

The Leveson Inquiry

Witness Statement for Part 1, Module 1

WITNESS STATEMENT OF GRAHAM SHEAR

I, Graham Shear, c/o Collyer Bristow LLP, 4 Bedford Row, London, WC1R 4DF will say as follows:

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1. I make this statement in connection with my role as a Core Participant in the Leveson Inquiry.
2. I am also a Claimant in the voicemail interception cases currently being heard by Mr Justice Vos in the Chancery Division of the High Court.

Background

3. I am a partner at the law firm, Berwin Leighton Paisner. Having qualified in 1989, I have over 20 years experience as a commercial litigator both in the UK and internationally. I am a recognised leader in commercial litigation, sports law, defamation, privacy and media and entertainment law and advise corporates and individuals on a wide range of issues. Over the years I have also acted for many individuals who have been victims of media misconduct.

Tabloid conduct

4. In this time, I have had to deal first-hand with the press and particularly the tabloid press and have experienced numerous examples of misconduct in the pursuit of stories about the private lives of well-known individuals, some of which I will describe below. In my opinion some of this misconduct, especially in recent years, has been as a result of the commercial pressures faced by tabloid papers. For example, there has been a noticeable shift over the last

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10-15 years away from large, well staffed newsrooms delivering investigative journalism towards more outsourcing and an increase in "cheque book" journalism delivering sensationalist stories.

Commercial pressure seems to dictate that tabloid papers have to generate high volumes of sales to stay viable. Unfortunately the reality is that the most reliable way to sell Sunday papers appears centred around having a "big splash" on the front page – preferably about a high profile individual's private life.

6. The tabloids have in my view become obsessed with printing shocking exposés about actors, actresses, pop stars, sportsmen, sportswomen and politicians. The need for exclusivity often drives the pace and many stories seem to rely on little more than unsubstantiated rumour coupled with a "good" recent, but often unconnected, series of photographs. Seemingly, little, if any regard is given to whether the publication of the story is in the public interest (and almost none of it ever is) or the extent of truth in the story.
7. It is apparent that editors are under pressure to feature sensational stories almost every week. Over the years it has become clear to me that the Sunday papers deploy a strategy whereby they focus on 3 key groups for the source of their stories; (1) celebrities; (2) sportsman (primarily footballers) and (3) those in a position of responsibility or elected officials. The tabloids alternate the stories from week to week between the 3 categories. They specifically target categories 1 and 2 to generate stories. Category 3 is largely opportunity led.
8. In my experience, I have noticed that the tabloid journalists have seemed to get more and more aggressive in their 'news' gathering tactics and undertake increased amounts of surveillance in order to uncover what they consider to be big news. The papers have realised that obtaining private information about high profile individuals through surveillance often provides details which make for a more colourful story and which detail and intelligence can lead on to better opportunities for obtaining clandestine photos and other scoops. I believe that it has reached the point where reporters are being encouraged by editors to act as interventionists and instructed to actively stimulate a story. The payment to "kiss and tell" girls of large sums of money is an example of such activity. Originally

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journalists would hear of a sexual relationship between a young "model/actress" and an actor or professional footballer etc and approach her with a promise of £10,000-£500,000, depending upon the profile of the target, in return for lurid details, photographs and an exclusivity agreement. The lure of fame was also often of interest to this particular type of person. This mutually beneficial relationship began to morph and become quite sinister.

9. Unscrupulous individuals quickly learned about this "value" system and began to target footballers with the sole aim of subsequently selling their story. There are a group of serial "kiss and tell" women who are the subject of numerous similar types of articles. The newspapers know precisely who they are. There have also been a number of blackmail attempts whereby the women sought payment from the target in return for not selling their stories. I am aware that similar "blackmails" have even been deliberately orchestrated by the press to enhance or develop a story.
10. I believe that the way a newspaper and its journalists behave is directly related to the personality of the editor in charge and how deep the particular newspaper's pockets are.
11. Up to about 2001 / 2002 my work was split between post publication proceedings for defamation and taking preventative steps against newspapers to stop the publication of defamatory and occasionally private or confidential material. It seemed like almost every Saturday afternoon I would be on the phone seeking to negotiate a stop on the publication of an article or arranging a pre-publication injunction hearing in order to seek to prevent publication. However, over the last 10 years this balance shifted in line with the Human Rights Act and the evolution of privacy law and much of the work I have been undertaking since 2000 has been seeking to challenge tabloid newspapers in advance of publication.
12. In my view, based on years of first-hand experience, the tabloids consciously calculate the financial risk of publishing a story. Calculating the potential profits generated by a story and then offsetting this against the risk of any future adverse costs or damages award has lead papers in certain circumstances to print stories regardless of legal issues or journalistic merit and simply to generate profits.

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13. Consequently tabloid journalists have been encouraged to take a more aggressive approach to news gathering and to stop bothering to check facts, give subjects a right to reply or carry out any sort of evaluation as to whether the publication of private information is in the public interest.
14. An example that sticks in my mind is in relation to a Premiership footballer who in 2003 was falsely identified by the tabloid newspapers as being a member of a group of 5 footballers accused of raping a 17 year old girl in a London hotel.
15. Somehow the press found out about the incident. The Police commenced an investigation but the suspects were deliberately not named by the Police for obvious reasons.
16. However, the reporters obtained a copy of the hotel register and questioned the staff so as to identify those footballers who had been at the hotel.
17. My client was staying at the hotel at the time but had no involvement in the incident whatsoever and was not arrested by the Police. However, he was targeted by several tabloid papers that seemed determined to vilify him. I believe this was because of who he was and his existing relationship with the press. Whilst some might say that he was a precocious footballing talent, he liked to keep his private life private. The press did not like this and he was targeted in a way that can only be described as extremely aggressive. It appeared to be a bit of a "witch hunt", a deliberate attempt to stimulate public speculation at the expense of my client.
18. The papers sought to publicly 'identify' the individuals who they felt were responsible for this alleged incident despite the Police's attitude. This was based on pure speculation as there had been no arrests at the time.
19. The papers sought to identify my client through innuendo and inference. Many of these articles left readers in little doubt as to who the accused footballer was likely to be. In my view the sole purpose was to help the public identify the individual whilst diluting the potential for a libel claim. This was a striking example of the press strategically trying to limit the risk of a legal claim by using innuendo and inference.
20. The coverage was so prejudicial that I wrote to the Attorney General, Lord Goldsmith, to highlight how concerned I was that the

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coverage would jeopardise any future prosecution. As a result the Attorney General issued a ban preventing the papers from naming the individuals arrested.

21. By the time the 2 individuals who had been arrested were released on bail and the Attorney General lifted the ban naming the actual suspects, my client's reputation had been irrevocably damaged (despite not being arrested or in any way involved in the alleged incident) and my client had little alternative other than to publicly deny any involvement in an alleged rape.
22. Following the press speculation about my client's involvement in the incident, we successfully sued in libel against 5 newspapers. However, the damage had already been done and was largely irreparable.
23. What is also concerning is that the tabloids seem to develop certain grudges against individuals who bring legal proceedings against them. I have noticed a trend whereby if an individual stands up to the press, the press then embarks on a revenge fuelled attack and actively targets the individual and vilifies them at every possible opportunity.
24. For example, in 2008, a tabloid newspaper ran a story about a video which allegedly showed a homosexual encounter between a Premiership footballer (my client) and a DJ. It is my view that it was known that the film was a hoax but the paper in question proceeded with the article regardless. The article did not name my client but featured pixelated photos of him taken from the internet and enough innuendo to lead to his identification.
25. My client pursued a libel claim against several newspapers. However, in my opinion, and from following the coverage as a result of my client standing up to the press on this occasion, he became the target of a 3 year campaign by the press.

Privacy Injunctions, libel laws and the chilling effect

26. As privacy laws have developed and the courts have come to recognise that those in the public eye are as much entitled to a private life as those who are not, they have become more willing to grant pre-publication injunctions. In response to the increased number of successful injunctions obtained by high profile individuals, and therefore the loss of valuable stories for them, I

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believe the tabloid press consciously deployed a strategy to undermine if not entirely frustrate the value of these injunctions. For example, over the last couple of years, the press have actively sought to do this by bringing facts into the public domain which would lead to enough speculation to allow the public to identify the subject of the injunction; if the public makes the connection it gives validity to the speculation and the press are not seen to be the source of the revelation. The press also highlight that an individual has obtained an injunction, very often by making it "front page news". This is particularly so when the claimant has obtained an order for anonymity so as to prevent reporting on his or her identity. This, in my view, has two main purposes. Firstly, it is almost as if it is intended as a punishment to the individual for having had the audacity to have taken such steps to protect their rights. It appears aimed at sending a message to that individual that, despite the injunction, the newspapers will do all in their power to try and ensure that the information will eventually come out. Secondly, it is designed to encourage the reader to speculate as to the claimant's identity, notwithstanding that the media themselves cannot name that person directly. The articles may contain certain pieces of information which at least limit and narrow down the possible pool of individuals who could be the claimant. The articles may also often contain references to the identity of the individual being wildly reported on the internet, sometimes even identifying the specific sites where this information can be found. All of this undermines the effect of the injunction and makes it far less attractive for an individual to seek to protect their rights through this course of action.

27. The newspapers seek to argue that libel and privacy laws (and the associated costs) have had a 'chilling effect' on press freedom. I do not agree. In my view the so called 'chilling effect' only kicks in when a paper has been penalised by the courts for printing something they should not have printed. I do not agree with the suggestion that the newspapers are being hampered by the costs of libel and privacy claims. There are relatively few such claims that proceed to trial and the vast majority that are pursued and proceedings issued are successfully concluded with negotiated settlements. This all forms part of the 'calculated risk' the newspapers take when they decide whether and how to report

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stories. I also believe that the tabloid media now actively pursues a policy of not seeking comment when there is any element of private information. They would prefer to publish and take their chances on low post publication damages awards than be prevented from publishing or slowed down pre-publication by the threat of a Court Order. The risk of litigation in relation to printing private material consequently diminishes when no notification is given. The private material has been published and damages are unlikely to be any real remedy and are therefore often not pursued.

Phone hacking and personal experiences of surveillance

28. On occasion I have personally been the subject of press surveillance (not connected to phone hacking). I presume the press see me as an easy way of finding out about a high profile individual's whereabouts. For example, I recall on one occasion, I arranged to meet a client in the middle of a high profile crisis at a secret location in Oxfordshire. A reporter /photographer followed me all the way from my office on my way to Oxfordshire. Fortunately I lost him on the way but this shows the extraordinary lengths the press will go to obtain a story or a photo.
29. Prior to the breaking of the phone hacking scandal, clients had often said to me that they felt the press were monitoring their electronic communications. They would tell me how they had arranged private meetings in obscure places and when they arrived the press would already be there. I always thought this was a coincidence or that someone close to the individuals was leaking information to the press.
30. I arranged, during the midst of a high profile crisis, an impromptu meeting with a client and his wife in early 2008. I was acutely aware that the press were trying to get hold of information about these 2 individuals and so we arranged for both of them to meet at my house. We arranged the meeting on a Saturday morning about an hour and a half before we were due to meet. The individuals did not know my address and so I sent them my address by text and left them a voicemail message with directions to my house. I was awaiting their arrival and was looking out at the road from my front door when I saw 3 cars full of reporters arrive about five minutes before my client and his wife. For the rest of that day we met at my house whilst a growing group of reporters, photographers and

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television crews gathered outside. I estimate that there were at least 30 or forty reporters present for about 10 hours and at times the group swelled to over 100 people. The experience was quite surreal and a little like being imprisoned in one's own home as the press felt at liberty to question my 9 year old child as he returned from a party and to lean on my car and trespass on my property.

31. These events led me to become suspicious that the press were monitoring my clients' phones. I believe now that these events were possibly as a result of phone hacking.
32. As a result of my suspicions, in 2008 and 2009, I wrote to the Information Commissioner and the Metropolitan Police Service enclosing a list of my clients and asking whether any of them were referred to in the evidence which the Police held about phone hacking. I included myself in the list of names. The response from the Police and the Information Commissioner was negative.
33. However, in February 2011 I was contacted by senior officers from Operation Weeting. I was informed that my name and phone number appeared in Glen Mulcaire's notes. The Police arranged an individual meeting with me to show me the relevant documents. It is clear to me from the notes that I have seen that my voicemails had been intercepted. Glen Mulcaire knew that I was a solicitor and knew which clients I was acting for which is why I believe I was targeted.
34. When I saw the evidence that my voicemails had been listened to, I was taken aback.
35. Quite apart from the fact that my voicemails would have contained private and personal information about me and my family, my communications with my clients were by their very nature, legally privileged. The information accessed would have included very sensitive details about specific cases that I was working on, advice, facts, strategy and risk assessments. Legal privilege is a fundamental right to be respected, not for the lawyers but for the clients whom he or she advises and it is staggering to think that the people responsible for hacking into my voicemails gave no consideration to this or simply did not care. The newspapers all have their own legal managers, legal departments and external lawyers and are very familiar with the principles of legal privilege and how this type of information is sacrosanct in the eyes of the law,

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36. One particular incident that I am aware of concerns voicemails of mine which were hacked while I was advising a Premiership footballer in relation to regulatory proceedings. These proceedings were held in private with the sole intention that the content of the hearings should not be put in the public domain. My belief is that my voicemail was accessed at the actual time I was in this hearing (and it was therefore known that my phone would divert to voicemail) and that confidential and privileged information was obtained as a result.
37. What I find staggering is the hypocrisy. At the very time the tabloid press were seeking to rely on the most trivial excuses of supposed misconduct by well-known people to justify why the 'news' they were publishing was in the public interest, they were undertaking large scale illegal activity themselves.
38. The fact that my mobile phone was hacked is absolutely disgraceful. It is a massive intrusion into my personal privacy. I am not in the public eye and there could have been no public interest whatsoever served by hacking my voicemail. It is patently wrong and unlawful.
39. Even though I am a litigator who sues newspapers on a regular basis, over the years I had developed close relationships with my opponents, including editors and journalists. I felt that this intrusion made a mockery of many of those relationships.

Statement of Truth

I believe that the facts stated in this witness statement are true.

DATED the  day of November 2011

SIGNED:

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Graham Shear