

IN THE MATTER OF THE LEVESON INQUIRY

**WITNESS STATEMENT OF
NICHOLAS ELDRED,
GROUP GENERAL COUNSEL AND SECRETARY, BBC**

1. I make this witness statement in reply to the Notice of request issued under section 21(2) of the Inquiries Act 2005 ("the Notice") on behalf of Lord Leveson, by letter of 05 August 2011 from the Solicitor to Lord Leveson's inquiry into the culture, practices and ethics of the Press ("the Inquiry").

2. I understand that Lord Leveson has also served a Notice under section 21(2) on other individuals in the British Broadcasting Corporation ("the BBC"), namely Lord Patten (as Chairman of the BBC Trust), Mark Thompson (as Director-General of the BBC), and the journalists Mr Robert Peston, Mr Nicholas Robinson and Mr Richard Watson.

(1) Who you are and a brief summary of your career history in broadcasting/the media and as a lawyer.

3. I am Nicholas Eldred, Group General Counsel and Secretary. I have been in post as the BBC's most senior lawyer since August 2001 having qualified as a solicitor in 1987. Prior to my BBC position I was Director, Legal and Business Affairs and Company Secretary for BT Cellnet, now O2 (UK), for approximately six and a half years. Before that I was a member of BT's legal department focussing on mergers and acquisitions work. Pre BT, I was a corporate lawyer at Simmons & Simmons having moved there just after qualification from Trowers & Hamlins where I undertook my legal training. A copy of my Job Specification is exhibited at "NE1".

(2) What your responsibilities as in house legal adviser are?

4. I am responsible for giving strategic legal, business and governance advice to senior BBC management. I manage a central core team of approximately 90 staff and provide professional leadership to a further 50 staff embedded in the BBC divisions or working for certain of the BBC's subsidiaries. The central core team mentioned above comprises three legal departments and two non-legal functions: Programme Legal Advice ('PLA') which gives pre-transmission legal advice to programme makers including news journalists; Litigation and Intellectual Property; Commercial and Regulatory Legal; Information Policy and Compliance (which handles data protection and Freedom of Information issues); and Fair Trading and Compliance (which ensures compliance with the Fair Trading Guidelines).

(3) Whether you have ever been asked to advise upon the legality of methods of obtaining information including (but not limited to) phone hacking, computer hacking and "blagging"? If so, please give the best particulars that you can about who sought the advice, when, in what context and the advice that you gave (please see the penultimate paragraph of this notice in relation to legal privilege).

5. I have never personally been asked to advise upon the legality of methods of obtaining information including (but not limited to) phone hacking, computer hacking and "blagging". I have made enquiries of the head of PLA, Valerie Nazareth, and where I refer to PLA, the information set out below is based on the information she has provided.
6. PLA lawyers have not been asked to advise on the BBC's journalists conducting any phone hacking but of course PLA lawyers have advised the BBC as it has covered phone hacking and blagging stories. This advice has been about other people and media organisations' involvement in these activities and has been sought by BBC colleagues to avoid defamation or contempt.
7. PLA lawyers have not been asked to advise on computer hacking save in respect of programmes about the dangers of computer hacking or computer malware. Advice has been sought on matters which are governed by the Computer Misuse Act in relation to activities designed to demonstrate for example the weakness of security

systems or other vulnerability to crime and where there has been a clear public interest. For example in 2009 a programme purchased a particular form of malware (a botnet) and used it to instruct other computers to simulate a denial of service attack but without inflicting harm. The aim was to demonstrate how easy it was to purchase and deploy this type of software and the threat this posed to individuals and corporations.

8. In relation to blagging, PLA lawyers have only been asked to advise on the situation where an individual has consented to their details being obtained by a third party pretending to be that individual in order to expose the security weaknesses of third party systems.
9. In addition as part of the day to day work of pre-publication lawyers, PLA are regularly asked to advise on matters pertaining to the lawfulness of methods of obtaining information on a wide range of matters such as advising in relation to undercover investigations, terrorism offences, trespass, entry into countries such as Burma without appropriate papers and secret filming.

(4) What training, guidance and policies have been provided to you by your employer in order to enable you accurately to advise upon the legality of methods of obtaining information (including keeping up to date)? Do you consider that it has been adequate?

10. Lawyers working in PLA have expertise in matters of media law. Lawyers attend courses to keep up to date in developments in media law and have access to online and other legal resources. No specific training has been provided on phone hacking, computer hacking or blagging. In terms of policies or guidance, PLA lawyers are familiar with the Editorial Guidelines and Guidance notes, compliance with which should ensure compliance with the Ofcom Code, (described in more detail in paragraph(s) 14 to 24 of Mark Thompson's statement). I consider that the training and the resources available are adequate to deal with the queries that are put by BBC journalists.

(5) Whether you have ever been asked to advise upon the legality of paying public servants (including police constables) for information either in cash or kind. If so, please give the best particulars that you can about

who sought the advice, when, in what context and the advice that you gave (please see the penultimate paragraph of this notice in relation to legal privilege).

11. Neither I nor any one in PLA has any recollection of being asked to advise on the payment for information by BBC journalists in cash or in kind to public servants including police officers.

12. Members of PLA have been asked to advise on the legality of such payments in the context of BBC news reports or programmes about *other* people or organisations' involvement in such activities.

(6) What training, guidance and policies have been provided to you by your employer in order to enable you accurately to advise on issues of bribery and corruption? Do you consider that it has been adequate?

13. I would refer you to the response I have set out to question 4 above. Over and above the general training on media law matters, and in the light of the enactment of new legislation on bribery, the BBC has rolled out training on the Bribery Act 2010 to its staff. I consider the training and resources available are adequate to deal with the queries put by BBC journalists.

(7) Have you had in put into any internal inquiry into phone hacking, computer hacking, "blagging" or bribery or corruption? If so, please describe the same, setting out your role and the outcome?

14. None of the members of my department has been involved in any internal inquiry of such a nature save as a result of the BBC's decision in July 2011 to carry out its own internal reviews following the phone hacking and related controversies affecting some other media organisations. As Mark Thompson explains in his statement, the reviews were not commissioned because there was cause for concern but rather to check that the BBC was in fact meeting its own standards. The Audit Committee of the BBC asked for a desktop review to identify payments that may have been made to police, private investigators, public officials or mobile phone companies and any other individuals or organisations that may have been implicated or have an association

with the recent journalism scandal. The review concentrated on the records of those areas of the BBC associated with investigative journalism.

15. For the same reason, the Director General also asked that in addition to the audit report referred to above, a review be undertaken by the Director of Editorial Policy and me (the terms of which were subsequently revised to encompass some of the points raised by the Inquiry) :

- I. to report on how the system of corporate governance works at the BBC with particular emphasis on systems to ensure lawful, professional and ethical conduct and how the system works in practice; and
- II. to conduct a review of areas of the BBC engaged in investigative journalism and
 - to consider whether any incidence of phone hacking, computer hacking, blagging, bribery of police officers or other public officials or payments to phone companies can be identified and if so under what circumstances such conduct took place;
 - to recommend changes if needed to the BBC Editorial Guidelines based on the outcome of the review; and
 - to recommend changes if needed to the BBC's current training modules based on the outcome of the review.

The outcome of those reviews insofar as relevant to the Leveson Inquiry is summarised in paragraphs 48 to 60 of Mark Thompson's statement. I can confirm that I have seen and agree with the contents of those paragraphs.

- (8) How you understand the system of corporate governance to work in practice at the BBC with particular emphasis on systems to ensure lawful, professional and ethical conduct;**
- (9) What your role is in ensuring that the corporate governance documents and all relevant policies are adhered to in practice. If you do not consider yourself to have any responsibility for this, please tell us who you consider to hold that responsibility;**

16. In relation to editorial matters, the BBC has the obligation to comply with the Charter and Framework Agreement, and the Editorial Guidelines which set out the principles and practices that the BBC requires to be met. This system is supported by the division of functions between the Executive (which has responsibility for the delivery of the BBC's editorial output and ensuring compliance with legal and regulatory requirements placed upon it) and the BBC Trust (which has responsibility for setting the strategy of the BBC, holding the Executive to account for regulatory compliance and approving guidelines to secure content standards).
17. As head of legal services at the BBC, I have responsibility for ensuring that the legal advice is given professionally by lawyers who are both properly qualified to do this and who have a proper understanding of the environment in which the BBC works. I also have responsibility as the head of legal services for addressing with senior management any serious breaches of regulation or law of which the Legal team becomes aware. As I have said previously the responsibility for delivering editorial output is the Executive's. I would refer you to the response given by Mark Thompson in paragraphs 7 to 29 of his witness statement in this regard.

(10) Whether the documents and policies referred to above are adhered to in practice, to the best of your knowledge;

18. To the best of my knowledge the documents and policies are normally adhered to in practice.

(11) Whether these practices or policies have changed, either recently as a result of the phone hacking media interest or prior to that point, and if so, what the reasons for the change were;

19. There has been no change to our practices as a result of the phone hacking media interest although the review referred to in paragraph 15 has not yet been finalised. The BBC has however made changes in response to other occasions where it has not met the standards it sets itself, such as over competitions and the Ross/Brand affair as detailed in Mark Thompson's statement.

(12) Where the responsibility for checking sources of information lies (including the method by which the information was obtained): from

reporter to business editor/political editor/news editor/showbiz editor/royal editors, and how this is done in practice (with some representative examples to add clarity);

- (13) To what extent an editor is aware, and should be aware, of the sources of the information which make up the central stories featured in your news broadcasts each day (including the method by which the information was obtained);
20. The responsibility for checking sources of information is that of the programme area - so from journalist to editor and up the editorial chain of management - although with advice and support from the legal and Editorial Policy teams. The most difficult questions are considered by the divisional directors for the relevant area and the Director General. In relation to sources of information, the Guidelines provide that journalists should try to witness events and gather information first hand. Where this is not possible they should talk to first hand sources and corroborate the information - they should be reluctant to rely on a single source. They also expressly provide that material supplied by third parties should be treated with appropriate caution, taking into account the reputation of the source. Editors also need to be satisfied that a contentious story is warranted from a legal perspective. It follows from this that a programme editor should be aware if any of their reporters are relying on material which raises or has been gathered in a way that raises serious ethical or legal issues. It is the editor's responsibility to ensure that where appropriate he takes advice from both Editorial Policy and PLA and where necessary refers the issue up the management chain.
21. Particular challenges can arise where the journalist is dealing with a confidential source. In such cases I consider that it is for a journalist and his editor to discuss how much the former should disclose about a confidential source's identity to the editor, in any particular case. I consider that in deciding to go ahead and transmit information from a source the editor has the right to know the identity of the source. I do not consider that it is necessary for the lawyer to know a source's identity, however where a story is legally contentious, PLA lawyers make enquiries about the quality of the evidence for example by checking matters including:
- How close the source is to the information
 - Whether the journalist may be relying on hearsay
 - Whether a source may be acting out of malice

- Whether the journalist has been given all relevant information
- Whether the source could be relied on in the event of litigation.

(14) The extent to which you consider that ethics can and should play a role in the print media, and what you consider 'ethics' to mean in this context'

22. Ethics clearly play a central role in the BBC's journalism. I consider that ethics have a proper role to play in all responsible journalism.

(15) The extent to which you, as a legal advisor, felt any financial and/or commercial pressure from the BBC or anyone else, and whether any such pressure affected any of the decision you made as legal advisor (such evidence to be limited to matters covered by the Terms of Reference);

23. I can confirm that I have never felt any financial or commercial pressure from the BBC or others, and neither have the lawyers in PLA.

(16) The extent (if any) to which you, as a legal advisor, had a financial incentive in the BBC broadcasting exclusive stories (NB. It is not necessary to state your precise earning);

24. I can confirm that I have never had any financial incentive in the BBC broadcasting exclusive stories and neither have the lawyers in PLA.

(17) Whether, to the best of your knowledge, the BBC used, paid or had any connection with private investigators in order to source stories or information and/or paid or received payments in kind for such information from the police, public officials, mobile phone companies or others with access to the same: if so, please provide details of the numbers of occasions on which such investigators or other external providers of information were used and of the amounts paid to them

(NB. You are not required to identify individuals, either within your organisation or otherwise);

25. Neither I nor PLA lawyers are aware of occasions where the BBC has paid police, public officials or mobile phone companies or investigators for the provision of information or to source stories. I am however aware from the review that private investigators are sometimes used by the BBC in the manner described in Mark Thompson's witness statement.

(18) What your role was in instructing, paying, advising on or having any other contact with such private investigators and/or other external providers of information including advising on any of these activities;

(19) If such investigators or other external providers of information were used, what policy/protocol, if any, was used to facilitate the use of such investigators or other external providers of information (for example, in relation to how they were identified, how they were chosen, how they were paid, their remit, how they were told to check sources, what methods they were told to or permitted to employ in order to obtain the information and so on);

(20) If there was such a policy/protocol, whether it was followed, and if not, what practice was followed in respect of all these matters;

(21) Whether there are any situations in which neither the existing protocol/policy nor the practice were followed and what precisely happened/failed to happen in those situations. What factors were in play in deciding to depart from the protocol or practice?

26. Neither I nor anyone in PLA has any recollection of instructing or paying private investigators or other providers of information to source programme information.

27. I am not aware and nor is anyone in PLA aware of any specific policy or protocol used to regulate or facilitate the use of private investigators or external providers of information although the guidance on investigations and the Editorial Guidelines are relevant to their use.

- (22) The extent to which you are aware of protocols or policies operating at the BBC in relation to expenses or remuneration paid to other external sources of information (whether actually commissioned by the BBC or not). There is no need for you to cover 'official' sources, such as the Press Association;
28. There is no specific expenses policy dealing with such payments but please see Mark Thompson's statement which sets out details of the BBC general expenses policy.
- (23) Whether you or the BBC (to the best of your knowledge) ever used or commissioned anyone who used 'computer hacking' in order to source stories, or for any other reason;
29. I am not aware and no-one in PLA is aware of the use of computer hackers to source stories other than in relation to the dangers of hacking.
- (24) If you cannot answer these questions, or take the view that they could be more fully answered by someone else, you must nonetheless provide answers to the extent that you can, and to the extent that you cannot you must provide the inquiry as soon as possible with names of those who would be able to assist us further.

I confirm the contents of my statement are true

Signed

Date

Nicholas Eldred