I dealt a lot 10 with the Advertising Standards Authority. A lot of 11 their code covered matters which would be illegal under 12 the Trade Descriptions Act. 13 Q. We've got that point and you're 100 per cent right -- 14 A. Thank you, but I just need to put that into this wider 15 context. Thank you. 16 Q. I just want to move this on a little bit, aware as I am 17 of what the agenda is for the rest of the afternoon. 18 RJT13, Mr Thomas. There was a meeting on 13 July 2006. 19 It's under our tab 18, 00389. 20 A. Yes, this followed the publication of our first report. 21 Q. You see, under "Key issues", a third of the way down: 22 "PCC's response." 23 And then: 24 "Respective roles and responsibilities of the PCC 25 and the Code of Practice Committee of Editors." Page 20</p>

<p>1 Specifics. You set out the background of the 2 report, in particular the intention to target the 3 middlemen involved in the illegal trade in confidential 4 information, while at the same time reducing the demand 5 by raising awareness of the illegal nature of the trade 6 amongst customers, including the press. So that's 7 a neat summary of your overall strategy, isn't it? 8 A. Yes. 9 Q. You express some disappointment that the PCC had not 10 been more forthright in its condemnation of the 11 activity. Am I right in saying that there had been no 12 forthright condemnation of the activity by the PCC at 13 all, from what we've seen in that speech, arguably? 14 A. That speech -- I don't personally have any knowledge, 15 but perhaps that's a question for the PCC. 16 Q. What Sir Christopher says: 17 "... explained the PCC stance has consistently been 18 that reporters must stay within the law and that he 19 makes this point regularly on public platforms but the 20 PCC is not able to act as a general regulator [see 21 that?]. He believes that what is needed is a strong 22 stance from the ICO, including prosecutions. He queried 23 what more the PCC could do." 24 So he's telling you yet again he's not going to do 25 anything. Isn't that true? Page 21</p>	<p>1 and see the committee of editors", and that's why my 2 subsequent letter of 19 July, RJT14, to Ian Beales -- 3 who I had never heard of before, but he was the 4 secretary of the committee, tucked away in 5 Gloucestershire. I had to write to him there, and as 6 I say, it did feel somewhat that they weren't willing to 7 take this matter on within the PCC, so we had to go and 8 deal with the Code Committee directly, which we did. 9 Q. An important part of the general policy considerations 10 which you refer to, in, I think, counsel's advice of 11 22 December 2003, "Let the PCC get its house in 12 order" -- you may or may not have known ex-ante what 13 might have happened, but looking back on it, nothing 14 much did happen with the PCC, did it? 15 A. Two points. Yet again, I need to come back to this word 16 "policy". It was not an ideological strategic policy; 17 it was a matter of practicality. This was where the 18 office was going to go at that time. 19 We thought and had some hopes that the PCC would be 20 a better way of addressing the problem than anything to 21 do with suing the prosecutions, which we were, at that 22 time, recognising was going to be very expensive and 23 demanding for the office. Now, with hindsight, I 24 think I would have been more aggressive and more 25 assertive with the PCC and with the Code at the outset, Page 23</p>
<p>1 A. It comes close to the truth, but I don't know what was 2 in his mind. 3 Q. At the bottom of the page he explained: 4 "The PCC website is focused at individuals, not at 5 journalists, which is consistent with their role, which 6 is not that of general regulator." 7 Then you refer in the next bullet point to some 8 guidance on Section 55 offences. At the bottom of the 9 page: 10 "... if the Code of Practice Committee of Editors is 11 to be engaged by the ICO and the PCC to discuss the 12 possibility of changes to the code and production of 13 guidance." 14 So the upshot of -- 15 A. Can I just interject there? 16 Q. Yes, please do. 17 A. Because my annotation for this Inquiry has got on the 18 side here "fobbed off to committee", and frankly, that's 19 how it felt, that we'd been told we'd come to the wrong 20 place. If you want the code changed, you have to go to 21 the committee of editors. 22 I understand the distinction between the committee 23 and the PCC, that the PCC is the public face of these 24 arrangements, but basically he was telling me we'd come 25 to the wrong place. "If you want the code changed, go Page 22</p>	<p>1 and they did disappoint me, as I said, in terms of their 2 response. But nevertheless, I do recognise that, 3 through whatever means, it appears to be the case that 4 the message was getting out, and certainly the 5 correspondence I've seen more recently from the PCC does 6 have some indication that they were exchanging messages 7 with the various players in the media industry, the 8 various associations and societies, saying, "Basically, 9 Thomas isn't going away. He's making a noise on this 10 thing. We have to do something." And they quoted the 11 sentence from my letter which you haven't quoted, which 12 was along the lines that if you don't take this more 13 seriously, it's going to put self-regulation in a very 14 poor light. 15 Q. We've covered one limb of strategy, if I can describe it 16 in that way, which you pursued. The other limb, of 17 course, is the deployment of Section 52(2), which I'm 18 going to come to in a moment. 19 A. Mm-hm. 20 Q. Can I ask you about your mainstream powers which 21 I touched on at the outset: powers under Section 40 to 22 issue enforcement notices, Section 43, I think, 23 assessment notices, and then your general duty under 24 Section 51. Why didn't you consider the use of all or 25 any of those mainstream powers against either the Page 24</p>

<p>1 journalists or the data controllers, which of course 2 were the companies who owned the media groups? 3 A. Well, I think we were using our powers to promote good 4 practice. That was a far more general power, and you 5 know, that was the justification, the rationale -- the 6 statutory foundation for much of what we did was 7 promoting good practice. I would describe pretty well 8 everything we did in this area as promoting good 9 practice. 10 On your question why didn't we use our formal 11 Section 40 enforcement powers, I can't recall any active 12 discussion or any active consideration of that, but 13 I would now say first of all we didn't serve that many 14 Section 40 notices, probably only two or three in 15 a year, and they were normally preceded by -- we're 16 under the constraints of the better regulation agenda. 17 We had to serve a draft of a notice before we entered 18 the actual notice as a matter of good regulation. 19 Secondly, I suppose I would say now -- but I can't 20 say if any of this surfaced at the time -- everybody 21 knew that to a very large extent the powers of the 22 office were very constrained indeed when it came to 23 dealing with the media. 24 Thirdly, I would say that obviously some 25 consideration was given to this because in the notes Page 25</p>	<p>1 discharging the power, the possibility of presenting 2 a report to Parliament, but also I very much saw it in 3 terms of promoting good practice. 4 I mean, we didn't sit down there every day and say, 5 "How exactly are we going to interpret this section of 6 the Act?" but I would say very strongly indeed that by 7 publishing a report which set out in pretty well full 8 chapter and verse what a wide range of people are 9 doing -- not just the press but all the other players 10 plus this illegal market of private investigators and 11 tracing agents, drawing attention to that, condemning it 12 in the loudest possible terms and getting as much 13 publicity as we could -- and that wasn't easy. We got 14 a fair amount in the end. I would say that was 15 promoting good practice, and sending it to a hundred 16 organisations with specific personalised letters saying, 17 "This is not acceptable." 18 So I'm sorry to -- 19 Q. No, no, fair point. 20 A. -- challenge you so strongly on that, but I would say 21 this is very much promoting good practice. 22 Q. So part of the reason for exercising the specific, 23 perhaps exceptional power under Section 52(2) is in 24 discharge, you say, of your general powers and duties 25 under Section 51(1); is that right? Page 27</p>
<p>1 that came out last week, there was a meeting in May -- 2 26 May 2005 -- Francis Aldhouse, Phil Taylor and Janet 3 Watowsky(?), who were the two lawyers -- and I think 4 that was a meeting where there was something about 5 possibility taking enforcement proceedings. 6 It says here: 7 "FGBA mooted enforcement proceedings." 8 So clearly some sort of passing thought was given to 9 it but nothing materialised. 10 Q. In terms of your general duty under Section 51 to 11 promote the following of good practice by data 12 controllers, you didn't issue any guidance of any sort 13 until after 2006; isn't that right? 14 A. Well, we're producing guidance all the time but -- 15 Q. Relevant to this? 16 A. On this, I think our good practice note -- I think it 17 might even have been 2007, but it was certainly after 18 the two reports had been published, so yes, it would 19 have been 2007. 20 Q. So in terms of your core general duty, nothing specific 21 is done until 2007 -- 22 A. No, no, no, not at all. I totally resist that. 23 Q. In relation to journalists -- 24 A. Well, because we were publishing these two reports, and 25 that is absolutely -- not only is it specifically Page 26</p>	<p>1 A. I'm saying that you take -- they're both part of the 2 same section. They're both part of this general 3 responsibility of the Commissioner to promote good 4 practice and to make sure everyone understands their 5 responsibilities. 6 Q. I'm right in saying, though, in answer to my question 7 about Section 40, is this right, that only passing 8 consideration was given to that mainstream enforcement 9 power? 10 A. That does appear to be the case, yes. 11 Q. Can I ask you about your purpose in publishing these two 12 reports? You've explained one of the purposes and 13 that's fully understood. Was it also part of your 14 purpose to try and initiate a political debate as to 15 whether the penalties under Section 60 for 16 contraventions of Section 55 should be increased? 17 A. I think I had quite a long list of objectives by the end 18 of the day, by the time we got to publishing this 19 report. 20 The first objective was to tell the world what was 21 going on. The primary stated objective was to get the 22 recommendations taken seriously, particularly to get the 23 government to increase the penalty, because we felt the 24 penalty was the main problem. 25 But I also felt -- and I'm not sure this was Page 28</p>

7 (Pages 25 to 28)

<p>1 articulated, but in my own mind -- the more noise we 2 could make about this, even if not successful in getting 3 the law changed, the more that was likely to have 4 a beneficial result. I wanted to get people on the back 5 foot. And in terms of all the other organisations, all 6 the other sectors where this activity was going on, as 7 our second report documented, it was taken seriously. 8 I mean, a lot of people were going around -- I almost 9 say in a blind panic, saying, "We have to clean up our 10 act on this." And we had some very, very encouraging 11 letters back from the Law Society, from the Office of 12 Fair Trading, from the Financial Services Authority.</p> <p>13 We wrote to a lot of people. We took this very 14 seriously indeed. I wanted as much noise, as much 15 action taken as a response to this report, and to that 16 extent I think it was quite successful. But then there 17 was what you call a political campaign -- I'm not sure 18 "campaign" is the right word, but a political objective 19 to get the law changed because it wasn't just Motorman; 20 it was all the other cases that had gone on for years 21 before. They were documented in our report in annex A 22 of the report. We set out there a large number of cases 23 where we had prosecuted and we had only very low levels 24 of fine and clearly this sort of low potential to impose 25 significant sanctions was not having the deterrent</p> <p style="text-align: center;">Page 29</p>	<p>1 that comes from my handwritten notes of that meeting. 2 We discussed it regularly with the civil servants at 3 the DCA. I met the Director of Public Prosecutions in 4 person before the report came out and I wanted to get 5 his support for the line I was pursuing. 6 I'd met the chief executive of the NHS electronic 7 records project in the news this week, but that was the 8 largest civil IT project in the world. I got his 9 support. He saw the risks. 10 I went to the Sargasso -- no, it might have been his 11 predecessor but the meeting of all the Permanent 12 Secretaries from across Whitehall -- I went to their 13 meeting in February and I covered it in many speeches 14 and I've given some examples in my evidence of some of 15 the speeches where I, if you like, rammed home this 16 message. 17 But just to go back to your point, it was partly 18 promoting good practice and it was partly to try and get 19 the law changed.</p> <p>20 Q. In terms of getting the law changed, you pick this up at 21 paragraph 24 of your first statement, 00266. You point 22 out that a DCA consultation paper was issued as early as 23 24 July 2006, which I think is RJT15 under our tab 24. 24 A. I regarded this as a major breakthrough. It's -- the 25 department was not always known for its speediness, but</p> <p style="text-align: center;">Page 31</p>
<p>1 effect which I thought good criminal law should have. 2 Q. The steps that you took to raise awareness at least in 3 the first instance are covered in paragraph 23 of your 4 first statement, are they not, in 00265? 5 A. Um ... 6 Q. Where you capture the steps that you took. 7 A. That's a summary there, yes. It's not everything but 8 that highlights the overall strategy and gives some 9 examples, some of which are documented, as to the sort 10 of things I and the office as a whole were doing. 11 Q. Yes. 12 A. And, you know, just the fact that we got four select 13 committees I think is actually without precedent. 14 Culture, media, sport, March. Health, March. 15 Justice, December. Home affairs, December. To get four 16 select committees taking evidence from you about this 17 problem, I felt that was a significant and welcome 18 success. And all supported us. All condemned this sort 19 of activity. 20 Q. And were supporting your plea for raising the 21 criminal -- 22 A. Oh, very much so. You'll see from that paragraph I had 23 also gone -- I'd, you know, raised this at my regular 24 meetings with Lord Falconer. He was very supportive. 25 He said, "We're right behind you. Disgraceful." Again,</p> <p style="text-align: center;">Page 30</p>	<p>1 to get a consultation paper published three months after 2 our report came out was extremely welcome, and the 3 government at that time declared a very clear measure of 4 support for the line we were taking and recognised that 5 the remedy did lie in increasing the sanctions. 6 Q. Largely for reasons of deterrence, I think. 7 A. Absolutely. I've made no secret to this Inquiry and 8 elsewhere that I was primarily concerned with preventing 9 bad behaviour and the law plays its part in having 10 suitable deterrence. 11 I've said many times -- and I repeat it now -- it 12 was never my wish and not my wish to send any journalist 13 to prison. That's not in any way the agenda. I wanted 14 right across the market and the courts to take this 15 seriously in order to deter this sort of activity. 16 Q. What happened thereafter we can pick up at paragraph 25 17 of your statement, and in annex B to it, that the bill 18 initially moved very swiftly and smoothly through the 19 House of Commons without any controversy but then, by 20 early 2008, the press were mobilised against it. Is 21 that a fair way of putting it? 22 A. Well, you've jumped ahead a year. 23 Q. I have, yes. 24 A. The consultation paper was July 2006. The bill was 25 introduced into Parliament in the autumn of 2007 and got</p> <p style="text-align: center;">Page 32</p>

<p>1 a second reading -- this is the criminal justice and 2 immigration bill.</p> <p>3 Q. Yes.</p> <p>4 A. And it went pretty plain sailing to start with.</p> <p>5 Q. Yes.</p> <p>6 A. It went through the House of Commons. There was a brief 7 exchange at the committee stage of the House of Commons 8 but no vote. It went to the House of Lords and at that 9 point, and --</p> <p>10 Q. I'm just trying trying to take this quickly, Mr Thomas. 11 I'm making a point that it all moves swiftly and 12 smoothly until the press mobilise against it in the 13 early part of 2008. Is that, broadly speaking, correct?</p> <p>14 A. Yes, I say -- you know, I was aware from January 2008 15 onwards that a powerful campaign was being generated 16 against this particular clause, and I was invited to 17 a number of meetings and the nature and the extent of 18 that campaign over the next three or four months became 19 very, very clear to me.</p> <p>20 Q. Yes, and it's even clearer from annex B, isn't it, in 21 your statement --</p> <p>22 A. Yes.</p> <p>23 Q. -- under our tab 00279, where you give a clear and 24 helpful timeline to the events of the winter, really, of 25 2008.</p> <p style="text-align: center;">Page 33</p>	<p>1 going to be withdrawn altogether. I'd been in Hong Kong 2 the previous week. I'd come back and on March 3, the 3 this call came through saying, "We're going to have is 4 to withdraw the clause, but we will reintroduce it at 5 some later stage", and I recall making a very forceful 6 protest and I wrote to him on 4 March.</p> <p>7 Q. You did, and that's RJT39 under our tab 45, 00539. You 8 very strongly register your protest, don't you?</p> <p>9 A. Well, I've said many times I -- a Commissioner has to be 10 independent and seen to be independent, and one doesn't 11 write that sort of letter lightly. But I did feel that 12 it was my duty to put on the record my strong feelings 13 about the matter and my letter of 4 March started by 14 expressing my deep disappointment. And the letter's on 15 the record.</p> <p>16 Q. Yes. Then there was a meeting with the Prime Minister 17 at RJT40, under our tab 46, 00542.</p> <p>18 A. Yes. The following day I was in London and I got a call 19 that morning saying could I meet the Prime Minister, 20 Gordon Brown, that afternoon. I was able to do so, went 21 to Downing Street and met the Prime Minister, and again 22 you'll see -- I think RJT40 is the email which I sent 23 back to the office immediately afterwards recording the 24 main thrust of that conversation.</p> <p>25 Q. Five lines down, the print is quite small:</p> <p style="text-align: center;">Page 35</p>
<p>1 A. I worked this up during the preparation of my statement, 2 going back to my diaries, because I had electronic 3 diaries at this stage and the notes I had and the 4 materials I was able to look at at the office in August 5 to help this Inquiry, and I've pieced together this 6 timeline and I'm not sure if you're looking at it now 7 but I mean, I recorded there how there was a meeting -- 8 and I think some people in this room were at that same 9 meeting -- when I, you know, sat down with the junior 10 minister, Maria Eagle, and both sides put their case and 11 then, if I just take the story up in the February --</p> <p>12 Q. Just summarise it until we get to March 4. Just take us 13 through it as quick as you can.</p> <p>14 A. I had a telephone call from Jack Straw, saying that he 15 might have to pull the clause out of the bill 16 altogether, and the reason given was that he needed to 17 make space for a provision because of the impending 18 prison officers' strike, and I recall registering strong 19 dismay at such a prospect and either saying or implying 20 that the real reason was media pressure.</p> <p>21 I then had a meeting with Jack Straw in the House of 22 Commons on 21 February and we discussed this matter and 23 I came away believing that the clause was still hanging 24 in the balance but likely to remain.</p> <p>25 I had a further call, March 3, telling me it was</p> <p style="text-align: center;">Page 34</p>	<p>1 "The PM started by saying that I had the most 2 difficult job in the country. I said that mine was 3 a long way behind his."</p> <p>4 Exactly.</p> <p>5 "He observed that he had long supported freedom of 6 information, referring ..."</p> <p>7 And I paraphrase, "to what he said a long time ago".</p> <p>8 The next paragraph:</p> <p>9 "He was very concerned about data losses but thought 10 the matter needed to be kept in perspective. Risk 11 averse ministers and officials should not let the 12 pendulum swing too far the other way. But he fully 13 accepted that a culture of data protection had not been 14 taken sufficiently seriously and welcomed ICO support 15 for Gus O'Donnell's data handling review."</p> <p>16 A. Can I interject there that this was about three, four 17 months after the great government data losses. HMRC had 18 lost 25 million child benefit records. The MoD, 19 Department of Transport, many departments had suffered 20 some really serious data losses, and that had been 21 a total preoccupation for the media, for government, for 22 me. In that period before Christmas, everyone was 23 extremely concerned the government had been careless 24 with large amounts of data which had got into the wrong 25 hands, and --</p> <p style="text-align: center;">Page 36</p>

<p>1 Q. Well, he makes that clear in the last sentence. 2 A. Indeed, and the Gus O'Donnell review -- I mean, this 3 was -- he asked the cabinet secretary to review what 4 needed to be done, and we -- and I -- the office and 5 myself played quite a large part in feeding into that 6 review to try and improve governmental data handling. 7 Q. Can we move to the middle of the page: 8 "On the Section 55 and the criminal justice and 9 immigration bill, he understood entirely the need for 10 stronger sanctions. He considered that the trade in 11 personal information is entirely unacceptable and 12 suggested he had himself been a victim in the past. 13 I draw attention to some of the highlights in "What 14 price privacy?", demonstrating the diverse nature and 15 extent of the market. I may have invoked the point that 16 many others beside tabloid journalists were involved and 17 the media cases were largely of the tittle-tattle 18 variety. The Prime Minister accepted that a strong 19 sentence is needed to deter all those involved. This is 20 especially important after recent data losses. I made 21 it clear that this is a to be priority for ICO. I'm not 22 prepared to give up. At the same time, he is concerned 23 to strike the right balance with protecting freedom of 24 expression, especially in relation to legitimate 25 investigative journalism. Now that some time has been Page 37</p>	<p>1 any concern on the part of the press and maybe other 2 people. 3 So this was not the deal. That took the next four, 4 five weeks or so to put together. This was me 5 speculating with him the sorts of areas which 6 a compromise might cover. 7 Q. But he was making it clear to you that you were not 8 going to get what you wanted in full-blown form, namely 9 without any further amendment, the increase in the 10 penalty to two years' imprisonment, but unless you came 11 to some sort of deal you weren't going to get anything? 12 A. Yes, and -- I'm sure you'll come onto this. The letter 13 I wrote a day or so later to the Prime Minister recorded 14 that, but essentially the message was: unless 15 a compromise can be found, then this clause is coming 16 out of the bill. 17 Indeed, if you look at the parliamentary debates for 18 that day in the evening in the House of Lords, the 19 government minister gave exactly the same message to the 20 House of Lords. This is in suspense at the moment, but 21 unless the interested parties can find a deal, can reach 22 a compromise, then this clause is going to have to be 23 dropped. 24 I was very -- well, I'd expressed my concern the 25 previous couple of days to the Lord Chancellor, the so Page 39</p>
<p>1 brought, he wants a compromise position to be achieved 2 to minimise media concerns." 3 The compromise was that -- we see at the bottom of 4 the page -- an enlarged reasonable belief public 5 interest defence and the publication of a prosecution 6 policy from you; is that right? 7 A. No, I think you're jumping ahead a bit there. 8 Q. Okay. 9 A. What he basically said was unless we can get 10 a compromise here, the clause is going to be dropped. 11 He said to me: "I want you to go away and work with 12 everybody else to see whether a compromise could be 13 established." 14 Q. Yes. 15 A. And those two points at the bottom of the page were 16 simply that conversation with him -- and Gus O'Donnell 17 was in the room at the same time -- beginning to 18 speculate what a compromise might look like. 19 I was offering up -- by this time, the enlarged 20 defence was on the table that had been discussed and 21 I think -- we'll come back to it, I'm sure, but I saw 22 that as part of the compromise and I had raised that and 23 mentioned that to the Prime Minister. And secondly, 24 I said that I was perfectly happy to produce a statement 25 of prosecution policy and that would, I hoped, alleviate Page 38</p>	<p>1 Secretary of State, and I repeated it to the 2 Prime Minister, and I felt very strongly indeed that it 3 would be very damaging to all concerned if this clause 4 were to be withdrawn altogether. 5 I think in my statement -- perhaps we'll come on to 6 talk about the detail, the compromise, but to roll 7 forward a bit, at the end of the day there was 8 a compromise -- 9 Q. Yes, before we get to the compromise, your letter to the 10 Prime Minister was 7 March 2008. It's RJT41, 00544 11 under our tab 47. 12 A. Yes. Well, that, I think, you know, in more formal 13 language, repeats what I've been saying just now. And 14 the conclusion -- the penultimate paragraph, if I can 15 read that: 16 "I must conclude, however, by repeating this is 17 a pernicious and largely hidden illegal market. It is 18 highly damaging to individuals, to organisations and to 19 society. Although I recognise the need for balance, 20 withdrawal of the clause now would have very negative 21 sequences. Although you assured me the clause would be 22 reintroduced, I do not believe there will ever be 23 a better legislative opportunity." 24 And that was my letter to him on the record to just 25 capture points we had been discussing. Page 40</p>

10 (Pages 37 to 40)

<p>1 Q. Aside from the Whittamore haul, which dates back to 2 2003, as you know, have there been any other similar 3 hauls or smaller hauls your office knew about? 4 A. Oh, absolutely. If you look at "What price privacy 5 now?", the second report, there are, I think, three or 6 four examples of prosecutions which we were bringing 7 forward, which we said -- you know, things had moved on 8 a bit. 9 Page 7, page 8, case 1, case 2, private investigator 10 case 1, accepted a caution. Case 2, the case of Anthony 11 Clifford and that was a case that Joshua Rozenberg 12 covered for the Telegraph, which we saw a record of. 13 And case 3, the Andersons. This was a couple who 14 were -- they eventually pleaded guilty to 14 cases of 15 blagging techniques. So there were cases going on and 16 indeed, you mentioned earlier the Select Committee which 17 I attended in 2007 and there were some good examples, if 18 you like, of this sort of activity still going on. 19 Q. Can we be clear, Mr Thomas. This sort of activity, does 20 it relate to media organisations or journalists? 21 A. No, I'm talking about the illegal market. I have to 22 keep saying this. Our concern was wider, much wider 23 than just journalists. 24 And the cases which I was going to read out -- 25 I don't have them to hand straight away, but one --</p> <p style="text-align: center;">Page 41</p>	<p>1 Q. So we understand the context, because we have to see the 2 bigger picture, your campaign, if that's the right way 3 of describing it, in relation to increasing the penalty 4 for Section 55, was not targeted specifically at 5 journalists; it was looking widely to all the customers 6 who were the procurers, as it were, of this confidential 7 information. Is that correct? 8 A. That's a point I've been wishing to get across to this 9 Inquiry very clearly. 10 Q. Absolutely. 11 A. Yes. 12 Q. But the campaign against you, if that's the right way of 13 putting it, was largely led by media organisations -- 14 A. I'd go further -- 15 Q. Just let me finish the question -- enlisting, where 16 appropriate or otherwise, the support of politicians and 17 government -- 18 A. As far as I'm aware, the media organisations were the 19 only ones organising the efforts against the clause. 20 I didn't have any indication at all that the legal 21 profession or the financial services industry or the 22 investigators themselves or anybody else was standing up 23 and campaigning against the clause in the bill. 24 So it was -- and I think I had some direct evidence 25 of that when I was at meetings but certainly indirect</p> <p style="text-align: center;">Page 43</p>
<p>1 there in the evidence to the Select Committee. One, as 2 our investigators visited some premises, the fax machine 3 burst into life and said, "Please find out if this 4 lady's got cancer." 5 Another case at the same sort of time, a message 6 sent to the receptionist of a -- sorry, a message sent 7 to an investigator to go look at an abortion clinic to 8 find out whether a named person had been in for an 9 abortion. 10 Now, I don't know who the customer was for that. 11 I'm not saying it was the press. It could have been 12 anybody, but somebody had instructed a private 13 investigator to find out about a named individual, 14 whether they had actually received an abortion at that 15 particular clinic. 16 So this sort of activity was still going on right 17 through -- that was 2007, and perhaps we'll come later 18 to what my successor told the justice committee just two 19 months ago. 20 LORD JUSTICE LEVESON: Just remind me of the dates in 21 relation to Mr Mulcaire, could you? 22 MR JAY: He was arrested 8 August 2006, pleaded guilty, 23 I think, November 2006 and then sentenced whenever it 24 was in January 2007. 25 A. Yes.</p> <p style="text-align: center;">Page 42</p>	<p>1 when I was told about what was going on. The compromise 2 being hammered out was -- involved me in three meetings 3 in quick succession -- 4 Q. Can we just look at that, please, Mr Thomas. In your 5 witness statement, annex B, the second bullet point on 6 the second page, 00280. You tell us that between 7 11 March and 2 April, you attended three meetings with 8 Sir Suma Chakrabarti to explore the scope for 9 a compromise: 10 "I understood that Paul Dacre, chairman of the 11 Editors' Code Committee, was attending alternate 12 meetings but we did not meet face to face at the time. 13 At the last meeting, I was told that it had been decided 14 to keep the clause but make two changes ... [first] the 15 custodial sentence would require consultation and 16 a ministerial order before being activated, and 17 secondly, the public interest defence will be modified 18 into a subjective or reasonable belief test." 19 LORD JUSTICE LEVESON: But that's purely subjective, is it? 20 It's objective as well. 21 A. Yes, I think that's a fair comment, chairman. It is 22 more subjective but there is obviously clearly still an 23 important element of objectivity. 24 LORD JUSTICE LEVESON: It's got to be reasonable. 25 A. Yes.</p> <p style="text-align: center;">Page 44</p>

<p>1 MR JAY: You sent an email, for example, RJT 42 under our 2 tab 48, 546, dated 24 March 2008.</p> <p>3 A. Yes. This followed the second of the meetings.</p> <p>4 Q. Yes. You make the point in the first paragraph -- and 5 I'm going to paraphrase it -- that the issue had become 6 very political and you set out how all the politicians 7 were, as it were, lined up.</p> <p>8 The second paragraph: 9 "The officials' position is currently to favour 10 retention but with the new clause to widen the defence." 11 So this is the reasonable belief test?</p> <p>12 A. Mm-hm, yes.</p> <p>13 Q. But otherwise -- when you say "favour retention", you 14 mean keep the original proposal in the new bill? That's 15 right, isn't it?</p> <p>16 A. That was what I think the civil servants were favouring.</p> <p>17 Q. Yes.</p> <p>18 A. Keep it as it is, but build into it a wider defence and 19 I was perfectly happy with that.</p> <p>20 Q. Yes: 21 "There had been several meetings with media 22 representatives, including Paul Dacre, Guy Black, Murdo 23 McClellan and Rebekah Wade. The media side welcome the 24 new clause as far as it goes but are still holding out 25 for removal. One of their fears -- though remote -- is</p> <p style="text-align: center;">Page 45</p>	<p>1 there had to be a deal, we wanted a best possible deal.</p> <p>2 Q. The upshot was that the deal which was attained was that 3 the increased criminal sanction, sentence of 4 imprisonment, would require secondary legislation -- 5 that's the ministerial order you refer to -- but paired 6 with that would be the introduction of the reasonable 7 belief test defence. All of this is now in Section 77 8 and I think Section 78 of the Criminal Justice and 9 Immigration Act 2008, which received the royal assent on 10 8 May 2008.</p> <p>11 A. I would at some stage, maybe now, like a chance to say 12 something about that.</p> <p>13 Q. Please do.</p> <p>14 A. Because that is still the position. That's on the face 15 of the statute and I cannot for the life of me 16 understand why the government has now not activated that 17 provision.</p> <p>18 There was a consultation in 2009, just before the 19 general election. My successor has been to Parliament 20 very recently. This -- he has documented how this trade 21 is still carrying on to this day. He's given many 22 examples, and I am very disappointed as an individual 23 now that still, despite all the material that has 24 surfaced in recent months, the order has not been 25 activated. It would be a very simple matter to bring</p> <p style="text-align: center;">Page 47</p>
<p>1 that the penalty will be increased but the wider defence 2 which gets taken later as a new clause will not succeed. 3 They have countered this by arguing that the prison 4 sentence should be dropped and the defence widened. 5 I fell off my seat at this point and said my reaction to 6 such an outcome would be nuclear."</p> <p>7 A. Yes.</p> <p>8 Q. We can see that. So it's quite clear that powerful 9 media representatives were arguing the position as 10 eloquently as they were able in support of their own 11 self-interests, really?</p> <p>12 A. Yes.</p> <p>13 Q. Fair enough, that part? Thank you. The upshot, 14 though --</p> <p>15 A. You didn't read the next sentence, which I --</p> <p>16 Q. Yes, please do.</p> <p>17 A. If I just read it to you: 18 "I was asked how we would react to removal. I said 19 it would be very noisy and very messy. We will publicly 20 denounce any such report. If we lost, we would publish 21 a third report to Parliament, documenting how this state 22 of affairs had come about." 23 So I was playing hard ball, if you like, but I had 24 to safeguard the position we had reached by making it 25 clear to the permanent secretary that, you know, if</p> <p style="text-align: center;">Page 46</p>	<p>1 that into force now, and my broad understanding back in 2 2008 was that it would only be a delay of six months or 3 so, but that has not yet materialised and I'm afraid, 4 sir, that your Inquiry has now given us the reason why 5 it can't be activated.</p> <p>6 LORD JUSTICE LEVESON: What?</p> <p>7 A. Yes, my successor has been told that the government is 8 not willing to activate it because it has to wait and 9 see what your Inquiry leads to. I understand the Lord 10 Chancellor wrote to my successor quite recently. 11 So we're in a situation now of having to wait until 12 your Inquiry is concluded before, apparently, that can 13 be activated and I say very clearly -- this is my 14 personal view -- I can see no reason whatsoever to once 15 and for all address this very, very serious matter of 16 this illegal market, why this section should not now be 17 activated to send a very clear signal indeed at 18 a deterrent level that this is to be taken very 19 seriously, because even now there are people engaging in 20 this sort of activity which need that sort of lesson. 21 They need not only the deterrent effect of a prison 22 sentence but also unlocking all the other sentences 23 which become available once a prison sentence is there, 24 and that was part of the campaign. It's not yet 25 concluded.</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 MR JAY: All of this evidence merges into module three of 2 this Inquiry. One can draw certain inferences from what 3 you said, perhaps.</p> <p>4 A. The chairman expressed surprise. This is all in the 5 public record because the justice committee in October 6 of this year made exactly the same point. They made 7 a very clear recommendation as a select committee that 8 the government should introduce this section straight 9 away and not await the outcome of the Leveson Inquiry.</p> <p>10 Q. This is all a nice segue to --</p> <p>11 A. I'm sorry, I said I wanted a chance to say this. This 12 seemed to be the point to --</p> <p>13 Q. Mr Thomas, the next section, press knowledge and 14 influence. That may or may not throw some light on what 15 you've just been saying. Paragraph 29 of your first 16 statement, 267.</p> <p>17 A. Yes.</p> <p>18 Q. Can we try and summarise this, given where we are at 19 3 o'clock on a Friday afternoon, having covered quite 20 a lot of evidence already. You make the point fairly in 21 paragraph 30 that although media coverage was limited -- 22 this is the reference to the publication of your 23 reports -- the reference to 305 journalists certainly 24 did not go unnoticed. You refer to the table which 25 we've looked at. You refer to the response to that.</p> <p style="text-align: center;">Page 49</p>	<p>1 to get the hard evidence.</p> <p>2 Q. In paragraphs 33 and 34 of your statement -- you've 3 covered much of this already, Mr Thomas -- you say that 4 you had exchanges with press representatives on the 5 substance of your reports. The general line was to 6 accept that some journalists "did these things". 7 Through numerous meetings, no attempt was ever made to 8 deny the activities that you'd exposed.</p> <p>9 Then you say in paragraph 34, towards the end: 10 "I have no doubt that by late 2006, most -- it not 11 all -- proprietors and editors at national level knew 12 all about the material we had published." 13 So that's your evidence in relation to that?</p> <p>14 A. A very clear impression that our report was being talked 15 about was people were aware of it and were increasingly 16 taking it seriously.</p> <p>17 Q. Then you had a meeting with Mr Les Hinton at the offices 18 of News International in Wapping, 27 October 2006 -- 19 this is paragraph 35 -- you say in his capacity as 20 chairman of the Editors' Code of practice committee. 21 RJT22, which is our tab 27, page 00440.</p> <p>22 Does this tie in chronologically with 23 Sir Christopher Meyer telling you you're speaking to the 24 wrong person, speak to the Editors' Code of Practice 25 Committee chair, you finding out who that person was,</p> <p style="text-align: center;">Page 51</p>
<p>1 Paragraph 32, if I could deal with one sentence there, 2 two lines down: 3 "Certainly the table suggested heavy involvement 4 across the tabloid press at least. I have always 5 recognised that the material seized in Operation 6 Motorman came only from one group of investigators and 7 may have been entirely isolated." 8 What is your considered view about that, Mr Thomas? 9 Or is there no evidence either way?</p> <p>10 A. There's no hard evidence, but we made the point in our 11 second report that the Goodman-Mulcaire case appeared to 12 be a completely separate group. They were not engaging 13 in the same activity, but I think we said there were 14 parallels. The hacking of voicemails had parallels to 15 the Section 55 activity.</p> <p>16 I also refer to -- I said this morning, we 17 documented in our first report how the office had 18 prosecuted an investigator for this sort of activity in 19 the mid-1990s and how the press coverage in the 2002, 20 early 2003, late 2002, early 2003 -- they had reported 21 three or four examples of this. So all that, shall we 22 say, points towards this not being a completely isolated 23 network, but I can't go further than that. By its 24 nature, this is an underground market and I knew from 25 conversations with my investigators how difficult it is</p> <p style="text-align: center;">Page 50</p>	<p>1 arranging the meeting and this is the meeting; is that 2 right?</p> <p>3 A. This is not -- yes, you're right in chronology, but 4 I had previously met the secretary, Ian Beales. I'd met 5 him about a month or so previously to explore issues and 6 in my evidence there's a note of the meeting with him 7 and we had a very frank exchange on both sides, and then 8 a month or so later, I had the meeting with Les Hinton, 9 who I knew was a powerful figure at News International, 10 but also was chairman of the code -- the Editors' 11 Committee at that time, and that was the reason for the 12 meeting. I gave this as an example both of the level of 13 awareness but also from the event that followed it.</p> <p>14 Q. You can see your objectives under paragraph 1: tougher 15 penalties, louder condemnation, plain English Section 55 16 guidance, changes to code within weeks.</p> <p>17 A. Yes, that was -- I think I had an awareness somewhere 18 the -- one of the virtues of self-regulation. It 19 doesn't take years to go through Parliament. We can 20 change it within weeks. I'm not sure whether the PCC 21 claim that, but that was part of the general culture of 22 self-regulation. I'd come across a lot of this at the 23 Office of Fair Trading and the line was: "Let us 24 self-regulate. We can latch onto things and change them 25 very fast."</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 Q. Then in the second part, ICO offers, first -- this is 2 public interest guidance? 3 A. Yes. 4 Q. In other words, displaying what would amount to a public 5 interest defence -- 6 A. Yes. 7 Q. -- wider than the code and then you set out possibly 8 categories: crime, inpropriety, health and safety, 9 misleading statements and activities. 10 A. Just to interrupt, one of the points I was making was 11 that we, by this time, were fully engaged with the 12 Freedom of Information Act and virtually every difficult 13 case we had to handle involved a balancing of public 14 interest considerations so -- and we had published 15 a great deal of guidance on what is the public interest 16 when it comes to disclosure in the freedom of 17 information context, and this was not an exhaustive list 18 but these were the sorts of matters which were covered 19 in our guidance as to what the public interest means in 20 the FOI context. 21 Q. Then you use the term "last-chance saloon" -- was it you 22 who used it? 23 A. I think it was, but I think I was aware that that phrase 24 had been used on a number of occasions in this context, 25 going back perhaps 20 years.</p> <p style="text-align: center;">Page 53</p>	<p>1 seen the witness statements from News International and 2 they are saying there was no connection. I do no more 3 than what I said in my witness statement. It raised 4 questions in my mind. It seemed to be a coincidence, 5 but I had no inside knowledge at all as to how the 6 editorial came to be written and I've seen the witness 7 statements. It's not for me to make any hard 8 allegations there, but it did seem to me there might 9 have been a connection. 10 Q. That point may be taken further by Mr Rhodri Davies. 11 I'm going to leave it there, Mr Thomas. 12 LORD JUSTICE LEVESON: One comment on it. In the left-hand 13 column, it's said: 14 "He [that's you] did not talk in the interview about 15 the role of the press in protecting the public by 16 exposing the abuses of the powerful. Newspapers had 17 already been doing this for centuries when he took up 18 his post four years ago. This duty of the media is 19 vital in the struggle to maintain an open society, yet 20 Mr Thomas would send reporters to prison for fulfilling 21 it." 22 Is that a fair reflection of what you were proposing 23 in the legislation? 24 A. No, it's not, because I was absolutely clear -- first of 25 all, this had been criminal since 1994. Nothing new.</p> <p style="text-align: center;">Page 55</p>
<p>1 Q. Yes. Mr Hinton says on the next page "accepts equals 2 problems", so he's accepting that there is a problem. 3 A. I've highlighted that in my evidence because that is my 4 note made that day, and that, I think, is consistent 5 with what I'm saying elsewhere, that everyone I talked 6 to recognised there was a problem and there was he, 7 saying to me -- this is my note: "I accept there's 8 a problem. Something radical will happen." That was 9 his very clear message to me. 10 Q. Although he was hostile to the prison sentence? 11 A. Absolutely. 12 Q. Then you say that within two days of that meeting 13 there's a leader in the Sunday Times under the next tab, 14 RJT23, 29 October 2006. 15 A. Could you remind me of the tab number? 16 LORD JUSTICE LEVESON: 28. 17 MR JAY: Tab 28. 18 LORD JUSTICE LEVESON: 442. 19 A. Thank you, sorry. 20 Yes. This was the leader on the Sunday Times. I'd 21 met Les Hinton on the Friday at about 4 o'clock and over 22 the weekend, picked up the newspaper and there was this 23 very strong leader. 24 I felt that there may have been some connection and 25 I made that point in my witness statement. I have now</p> <p style="text-align: center;">Page 54</p>	<p>1 And secondly, there was a number of defences, of which 2 the public interest defence is by far the most 3 important, and although almost everything which the 4 press were doing in this area was justified in terms of 5 what I might call genuine investigative journalism, 6 virtually all the stuff I was aware of certainly coming 7 out of Motorman was not something which would have been 8 at all easy to justify in public interest terms. 9 I think I said to the Select Committee it was, you 10 know, celebrity tittle-tattle, and I think it would be 11 very difficult indeed to justify the vast majority of 12 that in public interest terms. I hope I gave that 13 message to you this morning. 14 MR JAY: Yes. 15 A. So I don't think this was a fair comment. This was -- 16 you know, I understand what they were doing. 17 I understand the need for them to articulate their 18 various arguments, but their constant line was what we 19 were trying to do would threaten genuine investigative 20 journalism, and I was -- my response was: for a start, 21 this is not genuine investigative journalism, and 22 secondly, you have a very powerful defence there, and 23 later I came on to say the defence itself could be 24 widened to meet your concerns. 25 Q. Thank you. Then in paragraph --</p> <p style="text-align: center;">Page 56</p>

<p>1 A. I'm not sure I made the point that this editorial, 2 sir -- it was not prompted by anything in the public 3 domain at that time. I had done an interview with the 4 Times which I think appeared on the Saturday. I accept 5 that. That didn't mention this matter at all. It 6 mentioned many other matters. In fact, the editorial 7 itself talks about a "little-noticed report". So my 8 concerns about the article were reinforced by this 9 appeared out of the blue. It wasn't sort of following 10 something in the news over the previous couple of weeks. 11 But equally, I totally accept that the evidence from the 12 editor and others concerned was that there was no 13 connection with my meeting with Les Hinton. I'm just 14 reporting how it appeared to me at the time.</p> <p>15 Q. Yes. In paragraph 27 you say of your first statement: 16 "Whatever was precisely known about the nature and 17 extent of press misconduct across the industry as 18 a whole, it became increasingly clear that the press 19 were able to assert very substantial influence on public 20 policy and the political processes." 21 And really, you learned that from your experiences 22 derived through watching what happened to the criminal 23 justice and immigration bill, culminating in the 24 compromise which you told us about; is that right? 25 A. Well -- yes. That was when I was directly on the Page 57</p>	<p>1 "The agenda was their deep concern that the 2 newspaper industry with facing a number of very serious 3 threats to its freedoms." 4 The Data Protection Act and the amendment to the 5 criminal sanction was then mentioned, and then in the 6 next short paragraph: 7 "The Prime Minister -- I don't think it's breaking 8 confidences to reveal -- was hugely sympathetic to the 9 industry's case and promised to do what he could to 10 help. Over the coming months and battles ahead, 11 Mr Brown was totally true to his word." 12 It might be said though that Mr Brown simply 13 followed where his principles were taking him and he 14 wasn't listening at all to blandishments or otherwise 15 given by Mr Dacre and Mr Hinton. Is that not a possible 16 fair explanation of this? 17 A. I don't think it's for me to say one way or the other. 18 I mean, I've set out my involvement. Mr Dacre's speech 19 sets out his. I don't know what happened between these 20 various stages. I can speculate but I don't think it's 21 for me to speculate. 22 Q. Mr Dacre certainly had the ear of Mr Brown over dinner. 23 That's -- 24 A. I think there was a general feeling that people at the 25 head of newspapers were very influential with the Page 59</p>
<p>1 receiving end with first-hand evidence, but I mean 2 clearly right from 2006 onwards, there had been 3 a kickback from the press, and they were setting out 4 their counter-arguments.</p> <p>5 Q. You refer by way of example to Mr Paul Dacre's speech at 6 the Society of Editors conference, given on 9 November 7 2008, RJT46 under our tab 52 at 558. 8 A. Yes. This was him six months after the battle had 9 concluded. 10 Q. Yes. 11 A. I'd had a meeting with him which was actually a very 12 friendly and constructive meeting in the intervening 13 months, and then at Bristol, he set out in his speech 14 his version of events. I can do no more than just refer 15 the Inquiry to what he said. He described me as a 16 "tenacious and principled fighter who I've come to 17 admire". 18 He may not agree after this morning when I got his 19 title wrong, but I was teased, shall we say, at the 20 conference for being described in those terms by 21 Mr Dacre. 22 Q. You didn't have the benefit of a dinner with the 23 Prime Minister, Mr Hinton and Mr McClellan, which was 24 18 months prior to that, which Mr Dacre refers to in the 25 speech. This is three lines down RJT46: Page 58</p>	<p>1 politicians and this perhaps was an example of that. 2 And although they rested their case, as I said just 3 now, on the threats to investigative journalism, I was 4 surprised by how hard they were fighting, and it really 5 left me with a message that we were challenging 6 something which went to the heart of much of the -- 7 certainly the tabloid press activity. 8 Someone once said to me: "You do realise that you 9 are actually challenging their whole business model?" 10 Maybe that's one reason they were fighting so hard, 11 because on the one hand, they were not publicly 12 accepting this sort of thing went on. On the other 13 hand, they were fighting very hard to avoid the 14 consequences of the law as we saw it. 15 MR JAY: Mr Thomas, I am very much nearing the end but we 16 need to deal with section G and H of your first 17 statement. I think as we've been going for an hour and 18 twenty minutes -- 19 LORD JUSTICE LEVESON: Yes, let's have a break. Thank you. 20 (3.21 pm) 21 (A short break) 22 (3.28 pm) 23 MR JAY: Mr Thomas, the current situation, please, G. 24 Mr Graham will be giving evidence to the Inquiry 25 in January to bring us up to date, as it were, but you Page 60</p>

15 (Pages 57 to 60)

<p>1 rightly say in paragraph 44: 2 "My impression -- and this was reinforced 3 anecdotally by what my team were telling me between 2006 4 and 2009 -- is that press misconduct of this type set 5 out in the two ICO reports and in this statement largely 6 ceased after 2006." 7 And then you refer to a quote from the Independent 8 on 10 August 2006. We can go to the very bottom of it, 9 in the first box on the next page: 10 "What was a flood of stories stood up in this way is 11 now a trickle." 12 Then you refer to Mr Dacre's speech at RJT46, which 13 is really a very strong warning shot across the bows of 14 the press, isn't it? 15 A. Well, that's from Paul Dacre. 16 Q. Yes. 17 A. Yes. 18 Q. RJT46 is under -- well, in fact we've seen it, haven't 19 we? At paragraph 45: 20 "What Paul Dacre said then was consistent with what 21 he told me when he asked to see me on 4 June 2008 in his 22 letter to me of 25 July 2008." 23 That's our tab 50. RJT44, page 00555, where he 24 thanks you for coming to see him: 25 "It was good to see you and subsequently to watch in Page 61</p>	<p>1 meeting. We both recognised there had been a battle. 2 We both recognised that we'd had our respective 3 positions and he went out of his way to tell me that 4 within the Mail group newspapers and, I think, more 5 generally across the industry generally, that what we 6 had done had sent shockwaves and obviously the 7 imprisonment of the two people under the RIPA matter had 8 also had a big influence and that they were determined 9 to clean up their act and were cleaning it up. 10 Q. Yes. In terms of regulatory reform, Mr Thomas, you're 11 not suggesting -- in any event, it would be outside the 12 remit of this Inquiry -- wholesale changes to the UK 13 data protection regulatory framework. You are arguing 14 for -- and you've already made this plea to us -- an 15 immediate ministerial order to activate Section 77. 16 Towards the end of paragraph 49, you say: 17 "There remains a case for the ICO to publish 18 a statement of prosecution policy along the lines of the 19 draft in early 2008." 20 We should identify that. It's tab 42, RJT36, 21 starting at page 527. 22 If you look forward to page 529, what you're 23 furnishing there is some general guidance on public 24 interest, either for the purposes of bringing 25 prosecutions or also for the purpose of providing Page 63</p>
<p>1 admiration the way your body is changing the landscape 2 of freedom and secrecy in this country. As promised, 3 I am now writing to you about the progress we're making 4 over DPA. You already know about the various 5 undertakings at Associated Newspapers to ensure that our 6 journalists understand and comply with the DPA, 7 especially in regard to Section 55, and at our very 8 useful meeting, I promised you an update on the various 9 other industry initiatives at or on the DPA." 10 At the bottom of the page: 11 "Work is under way on an industry-wide education and 12 information notice which will be made available to all 13 journalists." 14 The notice will be distributed digitally, et cetera. 15 Third paragraph: 16 "We are planning during the autumn to carry out 17 a cross industry survey on data protection issues to 18 gauge levels of awareness, information and education." 19 That is all positive news, isn't it? 20 A. Yes. I had met him previously before then when he had 21 been asked by the Prime Minister to undertake a review 22 of the 30-year rule, which had an impact on the freedom 23 of information legislation. He asked to see me then. 24 Then my only other contact was this meeting I had 25 with him in whenever it was, June, and it was a charming Page 62</p>	<p>1 a gloss on what that means in Section 55; is that 2 correct? 3 A. That is correct, Mr Jay. This was drafted at fairly 4 short notice towards the end of January, when we first 5 got wind of the concerns being expressed by the media, 6 and one of the concerns was yes, there is a public 7 interest defence, but it's very uncertain and no one 8 knows where they stand. 9 So my reaction was: well, let's draw upon our 10 freedom of information experience and put together 11 a note on this. I'm not -- I don't think this was 12 published during my time or indeed subsequently. I'm 13 not quite sure what's happened since I left the office, 14 but although it was done in quick order, I look at it 15 now and I think actually it is still quite helpful, and 16 I wouldn't want to do very much changing to it. I think 17 it might be polished a little bit, but I think it does 18 set out very clearly that it is not that difficult to 19 identify the major public interest considerations in 20 this area. 21 Q. Yes. 22 A. And of course, if the defence were to be widened, as the 23 prospective change in the law anticipates, there would 24 be some modification to this note, but the substance of 25 what is public interest I don't think would change very Page 64</p>

16 (Pages 61 to 64)

<p>1 much.</p> <p>2 Q. Thank you. I'm not going to read it out, given the</p> <p>3 time, but we'll certainly take this into --</p> <p>4 A. But I would just say, Mr Jay, that all the stuff that</p> <p>5 I saw from the Motorman evidence didn't come near this</p> <p>6 sort of category. It was what I think I said to the</p> <p>7 Select Committee. I haven't seen a whiff of public</p> <p>8 interest. It was tittle-tattle. It was fishing. There</p> <p>9 may be one or two examples, but they would be</p> <p>10 exceptional.</p> <p>11 Q. Finally, Mr Thomas, I need to pick up on a number of</p> <p>12 points others have given to me.</p> <p>13 The first is a general point. Did you invite the</p> <p>14 editor of the Sunday Times to attend an interview under</p> <p>15 caution in 2003 in respect of possible breaches of</p> <p>16 Section 55 in relation to Lord Levy's tax affairs?</p> <p>17 A. I have no memory of that whatsoever. I suspect it was</p> <p>18 actually 2002, not 2003, or perhaps News International</p> <p>19 might check their dates on that.</p> <p>20 When I got to the office, there was sort of a casual</p> <p>21 comment there had been a problem with Lord Levy some</p> <p>22 time earlier. I did telephone Francis Aldhouse on</p> <p>23 Wednesday this week saying, "What's your knowledge of</p> <p>24 this, because it's been raised by News International?"</p> <p>25 He said to me that it rang a faint bell, but he had</p> <p style="text-align: center;">Page 65</p>	<p>1 Given the importance of Article 10 and the importance of</p> <p>2 a free press in a democratic society, the pendulum</p> <p>3 should really swing the other way.</p> <p>4 Can I invite you, please, to consider that argument?</p> <p>5 A. I totally and completely understand and support the</p> <p>6 freedom of the press, not least in holding governments</p> <p>7 and those in power to account. My evidence contains</p> <p>8 words to that effect. I totally recognise the need for</p> <p>9 balance in this area.</p> <p>10 But what I said at the time -- and I perhaps repeat</p> <p>11 now -- first of all this has been a criminal offence</p> <p>12 since 1994. We're not seeking -- never have been</p> <p>13 seeking to change the substance of the law. The debate</p> <p>14 was only about the penalty, and I would assume that no</p> <p>15 journalist or editor wants to have a criminal</p> <p>16 conviction, whatever the sanction.</p> <p>17 Secondly, to the extent it had a chilling effect on</p> <p>18 unacceptable press behaviour, then I would welcome that.</p> <p>19 I felt -- and I said at the time -- that the whole point</p> <p>20 of a deterrent is to stop illegal activity from being</p> <p>21 carried out.</p> <p>22 And I address the point more explicitly, first of</p> <p>23 all with the draft prosecution statement that we looked</p> <p>24 at ten minutes ago, but I also said -- and I said this</p> <p>25 to members of the various associations, the Code</p> <p style="text-align: center;">Page 67</p>
<p>1 nothing more to contribute than that.</p> <p>2 I'm sure something happened. I personally don't</p> <p>3 know what it was, and nor does Francis Aldhouse have any</p> <p>4 ability to help us.</p> <p>5 If that had been the case -- and can I speculate?</p> <p>6 If the Office had invited the editor and had been</p> <p>7 rebuffed, that might perhaps have influenced people at</p> <p>8 the investigatory level as to the problems of</p> <p>9 interviewing people from the press. I don't know.</p> <p>10 That's before my time and I'm afraid I don't know if the</p> <p>11 office has searched its records for anything on that</p> <p>12 because it's only surfaced in the last few days, but</p> <p>13 I have no personal knowledge of that at all.</p> <p>14 Q. When you were Commissioner, were journalists or editors</p> <p>15 on any occasion, to your knowledge, invited to attend an</p> <p>16 interview under caution in respect of possible breaches</p> <p>17 of Section 55?</p> <p>18 A. No.</p> <p>19 Q. The argument against the introduction of a prison</p> <p>20 sentence runs along these lines: that it does have</p> <p>21 a chilling effect on genuine investigative journalism</p> <p>22 because of uncertainties regarding the scope and content</p> <p>23 of the public interest defence, so that even unwittingly</p> <p>24 it will have a serious chilling effect, which you</p> <p>25 haven't properly taken into account as an argument.</p> <p style="text-align: center;">Page 66</p>	<p>1 Committee and in Select Committees -- I said that any</p> <p>2 journalist seriously justifying what they're doing in</p> <p>3 public interest terms at the very least should make</p> <p>4 a note of what they're doing, and if they were to wave</p> <p>5 that in the face of a Commissioner later, that would be</p> <p>6 a very serious inhibition on a prosecution later. They</p> <p>7 should also seek legal advice in those situations and</p> <p>8 they should seek the authority or the say-so of their</p> <p>9 editor or somebody with suitable authority.</p> <p>10 But the sort of scale of the activity that we saw --</p> <p>11 I'd almost describe it as industrial -- engaging or</p> <p>12 buying information from private investigators which at</p> <p>13 least must be a risk of coming near to criminality,</p> <p>14 unless they could document very clearly what they were</p> <p>15 doing in public interest terms, then they were going to</p> <p>16 be at risk.</p> <p>17 I said that if they did that, I did not think that</p> <p>18 it would have any sort of chilling impact on the --</p> <p>19 genuine investigatory journalism. If you look at the</p> <p>20 second of our reports, we included a quotation from the</p> <p>21 Observer newspaper in August 2006:</p> <p>22 "Occasionally all newspapers that turn over stones</p> <p>23 will need to do exceptional things and need that freedom</p> <p>24 if they are to be effective watchdogs, but such</p> <p>25 investigations can't be generalised trawls for titbits,</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 a covert sweep for something or other, even if only a 2 Palace gossip paragraph. Condoned that, and the kind of 3 seamy wheezes alleged here will poison the well for all 4 journalism." 5 And there was a similar article at the time of the 6 Glade case at Blackfriars by Roy Greenslade, I think in 7 the Evening Standard or perhaps the Guardian, making 8 some very similar points and actually saying that the 9 media ought to welcome what we were doing on this front. 10 Q. Thank you. 11 In relation to ex-directory numbers, do you accept 12 that the demands of what is known as the Reynolds 13 qualified privileged defence in libel, which encourages 14 responsible journalists to contact a potential target in 15 advance of publication to put the allegation to him or 16 her, means that getting in touch with the subject of 17 stories is both important and entirely legitimate? 18 A. It's important and it's legitimate. What is not 19 acceptable is to either engage in or to be the customer 20 of illegal activity. There are ways and means of 21 getting hold of people other than using stolen data from 22 inside, for example, telephone companies. 23 From time to time, the media need to get in touch 24 with me. It's not that difficult to approach the 25 organisation with which someone is associated and to</p> <p style="text-align: center;">Page 69</p>	<p>1 Q. RJT1? 2 A. Yes. If you look at paragraph 5.10 on page 17, the 3 internal page -- I don't have your page number -- 4 Q. 00298, yes. 5 A. You see where I'm going on this. We gave some examples 6 of private individuals. The first was a painter and 7 decorator, and I remember being told that he couldn't 8 understand why he was on the list of Whittamore's 9 targets. And then apparently -- I pick this up -- he 10 worked it out for himself. He had been painting and 11 decorating the house of a lottery winner and his van had 12 been parked outside, so somebody had tracked him down 13 from the registration number of his white van outside 14 the house of a lottery winner. No public interest there 15 that I can think of. 16 The second case, third case: a green grocer, hearing 17 aid technician. 18 The last case I mentioned there -- I've been 19 thinking about this and I'll share it with you. It's 20 a medical practitioner who was doorstepped by a Sunday 21 newspaper in the mistaken belief that he had inherited 22 a large sum of money from a former patient. 23 Now, if there was hard evidence that a GP had killed 24 a patient or contributed to his or her death, then 25 conceivably -- and I use that word advisedly -- there</p> <p style="text-align: center;">Page 71</p>
<p>1 say, "We need to get in touch with Mr Thomas very 2 quickly. Can you please pass on this message?" I get 3 those on a regular basis and that is the correct way to 4 behave. It is not correct to rely upon information 5 which was obtained by deceit or deception or corruption. 6 Q. Do you accept that in many cases there may have been 7 a public interest defence in stories which journalists 8 were writing? This, of course, is in relation to the 9 Whittamore material. 10 A. I said just now that I saw nothing at all which struck 11 me as being justifiable in public interest terms. 12 I also said earlier that I'm not condemning every single 13 transaction. I gave the example of the minister who had 14 resigned from the government. Perhaps that might have 15 raised public interest concerns. 16 I'll also share with you, in our report we 17 documented some examples of ordinary people being caught 18 up in this, which I felt particularly strongly about. 19 At the time -- how can I put it? No one cared that much 20 about the celebrities and we understood that and we were 21 concerned with the protection of the private individual. 22 We gave examples, if I can just turn up internal 23 page -- 24 Q. Is this the first report or the second? 25 A. The first of our reports.</p> <p style="text-align: center;">Page 70</p>	<p>1 might be some sort of public interest justification. 2 But even then, I would say it's a matter of 3 proportionality. If you only have a rumour going around 4 the village and they hadn't investigated themselves and 5 hadn't taken proper steps to involve the police or even 6 do their own investigations, just simply getting hold of 7 that doctor's personal information in order to doorstep 8 him on that particular matter, which indeed proved to 9 have no foundation whatsoever -- I think very hard 10 proportionate terms to justify as being in the public 11 interest. But I do recognise there may be some 12 examples, and that's one which I'm happy to share with 13 you. 14 Q. Final question, Mr Thomas: do you accept that in many 15 cases journalists were asking Mr Whittamore to supply 16 information that was already in the public domain? 17 A. It depends what you mean by "public domain". An address 18 or a telephone number would not normally be in the wider 19 public domain, in the sense of being in the press or 20 being very readily available, but I do recognise that in 21 some situations an address or a telephone number is not 22 a matter of great secrecy or, you know, beyond anyone's 23 sight. 24 On some occasions, I have no doubt that people were 25 using Whittamore or similar investigators to</p> <p style="text-align: center;">Page 72</p>

<p>1 shortcircuit -- and we've touched on this this 2 morning -- to get there faster. But I do not believe 3 that justifies the sort of blagging, the sort of 4 deception, the sort of corruption that we came across, 5 just because that number might otherwise have been 6 available by more laborious means. And people only go 7 ex-directory for good reason. 8 MR JAY: Mr Thomas, those are all my questions. 9 I understand that there may be applications by others 10 for short questioning. 11 LORD JUSTICE LEVESON: Yes. 12 Just can I pick up one thing you said just a moment 13 ago, Mr Thomas. You were talking about examples of 14 which you felt particularly strongly and you said: 15 "At the time -- how can I put it? No one cared that 16 much about the celebrities and we understand that." 17 Now, I'd just like to ask you what view you, as the 18 Information Commissioner, had in relation to those who 19 are celebrities? 20 A. Well, I hope I didn't give any sort of misleading 21 impression, sir. Any celebrity has the same entitlement 22 to the protection of the law and indeed self-regulation 23 as much as anybody else. But I'm trying to reflect back 24 to where we were eight, nine, ten years ago, and the 25 fact that in general discourse there was a sort of view</p> <p style="text-align: center;">Page 73</p>	<p>1 forward as being -- recognising they were victims. 2 LORD JUSTICE LEVESON: Well, we've seen some of the data 3 yes. Thank you. 4 Mr Davies? 5 MR DAVIES: Yes. If I may, sir. 6 LORD JUSTICE LEVESON: Shortly, Mr Davies. 7 MR DAVIES: I said about half an hour. I'll stick to that. 8 Questions from MR DAVIES 9 MR DAVIES: Mr Thomas, my name is Davies and I appear for 10 News International. 11 Can I just say for the record -- I'm not going to go 12 into it -- that we do not agree with you on the 13 interpretation of Section 32 of the Data Protection -- 14 A. I'm sorry? 15 Q. We do not agree with you on the interpretation of 16 Section 32 of the Data Protection Act, because we take 17 the view that it does cover steps leading up to 18 publication including, for example, contacting someone 19 to ask them about a story. 20 A. I don't think I was giving any sort of definitive rule 21 in the interpretation of Section 32. I was talking in 22 very general terms. 23 MR DAVIES: It's perfectly -- 24 A. I was not in any way attempting to interpret Section 32 25 today.</p> <p style="text-align: center;">Page 75</p>
<p>1 that celebrities put themselves into the public arena 2 and have to accept some intrusion into their lives as 3 a result of that. 4 What I was trying to say was: therefore, any formal 5 action, particularly a prosecution, was likely to be, if 6 you like, that much more difficult because there will be 7 less sympathy for the celebrity. That was perhaps one 8 of the factors in our mind at the time. That's why, 9 particularly in the reports, I wanted to highlight the 10 situation of people who were not celebrities. 11 I gave the three examples just now coming out of 12 Whittamore, but most of the other examples, where 13 insurance companies, finance companies, law firms had 14 been involved, these were not celebrities at all. These 15 are people who are caught up in insurance claims, in 16 matrimonial disputes, a wide range of activities where 17 this industry was targeting them. 18 I'm in no way suggesting that just because they were 19 celebrities they should not be taken seriously by us. 20 Indeed, I mentioned to Mr Jay that we'd gone to 20 or 30 21 people for witness statements and quite a few of those 22 were people who were celebrities. 23 LORD JUSTICE LEVESON: Yes. 24 A. I don't need to mention all the names now but some of 25 them have already appeared here and others have come</p> <p style="text-align: center;">Page 74</p>	<p>1 Q. Thank you. 2 Now, you became Information Commissioner in November 3 2002. It was, in fact, on 11 December 2002 that your 4 office wrote to the editor of the Sunday Times, 5 Mr Witherow, asking him to attend an interview under 6 caution under Section 55. 7 A. Well, I -- thank you, you've corrected me. I have no 8 knowledge or memory of that. Can you tell me who wrote 9 the letter? 10 Q. It was a Mr Farrington. 11 A. Well, he was one of the investigators who was a more 12 junior rank than Alec Owens. 13 Q. Yes. When he say he wrote it, he signed it. I don't 14 know who had input into it. 15 A. Well, yes. 16 Q. So presumably you don't recall that the cases that 17 Mr Witherow was asked to attend an interview about 18 concerned Lord Levy and Lord Ashcroft and one other that 19 I needn't mention. 20 A. Lord Ashcroft wrote to me -- well, as you know he made 21 the FOI request in 2006. 22 Q. Yes. 23 A. And either before or after -- I can't recall now -- he 24 had expressed quite strong frustration that my office 25 had not been much use at sorting out his complaints. It</p> <p style="text-align: center;">Page 76</p>

<p>1 wasn't the first time. I mean, before I even started, 2 Stella Rimington, who was head of MI5, in her memoirs 3 had written that her personal information had been 4 obtained by somebody and she had recorded she'd gone to 5 my office and hadn't got much joy out of the office. So 6 that was part of the generally background and context. 7 As for Lord Levy, apart from what I said earlier, 8 which is, I have to say, a very, very faint memory -- 9 and as I understood it, before my time. You're now 10 telling me it was two weeks into my time, but I'm afraid 11 I have no personal recollection or knowledge at all. 12 Q. You've said quite a lot about investigative journalism 13 and how that's not to be threatened, but it's quite 14 obvious, isn't it, that if you have a conjunction of the 15 Sunday Times, Lord Levy, Lord Ashcroft, tax and 16 financial affairs, then we're going to be talking about 17 investigative journalism and the public interest, aren't 18 we? 19 A. Well, I don't want to be drawn on matters I don't know 20 much about, but from what I've read in the last few 21 weeks about, you know, the tax affairs of somebody in 22 the public eye, then certainly in that sort of 23 situation, we are approaching the public interest 24 territory, yes. 25 Q. Yes, and nonetheless, your office thought it right to</p> <p style="text-align: center;">Page 77</p>	<p>1 months in, I wouldn't necessarily have known about it. 2 I probably would have expected to, but all I can say now 3 is I'm not aware of any example, apart from the one you 4 just mentioned, where we directly approached 5 a journalist or an editor. 6 Q. That example is actually mentioned in the Times article 7 that you complained about, following your meeting with 8 Mr Hinton. Did you notice that? 9 A. Um ... 10 Q. We'll come to it later so -- if you haven't picked it 11 up -- 12 A. I can remember the reference to Lord Levy, yes, and 13 indeed he was on the front page of the Sunday Times that 14 particular day, so obviously there's a connection to be 15 made there. On a separate matter, this was the cash for 16 honours issue. For all that -- what you're saying is: 17 is that public interest? It's certainly getting very 18 much into that territory, yes. 19 Q. Yes. 20 A. But this was not in any way typical of the material 21 coming out of the Motorman inquiry. 22 Q. No, Mr Thomas, and what's certainly troubling about it 23 is this is the only occasion upon which the big stick of 24 an interview under caution was wielded. So one is bound 25 to ask: is it a fair surmise that the reason that</p> <p style="text-align: center;">Page 79</p>
<p>1 ask Mr Witherow to attend an interview under caution. 2 Presumably, you would not be surprised that they got 3 a lawyer's letter back saying this was perfectly proper 4 and Mr Witherow doesn't intend to attend for an 5 interview under caution? 6 A. As you tell me now, I'm not surprised. 7 Q. No. 8 A. And indeed, the paperwork you shared with me on Tuesday 9 principles that point out and I think the matter didn't 10 go any further. 11 Q. No. And you would expect, wouldn't you, that 12 Mr Witherow would have taken advice on Section 55 and on 13 the penalties available under it? 14 A. I imagine so, yes. 15 Q. And what he would have been told then was that they 16 included a fine but not imprisonment? 17 A. Yes. 18 Q. You've confirmed today that in your time as the 19 Information Commissioner, that seems to have been the 20 only occasion upon which a journalist was invited to an 21 interview under caution for a possible breach of 22 Section 55? 23 A. I can only share my knowledge. I mean, you brought to 24 the surface an example which I didn't know about. That 25 was in my first two weeks. But even if it happened six</p> <p style="text-align: center;">Page 78</p>	<p>1 happened was that your office was under pressure from 2 two powerful and well-connected people to do something? 3 A. I don't see it that way. I mean, powerful, 4 well-connected people would normally write to the 5 Commissioner and say, "I want to bend your ear", and 6 occasionally you had things of that nature happening. 7 I mentioned Lord Ashcroft wrote to me, and I think it 8 was a dead issue by that time, but I don't -- I have no 9 knowledge. I just simply can't help you on that. 10 Q. I see. 11 A. If you're suggesting that we wrote -- what was the date? 12 The second week of December? 13 Q. Yes. 14 A. Well, that would suggest that whatever complaint or 15 issue that Lord Levy had raised had come in some time 16 before I'd started, so it didn't come across my desk is 17 all I'm saying. 18 Q. It was an old complaint as it related to something which 19 happened in 2000, which makes it perhaps all the more 20 remarkable that it was taken up three years later. 21 A. Well, I mean, I made the point this morning. The 22 investigations unit in those days was -- I think I used 23 the phrase "self-contained", and to a certain extent 24 self-governing. I wasn't happy with that, so I changed 25 things there. They were, perhaps, more detached from</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 the rest of the office than I was happy with. I can 2 only speculate that the letter would have come in and 3 they would have done something about it. They weren't 4 the most sophisticated of people. They would have -- 5 I mean you mentioned one person's name. He was not 6 a person who I think I ever had a meeting with myself. 7 I recall the name, but no more than that.</p> <p>8 Q. I don't want to spend a lot of time on this, but it is 9 rather odd, isn't it, that you had this avalanche of 10 information which we've heard of on Operation Motorman, 11 and that didn't lead to any such letter, and this did?</p> <p>12 A. I just don't know what their methodology was. I didn't 13 know, certainly in those days -- even now, I don't have 14 detailed knowledge of how that team undertook its 15 activities, so I don't draw any particular inference in 16 the way you're suggesting.</p> <p>17 Q. All right, let's move on to your meeting with Mr Hinton 18 on 27 October 2006. You raise this at paragraphs 35 and 19 36 of your first witness statement. Your meeting with 20 Mr Hinton was, as we've heard, in his capacity as 21 chairman of the Editors' Code Committee. He wasn't 22 wearing a News International hat?</p> <p>23 A. It was at his office, but you're quite right.</p> <p>24 Q. What you suggest in those two paragraphs is effectively 25 that immediately after the meeting, Mr Hinton lent on</p> <p style="text-align: center;">Page 81</p>	<p>1 Mr Hinton which led to those two --</p> <p>2 A. I'm saying no more than appears in my witness statement.</p> <p>3 Q. Can I just take a moment to deal with the context at the 4 time, Mr Thomas? You'd published your "What price 5 privacy?" report in May, about five months earlier. On 6 24 July, the government had had opened a consultation 7 period on the proposals for imprisonment for breach of 8 Section 55 and that was a proposal which you had 9 yourself initiated.</p> <p>10 Since publication of that report, you say in the 11 follow-up report that there had been a growing and 12 substantial level of positive press coverage. So that 13 was presumably going on in October?</p> <p>14 A. Yes, growing, not exactly an avalanche. But there was 15 more media interest, particularly after Goodman and 16 Mulcaire had been arrest, and I think that began to 17 really lift off the --</p> <p>18 Q. Which they had been at that point?</p> <p>19 A. Yes, indeed. That was August, yes.</p> <p>20 Q. And you'd given a lengthy interview to the Times, which 21 was published the day after your meeting with Mr Hinton.</p> <p>22 A. I think the interview had been about two weeks 23 previously, but you're quite right, it was published in 24 the intervening Saturday.</p> <p>25 Q. And it may be that was not unconnected with the fact</p> <p style="text-align: center;">Page 83</p>
<p>1 the editor of the Sunday Times and a journalist at the 2 Times to write hostile pieces about you?</p> <p>3 A. I wasn't suggesting anything at all apart from what's in 4 my witness statement.</p> <p>5 Q. Well, you're --</p> <p>6 A. I said the episode raised questions in my mind --</p> <p>7 Q. Yes.</p> <p>8 A. -- about proprietorial influences on editorial 9 independence and freedom.</p> <p>10 Q. Yes.</p> <p>11 A. That is absolutely how I saw it at the time. I thought: 12 "Gosh, this is very surprising and strange. Just 48 13 hours or less than that after I'd met the most senior 14 person at News International, here suddenly I'm 15 appearing in a leading article, the lead editorial in 16 the Sunday Times, on something which is not part of the 17 public debate at the moment."</p> <p>18 I've now seen the witness statements from the editor 19 at the time and also from Mr Linklater, and they say 20 categorically they were not directed by Mr Hinton. 21 I have absolutely no reason to challenge or disagree 22 with that. All I've said was at the time to me, and to 23 others around me, it looked strange.</p> <p>24 Q. So am I understanding this right: that you are not 25 making any allegation that there was any interference by</p> <p style="text-align: center;">Page 82</p>	<p>1 that there was an international data protection 2 conference in London the following week?</p> <p>3 A. Um ... I can't recall the timing. I know that that 4 was --</p> <p>5 Q. It's mentioned in the interview.</p> <p>6 A. I was organising and chairing that conference. That was 7 a major preoccupation for me at the time, to have the 8 world's commissioners all coming to London, so I was -- 9 the interview was largely sort of flagging up the issues 10 to be discussed at the conference.</p> <p>11 Q. Exactly. So you were actually trying and succeeding to 12 get a bit of press coverage for your conference which 13 was coming up.</p> <p>14 A. We spent a lot of time trying to get press coverage on 15 all sort of things, yes, and this was one of them. It 16 wasn't --</p> <p>17 Q. Then the consultation period for the government's 18 consultation paper on imprisonment was actually closing 19 on 30 October, wasn't it?</p> <p>20 A. Um ...</p> <p>21 Q. On the Monday?</p> <p>22 A. I forget the exact date but that sounds about right, 23 about three or four months after it started.</p> <p>24 Q. So when the Sunday Times wrote a leader on the Sunday 25 upon the desirability or undesirability of imprisonment</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 for breaches of the Data Protection Act, it was actually</p> <p>2 writing it the day before the end of the consultation</p> <p>3 period on exactly that subject?</p> <p>4 A. Yes.</p> <p>5 Q. That seems quite an opportune moment to write such an</p> <p>6 editorial, hadn't it?</p> <p>7 A. Except there hadn't been much about our report in the</p> <p>8 previous three or four weeks. I'm not going any further</p> <p>9 than I set out in my witness statement. It appears I'm</p> <p>10 even wrong to raise questions but I did, in my mind at</p> <p>11 the time, and until I saw the witness statement on</p> <p>12 Tuesday of this week, when they deny any sort of</p> <p>13 direction from Mr Hinton, I thought there was</p> <p>14 a connection. And virtually everybody I've talked to</p> <p>15 says, "Gosh, that does look rather strange, doesn't it?"</p> <p>16 But we've now seen what your witnesses have said and</p> <p>17 I in no way wish to challenge that.</p> <p>18 Q. Thank you.</p> <p>19 The other point which would have had a resonance for</p> <p>20 Mr Witherow, who was the editor of the Sunday Times, was</p> <p>21 that Lord Levy was back in the news on the front page</p> <p>22 that Sunday, and it was Lord Levy about whose affairs</p> <p>23 he'd been invited to an interview by your office three</p> <p>24 years earlier. So it's not -- there were very, very</p> <p>25 good reasons why he might have chosen to publish that</p> <p style="text-align: center;">Page 85</p>	<p>1 misconduct, that's what I had in mind and that's what</p> <p>2 I shared with him.</p> <p>3 Q. I just wanted to be clear about this. The knowledge you</p> <p>4 were attributing to Mr Hinton is what was to be found in</p> <p>5 your first report, which had been published five months</p> <p>6 earlier, and what you had been saying at other meetings</p> <p>7 and were repeating again at that meeting with him?</p> <p>8 A. Yes, and I use this example because I think my witness</p> <p>9 statement said that throughout many meetings and</p> <p>10 discussions, nobody seriously challenged the thrust of</p> <p>11 what we were saying, and indeed some went further. If</p> <p>12 you look at paragraph 33 of my statement, I say the</p> <p>13 general lines surfacing in many conversations was to</p> <p>14 accept that some journalists did these things and to</p> <p>15 indicate that we had uncovered details of what everyone</p> <p>16 knew was going on, and then going on to talk about</p> <p>17 cleaning up our act, et cetera.</p> <p>18 So this was generally what I was talking about by</p> <p>19 "misconduct", and from my recollection of that meeting</p> <p>20 and from the notes that I've made and shared with you,</p> <p>21 that was the sort of matter which Mr Hinton appeared to</p> <p>22 accept, and that's my contemporaneous note:</p> <p>23 "Accept what you say. Something radical will</p> <p>24 happen."</p> <p>25 Presumably something radical because he recognised</p> <p style="text-align: center;">Page 87</p>
<p>1 editorial on that Sunday, quite apart from your meeting</p> <p>2 with Mr Hinton?</p> <p>3 A. Yes.</p> <p>4 Q. The other point you make about this meeting at</p> <p>5 paragraph 35 of your first statement is that you refer</p> <p>6 to your manuscript note and you say that "that confirms</p> <p>7 knowledge of misconduct at the highest level". Now,</p> <p>8 "the highest level" is a reference to Mr Hinton,</p> <p>9 presumably?</p> <p>10 A. Yes.</p> <p>11 Q. I'm not quite sure what you mean by "knowledge of</p> <p>12 misconduct".</p> <p>13 A. Well, what I meant was the sort of activity which had</p> <p>14 been documented in our first report, which had been</p> <p>15 published some five months previously, and what I had</p> <p>16 meant was that this produced the prima facie hard</p> <p>17 evidence at the very least that tabloid journalists were</p> <p>18 significant customers of private investigators who were</p> <p>19 breaking the law to obtain information.</p> <p>20 Q. So essentially --</p> <p>21 A. And that's the sort of material which I -- which was</p> <p>22 documented in our report of 2006. It's the sort of</p> <p>23 material which I was engaged in many meetings throughout</p> <p>24 this period with many people, and I wasn't going through</p> <p>25 chapter and verse, but the -- when I talk about the</p> <p style="text-align: center;">Page 86</p>	<p>1 that things weren't right.</p> <p>2 Q. I'm not going so go into the full note of the meeting,</p> <p>3 but we see again in that note and in fact in your</p> <p>4 manuscript note that the industry was opposed to prison</p> <p>5 sentences for breach of section 55?</p> <p>6 A. Yes.</p> <p>7 Q. That was not a view which was confined to</p> <p>8 News International or indeed Associated Newspapers,</p> <p>9 was it? It was universal?</p> <p>10 A. Certainly across media organisations. I only had</p> <p>11 dealings directly with News International and</p> <p>12 Associated Newspapers, and that was only later, as I've</p> <p>13 explained. Otherwise, most of my contacts were with the</p> <p>14 various representative organisations.</p> <p>15 I refer in my evidence to a bill ordering range, and</p> <p>16 that was one of the problems we had. We didn't quite</p> <p>17 know who to talk to. I have a list of the various</p> <p>18 bodies apart from the Press Complaints Commission: the</p> <p>19 Editors' Committee, the Society of Editors, the</p> <p>20 Newspaper Society, the Newspaper Proprietors</p> <p>21 Association. And we didn't quite know -- I didn't quite</p> <p>22 know who we should be talking to.</p> <p>23 Q. I'm not going to venture into that, but the point is</p> <p>24 that the press, including the Guardian, to take one</p> <p>25 extreme end of the press, was united on that?</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 A. No. I think you'll find the Guardian was a great deal 2 more broadly sympathetic. I'm not sure "supportive" 3 would be the word to use, but I think they recognised -- 4 perhaps I'm wrong in that -- 5 Q. We have their response. If go to tab 29, I think it's 6 towards the back. Yes, page 475. 7 A. Oh yes. 8 Q. "Guardian News and Media takes a different view on some 9 of the issues. Nevertheless, it unreservedly supports 10 the Newspaper Publishers Association's opposition to 11 custodial sentences for journalists who are found by 12 a court to have breached Section 55." 13 A. Thank you. I was simply reflecting that I was aware the 14 Guardian were taking a somewhat different line from 15 everybody else. I couldn't recall the exact detail of 16 all that. I was also aware that the editor of the 17 Guardian, Alan Rusbridger, was voicing a dissenting line 18 when the code changes were made at some later stage and 19 he wanted more prominence to be given to third parties, 20 investigators and so on. But what you're doing here is 21 saying that the Guardian was on a different take but 22 I was wrong to say that they were supportive of 23 a stronger sanction. 24 Q. And that argument that imprisonment was an inappropriate 25 sanction for breach of Section 55 coming from the press Page 89</p>	<p>1 I understood where it was coming from. 2 Q. So essentially what was going on in this campaign was 3 that as you acknowledge, both sides had an argument to 4 make and they both made it very vigorously? 5 A. Yes, yes, yes. 6 Q. The press were, of course, quite entitled to oppose the 7 proposals which you were putting forward? 8 A. Yes, but -- I don't want to keep on saying this, but my 9 response all the time was: this has been the criminal 10 law since 1994, we're not changing anything in the 11 substance of the law, and if you believe you're acting 12 in the public interest, you have nothing to worry about. 13 Q. Well, yes. Of course, the difficulty about that is that 14 opinions about the public interest can vary -- 15 A. Which is why I was quite ready to go along with the idea 16 of widening the defence. 17 Q. We've seen some of that today, haven't we, because you 18 have said that to obtain the telephone number of 19 a minister who has just resigned in order to get 20 a comment from him as to the circumstances of his 21 resignation might -- but you're not sure, I think -- be 22 in the public interest? 23 A. No, I was speculating if I use the word "might", because 24 I was taking a -- not a hypothetical case, but taking 25 a case where I didn't know the full facts, and in that Page 91</p>
<p>1 was an entirely cogent and respectable argument to make, 2 was it not? 3 A. Oh, I've never disputed it. I can see the force of 4 their argument. If I was in their shoes, I would make 5 the same argument. I disagreed with it, but it was 6 a respectable argument. I thought they took it too far. 7 I thought they addressed far too much in terms of 8 investigative journalism, but obviously nobody wants to 9 be regulated more than they have to be, and I'm not 10 surprised therefore that the Guardian, which probably 11 does carry out more genuine investigative journalism in 12 the public interest than perhaps some of the other 13 papers, wanted to have as much freedom as possible. 14 Q. There was also, as I think you know, a legal argument 15 that it would in fact amount to a breach of Article 10 16 to introduce a prison sentence which might apply to 17 journalists. 18 A. Is this the opinion from -- 19 Q. It's Mr White. 20 A. Yes, and that was the one which surfaced at the -- 21 I think the first meeting I had with the minister. 22 I think Mr White actually was at the same meeting and 23 tabled and left that opinion with -- so I recognised the 24 argument. I thought, with the greatest respect, that it 25 was a good argument taken a bit too far, but Page 90</p>	<p>1 situation, I can see the argument, as I could see the 2 argument with the GP I mentioned, but when you are 3 a regulator you look at all the evidence and decide 4 whether to go forward or not. Likewise, if you're 5 a journalist and if you're in doubt, you seek advice 6 before using or receiving information which may or must 7 have come without the consent of the data controller. 8 Q. I want to go on to the publication of "What price 9 privacy now?" You have mentioned that the numbers in 10 the famous league table, as it originally appeared, were 11 wrong in relation to the Sunday Times and indeed 12 consequentially the News of the World, I think. 13 Mr Caseby, who was the managing director of the 14 Sunday Times, wrote to you about that. His letter is at 15 tab 32, I think. 16 A. Yes. 17 Q. Just let me catch up. He starts that letter off by 18 saying that he spoke yesterday with your colleague -- 19 that was the day of publication -- and you may not know 20 this, but of course the first question he asked was: 21 "Where did you get your figures from? Can I see them?" 22 He makes that point over the page at paragraph 3, 23 because he says, "I don't know, because you haven't 24 provided the information necessary to allow the 25 Sunday Times to defend itself." Page 92</p>

23 (Pages 89 to 92)

<p>1 And so on. So he's complaining vociferously, 2 I think one could reasonably say, that you have made 3 allegations against the Sunday Times and not provided 4 the information so they can examine them. 5 A. He also knew, by the way -- and that's in that letter on 6 the second page -- he knew the names of the four people 7 who had been prosecuted in Blackfriars, although the 8 case had not achieved any significant publicity at all 9 and he knew the names of the celebrity victims who were 10 mentioned in court. So to my mind, that said straight 11 away that people at the top of the newspaper industry 12 knew a great deal about what had been going on. So the 13 names are mentioned in paragraph 2 of this letter. 14 Q. Yes, indeed. 15 A. I just mention that in passing. So that again shows 16 that we were having an impact. People were aware of 17 what was going on. 18 Q. Well -- 19 A. You're quite right to say that we did not consult him in 20 advance of the league table -- publication of the league 21 table. 22 Q. Then your reply is at tab 34. 23 A. Yes. 24 Q. On the second page of that, in paragraph 3, you make it 25 quite clear that you're not going to provide the</p> <p style="text-align: center;">Page 93</p>	<p>1 difficult, but Section 59 was taken incredibly seriously 2 inside my office. We had cabinet papers. We had some 3 highly sensitive stuff. We were absolutely focused all 4 the time that nothing should leave the office which 5 should not leave the office. 6 It's a criminal offence for the Commissioner or 7 a member of the Commissioner's staff to break 8 Section 59, so we took it incredibly seriously, and 9 that's the reason why we felt unable to share the 10 details with Mr Caseby of exactly who the journalists 11 were. 12 Q. And that remained your position throughout your tenure 13 as Commissioner? 14 A. Indeed. 15 Q. I know that my successor has now given, I think, your 16 clients and Associated Newspapers access to the papers 17 and he also gave the chairman of the Select Committee 18 some access, and I can understand how he reached that 19 conclusion, because the Section 59 does allow that in -- 20 again, back to our public interest terms. But the 21 advice I was receiving throughout was that that had to 22 be kept sacrosanct. 23 Q. So that -- 24 A. There's no disagreement. Time moves on and that's his 25 judgment now.</p> <p style="text-align: center;">Page 95</p>
<p>1 identities of individual journalists or details of the 2 transactions. 3 A. And the reason for that was section -- we haven't talked 4 about this today, I'm afraid, but section 59 of the Data 5 Protection Act. 6 Q. If that -- 7 A. If I just say straight away, because this is important, 8 when we published the report -- the second report, we 9 had a lot of debate inside the office as to whether we 10 could even name the newspapers, and in the end the 11 advice I received was that given it's a statutory 12 function to lay a report before Parliament, given the 13 wording of section 59, it would be safe -- not cut and 14 dry, but they thought it would be safe to identify the 15 newspapers concerned but categorically not safe to 16 identify the journalists, and even today in this 17 Inquiry, I'm told that the names are the journalists are 18 not being bandied around. 19 For that reason, in my exchange with Mr Caseby and 20 my exchanges with the Select Committee, with my 21 exchanges with other people, the Press Complaints 22 Commission and so on -- throughout this, I would say, 23 "I'm very sorry, I'm not permitted to share the details 24 of what we obtained under search warrant powers." 25 I regretted that. I felt it was uncomfortable and</p> <p style="text-align: center;">Page 94</p>	<p>1 Q. Then you go on in that letter to apologise for the error 2 in the figures. 3 A. Yes. There was one -- I mean, let me say straight away 4 that we spent nearly a month going back on the figures. 5 We had an investigator who was a scrupulous person who 6 looked at it very closely indeed, and he discovered 7 there had been one error. It appeared to have arisen 8 from the original inputting, which Mr Owens had 9 contracted out to the company which inputted the data 10 into the database. And we put our hands up straight 11 away and said, "That's the only mistake we've found. We 12 apologise." Unqualified apology, and we put out the 13 correction to everybody who received the report. 14 I was very distressed at that. It was unfortunate, 15 to put it at its lowest. The investigator concerned, 16 his boss came to me and said that he'd been mortified 17 that it got through. But there it was; it was a mistake 18 and we apologised to your client. 19 Q. You will appreciate from the Sunday Times' point of view 20 it's not a terribly happy situation about the basis of 21 the numbers and, secondly, the numbers had turned out to 22 be badly wrong. 23 A. Well, we corrected them and we wrote to Mr Caseby, 24 I wrote to him personally, and I didn't receive any 25 further correspondence from him.</p> <p style="text-align: center;">Page 96</p>

<p>1 Q. I'm not going to spend any time on figures, Mr Thomas, 2 but can I just ask you this question: the total number 3 of transactions in the league table in "What price 4 privacy now?" we all know was 3,757, and in the draft 5 letter we have to Mr Ashcroft under the -- sorry, Lord 6 Ashcroft under the Freedom of Information Act, the total 7 number of definitely illicit, I think is the tag, 8 transactions is over 5,000. Are you able to explain any 9 connection or relation between those?</p> <p>10 A. No, I can't. I wasn't involved in the direct 11 compilation of this table. I know the figures don't 12 completely match together. I've done my best to explain 13 in my witness statements what I think was happening 14 there, but I think I've said several times, you know, if 15 this is important to the Inquiry to narrow down 16 precisely the numbers, then I would invite the Inquiry 17 to ask the current Commissioner to share all the 18 material with you.</p> <p>19 I am aware that this Inquiry has had the database 20 from Mr Owens, and I have to say that I am 21 extraordinarily surprised that he held that database. 22 I don't know the circumstances, I've read his statement, 23 but I understand the current Commissioner is ready and 24 willing to share the data with this Inquiry, and it 25 would seem to me that is the correct course.</p> <p style="text-align: center;">Page 97</p>	<p>1 law might perhaps be going too far?</p> <p>2 A. Well, first of all I would say it has been the law since 3 1994. It is not my job as was the regulator to question 4 whether that's right or not, but I have to say 5 instinctively it seems entirely right to me. If 6 somebody bribes somebody inside a telephone company to 7 get information out, that seems to me deplorable, and 8 that's the lower end of the scale. We're talking also 9 about health records, criminal records, tax records and 10 so on.</p> <p>11 Q. I --</p> <p>12 A. You're talking purely --</p> <p>13 Q. (overspeaking) strictly to address telephone numbers?</p> <p>14 A. I say at the very least, just to put it at its lowest, 15 this Inquiry's looking at ethical practices. At the 16 very lowest, it seems to me that a journalist who is 17 regularly using a private investigator, paying quite 18 large sums of money for information which, at its 19 lowest, prima facie was not obtained through legitimate 20 means, that raises a serious ethical question.</p> <p>21 Q. But you consider, do you, that it should be possible for 22 somebody to make it almost impossible to find out where 23 they live and what their telephone --</p> <p>24 A. No, I think there's a non sequitur in the point you're 25 making. There are various ways in which people can be</p> <p style="text-align: center;">Page 99</p>
<p>1 Q. It's with that in mind, partly, that I'm not going to 2 ask you anything else about the figures.</p> <p>3 A point that is picked up in the press articles 4 we've referred to, but in the interests of time we've 5 not gone to, is the issue of addresses and telephone 6 numbers, and as has been pointed out a number of times, 7 much of a journalist's job consists of talking to people 8 in person or by telephone; you accept that?</p> <p>9 A. Yes.</p> <p>10 Q. And you can't do that if you can't find out where the 11 person lives or what their phone number is.</p> <p>12 A. But you can't steal their number.</p> <p>13 Q. Well, unless there's --</p> <p>14 A. Or have it stolen.</p> <p>15 Q. The question is whether the line is in the right place, 16 and I just wanted to ask you about that. In the case of 17 the state, the police force and various other 18 manifestations of the state, they have a huge panoply of 19 powers to obtain information.</p> <p>20 A. Mm.</p> <p>21 Q. The journalist, as Mr Leigh pointed out the other day, 22 doesn't have any powers to obtain information; all he 23 can do is ask. Do you think that in potentially 24 criminalising the obtaining of basic information as to 25 where somebody lives and what their phone number is, the</p> <p style="text-align: center;">Page 98</p>	<p>1 talked to, but people are entitled to a private life. 2 That's what data protection is all about. If I choose 3 to make my number ex-directory, it's not, as has been 4 suggested, to prevent marketing calls. You put your 5 name, your phone number on the telephone preference 6 service and that excludes marketing calls. It's because 7 you don't want the world at large to know your telephone 8 number. That's why mobile phone numbers by and large 9 are not in directories and so on. People are entitled 10 to their privacy. And to have an organisation like 11 British Telecom being penetrated, and they were the 12 victims as much as anybody else, seems to me entirely 13 wrong.</p> <p>14 Q. I'm not aware of the facts of that, Mr Thomas, so we 15 can't go into --</p> <p>16 A. Well, it was in our report.</p> <p>17 Q. But there is a tension, isn't there, between people 18 wanting to keep their numbers private and other people, 19 journalists, who want to talk to them?</p> <p>20 A. I wouldn't put it as high as a tension. Clearly some 21 people want things which intrude into private life, and 22 if I choose to keep my telephone number private, if 23 I choose to keep my tax records private and bank records 24 private, if I choose to give them to you or share them 25 with you, fair enough. But the whole point of privacy,</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 article 8 in human rights terms, data protection, is 2 that people are entitled to have their personal data 3 kept confidential by the organisation which holds it, 4 and they have the right to choose who has the 5 information. So I am resisting, I'm afraid, what you're 6 saying. If you're saying just because a journalist 7 wants to talk to somebody they should be entitled to 8 breach that level of privacy, I don't agree.</p> <p>9 Q. You've touched on earlier today the question raised by 10 the News International evidence of databases of 11 ex-directory numbers. There was mention of a number of 12 48 million. Can I just ask you to look at the paperwork 13 on that. I think you have the statement of PS 14 Armour(?), who is the editorial legal director at Times 15 Newspapers. I don't know how you have it, but if you 16 can go to exhibit 5 to that statement --</p> <p>17 A. Is that PS5?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. There is there some material from an organisation called 21 GB Group, and if you go three pages into the exhibit, 22 there is what's really an article heading, "Blow to UK 23 liquidity as ex-directory figure hits 58 per cent"?</p> <p>24 A. Can I say, I only had these papers on Tuesday. I've had 25 a very busy week before now. I've not looked at these</p> <p style="text-align: center;">Page 101</p>	<p>1 database of every ex-directory number and mobile phone 2 directories, I was really quite shocked by this. Your 3 clients have done a great service to bring this to the 4 surface, and I'm sure my successor will want to look at 5 this very closely.</p> <p>6 Q. It's not difficult to find, I can sure you, Mr Thomas.</p> <p>7 A. Well --</p> <p>8 LORD JUSTICE LEVESON: But if it's right, Mr Rhodri Davies 9 presumably there is no need even to think about unlawful 10 mechanisms to get telephone numbers in the future,.</p> <p>11 A. Nor to pay £65, £70 to do it.</p> <p>12 LORD JUSTICE LEVESON: We're not both arguing with him!</p> <p>13 A. Sorry.</p> <p>14 MR DAVIES: If I put the figures straight first, I think 15 what this is saying is that they -- well, it is saying 16 they have a database of about 50 million numbers and 17 I think if one translates the paragraph underneath that, 18 what you come out to is that about 10 million of them 19 are ex-directory. So we're not actually talking about 20 48 million ex-directory numbers. They have a competitor 21 which has much the same.</p> <p>22 The source of these numbers, fairly clearly, 23 Mr Thomas, is I think something you referred to this 24 morning. They are numbered which people have given out 25 to websites, questionnaires, organisations they had</p> <p style="text-align: center;">Page 103</p>
<p>1 in detail at all.</p> <p>2 Q. No.</p> <p>3 A. But I generally got the impression that here's a company 4 claiming to have lots of ex-directory numbers and that 5 surprised me.</p> <p>6 Q. That is exactly what they're doing. They make the point 7 that ex-directory numbers are now as high as 58 per cent 8 and, because they're running a commercial service, they 9 make the point that this makes it terribly difficult for 10 creditors to track down their debtors.</p> <p>11 Three paragraphs from the bottom of that page, you 12 see the wonderfully named: 13 "GP Accelerator e-Trace V4 delves into the largest 14 pool of landline and mobile telephone numbers available, 15 sourced from a range of previously unavailable 16 datasources and following close consultation with the 17 Information Commissioners Office."</p> <p>18 A. Well, I saw somewhere else a reference to 19 "consultation". I mean, this means nothing to me. Lots 20 of organisations make this sort of claim. If I was 21 Commissioner right now, I'd be wanting to look into this 22 in a great deal more detail.</p> <p>23 Q. Yes.</p> <p>24 A. Frankly, this quite shocked me. I only glanced through 25 this, but when they're claiming to have a virtual</p> <p style="text-align: center;">Page 102</p>	<p>1 dealings with or contract with in which they have not 2 stipulated that the number must be kept private.</p> <p>3 A. You're drawing me and I was drawn this morning to 4 speculate. I don't know about this. I think these are 5 questions, frankly, for the current Commissioner. If 6 he's going to be called later, I am sure he can brief 7 himself before he comes here and give you some answers, 8 but I don't think it's for me now to comment on this.</p> <p>9 Q. I'm sorry, this is on numbers. Mr Jay touched on the 10 point this morning that in the whole database, and 11 I haven't done this exercise, there are only about 12 300 -- I think he said 300 or a few hundred -- what one 13 might call hard cases: criminal records checks, DVLA, 14 friends and family, that sort of extreme end of the 15 spectrum of what ought to be secure information. The 16 rest of it therefore is almost entirely names and 17 addresss and the yet more innocuous stuff.</p> <p>18 A. No, I'm sorry, you keep saying innocuous, but I have to 19 strongly disagree with that. If information has been 20 obtained in the sorts of ways that Mr Whittamore was 21 using from a data controller without the consent, that 22 is a criminal matter.</p> <p>23 I'd also say it's an ethical issue, and to simply 24 say because addresses and phone numbers are innocuous, 25 that doesn't stand up. We gave examples in our report</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 of battered women who were escaping their husbands and 2 took enormous lengths to suppress their current address. 3 Many people do not want their telephone number or mobile 4 phone number bandied around. So just to say an address 5 is innocuous or a mobile phone number is innocuous 6 I don't think stands up. If that had only been obtained 7 by bribery or by blagging or by deception, then I do not 8 think that's acceptable. 9 Q. I actually said "yet more innocuous" -- 10 A. You can put these on a scale, of course you can. I can 11 understand that. 12 Q. Yes. 13 A. And you could say that criminal records and tax records 14 are at one end of the scale and addresses at 15 ex-directory phone numbers are at the other end of the 16 scale. 17 The point I want to press very firmly indeed is if 18 they have been obtained illegally from inside British 19 Telecom or any other phone company or likewise, then 20 that does not stop it being a criminal matter, nor 21 should it, in my mind. 22 Q. In that respect -- 23 A. Don't forget, the British Telecoms were amongst the 24 strongest organisations saying to us, "We want to work 25 with you to stop this sort of activity." They knew they</p> <p style="text-align: center;">Page 105</p>	<p>1 defence could be mounted. 2 Q. Yes. 3 A. But I have to say yet again, that was not typical, 4 nothing like typical of the cases that we were seeing. 5 And although you made the point that the majority of the 6 cases were, in your language, only addresses or phone 7 numbers, I would also say the vast majority were nothing 8 to do with public interest considerations along the 9 lines I've just mentioned. 10 Q. Just so we agree on the analysis, I think this is right, 11 it is as you say a balancing act, and you're looking at 12 the one side the strength of the privacy interest, which 13 varies between addresses and medical records, and on the 14 other side the strength of the public interest in 15 obtaining the information. 16 A. I wouldn't want to finalise that as analysis, but it's 17 along those lines, yes. 18 Q. Finally you tell us at paragraph 42 of your first 19 statement, and you've said this again today, that your 20 goal was to stamp out press misconduct for the future 21 and that was a goal which you had set upon in 2006 or 22 thereabouts? 23 A. Sorry, could you -- 24 Q. It's paragraph -- 25 A. My goal was to stamp out the market. I don't know that</p> <p style="text-align: center;">Page 107</p>
<p>1 were exposed. 2 Section 55 is cast in terms of a data controller is 3 the victim of the crime. The individual is obviously 4 also a victim, but they were the ones, and also DWP, 5 HMRC, the tax people, we had protocols with them. 6 They're saying, "We are vulnerable. We want this to be 7 stopped." So you cannot say it's just an address, it's 8 just a phone number, therefore it's innocuous. 9 Q. The point -- and I'm not going to take time on it -- but 10 it is a good deal easier, isn't it, to find 11 a justification which could reach a public interest 12 justification for getting the basic information to get 13 hold of someone, things such as an address and 14 a telephone number; justifying getting someone's medical 15 records is an altogether different -- 16 A. I said earlier in one of Mr Jay's questions that when 17 you start to look at the public interest test, you look 18 at public interest justification, but it's also 19 a balancing proportionality aspect there. 20 Q. Absolutely. 21 A. And that's why I speculated that the case of the 22 minister resigning over a weekend and just getting his 23 number, although prima facie that may have fallen within 24 the section, that might well have been a case we'd say 25 we wouldn't take any further because probably a good</p> <p style="text-align: center;">Page 106</p>	<p>1 I -- that was talking to the Press Complaints 2 Commission. My wider goal was focused on the market as 3 a whole. 4 Q. Yes, sorry. 5 A. But my goal with the PCC, yes. 6 Q. I'm afraid I am focused on the press. So far as the 7 press was concerned, you wanted the press to clean up 8 its act? 9 A. Yes. 10 Q. For the future? 11 A. Yes. 12 Q. And that is in fact what you got? 13 A. Apparently. I may have stuck my neck out by saying that 14 anecdotally it appears to have been cleaned up, but just 15 let me quote from the current Commissioner going to the 16 Justice Committee in October. He said: 17 "My great concern about Section 55 is not very much 18 to do with the press, but there's lots and lots of 19 evidence of Section 55 being breached on a quite routine 20 basis and it's now mainly about financial service, debt 21 collection, claims management companies and also some 22 quite worrying interference with the course of justice, 23 perhaps attempted jury nobbling or witness tampering, 24 that's the real issue." 25 So he is saying, and he's in the driving seat now,</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 that it appears that the press are not heavily engaged 2 in this activity, and I am -- that was certainly my 3 impression also in the last couple of years of my 4 tenure. 5 MR DAVIES: Thank you very much, Mr Thomas. I have no more 6 questions. 7 LORD JUSTICE LEVESON: Thank you. 8 MR CAPLAN: Sir, I hope just five minutes, or I'll be very 9 unpopular. 10 LORD JUSTICE LEVESON: Certainly. Well, don't worry about 11 your popularity. Too much. 12 Just a moment, Mr Caplan. We're going to have a 13 minutes before we do it. 14 (4.35 pm) 15 (A short break) 16 (4.37 pm) 17 LORD JUSTICE LEVESON: Yes, Mr Caplan. 18 Questions from MR CAPLAN 19 MR CAPLAN: This morning you were asked a good deal about 20 what you had not done. I want to ask about what you did 21 do and what the result was. 22 Firstly, please, you told us that your concerns were 23 not just about improper access to personal data by 24 journalists but by others in society as well; is that 25 right?</p> <p style="text-align: center;">Page 109</p>	<p>1 tax and all that was stopped as soon as our report was 2 published. 3 Q. You were keen, were you not, obviously as Commissioner, 4 to promote a better understanding about data protection 5 and to change working methods and attitudes. That was 6 your principle goal? 7 A. Yes. There's quite a big question there. When 8 I started, data protection had quite a poor reputation. 9 It was seen as a bit nerdy, not taken very seriously 10 across many organisations. I think my office probably 11 had some responsibility. I used to say that, you know, 12 we were seen outside as the temple of data protection 13 and being the high priests of data protection, and 14 I wanted to destroy that sort of approach, and therefore 15 I was trying to make us much less esoteric, much more 16 avoiding the technical language. I mean, a data subject 17 is a man, a woman, a child, not a data subject. 18 So I took a much more practical down to earth 19 approach. Our slogan was that we are here to help 20 organisations who want to get it right, but we'll be 21 tough on those organisations which don't want to get it 22 right, and I think I started, quite soon after I became 23 Commissioner, in our speeches, our strategies, annual 24 reports and so on, to say: this is going to be the new 25 approach to data protection.</p> <p style="text-align: center;">Page 111</p>
<p>1 A. Indeed. 2 Q. Would they include solicitors' firms? 3 A. There were some examples of law firms, particularly in 4 the matrimonial area. Indeed, I had a letter from 5 a Court of Appeal judge saying that he was starting to 6 ask questions where evidence was coming in to cases 7 where prima facie it had come, for example, from a bank 8 account, which shouldn't have come, and saying unless 9 the parties could demonstrate they received the 10 information lawfully, he wasn't prepared to allow it to 11 be admitted into evidence. 12 Q. Banks? 13 A. Mainly finance houses, but they were often subsidiaries 14 of banks. 15 Q. Insurance companies? 16 A. Yes. There's an example of an insurance company in our 17 report, which I needn't go into detail now, but a quite 18 shocking example of where somebody's mother -- 19 85-year-old mother was telephoned by a blagger and was 20 impersonating a tax official saying that her son was 21 entitled to a tax refund. That was taped and the BBC 22 broadcast that example. 23 Q. One other example: local authorities? 24 A. Yes, we came across some examples of local authorities 25 who were using this sort of activity to chase up council</p> <p style="text-align: center;">Page 110</p>	<p>1 Q. But again, taking things fairly shortly after the length 2 of time you've been giving evidence and at this time of 3 the day, summarising, you must have been fairly pleased, 4 were you not, with the response of the press to your 5 attempts to promote a change in working methods and 6 attitudes? 7 A. Well, we're not going to go over all the same ground 8 today clearly. 9 Q. No, I don't want to. 10 A. But it seemed a tough fight at the time and it didn't 11 seem we were making very much progress. But I suppose 12 my meeting with Mr Dacre, which I mentioned earlier -- 13 Q. Yes. 14 A. He was very, very forthright on that occasion. I give 15 him credit to that and he said, "You've really told us 16 things we didn't know about before. We're now really 17 cleaning up our act." 18 Q. Yes, and in 2006, you published two reports and you 19 yourself have told this Inquiry in your statement that 20 since 2006, until you left the office in 2009, you 21 really had few or no complaints, I think, regarding the 22 press; is that right? 23 A. I think that's broadly right. There may be one or two, 24 but not many. 25 Although I have to say if I can say now, your</p> <p style="text-align: center;">Page 112</p>

<p>1 clients' witness statement said they were still using 2 Mr Whittamore in 2007. That really surprised me. It 3 may have been a mistake but I hope it was a mistake. 4 Q. Deal with the evidence in a minute. I'm going to come 5 to what happened with Associated. 6 But as far as you understand it -- and we'll hear 7 from Mr Graham, you've mentioned the evidence he gave to 8 one committee -- there's relatively little cause for 9 complaint about the press since he's taken office in 10 2009? 11 A. That's right, and that's why I would love the press to 12 say now: "Let's bring the stronger sanction into effect 13 right now." If the Daily Mail were to write an 14 editorial next week saying, "All this outrageous 15 activity going on, we need a tougher approach", 16 I suspect the government would move within about three 17 weeks. And it would be wonderful to have the press -- 18 if we hadn't mentioned the press in our reports, we 19 might have achieved our objective rather sooner. 20 Q. Yes, but -- 21 A. That may have been a big mistake on our part, to have 22 included the press. If we had just focused on all the 23 other activity and said that people are being damaged by 24 this activity, I suspect we would have had our law 25 passed in 2008 without any difficulty and it would be</p> <p style="text-align: center;">Page 113</p>	<p>1 Q. One other thing which you might hope to see, I suppose, 2 in an organisation, is to introduce into new contracts 3 of employment a provision that the employee cannot 4 breach or must not breach the Data Protection Act, as 5 one way of enforcing it? 6 A. Yeah. 7 Q. And to send letters to existing staff notifying them of 8 the importance of adhering to the Data Protection Act 9 and requiring them to sign it to confirm their 10 understanding of the letter. Those are the kind of 11 steps you'd expect to see; is that right? 12 A. Yes. I mean that's all very welcome news. 13 Q. Did you know that those were steps that were taken by 14 Associated Newspapers? 15 A. Well, I mentioned the meeting I had with him after the 16 battle had finished, as it were, in June 2008, and he 17 shared that sort of approach with me, and his speech at 18 the end of 2008 at Bristol said the same sort of thing 19 and I really did genuinely think there they are cleaning 20 up their act. 21 Q. Yes, he said to the Society of Editors that the industry 22 had been warned. 23 A. Yes. It had taken quite a long time, it had been a bit 24 begrudging and a battle, but I did feel at the end of 25 the day we had been vindicated in our approach.</p> <p style="text-align: center;">Page 115</p>
<p>1 wonderful if your clients would support such a campaign 2 right now. 3 Q. Well, I'm sure they hear what you say. The fact of the 4 matter is you've already, I think, agreed that there can 5 be a principled approach on both sides of the 6 argument -- 7 A. Yes. 8 Q. -- in relation to imprisoning journalists for preaches 9 of data protection. 10 The fact of the matter I want to focus on, please, 11 is this: what actually happened after the publication of 12 reports. I represent, as you know, 13 Associated Newspapers. You do know, don't you, that 14 from 2007 Mr Dacre banned the use of private 15 investigators by anybody working for 16 Associated Newspapers? 17 A. I don't know the exact dates, but when I met him in 18 2008, he told me he had taken quite a few steps in his 19 own group and he understood elsewhere and that sort of 20 training, changing contracts for editors and journalist 21 he is, and so he was giving me the aggression then that 22 quite serious steps had been taken to stop this. 23 I can't recall being told specifically a ban on 24 investigators, but I think that's come up in the 25 documentation.</p> <p style="text-align: center;">Page 114</p>	<p>1 Q. Now, I heard what you said obviously in relation to the 2 Press Complaints Commission, but the fact of the matter 3 is that in 2007, it changed its code of practice to 4 include a provision requiring, as a rule of professional 5 conduct, compliance with personal data protection? 6 A. Well, I think the amendment was more that digital 7 information was included in the definition of stuff 8 which should not be accessed by subterfuge, and 9 I welcome that and there is a letter on record welcoming 10 that. 11 I still felt it was rather buried away. It wasn't 12 quite highlighted in the way I would like it to have 13 been, but I do accept that the code did finally include 14 something explicitly addressing this issue. 15 Q. Of course, Operation Motorman and Mr Whittamore's 16 activities and the information he was gathering between 17 the years 2000 and 2003 are almost ten years ago. But 18 would you agree with this: that the fact of the matter 19 is that since the publication of your report in 2006, 20 this is a story of the press generally responding very 21 well to your approaches for them to change attitudes and 22 practices? 23 A. Well, I don't want to put out a hostage to fortune 24 there. I'm not not engaged in these matters directly 25 now but I've noted and shared with you what the current</p> <p style="text-align: center;">Page 116</p>

<p>1 Commissioner has said. I hope that is the case. I hope 2 it lasts and becomes permanent. But we've had 3 last-chance saloons before and I can't be totally 4 confident it's going to prevail indefinitely. 5 Q. I'm not asking you to look forward. I am asking you to 6 look back. 7 A. But -- 8 Q. Whilst you were Commissioner from 2006 onwards after the 9 publication of your reports, what I said would be true, 10 wouldn't it? 11 A. Certainly by the time I retired in 2009, my impression 12 was that this was being taken a great deal more 13 seriously across all the press, and I welcome that and 14 the sort of steps you've mentioned I was being told were 15 put in place. I haven't checked, nor has my office, but 16 that is the encouraging signal. Whether that's 17 sufficient to eliminate the practice forever, I can't 18 tell you. 19 MR CAPLAN: Thank you very much. 20 A. Could I just raise this question, if I may, because 21 I was very concerned to see Mr Whittamore being used in 22 2007, two years after the trial. 23 LORD JUSTICE LEVESON: Well, that's a matter which we may 24 look at. 25 A. I raised it my statement. That's why --</p> <p style="text-align: center;">Page 117</p>	<p>1 I would be addressing this matter today, and I cannot 2 tell you how important it is to me that out of this 3 Inquiry, I have been accused of misleading Parliament, 4 a very serious and grave matter. I deny that entirely. 5 LORD JUSTICE LEVESON: Yes. You will appreciate, I think, 6 that I'm not entitled to enquire -- 7 A. I'm not asking any more at all. 8 LORD JUSTICE LEVESON: Thank you very much. Thank you 9 Right, I don't think we'll be very long. Mr Jay, 10 Monday? 11 MR JAY: Monday, yes, two matters. The first witness is 12 Mr Mazher Mahmood. The proposal which we have made and 13 which we think is appropriate in relation to his 14 evidence is that there should be no filming of it. It 15 follows that there will be no transmission onto the 16 simultaneous web feed or to the marquee. But there's no 17 reason we see why his evidence cannot be audio streamed. 18 However, the public and press should be excluded from 19 the Inquiry room whilst he gives his evidence. 20 We think Mr Mahmood may be asking for somewhat more, 21 but the protections which we have just proposed we 22 believe are entirely sufficient. 23 LORD JUSTICE LEVESON: Yes. Do you know about this, Mr 24 Rhod -- 25 SPEAKER: I know about this.</p> <p style="text-align: center;">Page 119</p>
<p>1 LORD JUSTICE LEVESON: You raised it. Mr Caplan will deal 2 with it to such extent as he feels is right. 3 A. Sorry. 4 LORD JUSTICE LEVESON: But I'm looking at a much broader 5 picture, as I'm sure you appreciate. 6 Thank you very much. Thank you, Mr Thomas, that's 7 a very long ordeal -- 8 A. Sir, there was one matter I was told I would have a 9 chance to -- I understood I had a chance to share with 10 you? 11 LORD JUSTICE LEVESON: What's that? 12 A. I was very, very concerned indeed at the reporting of 13 Monday's hearing in the Independent newspaper on Tuesday 14 of this week. It came very close indeed to accusing me 15 of misleading Parliament. It quoted the legal advice 16 which was revealed here on Monday, which was the 2003 17 advice, which said there may have been a case against 18 journalists, and the article in the Independent on 19 Tuesday said that this contradicted what I had told 20 Parliament. 21 When I went to Parliament, I was relying upon the 22 2005 advice, which has come out today, and I did want to 23 place on record my very strong concern indeed at the 24 misreporting of my position. I may have to pursue this 25 further, but I did alert the journalist yesterday that</p> <p style="text-align: center;">Page 118</p>	<p>1 LORD JUSTICE LEVESON: Yes? 2 SPEAKER: And the arrangements have been agreed between the 3 Inquiry team and ourselves. 4 LORD JUSTICE LEVESON: So you are content with what Mr Jay 5 just said? 6 SPEAKER: Yes, we don't want any filming and we don't want 7 any members of the public or press. We are content for 8 the core participants and lawyers to be here, as in 9 HJK's case. 10 LORD JUSTICE LEVESON: Yes, but it will also be audio. 11 SPEAKER: Yes, we're content. 12 LORD JUSTICE LEVESON: Thank you very much indeed. 13 MR JAY: Sir, there's one other point. Would you be 14 prepared to sit at 9.30 to deal with possible issues 15 which will pertain to the following day's evidence? 16 I will be prepared to sit at 9.30. It's just as well 17 it's not tomorrow, having sat a fair day today. 18 Thank you very much. I hope -- 19 MR GARNHAM: Can I delay you 30 seconds? 20 LORD JUSTICE LEVESON: That's all right. 21 MR GARNHAM: I want to draw your attention to the fact and 22 to ensure you have had sight of some written submissions 23 we have put in in relation to the evidence next week. I 24 also want to refer to them so that they're on the 25 record, so the fact that the submissions have been put</p> <p style="text-align: center;">Page 120</p>

1 to you by the MPS and the CPS is recorded on the
2 transcript. I don't want to develop them. They're
3 there to be read.
4 LORD JUSTICE LEVESON: Thank you very much indeed.
5 Right. Monday. Thank you.
6 (4.50 pm)
7 (The hearing adjourned until 9.30 am
8 on Monday, 12 December 2011)

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23
24
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Page 121

A	74:16 81:15 116:16	107:10 116:18	92:10 96:7	76:17 92:20	averse 36:11	behaviour 14:4
ability 66:4	activity 6:16	agreed 14:13	appearing 82:15	109:19	avoid 60:13	32:9 67:18
able 10:10 21:20	17:23 21:11,12	114:4 120:2	appears 24:3	asking 5:4 72:15	avoiding 111:16	belief 38:4 44:18
34:4 35:20	29:6 30:19	ahead 8:14 32:22	83:2 85:9	76:5 117:5,5	await 49:9	45:11 47:7
46:10 57:19	32:15 41:18,19	38:7 59:10	108:14 109:1	119:7,20	aware 20:16	71:21
97:8	42:16 48:20	aid 71:17	application	aspect 106:19	33:14 43:18	believe 14:11
abortion 42:7,9	50:13,15,18	Alan 89:17	14:17	assent 47:9	51:15 53:23	40:22 73:2
42:14	60:7 67:20	Aldhouse 26:2	applications	assert 57:19	56:6 79:3	91:11 119:22
absolutely 5:10	68:10 69:20	65:22 66:3	73:9	assertive 23:25	89:13,16 93:16	believed 19:23
9:4 13:15	86:13 105:25	Alec 76:12	apply 90:16	assessment	97:19 100:14	believes 21:21
26:25 32:7	109:2 110:25	alert 118:25	appreciate 15:21	24:23	awareness 21:5	believing 34:23
41:4 43:10	113:15,23,24	allegation 69:15	96:19 118:5	assistant 5:20	30:2 52:13,17	bell 65:25
54:11 55:24	actual 25:18	82:25	119:5	associated 62:5	62:18	bend 80:5
82:11,21 95:3	address 48:15	allegations 55:8	approach 2:3,10	69:25 88:8,12	awarenesses	beneficial 29:4
106:20	67:22 72:17,21	93:3	69:24 111:14	95:16 113:5	14:5	benefit 36:18
abuses 55:16	99:13 105:2,4	alleged 69:3	111:19,25	114:13,16		58:22
Accelerator	106:7,13	alleviate 38:25	113:15 114:5	115:14	B	best 17:10 19:13
102:13	addressed 90:7	allow 92:24	115:17,25	Association	B 32:17 33:20	47:1 97:12
accept 18:25	addresses 4:10	95:19 110:10	approached 1:9	88:21	44:5	better 17:25
51:6 54:7 57:4	98:5 104:24	alternate 44:11	79:4	associations 24:8	back 6:4,11,19	23:20 25:16
57:11 69:11	105:14 107:6	altogether 34:16	approaches	67:25	8:23 10:1 11:5	40:23 111:4
70:6 72:14	107:13	35:1 40:4	116:21	Association's	12:17 14:10	beyond 72:22
74:2 87:14,22	addressing 23:20	106:15	approaching	89:10	16:21 17:8	big 63:8 79:23
87:23 98:8	116:14 119:1	amendment 8:6	77:23	assume 67:14	18:4 19:7	111:7 113:21
116:13	address 104:17	8:12,17 9:19	appropriate	assured 40:21	23:13,15 29:4	bigger 43:2
acceptable 27:17	adhering 115:8	39:9 59:4	43:16 119:13	atmosphere 5:23	29:11 31:17	bill 32:17,24
69:19 105:8	adjoined 121:7	116:6	approval 14:3	6:9 7:9 9:25	34:2 35:2,23	33:2 34:15
accepted 36:13	admiration 62:1	amount 27:14	April 11:3 44:7	attached 18:15	38:21 41:1	37:9 39:16
37:18 41:10	admire 58:17	53:4 90:15	area 25:8 56:4	attained 47:2	48:1 53:25	43:23 45:14
accepting 54:2	admitted 110:11	amounts 36:24	64:20 67:9	attempt 51:7	73:23 78:3	57:23 88:15
60:12	adopt 8:2	analysis 107:10	110:4	attempted	85:21 89:6	bit 5:11 6:14
accepts 54:1	advance 69:15	107:16	areas 39:5	108:23	95:20 96:4	20:16 38:7
access 95:16,18	93:20	Andersons 41:13	arena 74:1	attempting	117:6	40:7 41:8
109:23	Advertising	anecdotally 61:3	arguably 21:13	75:24	background	64:17 84:12
accessed 116:8	20:10	108:14	arguing 46:3,9	attempts 112:5	21:1 77:6	90:25 111:9
account 66:25	advice 11:16,18	annex 29:21	63:13 103:12	attend 65:14	bad 9:1 32:9	115:23
67:7 110:8	18:11 23:10	32:17 33:20	argument 66:19	66:15 76:5,17	badly 96:22	Black 5:21 45:22
accused 119:3	68:7 78:12	44:5	66:25 67:4	78:1,4	balance 34:24	Blackfriars 69:6
accusing 118:14	92:5 94:11	annotation 22:17	89:24 90:1,4,5	attended 18:16	37:23 40:19	93:7
achieved 38:1	95:21 118:15	annual 15:16	90:6,14,24,25	41:17 44:7	67:9	blagger 110:19
93:8 113:19	118:17,22	111:23	91:3 92:1,2	attending 44:11	balancing 53:13	blagging 41:15
acknowledge	advisedly 71:25	answers 28:6	114:6	attention 11:22	106:19 107:11	73:3 105:7
91:3	affair 5:9	answers 104:7	arguments 56:18	27:11 37:13	ball 46:23	blandishments
act 4:11,13 11:17	affairs 30:15	Anthony 41:10	arisen 96:7	120:21	ban 114:23	59:14
11:24 14:6,17	46:22 65:16	anticipates 64:23	arm 3:17	attitudes 111:5	bandied 94:18	blind 29:9
15:22 20:12	77:16,21 85:22	anybody 10:6	Armour 101:14	112:6 116:21	105:4	Blow 101:22
21:20 27:6	afraid 10:11 48:3	42:12 43:22	arrangements	Attorney 3:12	bank 100:23	blue 15:22 16:17
29:10 47:9	66:10 77:10	73:23 100:12	22:24 120:2	attributed 3:7	110:7	57:9
53:12 59:4	94:4 101:5	114:15	arranging 52:1	attributing 87:4	banks 110:12,14	bodies 88:18
63:9 75:16	108:6	anyone's 10:10	arrest 83:16	audio 119:17	banned 114:14	body 62:1
85:1 87:17	afternoon 20:17	72:22	arrested 42:22	120:10	basic 98:24	bolster 19:14
94:5 97:6	35:20 49:19	apart 77:7 79:3	article 57:8 67:1	August 34:4	106:12	books 1:8 18:3
107:11 108:8	agenda 20:17	82:3 86:1	69:5 79:6	42:22 61:8	basically 22:24	boss 96:16
112:17 115:4,8	25:16 32:13	88:18	82:15 90:15	68:21 83:19	24:8 38:9	bottom 22:3,8
115:20	59:1	apologise 96:1	101:1,22	authorities	basis 70:3 96:20	38:3,15 61:8
acting 91:11	agents 27:11	96:12	118:18	110:23,24	108:20	62:10 102:11
action 4:24 5:8	aggression	apologised 96:18	articles 98:3	authority 14:25	battered 105:1	bound 79:24
8:1 10:18	114:21	apology 96:12	articulate 56:17	20:10 29:12	battle 58:8 63:1	bows 61:13
29:15 74:5	aggressive 13:19	apparently	articulated 29:1	68:8,9	115:16,24	box 5:11 61:9
activate 48:8	23:24	48:12 71:9	Ashcroft 76:18	autumn 18:14	battles 59:10	breach 78:21
63:15	ago 36:7 42:19	108:13	76:20 77:15	32:25 62:16	BBC 110:21	83:7 88:5
activated 44:16	55:18 67:24	Appeal 110:5	80:7 97:5,6	available 48:23	Beales 23:2 52:4	89:25 90:15
47:16,25 48:5	73:13,24	appear 7:19	Aside 41:1	62:12 72:20	began 83:16	101:8 115:4,4
48:13,17	116:17	28:10 75:9	asked 2:9 6:7,11	73:6 78:13	beginning 38:17	breached 89:12
active 25:11,12	agree 58:18	appeared 50:11	8:24 13:25	102:14	begrudging	108:19
activities 6:4	75:12,15 101:8	57:4,9,14	37:3 46:18	avalanche 81:9	115:24	breaches 65:15
51:8 53:9		74:25 87:21	61:21 62:21,23	83:14	behave 70:4	66:16 85:1

break 31:24 60:19,21 95:7 109:15	carry 17:7 62:16 90:11	117:11	1:11 91:20 97:22	collection 108:21	108:16 113:8	30:18
breaking 59:7 86:19	carrying 47:21	cetera 62:14 87:17	civil 31:2,8 45:16	column 55:13	committees 30:13,16 68:1	condemning 17:23 27:11 70:12
bribery 105:7	case 5:8 19:3,6 24:3 28:10	chair 51:25	claim 52:21 102:20	come 7:16,20 10:1 15:1 17:14,21 19:7 22:19,24 23:15 24:18 35:2 38:21 39:12 40:5 42:17 46:22 52:22 58:16 65:5 74:25 79:10 80:15,16 81:2 92:7 103:18 110:7,8 113:4 114:24 118:22	committing 10:17 11:24	condone 14:4 69:2
bribes 99:6	34:10 41:9,9 41:10,10,10,11 41:13 42:5 50:11 53:13 59:9 60:2 63:17 66:5 69:6 71:16,16 71:18 91:24,25 93:8 98:16 106:21,24 117:1 118:17 120:9	chairing 84:6	claiming 102:4 102:25	clauses 33:16 34:15,23 35:4 38:10 39:15,22 40:3,20,21 43:19,23 44:14 45:10,24 46:2	Commons 32:19 33:6,7 34:22	conduct 116:5
brief 33:6 104:6	Chakrabarti 44:8	chairman 8:24 19:25 44:10,21 49:4 51:20 52:10 81:21 95:17	claims 74:15 108:21	clean 29:9 63:9 108:7	companies 25:2 69:22 74:13,13 108:21 110:15	conference 58:6 58:20 84:2,6 84:10,12
bring 47:25 60:25 103:3 113:12	challenge 27:20 82:21 85:17 challenged 4:14 87:10 challenging 60:5 60:9	chairing 84:6	clause 33:16 34:15,23 35:4 38:10 39:15,22 40:3,20,21 43:19,23 44:14 45:10,24 46:2	cleaned 108:14	company 96:9 99:6 102:3 105:19 110:16	confidences 59:8
bringing 18:8,9 41:6 63:24	Caseby 92:13 94:19 95:10 96:23	chairman 8:24 19:25 44:10,21 49:4 51:20 52:10 81:21 95:17	clean 29:9 63:9 108:7	cleaning 63:9 87:17 112:17 115:19	competitor 103:20	confidential 117:4 confidential 2:15 12:1 19:18 21:3 43:6 101:3
Bristol 58:13 115:18	cases 29:20,22 37:17 41:14,15 41:24 70:6 72:15 76:16 104:13 107:4,6 110:6	chairing 84:6	clear 5:1 7:25 12:14 14:22 17:11 18:11 32:3 33:19,23 37:1,21 39:7 41:19 46:8,25 48:17 49:7 51:14 54:9 55:24 57:18 87:3 93:25	comes 22:1 31:1 53:16 104:7	compilation 97:11	confidences 59:8
British 100:11 105:18,23	casual 65:20	challenge 27:20 82:21 85:17 challenged 4:14 87:10 challenging 60:5 60:9	clearer 33:20	coming 16:21 39:15 56:6 59:10 61:24 68:13 74:11 79:21 84:8,13 89:25 91:1 110:6	complained 79:7	confidential 117:4 confidential 2:15 12:1 19:18 21:3 43:6 101:3
broad 48:1	cat 4:17	chance 47:11 49:11 118:9,9	clearly 12:6 19:3 20:2 26:8 29:24 43:9 44:22 48:13 58:2 64:18 68:14 100:20 103:22 112:8	commas 3:16 7:13	complaint 80:14 80:18 113:9	confirm 115:9
broadcast 110:22	catch 92:17	changes 8:18 22:12 44:14 52:16 63:12 89:18	clear 5:1 7:25 12:14 14:22 17:11 18:11 32:3 33:19,23 37:1,21 39:7 41:19 46:8,25 48:17 49:7 51:14 54:9 55:24 57:18 87:3 93:25	comment 44:21 55:12 56:15 65:21 91:20 104:8	complaints 76:25 88:18 94:21 108:1 112:21 116:2	confirmed 78:18
broader 118:4	categorically 82:20 94:15	change 17:21 52:20,24 64:23 64:25 67:13 111:5 112:5 116:21	clear 5:1 7:25 12:14 14:22 17:11 18:11 32:3 33:19,23 37:1,21 39:7 41:19 46:8,25 48:17 49:7 51:14 54:9 55:24 57:18 87:3 93:25	commentary 14:1 102:8	complain 93:1	confirms 86:6
broadly 33:13 89:2 112:23	categories 53:8	changed 5:23 6:9 9:25 22:20,25 29:3,19 31:19 31:20 80:24 116:3	clear 5:1 7:25 12:14 14:22 17:11 18:11 32:3 33:19,23 37:1,21 39:7 41:19 46:8,25 48:17 49:7 51:14 54:9 55:24 57:18 87:3 93:25	commission 14:2 14:4 88:18 94:22 108:2 116:2	complaint 80:14 80:18 113:9	conjunction 77:14
brought 38:1 78:23	category 65:6	change 17:21 52:20,24 64:23 64:25 67:13 111:5 112:5 116:21	clear 5:1 7:25 12:14 14:22 17:11 18:11 32:3 33:19,23 37:1,21 39:7 41:19 46:8,25 48:17 49:7 51:14 54:9 55:24 57:18 87:3 93:25	commas 3:16 7:13	complaints 76:25 88:18 94:21 108:1 112:21 116:2	connection 54:24 55:2,9 57:13 79:14 85:14 97:9
Brown 35:20 59:11,12,22	caught 70:17 74:15	changing 62:1 64:16 91:10 114:20	clearer 33:20	comment 44:21 55:12 56:15 65:21 91:20 104:8	completely 50:12 50:22 67:5 97:12	consent 92:7 104:21
build 45:18	cause 113:8	changes 8:18 22:12 44:14 52:16 63:12 89:18	clearer 33:20	commentary 14:1 102:8	compliance 116:5	consequences 60:14
bullet 22:7 44:5	caution 41:10 65:15 66:16 76:6 78:1,5,21 79:24	changed 5:23 6:9 9:25 22:20,25 29:3,19 31:19 31:20 80:24 116:3	clearly 12:6 19:3 20:2 26:8 29:24 43:9 44:22 48:13 58:2 64:18 68:14 100:20 103:22 112:8	comments 14:1 102:8	comply 14:6 62:6	consequently 92:12
buried 14:15 116:11	celebrities 1:13 70:20 73:16,19 74:1,10,14,19 74:22	changing 62:1 64:16 91:10 114:20	clearly 12:6 19:3 20:2 26:8 29:24 43:9 44:22 48:13 58:2 64:18 68:14 100:20 103:22 112:8	commercial 102:8	comply 14:6 62:6	consider 1:6 24:24 67:4 99:21
burst 42:3	celebrity 56:10 73:21 74:7 93:9	changing 62:1 64:16 91:10 114:20	clearer 33:20	commission 14:2 14:4 88:18 94:22 108:2 116:2	completely 50:12 50:22 67:5 97:12	considerable 16:15
business 60:9	cent 20:13 101:23 102:7	changing 62:1 64:16 91:10 114:20	clearer 33:20	comments 14:1 102:8	comply 14:6 62:6	consideration 25:12,25 28:8
buy 101:25	centuries 55:17	changes 8:18 22:12 44:14 52:16 63:12 89:18	clearly 12:6 19:3 20:2 26:8 29:24 43:9 44:22 48:13 58:2 64:18 68:14 100:20 103:22 112:8	commissioner 28:3 35:9 66:14 68:5 73:18 76:2 78:19 80:5 95:6,13 97:17 97:23 102:21 104:5 108:15 111:3,23 117:1 117:8	comply 14:6 62:6	considerations 23:9 53:14 64:19 107:8
buying 68:12	certain 49:2 80:23	changing 62:1 64:16 91:10 114:20	clearer 33:20	Commissioner 28:3 35:9 66:14 68:5 73:18 76:2 78:19 80:5 95:6,13 97:17 97:23 102:21 104:5 108:15 111:3,23 117:1 117:8	comply 14:6 62:6	considered 37:10 50:8
C	cent 20:13 101:23 102:7	changing 62:1 64:16 91:10 114:20	clearer 33:20	Commissioner's 95:7	comply 14:6 62:6	consistent 22:5 54:4 61:20
cabinet 37:3 95:2	centuries 55:17	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitment 10:7	comply 14:6 62:6	consistently 21:17
call 1:13 14:21 15:22 29:17 34:14,25 35:3 35:18 56:5 104:13	certain 49:2 80:23	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitments 10:4	comply 14:6 62:6	consideration 25:12,25 28:8
called 101:20 104:6	certainly 3:25 4:14 7:9 8:25 10:14 24:4 26:17 43:25 49:23 50:3 56:6 59:22 60:7 65:3 77:22 79:17,22 81:13 88:10 109:2,10	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitment 10:7	comply 14:6 62:6	considerations 23:9 53:14 64:19 107:8
calls 100:4,6	cent 20:13 101:23 102:7	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitments 10:4	comply 14:6 62:6	considered 37:10 50:8
campaign 29:17 29:18 33:15,18 43:2,12 48:24 91:2 114:1	centuries 55:17	changing 62:1 64:16 91:10 114:20	clearer 33:20	commissioners 5:20 84:8 102:17	comply 14:6 62:6	consistent 22:5 54:4 61:20
campaigning 43:23	certain 49:2 80:23	changing 62:1 64:16 91:10 114:20	clearer 33:20	Commissioner's 95:7	comply 14:6 62:6	consistently 21:17
cancer 42:4	cent 20:13 101:23 102:7	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitment 10:7	comply 14:6 62:6	constraints 25:16
capacity 51:19 81:20	centuries 55:17	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitments 10:4	comply 14:6 62:6	constructive 7:8 8:11 17:8 58:12
Caplan 109:8,12 109:17,18,19 117:19 118:1	certain 49:2 80:23	changing 62:1 64:16 91:10 114:20	clearer 33:20	committee 4:1 20:25 22:10,18 22:21,22 23:1 23:4,8 33:7 41:16 42:1,18 44:11 49:5,7 51:20,25 52:11 56:9 65:7 68:1 81:21 88:19 94:20 95:17	comply 14:6 62:6	consult 14:1 93:19
capture 30:6 40:25	cent 20:13 101:23 102:7	changing 62:1 64:16 91:10 114:20	clearer 33:20	commentary 14:1 102:8	comply 14:6 62:6	consultation 31:22 32:1,24 44:15 47:18 83:6 84:17,18 85:2 102:16,19
cared 70:19 73:15	centuries 55:17	changing 62:1 64:16 91:10 114:20	clearer 33:20	commissioner's 95:7	comply 14:6 62:6	contact 19:1 62:24 69:14 contacting 1:7
careful 2:2	cent 20:13 101:23 102:7	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitment 10:7	comply 14:6 62:6	
carefully 2:11	centuries 55:17	changing 62:1 64:16 91:10 114:20	clearer 33:20	commitments 10:4	comply 14:6 62:6	
careless 36:23	certain 49:2 80:23	changing 62:1 64:16 91:10 114:20	clearer 33:20	commissioners 5:20 84:8 102:17	comply 14:6 62:6	
carried 67:21	certainly 3:25 4:14 7:9 8:25 10:14 24:4 26:17 43:25 49:23 50:3 56:6 59:22 60:7 65:3 77:22 79:17,22 81:13 88:10 109:2,10	changing 62:1 64:16 91:10 114:20	clearer 33:20	Commissioner's 95:7	comply 14:6 62:6	

75:18	70:8 91:6,13	26:11 36:9,13	debtors 102:10	102:1,22	discussed 31:2	dry 94:14
contacts 88:13	92:20 97:25	36:15,17,20,24	deceit 70:5	110:17	34:22 38:20	duplicate 20:3
contains 67:7	105:10 108:22	37:6,20 59:4	December 10:8	detailed 8:18	84:10	duties 27:24
contemporane...	116:15	62:17 63:13	11:6,14 13:1,6	81:14	discussing 19:17	duty 24:23 26:10
2:13 87:22	court 89:12	69:21 75:2,13	13:10,21 23:11	details 8:10	40:25	26:20 35:12
contempt 3:11	93:10 110:5	75:16 84:1	30:15,15 76:3	87:15 94:1,23	discussion 2:2	55:18
content 16:11	courts 32:14	85:1 92:7 94:4	80:12 121:8	95:10	25:12	DVLA 104:13
66:22 120:4,7	cover 39:6 75:17	96:9 97:24	deception 70:5	deter 32:15	discussions	DWP 106:4
120:11	coverage 49:21	100:2 101:1,2	73:4 105:7	37:19	19:20 87:10	
context 12:22	50:19 83:12	104:21 106:2	decide 92:3	determined 63:8	Disgraceful	E
14:16 20:15	84:12,14	109:23 111:4,8	decided 44:13	deterrence 32:6	30:25	Eagle 34:10
43:1 53:17,20	covered 4:4,16	111:12,13,16	declared 32:3	32:10	dismay 34:19	ear 59:22 80:5
53:24 77:6	20:11 24:15	111:17,25	decorating 71:11	deterrent 29:25	displaying 53:4	earlier 18:4
83:3	30:3 31:13	114:9 115:4,8	decorator 71:7	48:18,21 67:20	disputed 90:3	41:16 65:22
continue 12:2	41:12 49:19	116:5	deep 35:14 59:1	develop 121:2	disputes 74:16	70:12 77:7
contract 104:1	51:3 53:18	database 96:10	defence 38:5,20	dialogue 8:10	dissenting 89:17	83:5 85:24
contracted 96:9	covert 69:1	97:19,21 103:1	44:17 45:10,18	17:8	distinction 22:22	87:6 101:9
contracts 114:20	CPS 18:9 121:1	103:16 104:10	46:1,4 47:7	diaries 34:2,3	distressed 96:14	106:16 112:12
115:2	credit 112:15	databases	53:5 56:2,22	differ 89:8,14	distributed	early 31:22
contradicted	creditors 102:10	101:10	56:23 64:7,22	89:21 106:15	62:14	32:20 33:13
118:19	crime 53:8 106:3	datasources	66:23 69:13	difficult 36:2	diverse 37:14	50:20,20 63:19
contraventions	criminal 3:23 4:4	102:16	70:7 91:16	50:25 53:12	doctor's 72:7	earth 111:18
28:16	4:20 11:24	date 60:25 80:11	107:1	56:11 64:18	document 11:10	easier 106:10
contribute 66:1	14:4 20:3,5	84:22	defences 56:1	69:24 74:6	68:14	easy 27:13 56:8
contributed	30:1,21 33:1	dated 45:2	defend 92:25	95:1 102:9	documentary	economically
71:24	37:8 47:3,8	dates 41:1 42:20	definitely 97:7	103:6	11:3	15:3
controller 92:7	55:25 57:22	65:19 114:17	definition 116:7	difficulties 9:18	documentation	editor 17:20
104:21 106:2	59:5 67:11,15	Davies 55:10	definitive 75:20	difficulty 91:13	114:25	57:12 65:14
controllers 25:1	91:9 95:6 99:9	75:4,5,6,7,8,9	delay 48:2	113:25	documented	66:6 67:15
26:12	104:13,22	75:9,23 103:8	120:19	digital 116:6	29:7,21 30:9	68:9 76:4 79:5
controversy	105:13,20	103:14 109:5	delves 102:13	digitally 62:14	47:20 50:17	82:1,18 85:20
32:19	criminalising	day 27:4 28:18	demand 21:4	dinner 58:22	70:17 86:14,22	89:16
conversation	98:24	35:18 39:13,18	demanding	59:22	documenting	editorial 55:6
35:24 38:16	criminality	40:7 47:21	23:23	direct 19:1 43:24	46:21	57:1,6 82:8,15
conversations	68:13	54:4 79:14	demands 69:12	97:10	documents 14:7	85:6 86:1
3:25 50:25	cross 62:17	83:21 85:2	democratic 67:2	directed 16:9	doing 17:10 27:9	101:14 113:14
87:13	culminating	92:19 98:21	demonstrate	82:20	30:10 55:17	editors 4:6 11:23
conviction 67:16	57:23	112:3 115:25	110:9	direction 85:13	56:4,16 68:2,4	20:25 22:10,21
copy 15:5,13,15	culture 30:14	120:17	demonstrating	directly 9:10	68:15 69:9	23:1 44:11
core 26:20 120:8	36:13 52:21	days 6:12 39:25	37:14	23:8 57:25	89:20 102:6	51:11,20,24
correct 10:9	current 60:23	54:12 66:12	denounce 46:20	79:4 88:11	domain 15:24	52:10 58:6
33:13 43:7	97:17,23 104:5	80:22 81:13	deny 51:8 85:12	116:24	57:3 72:16,17	66:14 81:21
64:2,3 70:3,4	105:2 108:15	day's 120:15	119:4	director 5:22	72:19	88:19,19
97:25	116:25	DCA 31:3,22	department	31:3 92:13	doorstep 72:7	114:20 115:21
corrected 76:7	currently 45:9	dead 80:8	31:25 36:19	101:14	doorstepped	education 62:11
96:23	custodial 44:15	deal 3:11 4:3,15	departments	directories 100:9	71:20	62:18
correction 96:13	89:11	5:12 20:5 23:8	36:19	103:2	doubt 51:10	effect 9:14 30:1
correspondence	customer 42:10	39:3,11,21	depends 72:17	disagree 82:21	72:24 92:5	48:21 66:21,24
9:8 13:17 24:5	69:19	47:1,1,2 50:1	deplorable 99:7	104:19	Downing 35:21	67:8,17 113:12
96:25	customers 21:6	53:15 60:16	deployment	disagreed 90:5	DPA 62:4,6,9	effective 68:24
corruption 70:5	43:5 86:18	83:3 89:1	24:17	disagreement	draft 10:25 14:2	effectively 81:24
73:4	cut 94:13	93:12 102:22	derived 57:22	95:24	25:17 63:19	effort 19:10
council 110:25		106:10 109:19	describe 4:8	disappoint 24:1	67:23 97:4	efforts 43:19
counsel 18:11	D	113:4 117:12	16:14 24:15	disappointed	drafted 11:16	eight 73:24
counsel's 23:10	Dacre 44:10	118:1 120:14	25:7 68:11	11:19 19:2	18:20 64:3	either 7:3,5
countered 46:3	45:22 58:21,24	dealing 25:23	described 58:15	47:22	draw 15:12	24:25 34:19
counter-argu...	59:15,22 61:15	dealings 88:11	58:20	disappointing	37:13 49:2	50:9 63:24
58:4	61:20 112:12	104:1	describing 43:3	12:21	64:9 81:15	69:19 76:23
country 36:2	114:14	deals 4:9	Descriptions	disappointment	120:21	elapsed 12:10
62:2	Dacre's 58:5	dealt 20:9	20:12	21:9 35:14	drawing 27:11	election 47:19
couple 10:1	59:18 61:12	Dear 2:4	desirability	discharge 27:24	104:3	electronic 31:6
39:25 41:13	Daily 113:13	death 71:24	84:25	discharging 27:1	drawn 11:23	34:2
57:10 109:3	damaged 113:23	debate 28:14	desk 80:16	disclosure 53:16	77:19 104:3	element 44:23
course 2:22	damaging 40:3	67:13 82:17	despite 47:23	discourse 73:25	dreadful 17:9	eliminate 117:17
10:17 15:8	40:18	94:9	destroy 111:14	discovered 11:7	driving 108:25	eloquently 46:10
17:24 24:17	data 1:11 11:16	debates 39:17	detached 80:25	96:6	dropped 38:10	email 6:18 7:15
25:1 64:22	14:16 25:1	debt 108:20	detail 40:6 89:15	discuss 22:11	39:23 46:4	7:16 9:16,21

35:22 45:1	eventually 41:14	9:20	facts 91:25	finalise 107:16	forever 117:17	G
emails 7:20	everybody 25:20	expected 8:25	100:14	finally 19:15	forget 84:22	
10:24	38:12 85:14	9:12 79:2	faint 65:25 77:8	65:11 107:18	105:23	G 60:16,23
emphatic 16:10	89:15 96:13	expecting 4:24	fair 3:11 27:14	116:13	form 39:8	GARNHAM
employee 115:3	evidence 1:10	7:25	27:19 29:12	finance 74:13	formal 25:10	120:19,21
employment	4:2 5:5 12:17	expensive 23:22	32:21 44:21	110:13	40:12 74:4	gathering 116:16
115:3	30:16 31:14	experience 8:25	46:13 52:23	financial 4:12,13	former 71:22	gauge 62:18
encourages	42:1 43:24	64:10	55:22 56:15	29:12 43:21	forthright 21:10	GB 101:21
69:13	49:1,20 50:9	experiences	59:16 79:25	77:16 108:20	21:12 112:14	general 1:6 3:12
encouraging	50:10 51:1,13	57:21	100:25 120:17	find 10:10 39:21	fortune 116:23	5:5 6:3 8:2,3
29:10 117:16	52:6 54:3	explain 15:6 97:8	fairly 9:24 16:6	42:3,8,13 89:1	forward 1:20	8:20 9:17
endemic 6:17	57:11 58:1	97:12	16:10 49:20	98:10 99:22	19:16,20 40:7	10:14 12:11
enforce 3:17,23	60:24 65:5	explained 11:18	64:3 103:22	103:6 106:10	41:7 63:22	21:20 22:6
4:19,21	67:7 71:23	21:17 22:3	112:1,3	finding 51:25	75:1 91:7 92:4	23:9 24:23
enforcement	86:17 88:15	28:12 88:13	faith 12:17	fine 29:24 78:16	117:5	25:4 26:10,20
24:22 25:11	92:3 101:10	explanation	Falconer 30:24	finish 43:15	found 39:15 87:4	27:24 28:2
26:5,7 28:8	108:19 110:6	59:16	fallen 106:23	finished 115:16	89:11 96:11	47:19 51:5
enforcing 115:5	110:11 112:2	explicitly 67:22	familiar 19:9	firm 10:7	foundation 25:6	52:21 59:24
engage 12:19	113:4,7 119:14	116:14	family 2:6	firmly 105:17	72:9	63:23 65:13
69:19	119:17,19	explore 15:20	104:14	firms 74:13	four 30:12,15	73:25 75:22
engaged 22:11	120:15,23	44:8 52:5	famous 92:10	110:2,3	33:18 36:16	87:13
53:11 86:23	exact 84:22	exposed 51:8	far 9:15 17:18	first 1:25 5:25	39:3 41:6	generalised
109:1 116:24	89:15 114:17	106:1	25:4 36:12	10:13,23 16:12	50:21 55:18	68:25
engaging 48:19	exactly 2:24	exposing 55:16	43:18 45:24	18:15,17 20:20	84:23 85:8	generally 14:18
50:12 68:11	16:22 27:5	express 21:9	56:2 90:6,7,25	25:13 28:20	93:6	63:5,5 77:6
English 52:15	36:4 39:19	expressed 39:24	99:1 108:6	30:3,4 31:21	framework	87:18 102:3
enlarged 38:4,19	49:6 83:14	49:4 64:5	113:6	44:14 45:4	19:22 63:13	116:20
enlisting 43:15	84:11 85:3	76:24	Farrington	49:15 50:17	Francis 26:2	generated 33:15
enormous 19:10	95:10 102:6	expressing 35:14	76:10	53:1 55:24	65:22 66:3	genuine 56:5,19
105:2	examine 93:4	expression 37:24	fast 6:9 52:25	57:15 60:16	frank 52:7	56:21 66:21
enquire 119:6	example 2:3 45:1	extent 18:2,5	faster 73:2	61:9 64:4	frankly 16:1	68:19 90:11
ensure 62:5	52:12 58:5	25:21 29:16	favour 45:9,13	65:13 67:11,22	19:2 22:18	genuinely 115:19
120:22	60:1 69:22	33:17 37:15	favouring 45:16	70:24,25 71:6	102:24 104:5	getting 13:19
entered 25:17	70:13 75:18	57:17 67:17	fax 42:2	77:1 78:25	free 67:2	16:8 17:1 20:4
entirely 8:7 37:9	78:24 79:3,6	80:23 118:2	fears 45:25	81:19 86:5,14	freedom 36:5	24:4 27:12
37:11 50:7	87:8 110:7,16	extraordinarily	February 14:3	87:5 90:21	37:23 53:12,16	29:2 31:20
69:17 90:1	110:18,22,23	97:21	31:13 34:11,22	92:20 99:2	62:2,22 64:10	69:16,21 72:6
99:5 100:12	examples 30:9	extreme 88:25	feed 119:16	103:14 107:18	67:6 68:23	79:17 106:12
104:16 119:4	31:14 41:6,17	104:14	feeding 37:5	119:11	82:9 90:13	106:14,22
119:22	47:22 50:21	extremely 11:15	feeds 5:13	Firstly 109:22	97:6	give 1:21 2:3
entitled 91:6	65:9 70:17,22	32:2 36:23	feel 23:6 35:11	first-hand 58:1	freedoms 59:3	33:23 37:22
100:1,9 101:2	71:5 72:12	ex-ante 23:12	115:24	fishing 65:8	Friday 49:19	73:20 100:24
101:7 110:21	73:13 74:11,12	ex-directory	feeling 59:24	five 35:25 39:4	54:21	104:7 112:14
119:6	104:25 110:3	69:11 73:7	feelings 35:12	83:5 86:15	friendly 58:12	given 12:11
entitlement	110:24	100:3 101:11	feels 118:2	87:5 109:8	friends 104:14	25:25 26:8
73:21	exceptional	101:23 102:4,7	fell 46:5	flagging 84:9	front 69:9 79:13	28:8 31:14
episode 82:6	27:23 65:10	103:1,19,20	fellow 7:8,23	flood 61:10	85:21	34:16 47:21
equally 57:11	68:23	105:15	felt 3:6 16:13	flooded 22:18	frustration	48:4 49:18
equals 54:1	exchange 33:7	eye 12:2 77:22	22:19 28:23,25	focus 14:19	76:24	58:6 59:15
error 96:1,7	52:7 94:19	e-Trace 102:13	30:17 40:2	114:10	fulfilling 55:20	65:2,12 67:1
escaping 105:1	exchanges 9:8		54:24 67:19	focused 19:3	full 27:7 88:2	83:20 89:19
esoteric 111:15	51:4 94:20,21	F	70:18 73:14	22:4 95:3	91:25	94:11,12 95:15
especially 37:20	exchanging	face 22:23 44:12	94:25 95:9	108:2,6 113:22	fully 28:13 36:12	103:24
37:24 62:7	10:24 24:6	44:12 47:14	116:11	FOI 53:20 76:21	53:11	gives 30:8 119:19
essentially 39:14	excluded 119:18	68:5	FGBA 26:7	followed 20:20	full-blown 39:8	giving 1:10 10:4
86:20 91:2	excludes 100:6	facie 86:16 99:19	fight 112:10	45:3 52:13	function 94:12	60:24 75:20
established	executive 31:6	106:23 110:7	fighter 58:16	59:13	furnishing 63:23	112:2 114:21
38:13	exercise 104:11	facing 59:2	fighting 60:4,10	following 13:5	further 14:7	Glade 69:6
et 62:14 87:17	exercising 27:22	fact 13:10 30:12	60:13	26:11 35:18	18:13 34:25	glanced 102:24
ethical 99:15,20	exhaustive 53:17	57:6 61:18	figure 52:9	57:9 79:7 84:2	39:9 43:14	gloss 64:1
104:23	exhibit 101:16	73:25 76:3	101:23	102:16 120:15	50:23 55:10	Gloucestershire
evening 9:23	101:21	83:25 88:3	figures 92:21	follows 119:15	78:10 85:8	23:5
39:18 69:7	exhibited 9:6	90:15 108:12	96:2,4 97:1,11	follow-up 83:11	87:11 96:25	go 1:24 6:11 8:14
event 52:13	existing 115:7	114:3,10 116:2	98:2 103:14	foot 29:5	106:25 118:25	10:20 14:10
63:11	expect 5:6,7 9:23	116:18 120:21	filming 119:14	force 48:1 90:3	future 5:3	22:20,25 23:7
events 33:24	78:11 115:11	120:25	120:6	98:17	103:10 107:20	23:18 31:17
58:14	expectations	factors 74:8	final 14:1 72:14	forceful 35:5	108:10	38:11 42:7
						43:14 49:24

50:23 52:19 61:8 73:6 75:11 78:10 88:2 89:5 91:15 92:4,8 96:1 100:15 101:16,21 110:17 112:7 goal 107:20,21 107:25 108:2,5 111:6 goes 8:23 14:3 45:24 going 2:10 4:19 5:6,7 6:4 12:15 17:11 21:24 23:18,22 24:9 24:13,18 27:5 28:21 29:6,8 34:2 35:1,3 38:10 39:8,11 39:22 41:15,18 41:24 42:16 44:1 45:5 53:25 55:11 60:17 65:2 68:15 71:5 72:3 75:11 77:16 83:13 85:8 86:24 87:16,16 88:2 88:23 91:2 93:12,17,25 96:4 97:1 98:1 99:1 104:6 106:9 108:15 109:12 111:24 112:7 113:4,15 117:4 good 2:15 14:21 25:3,7,8,18 26:11,16 27:3 27:15,21 28:3 30:1 31:18 41:17 61:25 73:7 85:25 90:25 106:10 106:25 109:19 Goodman 83:15 Goodman-Mul... 50:11 Gordon 35:20 Gosh 82:12 85:15 gospel 19:10 gossip 69:2 government 28:23 32:3 36:17,21,23 39:19 43:17 47:16 48:7 49:8 70:14 83:6 113:16 governmental 37:6 governments 67:6	government's 84:17 GP 71:23 92:2 102:13 Graham 60:24 113:7 grave 119:4 great 36:17 53:15 72:22 89:1 93:12 102:22 103:3 108:17 117:12 greater 14:25 greatest 90:24 green 71:16 Greenslade 69:6 grind 11:2 grocer 71:16 ground 112:7 group 50:6,12 63:4 101:21 114:19 groups 25:2 growing 83:11 83:14 Guardian 69:7 88:24 89:1,8 89:14,17,21 90:10 guidance 10:25 11:7 12:8 13:25 14:9,14 16:20 22:8,13 26:12,14 52:16 53:2,15,19 63:23 guilty 16:15 41:14 42:22 Gus 36:15 37:2 38:16 Guy 5:21 45:22 guys 17:21	23:14 54:8 87:24 happened 23:13 32:16 57:22 59:19 64:13 66:2 78:25 80:1,19 113:5 114:11 happening 15:2 80:6 97:13 happens 10:19 happy 38:24 45:19 72:12 80:24 81:1 96:20 hard 46:23 50:10 51:1 55:7 60:4 60:10,13 71:23 72:9 86:16 104:13 hastily 2:20 hat 81:22 haul 41:1 hauls 41:3,3 head 59:25 77:2 heading 101:22 health 30:14 53:8 99:9 hear 11:15,20 113:6 114:3 heard 23:3 81:10 81:20 116:1 hearing 71:16 118:13 121:7 heart 60:6 heavily 109:1 heavy 50:3 held 97:21 help 6:25 12:15 17:11 34:5 59:10 66:4 80:9 111:19 helpful 15:19 33:24 64:15 hidden 40:17 high 9:20 10:25 100:20 102:7 111:13 highest 86:7,8 highlight 74:9 highlighted 54:3 116:12 highlights 30:8 37:13 highly 40:18 95:3 hindsight 2:1 23:23 Hinton 51:17 52:8 54:1,21 57:13 58:23 59:15 79:8 81:17,20,25 82:20 83:1,21 85:13 86:2,8 87:4,21 hits 101:23	HJK's 120:9 HMRC 36:17 106:5 hold 69:21 72:6 106:13 holding 45:24 67:6 holds 101:3 home 9:23 30:15 31:15 Hong 35:1 honours 79:16 hope 6:18 56:12 73:20 109:8 113:3 115:1 117:1,1 120:18 hoped 9:2 14:24 38:25 hopes 11:1 23:19 hoping 8:22 hostage 116:23 hostile 54:10 82:2 hour 60:17 75:7 hours 82:13 house 23:11 32:19 33:6,7,8 34:21 39:18,20 71:11,14 houses 110:13 huge 98:18 hugely 59:8 human 101:1 hundred 15:7 27:15 104:12 husbands 105:1 hypothetical 91:24	68:18 93:16 impending 34:17 impersonating 110:20 implicated 5:9 implied 1:23 implying 34:19 importance 67:1 67:1 115:8 important 20:9 23:9 37:20 44:23 56:3 69:17,18 94:7 97:15 119:2 impose 29:24 impossible 99:22 impression 51:14 61:2 73:21 102:3 109:3 117:11 imprisoning 114:8 imprisonment 39:10 47:4 63:7 78:16 83:7 84:18,25 89:24 improper 109:23 improve 18:21 37:6 inappropriate 89:24 include 110:2 116:4,13 included 68:20 78:16 113:22 116:7 including 21:6 21:22 45:22 75:18 88:24 increase 28:23 39:9 increased 28:16 46:1 47:3 increasing 32:5 43:3 increasingly 7:22 51:15 57:18 incredibly 95:1,8 indefinitely 117:4 independence 3:3,5 82:9 independent 2:16 3:1,6 35:10,10 61:7 118:13,18 indicate 14:8 87:15 indicated 12:12 indicates 18:16 indication 9:7 16:21 24:6 43:20 indirect 43:25 individual 42:13	47:22 70:21 94:1 106:3 individuals 1:14 22:4 40:18 71:6 industrial 68:11 industry 14:2 24:7 43:21 57:17 59:2 62:9,17 63:5 74:17 88:4 93:11 115:21 industry's 19:13 59:9 industry-wide 62:11 inference 81:15 inferences 15:12 49:2 influence 49:14 57:19 63:8 influenced 66:7 influences 82:8 influential 59:25 information 4:12 12:1 19:19 21:4 36:6 37:11 43:7 53:12,17 62:12 62:18,23 64:10 68:12 70:4 72:7,16 73:18 76:2 77:3 78:19 81:10 86:19 92:6,24 93:4 97:6 98:19,22,24 99:7,18 101:5 102:17 104:15 104:19 106:12 107:15 110:10 116:7,16 inherited 71:21 inhibition 68:6 initially 32:18 initiate 28:14 initiated 83:9 initiatives 62:9 innocous 105:5 innocuous 104:17,18,24 105:5,9 106:8 inpropriety 53:8 input 76:14 inputted 96:9 inputting 96:8 inquiry 4:2 22:17 32:7 34:5 43:9 48:4 48:9,12 49:2,9 58:15 60:24 63:12 79:21 94:17 97:15,16 97:19,24 112:19 119:3 119:19 120:3 Inquiry's 99:15	inside 55:5 69:22 94:9 95:2 99:6 105:18 instance 30:3 instinctively 99:5 instructed 42:12 insurance 74:13 74:15 110:15 110:16 intend 78:4 intention 21:2 interest 12:19 18:12 38:5 44:17 53:2,5 53:14,15,19 56:2,8,12 63:24 64:7,19 64:25 65:8 66:23 68:3,15 70:7,11,15 71:14 72:1,11 77:17,23 79:17 83:15 90:12 91:12,14,22 95:20 106:11 106:17,18 107:8,12,14 interested 39:21 interesting 15:15 16:6,14 19:5 interests 19:13 98:4 interference 82:25 108:22 interject 22:15 36:16 internal 70:22 71:3 international 51:18 52:9 55:1 65:18,24 75:10 81:22 82:14 84:1 88:8,11 101:10 interpret 27:5 75:24 interpretation 9:22 75:13,15 75:21 interpretations 7:3 interrupt 53:10 intervening 58:12 83:24 interview 55:14 57:3 65:14 66:16 76:5,17 78:1,5,21 79:24 83:20,22 84:5,9 85:23 interviewing 66:9 introduce 49:8 90:16 115:2 introduced 32:25
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

introduction 47:6 66:19	54:17 56:14 60:15,23 64:3	108:22 109:7 109:10,17	76:8 77:11 78:23 80:9	43:20 68:7 90:14 101:14	limbs 8:3 limited 49:21	85:22 97:5 103:8,12 109:7
intrude 100:21	65:4 73:8	117:23 118:1,4	81:14 86:7,11	118:15	line 4:1,3,5,15	109:10,17
intrusion 74:2	74:20 104:9	118:11 119:5,8	87:3	legislation 47:4	16:21,24 20:4	117:23 118:1,4
inverted 3:16	119:9,11 120:4	119:23 120:1,4	known 23:12	55:23 62:23	31:5 32:4 51:5	118:11 119:5,8
7:12	120:13	120:10,12,20	31:25 57:16	legislative 40:23	52:23 56:18	119:23 120:1,4
investigate 4:24	Jay's 106:16	121:4	69:12 79:1	legitimate 37:24	89:14,17 98:15	120:10,12,20
5:4	job 17:2,2 36:2	justifiable 70:11	knogs 64:8	69:17,18 99:19	lined 45:7	121:4
investigated 72:4	98:7 99:3	justification 25:5	Kong 35:1	Leigh 98:21	lines 10:7 24:12	Lords 33:8 39:18
investigations	Jones 5:20 10:23	72:1 106:11,12		length 112:1	35:25 50:2	39:20
68:25 72:6	14:1	106:18	L	lengths 105:2	58:25 63:18	lose 12:16
80:22	Joshua 41:11	justified 56:4	laborious 73:6	lengthy 83:20	66:20 87:13	losses 36:9,17,20
investigative	journalism	justifies 73:3	lady's 42:4	lent 81:25	107:9,17	37:20
37:25 56:5,19	11:17 37:25	justify 56:8,11	landline 102:14	Les 51:17 52:8	Linklater 82:19	lost 18:5,6 36:18
56:21 60:3	56:5,20,21	72:10	landscape 62:1	54:21 57:13	liquidity 101:23	46:20
66:21 77:12,17	60:3 66:21	justifying 68:2	language 10:5	lesson 48:20	list 28:17 53:17	lot 10:21 16:7
90:8,11	68:19 69:4	106:14	11:8 40:13	letter 2:4,7 13:3	71:8 88:17	20:9,10 29:8
investigator 2:6	77:12,17 90:8	K	107:6 111:16	15:9 17:6,9	listening 59:14	29:13 49:20
41:9 42:7,13	90:11	keen 111:3	large 1:25 25:21	23:2 24:11	little 5:11 14:15	52:22 77:12
50:18 96:5,15	journalist 32:12	keep 12:19 17:7	29:22 36:24	35:11,13 39:12	17:5 20:16	81:8 84:14
99:17	67:15 68:2	41:22 44:14	37:5 71:22	40:9,24 61:22	64:17 113:8	94:9
investigators	78:20 79:5	45:14,18 91:8	99:18 100:7,8	76:9 78:3 81:2	little-noticed	lots 102:4,19
27:10 42:2	82:1 92:5	100:18,22,23	largely 32:6	81:11 92:14,17	57:7	108:18,18
43:22 50:6,25	98:21 99:16	104:18	37:17 40:17	93:5,13 96:1	live 99:23	lottery 71:11,14
68:12 72:25	101:6 114:20	kept 12:25 36:10	43:13 61:5	97:5 110:4	lives 74:2 98:11	loud 8:22 9:3,11
76:11 86:18	118:25	95:22 101:3	84:9	115:10 116:9	98:25	louder 52:15
89:20 114:15	journalists 4:25	104:2	largest 31:8	letters 27:16	local 110:23,24	loudest 27:12
114:24	5:9 8:1 11:23	Key 20:21	102:13	29:11 115:7	London 35:18	love 113:11
investigatory	14:5 22:5 25:1	kickback 58:3	lasts 117:2	letter's 35:14	84:2,8	low 29:23,24
4:11 66:8	26:23 37:16	killed 71:23	last-chance	let's 60:19 64:9	long 28:17 36:3,5	lower 4:23 99:8
68:19	41:20,23 43:5	kind 69:2 115:10	53:21 117:3	81:17 113:12	36:7 115:23	lowest 96:15
invite 65:13 67:4	49:23 51:6	knew 7:3 25:21	latch 52:24	level 16:19 48:18	118:7 119:9	99:14,16,19
97:16	62:6,13 66:14	41:3 50:24	late 50:20 51:10	51:11 52:12	look 1:5 4:6	lunch 6:7 11:6,7
invited 33:16	69:14 70:7	51:11 52:9	law 3:13,17,23	66:8 83:12	10:15,16 11:10	M
66:6,15 78:20	72:15 86:17	87:16 93:5,6,9	4:4,8,16,19,20	86:7,8 101:8	13:19 19:16,20	machine 42:2
85:23	87:14 89:11	93:12 105:25	20:3,6 21:18	levels 29:23	34:4 38:18	Mahmood
invoked 37:15	90:17 94:1,16	know 1:14 5:16	29:3,11,19	62:18	39:17 41:4	119:12,20
involve 72:5	94:17 95:10	6:1,13,22,23	30:1 31:19,20	Leveson 1:3 3:1	42:7 44:4	Mail 63:4 113:13
involved 21:3	100:19 109:24	6:24,24 7:5,14	32:9 60:14	13:3,6,9,16,21	63:22 64:14	main 9:16 18:9
37:16,19 44:2	114:8 118:18	9:22 10:5,14	64:23 67:13	13:23 19:5	68:19 71:2	28:24 35:24
53:13 74:14	journalist's 98:7	10:16 11:1	73:22 74:13	42:20 44:19,24	85:15 87:12	mainstream
97:10	joy 77:5	13:12 17:19	86:19 91:10,11	48:6 49:9	92:3 101:12	24:20,25 28:8
involvement	judge 110:5	22:1 25:5	99:1,2 110:3	54:16,18 55:12	102:21 103:4	maintain 55:19
50:3 59:18	judgment 95:25	30:12,23 33:14	113:24	60:19 73:11	106:17,17	major 31:24
in-house 18:20	July 20:18 23:2	34:9 40:12	lawfully 110:10	74:23 75:2,6	117:5,6,24	64:19 84:7
isolated 50:7,22	31:23 32:24	41:2,7 42:10	lawyers 11:18	103:8,12 109:7	looked 49:25	majority 56:11
issue 10:15 18:2	61:22 83:6	46:25 56:10,16	26:3 120:8	109:10,17	67:23 82:23	107:5,7
24:22 26:12	jumped 32:22	59:19 62:4	lawyer's 78:3	117:23 118:1,4	96:6 101:25	making 3:21
45:5 79:16	jumping 8:14	66:3,9,10	lay 94:12	118:11 119:5,8	looking 8:1 10:5	17:11 24:9
80:8,15 98:5	38:7	72:22 76:14,20	lead 9:17 10:5	119:23 120:1,4	12:13 23:13	33:11 35:5
104:23 108:24	June 61:21 62:25	77:19,21 78:24	81:11 82:15	120:10,12,20	34:6 43:5	39:7 46:24
116:14	115:16	81:12,13 84:3	leader 54:13,20	121:4	99:15 107:11	53:10 62:3
issued 31:22	junior 34:9	88:17,21,22	54:23 84:24	Levy 65:21 76:18	118:4	69:7 82:25
issues 20:21 52:5	76:12	90:14 91:25	leading 75:17	77:7,15 79:12	looks 19:5	99:25 112:11
62:17 84:9	jury 108:23	92:19,23 95:15	82:15	80:15 85:21,22	Lord 1:3 3:1	man 111:17
89:9 120:14	justice 1:3 3:1	97:4,11,14,22	leads 48:9	Levy's 65:16	13:3,6,9,16,21	management
J	13:3,6,9,16,21	99:4,11,14,22	league 92:10	libel 69:13	13:23 19:5	108:21
Jack 34:14,21	13:23 19:5	100:7 101:15	93:20,20 97:3	lie 32:5	30:24 39:25	managing 92:13
Janet 26:2	30:15 33:1	104:4 107:25	learned 57:21	life 1:14 42:3	42:20 44:19,24	manifestations
January 33:14	37:8 42:18,20	111:11 112:16	leave 13:9 55:11	47:15 100:1,21	48:6,9 54:16	98:18
42:24 60:25	44:19,24 47:8	114:12,13,17	95:4,5	lift 83:17	54:18 55:12	manuscript 86:6
64:4	48:6 49:5	115:13 119:23	led 18:17 43:13	light 13:14 24:14	60:19 65:16,21	88:4
Jay 1:3,4 3:2	54:16,18 55:12	119:25	83:1	49:14	73:11 74:23	March 30:14,14
13:5,7,21,22	57:23 60:19	knowledge 6:20	left 60:5 64:13	lightly 35:11	75:2,6 76:18	34:12,25 35:2
13:24 42:22	73:11 74:23	7:4 21:14	90:23 112:20	likewise 92:4	76:18,20 77:7	35:6,13 40:10
45:1 49:1	75:2,6 103:8	49:13 55:5	left-hand 55:12	105:19	77:15,15 79:12	44:7 45:2
	103:12 108:16	65:23 66:13,15	legal 4:8 9:22	limb 24:15,16	80:7,15 85:21	

Maria 34:10	38:2 41:20	52:4,4 54:21	24:18 39:20	neat 21:7	14:11,14,20,21	obvious 77:14
market 27:10	43:13,18 45:21	62:20 82:13	73:12 82:17	necessarily 79:1	16:20 26:16	obviously 1:25
32:14 37:15	45:23 46:9	114:17	83:3 85:5	necessary 92:24	52:6 54:4,7	25:24 44:22
40:17 41:21	49:21 55:18	methodology	109:12	neck 108:13	64:11,24 68:4	63:6 79:14
48:16 50:24	64:5 69:9,23	81:12	Monday 84:21	need 10:15,16	86:6 87:22	90:8 106:3
107:25 108:2	83:15 88:10	methods 111:5	118:16 119:10	20:14 23:15	88:2,3,4	111:3 116:1
marketing 100:4	89:8	112:5	119:11 121:5,8	37:9 40:19	noted 116:25	occasion 66:15
100:6	medical 71:20	Meyer 3:5 9:5	Monday's	48:20,21 56:17	notes 6:15 10:11	78:20 79:23
Markets 4:13	106:14 107:13	11:6 17:19	118:13	60:16 65:11	25:25 31:1	112:14
marquee 119:16	meet 35:19 44:12	51:23	money 19:18	67:8 68:23,23	34:3 87:20	occasionally
match 97:12	56:24	middle 37:7	71:22 99:18	69:23 70:1	notice 25:17,18	68:22 80:6
material 11:4	meeting 2:15,21	middlemen 21:3	month 52:5,8	74:24 103:9	62:12,14 64:4	occasions 4:14
15:23 16:8	5:18,19,22,24	mid-1990s 50:19	96:4	113:15	79:8	9:10 53:24
18:3 47:23	5:25 6:8,10,12	million 36:18	months 32:1	needed 17:1	notices 24:22,23	72:24
50:5 51:12	6:19 7:10,23	101:12 103:16	33:18 36:17	21:21 34:16	25:14	October 49:5
70:9 79:20	8:8 9:24 10:8	103:18,20	42:19 47:24	36:10 37:4,19	notifying 115:7	51:18 54:14
86:21,23 97:18	10:11,13 15:20	mind 1:17 5:19	48:2 58:8,13	needn't 76:19	November 42:23	81:18 83:13
101:20	20:18 26:1,4	22:2 29:1 55:4	58:24 59:10	110:17	58:6 76:2	84:19 108:16
materialised	31:1,11,13	74:8 82:6	79:1 83:5	negative 40:20	nuclear 46:6	odd 81:9
12:8 26:9 48:3	34:7,9,21	85:10 87:1	84:23 86:15	nerdy 111:9	number 1:25	offence 16:16
materials 34:4	35:16 44:13	93:10 98:1	87:5	network 50:23	12:17 29:22	67:11 95:6
matrimonial	51:17 52:1,1,6	105:21	mooted 26:7	never 5:22 6:8	33:17 53:24	offences 11:24
74:16 110:4	52:8,12 54:12	mine 36:2	morning 35:19	23:3 32:12	54:15 56:1	22:8
matter 18:13	57:13 58:11,12	minimise 38:2	50:16 56:13	67:12 90:3	59:2 65:11	offering 5:10
23:7,17 25:18	62:8,24 63:1	minister 34:10	58:18 73:2	nevertheless	71:3,13 72:18	19:18 38:19
34:22 35:13	79:7 81:6,17	35:16,19,21	80:21 103:24	16:10 24:2	72:21 73:5	offers 53:1
36:10 47:25	81:19,25 83:21	37:18 38:23	104:3,10	89:9	91:18 97:2,7	office 1:6 2:4,8
48:15 57:5	86:1,4 87:7,19	39:13,19 40:2	109:19	new 45:10,14,24	98:6,11,12,25	6:19 23:18,23
63:7 72:2,8,22	88:2 90:21,22	40:10 58:23	mortified 96:16	46:2 55:25	100:3,5,8,22	25:22 29:11
78:9 79:15	112:12 115:15	59:7 62:21	mother 110:18	111:24 115:2	101:11 103:1	30:10 34:4
87:21 104:22	meetings 16:18	70:13 90:21	110:19	news 31:7 51:18	104:2 105:3,4	35:23 37:4
105:20 114:4	18:16 30:24	91:19 106:22	Motorman 5:9	52:9 55:1	105:5 106:8,14	41:3 50:17
114:10 116:2	33:17 43:25	ministerial 44:16	29:19 50:6	57:10 62:19	106:23	52:23 64:13
116:18 117:23	44:2,7,12 45:3	47:5 63:15	56:7 65:5	65:18,24 75:10	numbered	65:20 66:6,11
118:8 119:1,4	45:21 51:7	ministers 36:11	79:21 81:10	81:22 82:14	103:24	76:4,24 77:5,5
matters 4:3,10	86:23 87:6,9	minute 10:21	116:15	85:21 88:8,11	numbers 69:11	77:25 80:1
4:15 12:11	member 95:7	113:4	mounted 107:1	89:8 92:12	92:9 96:21,21	81:1,23 85:23
20:11 53:18	members 67:25	minutes 60:18	move 20:16 37:7	101:10 115:12	97:16 98:6	94:9 95:2,4,5
57:6 77:19	120:7	67:24 109:8,13	81:17 113:16	newspaper 54:22	99:13 100:8,18	102:17 111:10
116:24 119:11	memoirs 77:2	misconduct	moved 32:18	59:2 68:21	101:11 102:4,7	112:20 113:9
Mazher 119:12	memory 10:13	57:17 61:4	41:7	71:21 88:20,20	102:14 103:10	117:15
McClellan 45:23	65:17 76:8	86:7,12 87:1	moves 33:11	89:10 93:11	103:16,20,22	officers 34:18
58:23	77:8	87:19 107:20	95:24	118:13	104:9,24	offices 51:17
mean 2:16 6:21	mention 9:6 57:5	misleading 53:9	MPS 121:1	newspapers 2:16	105:15 107:7	official 16:19
17:17 27:4	74:24 76:19	73:20 118:15	Mulcaire 42:21	2:19 3:9 55:16	numerous 51:7	110:20
29:8 34:7 37:2	93:15 101:11	119:3	83:16	59:25 62:5	<hr/>	officials 36:11
45:14 58:1	mentioned 10:23	misreporting	Murdo 45:22	63:4 68:22	O	45:9
59:18 72:17	17:15 38:23	118:24	<hr/>	88:8,12 94:10	obey 3:13	Oh 30:22 41:4
77:1 78:23	41:16 57:6	mistake 96:11,17	N	94:15 95:16	objective 5:4	89:7 90:3
80:3,21 81:5	59:5 71:18	113:3,3,21	name 1:15 75:9	101:15 114:13	28:20,21 29:18	okay 2:12 3:8
86:11 96:3	74:20 79:4,6	mistaken 71:21	81:5,7 94:10	114:16 115:14	44:20 113:19	18:19,24 38:8
102:19 111:16	80:7 81:5 84:5	MI5 77:2	100:5	NHS 31:6	objectives 28:17	old 80:18
115:12	92:2,9 93:10	Mm 98:20	named 42:8,13	nice 49:10	52:14	once 12:22 48:14
means 7:6 24:3	93:13 107:9	Mm-hm 24:19	102:12	night 15:17	objectivity 44:23	48:23 60:8
53:19 64:1	112:12 113:7	45:12	names 1:15,17	nine 73:24	obligation 3:13	ones 16:25 43:19
69:16,20 73:6	113:18 115:15	mobile 100:8	74:24 93:6,9	nobbling 108:23	observed 36:5	106:4
99:20 102:19	117:14	102:14 103:1	93:13 94:17	noise 24:9 29:1	Observer 68:21	onwards 18:1
meant 7:2 13:8	merely 16:14	105:3,5	104:16	29:14	obtain 12:1	33:15 58:2
86:13,16	merges 49:1	mobilise 33:12	narrow 97:15	noisy 9:3 46:19	86:19 91:18	117:8
measure 32:3	message 24:4	mobilised 32:20	national 51:11	non 99:24	98:19,22	open 55:19
mechanisms	31:16 39:14,19	MoD 36:18	nature 6:3 21:5	normally 25:15	obtained 1:12,19	opened 83:6
103:10	42:5,6 54:9	model 60:9	33:17 37:14	72:18 80:4	70:5 77:4	Operation 50:5
media 9:15 11:18	56:13 60:5	modification	50:24 57:16	note 2:13,21 4:23	94:24 99:19	81:10 116:15
13:19 14:17	70:2	64:24	80:6	6:5,25 7:1,5	104:20 105:6	opinion 90:18,23
24:7 25:2,23	messages 24:6	modified 44:17	near 65:5 68:13	8:7 10:25 11:7	105:18	opinions 91:14
30:14 34:20	messy 46:19	module 49:1	nearing 60:15	11:16 12:8	obtaining 98:24	opportune 85:5
36:21 37:17	met 31:3,6 35:21	moment 5:18	nearly 96:4	13:25 14:5,9	107:15	opportunity

40:23	63:21,22 70:23	33:16 42:15	perceive 13:11	114:10	possibly 53:7	88:24,25 89:25
oppose 91:6	71:2,3,3 79:13	72:8 79:14	perfectly 38:24	pleased 112:3	post 55:18	91:6 94:21
opposed 88:4	85:21 89:6	81:15	45:19 75:23	plus 27:10	potential 29:24	98:3 105:17
opposition 89:10	92:22 93:6,24	particularly	78:3	pm 1:2 36:1	69:14	107:20 108:1,6
optimistic 9:24	102:11	28:22 70:18	period 36:22	60:20,22	potentially 12:10	108:7,7,18
ordeal 118:7	pager 14:22	73:14 74:5,9	83:7 84:17	109:14,16	98:23	109:1 112:4,22
order 23:12	pages 101:21	83:15 110:3	85:3 86:24	121:6	power 25:4 27:1	113:9,11,17,18
32:15 44:16	painter 71:6	parties 39:21	permanent	point 3:21,24	27:23 28:9	113:22 116:2
47:5,24 63:15	painting 71:10	89:19 110:9	31:11 46:25	5:13 6:13 8:23	67:7	116:20 117:13
64:14 72:7	paired 47:5	partly 31:17,18	117:2	18:1 19:25	powerful 33:15	119:18 120:7
91:19	Palace 69:2	98:1	permitted 94:23	20:9,13 21:19	46:8 52:9	pressure 34:20
ordering 88:15	panic 29:9	parts 4:7	pernicious 40:17	22:7 27:19	55:16 56:22	80:1
ordinary 70:17	panoply 98:18	pass 70:2	person 31:4 42:8	31:17,21 33:9	80:2,3	presumably
organisation	paper 31:22 32:1	passed 113:25	51:24,25 81:6	33:11 37:15	powers 4:11	76:16 78:2
69:25 100:10	32:24 84:18	passing 26:8	82:14 96:5	43:8 44:5 45:4	24:20,21,25	83:13 86:9
101:3,20 115:2	papers 90:13	28:7 93:15	98:8,11	46:5 49:6,12	25:3,11,21	87:25 103:9
organisations	95:2,16 101:24	patient 71:22,24	personal 1:11	49:20 50:10	27:24 94:24	pretty 12:14 25:7
13:19 27:16	paperwork 78:8	Paul 44:10 45:22	2:9 37:11	54:25 55:10	98:19,22	27:7 33:4
29:5 40:18	101:12	58:5 61:15,20	48:14 66:13	57:1 65:13	practical 12:3	prevail 117:4
41:20 43:13,18	paragraph 9:16	pause 5:18	72:7 77:3,11	67:19,22 78:9	111:18	prevent 100:4
88:10,14	11:21 20:1	pay 103:11	101:2 109:23	80:21 83:18	practicality	preventing 32:8
102:20 103:25	30:3,22 31:21	paying 12:1	116:5	85:19 86:4	23:17	previous 35:2
105:24 111:10	32:16 36:8	99:17	personalised	88:23 92:22	practice 9:2,2	39:25 57:10
111:20,21	40:14 45:4,8	PCC 4:1,19,24	27:16	96:19 98:3	11:25 14:21	85:8
organised 15:19	49:15,21 50:1	5:16,22 8:21	personally 11:4	99:24 100:25	19:18 20:3,25	previously 52:4
organising 43:19	51:9,19 52:14	10:22,24 11:5	21:14 66:2	102:6,9 104:10	22:10 25:4,7,9	52:5 62:20
84:6	56:25 57:15	11:17 12:4,11	96:24	105:17 106:9	26:11,16 27:3	83:23 86:15
original 45:14	59:6 61:1,19	12:18 13:11,12	person's 81:5	107:5 120:13	27:15,21 28:4	102:15
96:8	62:15 63:16	14:11 15:1,18	perspective	pointed 98:6,21	31:18 51:20,24	price 37:14 41:4
originally 9:12	69:2 71:2 86:5	15:21 17:23	36:10	points 23:15	116:3 117:17	83:4 92:8 97:3
92:10	87:12 92:22	19:2,9,21	pertain 120:15	38:15 40:25	practices 5:3	priests 111:13
ought 69:9	93:13,24	20:24 21:9,12	Phil 5:20 10:23	50:22 53:10	99:15 116:22	prima 86:16
104:15	103:17 107:18	21:15,17,20,23	14:1 26:2	65:12 69:8	practitioner	99:19 106:23
outcome 18:10	107:24	22:4,11,23,23	phone 98:11,25	poison 69:3	71:20	110:7
46:6 49:9	paragraphs	23:7,11,14,19	100:5,8 103:1	police 72:5 98:17	preach 19:10	primary 1:10
outhouse 18:21	17:13 51:2	23:25 24:5	104:24 105:4,5	policy 23:9,16,16	preaches 114:8	18:20 32:8
outraged 19:2	81:18,24	52:20 108:5	105:15,19	38:6,25 57:20	preceded 25:15	primary 28:21
outrageous	102:11	PCC's 20:22	106:8 107:6	63:18	precedent 30:13	Prime 35:16,19
113:14	parallels 50:14	penalties 28:15	phrase 7:14,19	polished 64:17	precise 9:21	35:21 37:18
outset 23:25	50:14	52:15 78:13	53:23 80:23	political 28:14	precisely 57:16	38:23 39:13
24:21	paraphrase	penalty 28:23,24	pick 31:20 32:16	29:17,18 45:6	97:16	40:2,10 58:23
outside 5:15	13:20 36:7	39:10 43:3	65:11 71:9	57:20	predecessor	59:7 62:21
63:11 71:12,13	45:5	46:1 67:14	73:12	politicians 2:17	31:11	principle 111:6
111:12	parked 71:12	pendulum 36:12	picked 54:22	2:19 3:10	preference 100:5	principled 58:16
overall 21:7 30:8	Parliament	67:2	79:10 98:3	43:16 45:6	premises 42:2	114:5
overlap 4:7	16:13 27:2	penetrated	picture 43:2	60:1	preoccupation	principles 13:13
oversimplified	32:25 46:21	100:11	118:5	pool 102:14	36:21 84:7	59:13 78:9
11:19	47:19 52:19	penultimate	pieced 34:5	poor 13:14 24:14	preparation 34:1	print 35:25
overspeaking	94:12 118:15	40:14	pieces 82:2	111:8	prepared 37:22	prior 58:24
99:13	118:20,21	people 12:1 15:7	place 8:13 22:20	popularity	110:10 120:14	priority 37:21
Owens 76:12	119:3	17:7,17,18	22:25 98:15	109:11	120:16	prison 32:13
96:8 97:20	parliamentary	19:4 27:8 29:4	117:15 118:23	position 11:19	presentation	34:18 46:3
owned 25:2	39:17	29:8,13 34:8	plain 33:4 52:15	12:3 38:1 45:9	18:22	48:21,23 54:10
o'clock 9:23	part 3:11 4:20	39:2 48:19	planning 62:16	46:9,24 47:14	presenting 27:1	55:20 66:19
49:19 54:21	20:5 23:9	51:15 59:24	platforms 21:19	59:12 118:24	press 14:23	88:4 90:16
O'Donnell 37:2	27:22 28:1,2	63:7 66:7,9	played 37:5	positions 63:3	16:10 17:1	privacy 2:9
38:16	28:13 32:9	69:21 70:17	players 24:7 27:9	positive 62:19	21:6 27:9	37:14 41:4
O'Donnell's	33:13 37:5	72:24 73:6	playing 46:23	83:12	32:20 33:12	83:5 92:9 97:4
36:15	38:22 39:1	74:10,15,21,22	plays 32:9	possibility 11:23	39:1 42:11	100:10,25
	46:13 48:24	80:2,4 81:4	plea 30:20 63:14	12:13 22:12	49:13 50:4,19	101:8 107:12
	52:21 53:1	86:24 93:6,11	pleaded 41:14	26:5 27:1	51:4 55:15	private 1:14,14
	77:6 82:16	93:16 94:21	42:22	possible 7:2	56:4 57:17,18	2:5 27:10 41:9
	113:21	98:7 99:25	please 2:12 22:16	27:12 47:1	58:3 60:7 61:4	42:12 68:12
page 4:23 15:14	participants	100:1,9,17,18	42:3 44:4	59:15 65:15	61:14 66:9	70:21 71:6
19:7,8 22:3,9	120:8	100:21 101:2	46:16 47:13	66:16 78:21	67:2,6,18	86:18 99:17
37:7 38:4,15	particular 10:17	103:24 105:3	60:23 67:4	90:13 99:21	72:19 83:12	100:1,18,21,22
41:9,9 44:6	14:9 19:7 21:2	106:5 113:23	70:2 109:22	120:14	84:12,14 88:18	100:23,24
51:21 54:1						
61:9,23 62:10						
P						

104:2 114:14 privileged 69:13 probably 3:9 14:12 16:3,15 25:14 79:2 90:10 106:25 111:10 problem 6:17 7:11 23:20 28:24 30:17 54:2,6,8 65:21 problems 8:10 54:2 66:8 88:16 proceedings 26:5 26:7 processes 57:20 procurers 43:6 produce 11:1 18:17 38:24 produced 1:20 14:20 86:16 producing 26:14 production 22:12 profession 43:21 professional 116:4 progress 62:3 112:11 progressed 7:23 11:8 project 31:7,8 prominence 89:19 promised 59:9 62:2,8 promote 25:3 26:11 28:3 111:4 112:5 promoting 25:7 25:8 27:3,15 27:21 31:18 prompted 57:2 proper 72:5 78:3 properly 66:25 proportionality 72:3 106:19 proportionate 72:10 proposal 12:4 45:14 83:8 119:12 proposals 83:7 91:7 proposed 119:21 proposing 55:22 proprietor 17:20 proprietary 82:8 proprietors 6:20 6:24 7:3 51:11 88:20 prosecuted 29:23 50:18 93:7 prosecution 18:9	38:5,25 63:18 67:23 68:6 74:5 prosecutions 21:22 23:21 31:3 41:6 63:25 prosecutor 3:23 prospect 34:19 prospective 64:23 protecting 37:23 55:15 protection 11:16 14:17 36:13 59:4 62:17 63:13 70:21 73:22 75:13,16 84:1 85:1 94:5 100:2 101:1 111:4,8,12,13 111:25 114:9 115:4,8 116:5 protections 119:21 protest 35:6,8 protocols 106:5 proud 3:3 16:11 proved 72:8 provide 93:25 provided 92:24 93:3 providing 63:25 provision 34:17 47:17 115:3 116:4 PS 101:13 PS5 101:17 public 12:2 14:11 15:24 18:12 21:19 22:23 31:3 38:4 44:17 49:5 53:2,4,13 53:15,19 55:15 56:2,8,12 57:2 57:19 63:23 64:6,19,25 65:7 66:23 68:3,15 70:7 70:11,15 71:14 72:1,10,16,17 72:19 74:1 77:17,22,23 79:17 82:17 90:12 91:12,14 91:22 95:20 106:11,17,18 107:8,14 119:18 120:7 publication 20:20 38:5 49:22 69:15 75:18 83:10 92:8,19 93:20 114:11 116:19 117:9	publicised 17:17 publicity 27:13 93:8 publicly 46:19 60:11 publish 46:20 63:17 85:25 published 15:16 18:22 26:18 32:1 51:12 53:14 64:12 83:4,21,23 86:15 87:5 94:8 111:2 112:18 Publishers 89:10 publishing 26:24 27:7 28:11,18 pull 34:15 purely 44:19 99:12 purpose 28:11 28:14 63:25 purposes 28:12 63:24 pursue 18:12 118:24 pursued 24:16 pursuing 31:5 put 5:3 9:1 12:7 15:23 16:7,8 20:14 24:13 34:10 35:12 39:4 64:10 69:15 70:19 73:15 74:1 96:10,12,15 99:14 100:4,20 103:14 105:10 116:23 117:15 120:23,25 putting 12:6,16 14:2 32:21 43:13 91:7	quickly 33:10 70:2 quite 5:1 6:1 10:21 13:18 15:5 28:17 29:16 35:25 37:5 46:8 48:10 49:19 64:13,15 74:21 76:24 77:12,13 81:23 83:23 85:5 86:1,11 88:16,21,21 91:6,15 93:19 93:25 99:17 102:24 103:2 108:19,22 110:17 111:7,8 111:22 114:18 114:22 115:23 116:12 quotation 68:20 quote 61:7 108:15 quoted 24:10,11 118:15	realise 60:8 really 3:21 6:1 17:10,18,21 18:4 33:24 36:20 46:11 57:21 60:4 61:13 67:3 83:17 101:22 103:2 112:15 112:16,21 113:2 115:19 reason 5:1 27:22 34:16,20 48:4 48:14 52:11 60:10 73:7 79:25 82:21 94:3,19 95:9 119:17 reasonable 38:4 44:18,24 45:11 47:6 reasonably 15:3 93:2 reasons 32:6 85:25 Rebekah 45:23 rebuffed 66:7 recall 1:12 7:1 25:11 34:18 35:5 76:16,23 81:7 84:3 89:15 114:23 receive 96:24 received 42:14 47:9 94:11 96:13 110:9 receiving 58:1 92:6 95:21 receptionist 42:6 recognise 2:23 2:24 24:2 40:19 67:8 72:11,20 recognised 32:4 50:5 54:6 63:1 63:2 87:25 89:3 90:23 recognising 23:22 75:1 recollection 77:11 87:19 recommendati... 49:7 recommendati... 28:22 record 35:12,15 40:24 41:12 49:5 75:11 116:9 118:23 120:25 recorded 9:10 34:7 39:13 77:4 121:1 recording 35:23 records 14:10 31:7 36:18 66:11 99:9,9	100:23,23 104:13 105:13 105:13 106:15 107:13 reducing 21:4 refer 15:18 22:7 23:10 47:5 49:24,25 50:16 58:5,14 61:7 61:12 86:5 88:15 120:24 reference 11:10 49:22,23 79:12 86:8 102:18 referred 98:4 103:23 referring 36:6 refers 58:24 reflect 73:23 reflected 6:14,18 7:15 reflecting 89:13 reflection 55:22 reflects 8:7 reform 63:10 refund 110:21 regard 62:7 regarded 31:24 regarding 66:22 112:21 register 35:8 registering 34:18 registration 71:13 regretted 94:25 regular 30:23 70:3 regularly 21:19 31:2 99:17 regulated 90:9 regulation 4:11 25:16,18 regulator 3:22 9:1 13:11 21:20 22:6 92:3 99:3 regulators 7:8,24 8:24 19:23 regulatory 63:10 63:13 reinforced 57:8 61:2 reintroduce 35:4 reintroduced 40:22 relate 41:20 related 80:18 relation 26:23 37:24 42:21 43:3 51:13 65:16 69:11 70:8 73:18 92:11 97:9 114:8 116:1 119:13 120:23 relationship 2:15 relatively 113:8	Relevant 26:15 rely 70:4 relying 118:21 remain 34:24 remained 95:12 remains 63:17 remarkable 80:20 remarks 15:18 remedy 32:5 remember 71:7 79:12 remind 42:20 54:15 remit 63:12 remote 45:25 removal 45:25 46:18 repeat 13:10 20:6 32:11 67:10 repeated 40:1 repeating 40:16 87:7 repeats 40:13 reply 15:10 93:22 report 15:6,13 15:16,24 16:8 16:9,12,12 17:14 18:18,20 18:22 20:20 21:2 27:2,7 28:19 29:7,15 29:21,22 31:4 32:2 41:5 46:20,21 50:11 50:17 51:14 57:7 70:16,24 83:5,10,11 85:7 86:14,22 87:5 94:8,8,12 96:13 100:16 104:25 110:17 111:1 116:19 reported 50:20 reporters 21:18 55:20 reporting 57:14 118:12 reports 1:21 26:18,24 28:12 49:23 51:5 61:5 68:20 70:25 74:9 111:24 112:18 113:18 114:12 117:9 represent 114:12 representative 88:14 representatives 45:22 46:9 51:4 reputation 111:8 request 76:21 require 44:15
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

47:4	88:1 93:19	saloons 117:3	secondary 47:4	95:17	53:7 58:13	sit 27:4 120:14
requirements	98:15 99:4,5	sanction 47:3	secondly 25:19	self-contained	59:18 61:4	120:16
4:8	101:4 102:21	59:5 67:16	38:23 44:17	80:23	64:18 85:9	situation 48:11
requiring 115:9	103:8 107:10	89:23,25	56:1,22 67:17	self-governing	107:21	60:23 74:10
116:4	109:25 111:20	113:12	96:21	80:24	sets 59:19	77:23 92:1
resignation	111:22 112:22	sanctions 29:25	seconds 120:19	self-interests	setting 58:3	96:20
91:21	112:23 113:11	32:5 37:10	secrecy 62:2	46:11	shame 14:19	situations 68:7
resigned 70:14	113:13 114:2	sand 11:9,17	72:22	self-regulate	shape 14:13	72:21
91:19	115:11 118:2	12:4	secret 32:7	52:24	share 17:5 70:16	six 48:2 58:8
resigning 106:22	119:9 120:20	Sargasso 31:10	Secretaries	self-regulation	71:19 72:12	78:25
resist 26:22	121:5	sat 34:9 120:17	31:12	13:13 19:11,14	78:23 94:23	skilled 18:21
resisting 101:5	rightly 4:18 15:5	Saturday 57:4	secretary 23:4	24:13 52:18,22	95:9 97:17,24	skin 4:17
resonance 85:19	61:1	83:24	37:3 40:1	73:22	100:24 118:9	slogan 111:19
respect 65:15	rights 101:1	saw 2:6 27:2	46:25 52:4	self-regulators	shared 6:7 16:8	slow 17:5
66:16 90:24	Rimington 77:2	31:9 38:21	section 4:9 14:15	16:24	78:8 87:2,20	slowed 18:25
105:22	ringing 17:20	41:12 60:14	14:19,23 22:8	self-regulatory	115:17 116:25	small 35:25
respectable 90:1	RIPA 63:7	65:5 68:10	24:17,21,22,24	19:22	sharply 12:6	smaller 41:3
90:6	risk 11:25 36:10	70:10 82:11	25:11,14 26:10	send 15:5 32:12	she'd 77:4	smoothly 32:18
respective 20:24	68:13,16	85:11 102:18	27:5,23,25	48:17 55:20	shocked 102:24	33:12
63:2	risks 31:9	saying 2:1,4 3:6	28:2,7,15,16	115:7	103:2	societies 24:8
responding	RJT 15:10 45:1	5:14,15 6:23	37:8 43:4 47:7	sending 15:13,15	shocking 110:18	society 29:11
116:20	RJT1 71:1	9:4 10:16	47:8 48:16	27:15	shockwaves 63:6	40:19 55:19
response 7:24	RJT13 20:18	12:25 14:3	49:8,13 50:15	senior 82:13	shoes 90:4	58:6 67:2
12:20 20:22	RJT14 23:2	17:21 21:11	52:15 60:16	sense 72:19	short 6:18 59:6	88:19,20
24:2 29:15	RJT15 31:23	24:8 27:16	62:7 63:15	sensitive 95:3	60:21 64:4	109:24 115:21
49:25 56:20	RJT22 51:21	28:1,6 29:9	64:1 65:16	sent 6:18 35:22	73:10 109:15	solicitors 110:2
89:5 91:9	RJT23 54:14	34:14,19 35:3	66:17 75:13,16	42:6,6 45:1	shortcircuit 73:1	solution 8:2
112:4	RJT36 63:20	35:19 36:1	75:21,24 76:6	63:6	shortly 75:6	somebody 7:14
responsibilities	RJT39 35:7	40:13 41:22	78:12,22 83:8	sentence 20:1	112:1	42:12 68:9
20:24 28:5	RJT40 35:17,22	42:11 49:15	88:5 89:12,25	24:11 37:1,19	shot 61:13	71:12 77:4,21
responsibility	RJT41 40:10	54:5,7 55:2	94:3,4,13 95:1	44:15 46:4,15	shown 13:13	98:25 99:6,6
4:21 28:3	RJT44 61:23	65:23 69:8	95:8,19 106:2	47:3 48:22,23	shows 12:17	99:22 101:7
111:11	RJT46 58:7,25	78:3 79:16	106:24 108:17	50:1 54:10	93:15	somebody's
responsible	61:12,18	80:17 83:2	108:19	66:20 90:16	side 12:13 17:7	110:18
69:14	RJT54 1:5 2:12	87:6,11 89:21	sectors 29:6	sentenced 42:23	22:18 45:23	someone's
rest 20:17 81:1	RJT6 7:18 9:16	91:8 92:18	secure 104:15	sentences 48:22	107:12,14	106:14
104:16	RJT7 10:20	101:6,6 103:15	secured 10:6	88:5 89:11	sides 12:7 34:10	somewhat 23:6
rested 60:2	11:11	103:15 104:18	see 4:23 5:2,10	separate 50:12	52:7 91:3	89:14 119:20
result 8:12 19:3	RJT8 13:2	105:24 106:6	6:1 9:15 10:1	79:15	114:5	son 110:20
29:4 74:3	RJT9 15:2	108:13,25	13:17 15:2	sequences 40:21	sight 72:23	soon 6:18 111:1
109:21	role 3:17 22:5	110:5,8,20	20:21 21:20	sequentially 8:15	120:22	111:22
resurrect 13:25	55:15	113:14	23:1 30:22	sequitur 99:24	sign 115:9	sooner 113:19
retention 45:10	roles 20:24	says 2:14 3:9 7:7	35:22 38:3,12	serious 12:11	signal 48:17	sophisticated
45:13	roll 40:6	9:16 13:24	43:1 46:8 48:9	36:20 48:15	117:16	81:4
retired 117:11	room 34:8 38:17	21:16 26:6	48:14 52:14	59:2 66:24	signed 76:13	sorry 6:22 18:6
return 19:9	119:19	54:1 85:15	61:21,24,25	68:6 99:20	significant 29:25	27:18 42:6
reveal 59:8	routine 108:19	92:23	62:23 71:5	114:22 119:4	30:17 86:18	49:11 54:19
revealed 118:16	roy 69:6	say-so 68:8	80:3,10 88:3	seriously 6:10	93:8	75:14 94:23
review 36:15	royal 47:9	scale 6:4,16,17	90:3 92:1,1,21	13:18 14:23	similar 41:2 69:5	97:5 103:13
37:2,3,6 62:21	Rozenberg 41:11	68:10 99:8	102:12 115:1	24:13 28:22	69:8 72:25	104:9,18
revived 11:9	RT 4:23	105:10,14,16	115:11 117:21	29:7,14 32:15	simple 47:25	107:23 108:4
Reynolds 69:12	rule 62:22 75:20	scene 11:5	119:17	36:14 48:19	simply 6:25 7:4	118:3
Rhod 119:24	116:4	scenes 17:19	seeing 107:4	51:16 68:2	20:2 38:16	sort 9:11,17,21
Rhodri 55:10	rumour 72:3	scope 44:8 66:22	seek 68:7,8 92:5	74:19 87:10	59:12 72:6	11:2 26:8,12
103:8	run 11:8,17 12:4	scrupulous 96:5	seeking 67:12,13	95:1,8 111:9	80:9 89:13	29:24 30:9,18
right 3:14,19 8:4	running 102:8	seamy 69:3	seen 6:8 21:13	117:13	104:23	32:15 35:11
17:7 20:13	runs 66:20	search 94:24	24:5 35:10	seriousness 6:2	simultaneous	39:11 41:18,19
21:11 26:13	Rusbridger	searched 66:11	55:1,6 61:18	servants 31:2	119:16	42:5,16 48:20
27:25 28:6,7	89:17	seat 46:5 108:25	65:7 75:2	45:16	single 70:12	48:20 50:18
29:18 30:25	S	second 6:10,12	82:18 85:16	serve 25:13,17	sir 3:18 4:18	57:9 60:12
32:14 37:23		7:9 9:25 10:8	91:17 111:9,12	service 100:6	12:24 13:1	65:6,20 68:10
38:6 42:16	sacrosanct 95:22	29:7 33:1 41:5	segue 49:10	102:8 103:3	15:5 19:6	68:18 72:1
43:2,12 45:15	safe 94:13,14,15	44:5,6 45:3,8	seized 50:5	108:20	21:16 44:8	73:3,3,4,20,25
52:2,3 57:24	safeguard 46:24	50:11 53:1	select 30:12,16	services 4:13	48:4 51:23	75:20 77:22
58:2 77:25	safety 53:8	68:20 70:24	41:16 42:1	29:12 43:21	57:2 73:21	84:9,15 85:12
81:17,23 82:24	sailing 33:4	71:16 80:12	49:7 56:9 65:7	set 21:1 27:7	75:5 109:8	86:13,21,22
83:23 84:22	saloon 53:21	93:6,24 94:8	68:1 94:20	29:22 45:6	118:8 120:13	87:21 102:20

104:14 105:25 110:25 111:14 114:19 115:17 115:18 117:14 sorting 76:25 sorts 2:7 39:5 53:18 104:20 sounds 84:22 source 103:22 sourced 102:15 so-and-so 2:5 space 34:17 speak 11:4 51:24 SPEAKER 119:25 120:2,6 120:11 speaking 3:18 6:4 8:7 16:1 33:13 51:23 special 16:12 specific 26:20 27:16,22 specifically 26:25 43:4 114:23 Specifics 21:1 spectrum 104:15 speculate 38:18 59:20,21 66:5 81:2 104:4 speculated 106:21 speculating 39:5 91:23 speech 9:5,6 15:17 17:12,13 17:13,16,17 19:6,7 21:13 21:14 58:5,13 58:25 59:18 61:12 115:17 speeches 31:13 31:15 111:23 speediness 31:25 spend 81:8 97:1 spent 84:14 96:4 spirit 8:11 spoke 92:18 sport 30:14 spring 14:12 staff 95:7 115:7 stage 15:1,7 18:2 33:7 34:3 35:5 47:11 89:18 stages 59:20 stale 18:2 stamp 107:20,25 stance 21:17,22 stand 64:8 104:25 standard 15:9 69:7 Standards 20:10 standing 43:22 stands 105:6 start 2:14 33:4 56:20 106:17	started 6:2 35:13 36:1 77:1 80:16 84:23 111:8,22 starting 63:21 110:5 starts 92:17 state 40:1 46:21 98:17,18 stated 28:21 statement 18:15 30:4 31:21 32:17 33:21 34:1 38:24 40:5 44:5 49:16 51:2 54:25 55:3 57:15 60:17 61:5 63:18 67:23 81:19 82:4 83:2 85:9 85:11 86:5 87:9,12 97:22 101:13,16 107:19 112:19 113:1 117:25 statements 1:19 53:9 55:1,7 74:21 82:18 97:13 statute 47:15 statutory 25:6 94:11 stay 1:17 21:18 steal 98:12 Stella 77:2 step 15:19 steps 5:17 18:17 30:2,6 72:5 75:17 114:18 114:22 115:11 115:13 117:14 stick 5:19 75:7 79:23 stipulated 104:2 stolen 69:21 98:14 stones 68:22 stood 61:10 stop 9:1 17:1 67:20 105:20 105:25 114:22 stopped 6:20 106:7 111:1 stories 61:10 69:17 70:7 story 1:21 8:15 34:11 75:19 116:20 straight 41:25 49:8 93:10 94:7 96:3,10 103:14 strange 82:12,23 85:15 strategic 7:24 23:16	strategies 111:23 strategy 21:7 24:15 30:8 Straw 34:14,21 streamed 119:17 Street 35:21 strength 107:12 107:14 stressed 3:4 strictly 99:13 strident 8:22 12:21 strike 34:18 37:23 strong 16:6 21:21 34:18 35:12 37:18 54:23 61:13 76:24 118:23 stronger 37:10 89:23 113:12 strongest 105:24 strongly 12:16 13:12 27:6,20 35:8 40:2 70:18 73:14 104:19 struck 70:10 struggle 55:19 stuck 108:13 stuff 56:6 65:4 95:3 104:17 116:7 style 16:11 17:6 subject 69:16 85:3 111:16,17 subjective 44:18 44:19,22 submissions 120:22,25 subsequent 3:25 23:2 subsequently 61:25 64:12 subsidiaries 110:13 substance 51:5 64:24 67:13 91:11 substantial 57:19 83:12 substantially 14:13 subterfuge 4:9 116:8 succeed 46:2 succeeding 84:11 success 30:18 successful 29:2 29:16 succession 44:3 successor 42:18 47:19 48:7,10 95:15 103:4 suddenly 82:14 suffered 36:19 sufficient 117:17	119:22 sufficiently 36:14 suggest 80:14 81:24 suggested 37:12 50:3 100:4 suggesting 7:5 63:11 74:18 80:11 81:16 82:3 suing 23:21 suitable 32:10 68:9 sum 71:22 Suma 44:8 summarise 34:12 49:18 summarising 112:3 summary 21:7 30:7 sums 99:18 Sunday 54:13,20 65:14 71:20 76:4 77:15 79:13 82:1,16 84:24,24 85:20 85:22 86:1 92:11,14,25 93:3 96:19 supply 72:15 support 19:24 31:5,9 32:4 36:14 43:16 46:10 67:5 114:1 supported 30:18 36:5 supporting 30:20 supportive 30:24 89:2,22 supports 89:9 suppose 14:14 25:19 112:11 115:1 supposed 16:25 suppress 105:2 sure 3:4,6,20 16:1 28:4,25 29:17 34:6 38:21 39:12 52:20 57:1 64:13 66:2 86:11 89:2 91:21 103:4,6 104:6 114:3 118:5 surface 14:9 78:24 103:4 surfaced 25:20 47:24 66:12 90:20 surfacing 87:13 surmise 79:25 surprise 49:4	surprised 6:15 6:16 17:6 60:4 78:2,6 90:10 97:21 102:5 113:2 surprising 16:18 82:12 survey 62:17 suspect 3:5 65:17 113:16,24 suspense 39:20 sweep 69:1 swiftly 32:18 33:11 swing 36:12 67:3 sympathetic 59:8 89:2 sympathy 74:7 <hr/> T <hr/> tab 7:18 13:1,7 15:10 20:19 31:23 33:23 35:7,17 40:11 45:2 51:21 54:13,15,17 58:7 61:23 63:20 89:5 92:15 93:22 table 38:20 49:24 50:3 92:10 93:20,21 97:3 97:11 tabled 13:17 90:23 tabloid 37:16 50:4 60:7 86:17 tackle 7:11 tag 97:7 take 4:24 5:8,17 6:21 8:1,12 14:1,23 15:2 23:7 24:12 28:1 32:14 33:10 34:11,12 52:19 65:3 75:16 83:3 88:24 89:21 106:9,25 taken 18:17 28:22 29:7,15 36:14 46:2 48:18 55:10 66:25 72:5 74:19 78:12 80:20 90:25 95:1 111:9 113:9 114:18 114:22 115:13 115:23 117:12 takes 89:8 talk 40:6 55:14 86:25 87:16 88:17 100:19 101:7 talked 51:14	54:5 85:14 94:3 100:1 talking 14:16 41:21 73:13 75:21 77:16 87:18 88:22 98:7 99:8,12 103:19 108:1 talks 6:15 57:7 tampering 108:23 taped 110:21 target 21:2 69:14 targeted 1:22 2:5 43:4 targeting 74:17 targets 1:7 71:9 tax 65:16 77:15 77:21 99:9 100:23 105:13 106:5 110:20 110:21 111:1 Taylor 26:2 team 10:24 12:7 12:7 61:3 81:14 120:3 teased 58:19 technical 111:16 technician 71:17 techniques 41:15 Telecom 100:11 105:19 Telecoms 105:23 Telegraph 41:12 telephone 34:14 65:22 69:22 72:18,21 91:18 98:5,8 99:6,13 99:23 100:5,7 100:22 102:14 103:10 105:3 106:14 telephoned 110:19 tell 6:3 16:2,2,22 17:2 28:20 44:6 63:3 76:8 78:6 107:18 117:18 119:2 telling 4:18 21:24 22:24 34:25 51:23 61:3 77:10 temple 111:12 tempo 18:4,7,25 ten 6:11 67:24 73:24 116:17 tenacious 58:16 tension 100:17 100:20 tenure 95:12 109:4 term 7:12 53:21 terms 4:8 5:5 6:3 8:22 10:14 17:23 24:1 26:10,20 27:3	27:12 29:5 31:20 56:4,8 56:12 58:20 63:10 68:3,15 70:11 72:10 75:22 90:7 95:20 101:1 106:2 terribly 96:20 102:9 territory 17:2 77:24 79:18 test 44:18 45:11 47:7 106:17 text 15:17 thank 1:4 12:24 15:13 20:14,15 46:13 54:19 56:25 60:19 65:2 69:10 75:3 76:1,7 85:18 89:13 109:5,7 117:19 118:6,6 119:8 119:8 120:12 120:18 121:4,5 thanks 61:24 thats 87:15 theme 19:9 thereabouts 107:22 they'd 1:18 thing 24:10 60:12 73:12 115:1,18 things 2:25 17:25 30:10 41:7 51:6 52:24 68:23 80:6,25 84:15 87:14 88:1 100:21 106:13 112:1 112:16 think 1:12,23 2:5 3:3,24 5:21,25 7:2,15 8:18 9:7 10:4,8,10,21 11:8 12:21 14:9,10,12,18 14:20 15:18,21 15:25 16:3,17 16:20 18:8 23:10,24 24:22 25:3 26:3,16 26:16 28:17 29:16 30:13 31:23 32:6 34:8 35:22 38:7,21 40:5 40:12 41:5 42:23 43:24 44:21 45:16 47:8 50:13 52:17 53:23,23 54:4 56:9,10 56:15 57:4 59:7,17,20,24
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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60:17 63:4 64:11,15,16,17 64:25 65:6 68:17 69:6 71:15 72:9 75:20 78:9 80:7,22 81:6 83:16,22 87:8 89:1,3,5 90:14 90:21,22 91:21 92:12,15 93:2 95:15 97:7,13 97:14 98:23 99:24 101:13 103:9,14,17,23 104:4,8,12 105:6,8 107:10 111:10,22 112:21,23 114:4,24 115:19 116:6 119:5,9,13,20 thinking 71:19 thinks 19:21 third 20:21 46:21 62:15 71:16 89:19 Thirdly 25:24 Thomas 1:5 15:25 19:20 20:8,18 24:9 33:10 41:19 44:4 49:13 50:8 51:3 55:11,20 60:15 60:23 63:10 65:11 70:1 72:14 73:8,13 75:9 79:22 83:4 97:1 100:14 103:6 103:23 109:5 118:6 thought 11:18 12:20,22 14:24 16:2,4,6,7 23:19 26:8 30:1 36:9 77:25 82:11 85:13 90:6,7 90:24 94:14 thoughts 17:4 threaten 56:19 threatened 77:13 threats 59:3 60:3 three 1:17,20 18:7,16 25:14 32:1 33:18 36:16 41:5 44:2,7 49:1 50:21 58:25 74:11 80:20 84:23 85:8,23 101:21 102:11 113:16 throw 49:14 thrust 35:24	87:10 tie 51:22 Tim 11:16 13:25 time 10:2 15:25 16:2,4,12,22 20:4 21:4 23:18,22 25:20 26:14 28:18 32:3 36:7 37:22,25 38:17 38:19 42:5 44:12 52:11 53:11 57:3,14 64:12 65:3,22 66:10 67:10,19 69:5,23,23 70:19 73:15 74:8 77:1,9,10 78:18 80:8,15 81:8 82:11,19 82:22 83:4 84:7,14 85:11 91:9 95:4,24 97:1 98:4 106:9 112:2,2 112:10 115:23 117:11 timeline 18:14 33:24 34:6 times 12:18 32:11 35:9 54:13,20 57:4 65:14 76:4 77:15 79:6,13 82:1,2,16 83:20 84:24 85:20 92:11,14 92:25 93:3 96:19 97:14 98:6 101:14 timing 84:3 titbits 68:25 title 58:19 tittle-tattle 37:17 56:10 65:8 today 75:25 78:18 91:17 94:4,16 101:9 107:19 112:8 118:22 119:1 120:17 told 1:18 22:19 42:18 44:1,13 48:7 57:24 61:21 71:7 78:15 94:17 109:22 112:15 112:19 114:18 114:23 117:14 118:8,19 tomorrow 120:17 top 93:11 total 36:21 97:2 97:6 totally 26:22 57:11 59:11	67:5,8 117:3 touch 69:16,23 70:1 touched 24:21 73:1 101:9 104:9 tough 111:21 112:10 tougher 52:14 113:15 tracing 27:11 track 102:10 tracked 71:12 trade 20:12 21:3 21:5 37:10 47:20 Trading 29:12 52:23 training 114:20 transaction 70:13 transactions 94:2 97:3,8 transcript 121:2 translates 103:17 transmission 119:15 Transport 36:19 trawls 68:25 trial 117:22 trickle 61:11 tried 12:19 tries 9:1 troubling 79:22 true 12:5,15,20 21:25 59:11 117:9 truth 22:1 try 16:19 17:6 28:14 31:18 37:6 49:18 trying 2:24 4:21 10:25 12:7 33:10,10 56:19 73:23 74:4 84:11,14 111:15 tucked 23:4 Tuesday 78:8 85:12 101:24 118:13,19 turn 68:22 70:22 turned 96:21 61:21 71:7 two 1:17 7:2 8:3 16:18 17:13,14 18:16 23:15 25:14 26:3,18 26:24 28:11 38:15 39:10 42:18 44:14 50:2 54:12 61:5 63:7 65:9 77:10 78:25 80:2 81:24 83:1,22 112:18	112:23 117:22 119:11 type 61:4 typical 79:20 107:3,4 <hr/> U <hr/> UK 19:11 63:12 101:22 Um 30:5 79:9 84:3,20 unabated 12:2 unable 95:9 unacceptable 9:2 9:4 17:1 37:11 67:18 unavailable 102:15 uncertain 64:7 uncertainties 66:22 uncomfortable 94:25 unconnected 83:25 uncovered 87:15 underground 50:24 underlying 18:3 undermine 3:13 underneath 103:17 understand 2:20 5:14 8:17 20:8 22:22 43:1 47:16 48:9 56:16,17 62:6 67:5 71:8 73:9 73:16 95:18 97:23 105:11 113:6 understanding 1:9 48:1 82:24 111:4 115:10 understands 28:4 understatement 16:7,15 understood 28:13 37:9 44:10 70:20 77:9 91:1 114:19 118:9 undertake 62:21 undertakings 62:5 undertook 81:14 undesirability 84:25 unfortunate 96:14 unidentified 5:12 unit 80:22 united 88:25 universal 88:9 unlawful 103:9	unlocking 48:22 unnoticed 49:24 unpopular 109:9 Unqualified 96:12 unreservedly 89:9 unwittingly 66:23 update 62:8 upshot 22:14 46:13 47:2 use 24:24 25:10 53:21 71:25 76:25 87:8 89:3 91:23 114:14 useful 14:14 62:8 <hr/> V <hr/> van 71:11,13 varies 107:13 variety 37:18 various 2:25 4:7 13:18 24:7,8 56:18 59:20 62:4,8 67:25 88:14,17 98:17 99:25 vary 91:14 vast 56:11 107:7 venture 88:23 verse 27:8 86:25 version 58:14 viable 20:2 victim 37:12 106:3,4 victims 1:7,24 2:3,10 5:12,16 75:1 93:9 100:12 view 1:10 8:21 13:12 19:24 48:14 50:8 73:17,25 75:17 88:7 89:8 96:19 vigorously 91:4 village 72:4 vindicated 115:25 virtual 102:25 virtually 53:12 56:6 85:14 virtues 52:18 visibility 17:23 visited 1:18 42:2 vis-a-vis 11:5 vital 55:19 vivid 10:13 vociferously 93:1 voicemails 50:14 voicing 89:17 vote 33:8 vulnerable 106:6 V4 102:13	<hr/> W <hr/> Wade 45:23 wait 10:21 48:8 48:11 waiting 18:9 want 1:15 6:13 8:14 16:22 20:16 22:20,25 38:11 64:16 77:19 80:5 81:8 91:8 92:8 100:7,19,21 103:4 105:3,17 105:24 106:6 107:16 109:20 111:20,21 112:9 114:10 116:23 118:22 120:6,6,21,24 121:2 wanted 5:2 8:22 13:21 29:4,14 31:4 32:13 39:8 47:1 49:11 74:9 87:3 89:19 90:13 98:16 108:7 111:14 wanting 100:18 102:21 wants 38:1 67:15 90:8 101:7 Wapping 51:18 warned 115:22 warning 61:13 warnings 14:16 warrant 94:24 wasn't 5:1,4 10:4 17:11,22 18:10 19:1 27:13 29:19 57:9 59:14 77:1 80:24 81:21 82:3 84:16,19 86:24 97:10 110:10 116:11 watch 61:25 watchdogs 68:24 watching 57:22 watershed 6:17 Watowsky 26:3 wave 68:4 way 4:17 7:1,5 14:19 19:14 20:21 23:20 24:16 32:13,21 36:3,12 43:2 43:12 50:9 58:5 59:17 61:10 62:1,11 63:3 67:3 70:3 74:18 75:24 79:20 80:3 81:16 85:17 93:5 115:5 116:12 ways 69:20	99:25 104:20 wearing 81:22 web 119:16 website 22:4 websites 103:25 Wednesday 65:23 week 13:5 26:1 31:7 35:2 65:23 80:12 84:2 85:12 101:25 113:14 118:14 120:23 weekend 54:22 106:22 weeks 10:1 17:14 39:4 52:16,20 57:10 77:10,21 78:25 83:22 85:8 113:17 welcome 14:6 30:17 32:2 45:23 67:18 69:9 115:12 116:9 117:13 welcomed 36:14 welcoming 116:9 well-connected 80:2,4 went 12:17 18:3 18:21 31:10,12 33:4,6,8 35:20 60:6,12 63:3 87:11 118:21 weren't 7:25 9:20 12:14 23:6 39:11 81:3 88:1 we'll 7:16,20 38:21 40:5 42:17 65:3 79:10 111:20 113:6 119:9 we're 18:14 25:15 26:14 30:25 35:3 48:11 62:3 67:12 77:16 91:10 99:8 103:12,19 109:12 112:7 112:16 120:11 we've 15:16 20:13 21:13 24:15 49:25 60:17 61:18 73:1 75:2 81:10,20 85:16 91:17 96:11 98:4,4 117:2 whatsoever 48:14 65:17 72:9 wheezes 69:3 whiff 65:7 whilst 117:8 119:19
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>white 71:13 90:19,22 Whitehall 31:12 Whittamore 41:1 70:9 72:15,25 74:12 104:20 113:2 117:21 Whittamore's 1:8 18:3 71:8 116:15 wholesale 63:12 wide 27:8 74:16 widely 43:5 widen 45:10 widened 46:4 56:24 64:22 widening 91:16 wider 14:16 20:14 41:22,22 45:18 46:1 53:7 72:18 108:2 widespread 11:25 wielded 79:24 wife 2:6 willing 23:6 48:8 97:24 willingness 8:2 wind 64:5 winner 71:11,14 winter 33:24 wish 32:12,12 85:17 wishing 43:8 withdraw 35:4 withdrawal 40:20 withdrawn 35:1 40:4 Witherow 76:5 76:17 78:1,4 78:12 85:20 witness 1:18 18:15 44:5 54:25 55:1,3,6 74:21 81:19 82:4,18 83:2 85:9,11 87:8 97:13 108:23 113:1 119:11 witnesses 85:16 woman 111:17 women 105:1 wonderful 113:17 114:1 wonderfully 102:12 word 3:7 12:21 23:15 29:18 59:11 71:25 89:3 91:23 wording 17:16 94:13 words 53:4 67:8 work 7:10,23</p>	<p>15:23 16:7 38:11 62:11 105:24 worked 34:1 71:10 working 16:25 111:5 112:5 114:15 world 28:20 31:8 92:12 100:7 world's 84:8 worry 91:12 109:10 worrying 108:22 worthwhile 11:2 wouldn't 64:16 78:11 79:1 100:20 106:25 107:16 117:10 write 17:8 23:5 35:11 80:4 82:2 85:5 113:13 writer 18:21 writes 13:1 writing 62:3 70:8 85:2 written 2:20 55:6 77:3 120:22 wrong 22:19,25 36:24 51:24 58:19 85:10 89:4,22 92:11 96:22 100:13 wrongly 4:18 wrote 29:13 35:6 39:13 48:10 76:4,8,13,20 80:7,11 84:24 92:14 96:23,24</p>	<p>00440 51:21 00539 35:7 00542 35:17 00544 40:10 00555 61:23</p> <hr/> <p>1</p> <p>1 41:9,10 52:14 10 15:6 61:8 67:1 90:15 103:18 100 20:13 11 7:18 44:7 76:3 12 15:10 121:8 13 13:2,7 20:18 14 41:14 15 13:21 15th 13:8 17 15:10 71:2 18 20:19 58:24 19 23:2 1994 55:25 67:12 91:10 99:3</p> <hr/> <p>2</p> <p>2 10:8 41:9,10 44:7 93:13 2.00 1:2 20 53:25 74:20 2000 80:19 116:17 2002 50:19,20 65:18 76:3,3 2003 18:4 23:11 41:2 50:20,20 65:15,18 116:17 118:16 2004 10:23 11:3 11:14 12:9 2005 12:18 14:12 18:10,14 26:2 118:22 2006 12:18 14:20 15:6 20:18 26:13 31:23 32:24 42:22,23 51:10,18 54:14 58:2 61:3,6,8 68:21 76:21 81:18 86:22 107:21 112:18 112:20 116:19 117:8 2007 8:13,18 12:18 14:21 26:17,19,21 32:25 41:17 42:17,24 113:2 114:14 116:3 117:22 2008 32:20 33:13 33:14,25 40:10 45:2 47:9,10 48:2 58:7 61:21,22 63:19 113:25 114:18 115:16,18 2009 47:18 61:4</p>	<p>112:20 113:10 117:11 2011 121:8 21 34:22 22 23:11 23 30:3 24 31:21,23,23 45:2 83:6 25 17:14 32:16 36:18 61:22 26 26:2 267 49:16 27 51:18,21 57:15 81:18 28 54:16,17 29 49:15 54:14 89:5</p> <hr/> <p>3</p> <p>3 34:25 35:2 41:13 49:19 92:22 93:24 3,757 97:4 3.21 60:20 3.28 60:22 30 1:9 49:21 74:20 84:19 120:19 30-year 62:22 300 104:12,12 305 49:23 32 50:1 75:13,16 75:21,24 92:15 33 51:2 87:12 34 51:2,9 93:22 35 51:19 81:18 86:5 36 81:19 367 13:23,24 379 19:7 380 19:8 381 19:12 388 19:15</p> <hr/> <p>4</p> <p>4 34:12 35:6,13 54:21 61:21 4.35 109:14 4.37 109:16 4.50 121:6 40 1:9 24:21 25:11,14 28:7 400 4:25 8:1 42 45:1 63:20 107:18 43 24:22 44 61:1 442 54:18 45 35:7 61:19 46 35:17 47 40:11 475 89:6 48 45:2 82:12 101:12 103:20 49 63:16</p> <hr/> <p>5</p>	<p>5 9:23 13:1 101:16 5th 13:7 5,000 97:8 5.10 71:2 50 61:23 103:16 51 24:24 26:10 51(1) 27:25 52 58:7 52(2) 24:17 27:23 527 63:21 529 63:22 546 45:2 55 14:15,19,23 22:8 28:16 37:8 43:4 50:15 52:15 62:7 64:1 65:16 66:17 76:6 78:12,22 83:8 88:5 89:12,25 106:2 108:17,19 558 58:7 58 101:23 102:7 59 94:4,13 95:1,8 95:19</p> <hr/> <p>6</p> <p>60 28:15 65 103:11</p> <hr/> <p>7</p> <p>7 40:10 41:9 70 103:11 77 47:7 63:15 78 47:8</p> <hr/> <p>8</p> <p>8 11:14 13:6,10 41:9 42:22 47:10 101:1 85-year-old 110:19</p> <hr/> <p>9</p> <p>9 58:6 9.30 120:14,16 121:7</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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