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| <p>1 Friday, 13 July 2012<br/>                 2 (10.00 am)<br/>                 3 LORD JUSTICE LEVESON: Good morning, Mr Jay.<br/>                 4 MR JAY: Good morning. The first two witnesses today are<br/>                 5 Professor Curran and Angela Phillips, please.<br/>                 6 Tab 46.<br/>                 7 LORD JUSTICE LEVESON: I have it, thank you.<br/>                 8 PROFESSOR JAMES CURRAN (sworn)<br/>                 9 LORD JUSTICE LEVESON: Am I getting this quite wrong? You<br/>                 10 have given evidence before?<br/>                 11 MS PHILLIPS: I have.<br/>                 12 LORD JUSTICE LEVESON: Then we don't need to do it again.<br/>                 13 MS ANGELA PHILLIPS (previously sworn)<br/>                 14 Questions by MR JAY<br/>                 15 MR JAY: May I ask each of you to provide us with your full<br/>                 16 names, please.<br/>                 17 PROFESSOR CURRAN: James Curran.<br/>                 18 MS PHILLIPS: Angela Phillips.<br/>                 19 MR JAY: You have provided us with a submission on behalf of<br/>                 20 the Co-ordinating Committee for Media Reform. I'm not<br/>                 21 sure exactly when it's dated, but it matters not.<br/>                 22 May I ask you to confirm the truth of that<br/>                 23 submission, please.<br/>                 24 PROFESSOR CURRAN: I confirm.<br/>                 25 Q. Professor Curran, we haven't heard from you before.</p> <p style="text-align: center;">Page 1</p>   | <p>1 debate, closing newspapers. Causes -- well, there are<br/>                 2 multiple causes, everything. But one cause we focus on<br/>                 3 is media concentration that produces a culture of<br/>                 4 impunity that breeds unethical practice, a centre of<br/>                 5 power that intimidates politicians and leads to a<br/>                 6 dysfunctional relationship; and an unrepresentative<br/>                 7 power centre that distorts public debate.<br/>                 8 So that's one problem we confront. The other<br/>                 9 problem is the growing economic crisis of journalism.<br/>                 10 Q. Thank you. That's very clear.<br/>                 11 Can I ask you, please, just to raise your voice<br/>                 12 a small amount so everybody in this room can hear.<br/>                 13 I think that amplifies to some extent, that device.<br/>                 14 It's important it's not just me and Lord Justice Leveson<br/>                 15 who hear what you're saying.<br/>                 16 LORD JUSTICE LEVESON: I don't think it does amplify<br/>                 17 actually.<br/>                 18 PROFESSOR CURRAN: I'll speak up.<br/>                 19 MR JAY: Can I ask you, please, the decline of investigative<br/>                 20 journalism, which many have spoken to, could I just put<br/>                 21 this point to you. Isn't that simply a function of the<br/>                 22 lack of desire on the part of the general public for<br/>                 23 what might be called "traditional news stories", and if<br/>                 24 so, why is it a problem that needs addressing?<br/>                 25 PROFESSOR CURRAN: Well, I think the role of the press</p> <p style="text-align: center;">Page 3</p> |
| <p>1 Could you tell us very briefly about yourself.<br/>                 2 PROFESSOR CURRAN: I have written or edited 21 books about<br/>                 3 the media. I've been a visiting professor at<br/>                 4 Stamford University, Oslo University,<br/>                 5 Stockholm University. I'm director of the Goldsmith<br/>                 6 Leverhulme Media Research Centre and chair of Media<br/>                 7 Reform.<br/>                 8 Q. What is the Co-ordinating Committee for Media Reform?<br/>                 9 PROFESSOR CURRAN: It's an umbrella group that involves<br/>                 10 people from different civil society organisations and<br/>                 11 groups concerned with the media.<br/>                 12 Q. Thank you.<br/>                 13 In relation to submission, you are going to deal<br/>                 14 with part 1, Professor Curran, I understand, and<br/>                 15 Ms Phillips, part 2. But at the end I may give you<br/>                 16 an opportunity to comment on those other proposals that<br/>                 17 the Inquiry has received such as you wish to, or indeed<br/>                 18 to say anything in addition.<br/>                 19 So may we look at part 1, Professor Curran, first of<br/>                 20 all.<br/>                 21 The generating public interest journalism.<br/>                 22 Could I ask you please in your own words to summarise<br/>                 23 the twofold problem you are identifying there?<br/>                 24 PROFESSOR CURRAN: The symptoms would be unethical<br/>                 25 journalism, cowed politicians, a distorted national</p> <p style="text-align: center;">Page 2</p> | <p>1 shouldn't only be defined by consumer demand. The press<br/>                 2 has a democratic function, and one of the functions is<br/>                 3 to act as a watchdog. So my response is yes, the point<br/>                 4 you are making is partly true, but nonetheless the press<br/>                 5 has an obligation to be an effective investigator of<br/>                 6 power.<br/>                 7 Q. Thank you.<br/>                 8 Your solution has three elements. You define those<br/>                 9 as: obligations, caps and levies. Obligations first of<br/>                 10 all. That's our page 00864. On the internal numbering<br/>                 11 of the document is page 2, Professor Curran.<br/>                 12 PROFESSOR CURRAN: Yes.<br/>                 13 Q. You see certain obligations arising only if certain<br/>                 14 thresholds are met, as it were. Could I ask you,<br/>                 15 please, to explain how that works, and also the reasons<br/>                 16 underlying this.<br/>                 17 PROFESSOR CURRAN: Right. Essentially market leaders have<br/>                 18 5 per cent share of the respective markets, have a very<br/>                 19 privileged position. And in response to that, they<br/>                 20 should have public duties. This is an extension of the<br/>                 21 regime we have for commercial broadcasting. Major<br/>                 22 commercial broadcasters have public duties, and we are<br/>                 23 essentially applying the logic that applies in<br/>                 24 broadcasting to the press.<br/>                 25 Q. Can I understand what the threshold is?</p> <p style="text-align: center;">Page 4</p>   |

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| <p>1 PROFESSOR CURRAN: It's 15 per cent of specified markets.<br/> 2 Q. There are four specified markets. These are the sort of<br/> 3 bullet points.<br/> 4 PROFESSOR CURRAN: National newspapers, television, radio<br/> 5 and the Internet.<br/> 6 Q. Thank you. As you explain in the paragraph thereafter:<br/> 7 "Any entity whose combined outlets command<br/> 8 15 per cent or more of any of the above must ensure that<br/> 9 public interest obligations are adhered to."<br/> 10 So is this right: you're not combining shares within<br/> 11 the four; it must be any of the four?<br/> 12 PROFESSOR CURRAN: Each of the respective markets. So there<br/> 13 are two proposals: one, a limit on cross media<br/> 14 ownership, and the second one is obligations that arise<br/> 15 from a 15 per cent share of specified sub-markets, which<br/> 16 are national newspapers, television, radio and the<br/> 17 Internet.<br/> 18 Q. The proposal in relation to cross-media ownership, could<br/> 19 you tell us about that one, please?<br/> 20 PROFESSOR CURRAN: Yes. That derives from the<br/> 21 Enders Analysis. They propose that there should be<br/> 22 a limit of 15 per cent of the core media industry. And<br/> 23 they define it in terms of revenue.<br/> 24 So, for example, BSkyB has a 14 per cent share of<br/> 25 the core media industry revenue, and is very close to</p> <p style="text-align: center;">Page 5</p> | <p>1 websites that could come from anywhere in the world.<br/> 2 Q. Anywhere?<br/> 3 PROFESSOR CURRAN: Anywhere from the world. So it's unique<br/> 4 visitors' traffic in relation to UK news and information<br/> 5 websites, as derived from Alexa.<br/> 6 Q. Right. Perhaps a more general point now, that it's<br/> 7 implicit in the proposal that your four different<br/> 8 sources, as you define them, are being treated as<br/> 9 different markets. Given that there's evidence that the<br/> 10 average person uses over four sources of information for<br/> 11 news, the idea of a newspaper audience which is distinct<br/> 12 from a television audience, for example, may arguably<br/> 13 not make complete sense. So why are you treating them<br/> 14 as different markets?<br/> 15 PROFESSOR CURRAN: There are major players in the media that<br/> 16 have a dominating influence. If we take the press with<br/> 17 which we are particularly concerned, we have a situation<br/> 18 where you have major press oligarchs who make tacit<br/> 19 deals with Government, who, at the behest of a small<br/> 20 number of people, can move into coalition with<br/> 21 Government or launch a jihad against Government.<br/> 22 So the problem is not that there is a mix in terms<br/> 23 of the diet of consumption. The problem arises from the<br/> 24 concentration of power in key sectors. The point you<br/> 25 are making is obviously right. People draw upon</p> <p style="text-align: center;">Page 7</p> |
| <p>1 the upper limit. And what is being proposed in<br/> 2 suggesting there should be limits on press groups is in<br/> 3 line with what a former Conservative Prime Minister<br/> 4 advocated to you. It's in line with what the leader of<br/> 5 the Labour Party opposition. And here are distinguished<br/> 6 politicians who are proposing to you that the problem of<br/> 7 media concentration is so great that there needs to be<br/> 8 a direct limitation on their power.<br/> 9 Q. I understand as a matter of principle, where you're<br/> 10 coming from is that if the source of the problem is<br/> 11 excessive concentration of power, one needs to cut the<br/> 12 power off at root almost and therefore look at certain<br/> 13 threshold.<br/> 14 We will come back to that issue. But can I just<br/> 15 understand some of the detail --<br/> 16 PROFESSOR CURRAN: Sure.<br/> 17 Q. -- just a little bit more.<br/> 18 When you say in relation to your four bullet points,<br/> 19 the last one is:<br/> 20 "Traffic shares of top 20 UK-based news website."<br/> 21 Can you clarify for us what that means? Does that<br/> 22 mean solely operated from the United Kingdom or does it<br/> 23 include aggregators?<br/> 24 PROFESSOR CURRAN: It's unique visitors as defined by the<br/> 25 Alexa measurement, and it replies to visitors to UK</p> <p style="text-align: center;">Page 6</p>                                   | <p>1 information from different sources. But that doesn't<br/> 2 obviate the point that a concentration of fire power<br/> 3 within particular sectors has enormous political clout<br/> 4 and enormously influences the nature of British<br/> 5 politics.<br/> 6 Q. I understand.<br/> 7 In terms, then, of who would qualify -- if that's<br/> 8 the right way of putting it, Professor Curran. If one<br/> 9 looks at the next page, 00865, you have helpfully given<br/> 10 us a bar chart. Unfortunately we don't have the colours<br/> 11 on the version we have, but we can decipher it.<br/> 12 If one is looking at national newspapers, which of<br/> 13 course are of greatest concern, but not the sole<br/> 14 concern, of this Inquiry, those which qualify because<br/> 15 they're above the 15 per cent, obviously the<br/> 16 News International titles, the Trinity Mirror national<br/> 17 titles and the Associated News titles, but no one else.<br/> 18 Is that right?<br/> 19 PROFESSOR CURRAN: That's correct.<br/> 20 Q. So self-evidently then, the Guardian and the Independent<br/> 21 titles are below the threshold. They don't owe the<br/> 22 obligations which you're going to go on to define and<br/> 23 describe to us. But they may owe different obligations;<br/> 24 is that correct?<br/> 25 PROFESSOR CURRAN: Yes. To be brutally frank, the</p> <p style="text-align: center;">Page 8</p>  |

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| <p>1 Independent and the Guardian have tiny circulations.<br/> 2 They don't correspond in terms of their position to<br/> 3 large groups like News Corporation, Trinity Mirror and<br/> 4 Daily Mail.<br/> 5 LORD JUSTICE LEVESON: Is it right just to count the number<br/> 6 of newspapers, or does one also have to take account of<br/> 7 the reach of these organs through the Internet?<br/> 8 Because, as I understand it, the reach of the Guardian,<br/> 9 for example, is dramatically different to its production<br/> 10 of papers.<br/> 11 PROFESSOR CURRAN: That is true. But in response to<br/> 12 questions about use, the Internet is not a major source<br/> 13 of news. It's a major source of entertainment. But the<br/> 14 point you are making nonetheless is correct.<br/> 15 The Guardian's status is enhanced by its presence<br/> 16 online.<br/> 17 LORD JUSTICE LEVESON: Yes. I'm sure the Guardian Online<br/> 18 editor would hope that the Guardian Online was a source<br/> 19 of entertainment, but equally, I would hope that it<br/> 20 would be thought that it was also the subject of pretty<br/> 21 comprehensive information by way of news and comment.<br/> 22 The trouble is we may not know why people read it,<br/> 23 although one might be able to infer why people read the<br/> 24 Guardian website. I have picked the Guardian as one of<br/> 25 a type. I could equally have taken the Independent.</p> <p style="text-align: center;">Page 9</p> | <p>1 seek to take on rather more than I have been asked to<br/> 2 do, because there'll be no small number of people who<br/> 3 are prepared to point out what I have been required to<br/> 4 do, and to identify if I have extended my brief.<br/> 5 So I just need to be careful, and just so that we<br/> 6 all bear it in mind, I certainly have to deal with the<br/> 7 extent to which the current policy and regulatory<br/> 8 framework has failed, including in relation to data<br/> 9 protection. And I have to make recommendations:<br/> 10 "... for a new more effective policy and regulatory<br/> 11 regime which supports the integrity and freedom of the<br/> 12 press, the plurality of the media, and its independence,<br/> 13 including from Government, while encouraging the highest<br/> 14 ethical and professional standards ..."<br/> 15 And:<br/> 16 "... for how future concerns about press behaviour,<br/> 17 media policy, regulation and cross-media ownership<br/> 18 should be dealt with ..."<br/> 19 So how future concerns should be dealt with by all<br/> 20 the relevant authorities, including Parliament,<br/> 21 Government, the prosecuting authorities and the Police.<br/> 22 So I'm not sure that extends to my saying, however<br/> 23 much former Prime Minister and the Leader of the<br/> 24 Opposition have encouraged me, that I think there ought<br/> 25 to be this cap.</p> <p style="text-align: center;">Page 11</p> |
| <p>1 I'm not getting at or saying anything one way or the<br/> 2 other about the newspaper. It's the point I'm concerned<br/> 3 with.<br/> 4 PROFESSOR CURRAN: I understand the point you are making.<br/> 5 I would say in response to that that the editor of the<br/> 6 Guardian can't swing an enormous media influence behind<br/> 7 a government or launch a jihad against the Government.<br/> 8 Murdoch can, Paul Dacre can and the Mirror Group can.<br/> 9 The status of the Guardian doesn't correspond to<br/> 10 that of Murdoch. But the larger point is one needs to<br/> 11 find some kind of objective measurement.<br/> 12 LORD JUSTICE LEVESON: That's the point I'm really getting<br/> 13 at.<br/> 14 PROFESSOR CURRAN: This is the best measurement which is<br/> 15 objective, rather than influenced by political or party<br/> 16 considerations that we came up with.<br/> 17 LORD JUSTICE LEVESON: That was of course the point I was<br/> 18 making. I wasn't seeking to make any particular comment<br/> 19 about the Guardian or the Independent on the one hand,<br/> 20 or the News International titles or the Daily Mail on<br/> 21 the other. It may be just an issue of measurement.<br/> 22 I have interrupted Mr Jay. I'll just interrupt him<br/> 23 a bit more.<br/> 24 It's very important that I tie in what you're<br/> 25 suggesting to my terms of reference, and that I don't</p> <p style="text-align: center;">Page 10</p>                             | <p>1 So I need to think about it.<br/> 2 PROFESSOR CURRAN: Can I respond to that?<br/> 3 LORD JUSTICE LEVESON: Please do. That's why I raised it.<br/> 4 PROFESSOR CURRAN: A policy that is designed to support<br/> 5 plurality would seem to me to connect with proposals<br/> 6 designed to promote plurality.<br/> 7 LORD JUSTICE LEVESON: We just need to think about it.<br/> 8 MR JAY: My understanding, Professor Curran -- correct me if<br/> 9 I am wrong -- there are two aspects to this. The cap is<br/> 10 being treated here as a threshold for triggering the<br/> 11 public service obligation, but there may be a separate<br/> 12 point that if you are over the cap, whether you should<br/> 13 be divested in any event, which directly engages the<br/> 14 plurality issue, which may or may not directly engage<br/> 15 the terms of reference.<br/> 16 Have I correctly understood where you're coming<br/> 17 from?<br/> 18 PROFESSOR CURRAN: Yes. In the case of public service<br/> 19 obligations, one of them we propose is to strengthen the<br/> 20 position of the editor, and make the editor more<br/> 21 oriented towards his staff.<br/> 22 That would seem to me to be a proposal supporting<br/> 23 the independence of the press that falls within the<br/> 24 reference of the Leveson Inquiry, and has the potential<br/> 25 to promote the plurality of the press.</p> <p style="text-align: center;">Page 12</p>                      |

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| <p>1 It's in line with the previous Inquiry conducted by<br/>2 the Royal Commission On the Press, chaired by McGregor,<br/>3 where they produced a press freedom charter, and that<br/>4 was informed by the notion that a way of enhancing the<br/>5 independence and plurality of the press was to ensure<br/>6 that press freedom wasn't simply the property of the<br/>7 owner, that it was something shared with journalists.<br/>8 So they were concerned to strengthen, through the<br/>9 press freedom charter, the role of the editor and the<br/>10 role of journalists. We have just taken the logic of<br/>11 that proposal and extended it.<br/>12 Q. I just ask you to clarify the last two lines of the<br/>13 third page, 00865, which follows on to the next page,<br/>14 about, in particular, the measurement of local news and<br/>15 the possible role of Ofcom in that context, please,<br/>16 Professor Curran.<br/>17 PROFESSOR CURRAN: Which page is this?<br/>18 Q. On your page numbering it's page 3, the very bottom of<br/>19 the page, the last two lines of your page 3.<br/>20 PROFESSOR CURRAN: Yes. We just thought the local press was<br/>21 an unbelievably complex area, and the problems of<br/>22 definition and the problems of intervention required<br/>23 very detailed knowledge, and we therefore didn't wish to<br/>24 offer a proposal, and shifted it to Ofcom.<br/>25 Q. I understand.</p> <p style="text-align: center;">Page 13</p>  | <p>1 journalism.<br/>2 So that is the thinking behind these proposals.<br/>3 Q. May I understand, please, how this proposal would be<br/>4 enforced? Are you anticipating that there be a statute<br/>5 which imposes the minimum requirement you are referring<br/>6 to?<br/>7 PROFESSOR CURRAN: Yes, that's right.<br/>8 Q. So it would be unlawful for either a private or a public<br/>9 company to operate in a way which did not reflect these<br/>10 minimum requirements?<br/>11 PROFESSOR CURRAN: So there would have to be an editorial<br/>12 panel established in all leading market organisations.<br/>13 Q. May I put this contrary argument to you<br/>14 Professor Curran. Some might say that this is really an<br/>15 unwarranted interference with the operation of a free<br/>16 market, that if a proprietor has successfully built up<br/>17 his organisation close from scratch -- take the example<br/>18 of Mr Murdoch, for example. That's what he's done.<br/>19 He's been enormously successful. You are now telling<br/>20 him that he can't appoint the editor he chooses. Okay,<br/>21 he has certain obligations in relation to the Times and<br/>22 the Sunday Times, but otherwise he should be allowed to<br/>23 do what which he wishes, certainly in the areas which<br/>24 you are defining here.<br/>25 The general law will constrain him and regulation</p> <p style="text-align: center;">Page 15</p>                                    |
| <p>1 Your recommendations then, when a relevant body is<br/>2 above the threshold, there are various elements to it.<br/>3 The first is protecting editorial autonomy.<br/>4 Can I understand what your proposal is here?<br/>5 In essence you say that the qualifying news<br/>6 organisations above the 15 per cent set up a panel,<br/>7 including a minimum of five staff journalists, empowered<br/>8 to oversee key decisions. Then you identify the sorts<br/>9 of decisions.<br/>10 Could I ask you please to amplify that?<br/>11 PROFESSOR CURRAN: The intention essentially is to ensure<br/>12 that staff are -- participate in a consultative way with<br/>13 decisions in a company. And the intention is also to<br/>14 strengthen the position of the editor and to ensure that<br/>15 the editor is oriented towards journalists.<br/>16 This I think does connect to the issue of<br/>17 independence and plurality of the press that is<br/>18 a concern of the Leveson Inquiry.<br/>19 Our press is different from that of other countries.<br/>20 We're in a kind of time warp in which the controllers of<br/>21 the press operate rather like the press barons of old,<br/>22 and in other countries they have moved on from that, and<br/>23 most media groups have dispersed shareholdings. And<br/>24 editors, managers and journalists have much greater<br/>25 influence, and that leads in our view to better</p> <p style="text-align: center;">Page 14</p> | <p>1 may constrain him, but you're arguably creating serious<br/>2 intrusions into his freedoms.<br/>3 PROFESSOR CURRAN: The editorial panel would include both<br/>4 management and editorial staff. The proportions haven't<br/>5 been assigned. But the basic point that is being put is<br/>6 that press groups shouldn't only operate at the behest<br/>7 of very powerful individuals. And it's very important<br/>8 that staff and editors have a greater degree of autonomy<br/>9 than they have, and this is a mechanism designed to<br/>10 strengthen that.<br/>11 Q. So you are thinking it's a necessary and proportionate<br/>12 step to deal with a serious problem which in the public<br/>13 interest must be addressed; is that a fair summary?<br/>14 PROFESSOR CURRAN: Exactly.<br/>15 Q. I understand. Now --<br/>16 LORD JUSTICE LEVESON: Would that really work? Because if<br/>17 the editor has the right of hire and fire, it would take<br/>18 a very strong group of journalists who disagreed with<br/>19 his policy and his view to stand up to him if he was<br/>20 working at the behest of the proprietor. I'm not taking<br/>21 any example in particular.<br/>22 PROFESSOR CURRAN: That would be right. The biggest<br/>23 sanction that could be taken is a motion of no<br/>24 confidence. At universities, vice chancellors are<br/>25 exposed to a motion of no confidence from time to time.</p> <p style="text-align: center;">Page 16</p> |

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| <p>1 They generally ignore those votes of no confidence, but<br/>2 nonetheless it's a warning shot, and it means that they<br/>3 have to worry a bit more about presentation to their<br/>4 staff.<br/>5 So what is being proposed is not a syndicalist<br/>6 solution, which I don't believe in, where the staff<br/>7 control. It's just creating a buffer. A buffer zone in<br/>8 which journalists and editors have a greater degree of<br/>9 autonomy.<br/>10 MR JAY: The second recommendation, Professor Curran,<br/>11 promoting public interest media, in my understanding,<br/>12 the qualifying entities will be subject to a levy of<br/>13 sorts, which is a contribution out of their annual<br/>14 profits into a trust, and that trust will subvent,<br/>15 subsidise journalism in the public interest. Is that<br/>16 basically the idea?<br/>17 PROFESSOR CURRAN: That's correct, and the idea behind that<br/>18 is Channel 4. Channel 4 was set up on the basis of<br/>19 a transfer of resources from ITV to support a minority<br/>20 channel, Channel 4.<br/>21 So a levy on market leaders is designed to support<br/>22 greater diversity. In a strange kind of way, the<br/>23 Government's policy on local TV is doing this too. It's<br/>24 taking money from the BBC to support new local TV<br/>25 organisations.</p> <p style="text-align: center;">Page 17</p>                                     | <p>1 PROFESSOR CURRAN: They have a very clever scheme. Nobody<br/>2 would pay any attention to one investigative unit, so<br/>3 they form a partnership. So they had two exclusives<br/>4 this week with the Guardian, which was splashed over two<br/>5 pages on two successive days, which was then picked up<br/>6 by television.<br/>7 So they operate with working in partnership with<br/>8 major players. The same thing operates with ProPublica<br/>9 in America. They have done a series of successful<br/>10 stories. They won the Pulitzer Prize by working in<br/>11 conjunction with NBC, the Los Angeles Times and others.<br/>12 So here is a specialist unit of really good<br/>13 journalists who develop a story. They then give it to<br/>14 a major organisation as an exclusive, which runs it.<br/>15 It's then picked up by broadcasting. So it's a very<br/>16 cheap way of strengthening the independence, plurality<br/>17 and democratic functioning of the press.<br/>18 MR JAY: When we come to the issue of caps, which is the<br/>19 separate aspect of pluralism, which may or may not<br/>20 engage the terms of reference, but nonetheless you will<br/>21 speak to them, what you're proposing is that there<br/>22 should be two caps: one in relation to single entities<br/>23 controlling a given media audience, and we are looking<br/>24 at the four categories you had identified earlier; and<br/>25 then a different cap at a lower level for cross-media</p> <p style="text-align: center;">Page 19</p> |
| <p>1 So the levy is intended to support diversity.<br/>2 Q. Is this going to be done exclusively through the entity<br/>3 you identify on page 5, the top of our page 00867,<br/>4 namely The Bureau of Investigative Journalism?<br/>5 PROFESSOR CURRAN: No, that is one beneficiary of such<br/>6 a scheme.<br/>7 The levy would be levied in a way that all levies<br/>8 would be levied. The money would go towards the Public<br/>9 Media Trust, and the Public Media Trust would be the<br/>10 agency that would allocate funds to support diversity.<br/>11 Q. What is The Bureau of Investigative Journalism?<br/>12 PROFESSOR CURRAN: It's one example of an initiative that<br/>13 was supported by a small amount of money. It's<br/>14 a separate investigative journalism unit, and it has<br/>15 been spectacularly successful. The stories run this<br/>16 week on the influence of banks, on the politicians, the<br/>17 FSA and the Lords all came from this tiny investigative<br/>18 unit. And it illustrates what a small amount of money<br/>19 can do to bolster the watchdog role of the press.<br/>20 So the idea is a levy on market leaders would<br/>21 include support for investigative units, such as the one<br/>22 that's been referred to.<br/>23 Q. How?<br/>24 LORD JUSTICE LEVESON: How are those stories promulgated?<br/>25 Who picks them up?</p> <p style="text-align: center;">Page 18</p> | <p>1 market revenue; is that right?<br/>2 PROFESSOR CURRAN: That's correct, yes.<br/>3 Q. So are you proposing then -- I think you are -- that if<br/>4 one overreaches the cap, one will be cut back, shorn<br/>5 back to the cap --<br/>6 PROFESSOR CURRAN: Yes.<br/>7 Q. -- by compulsory action by the state?<br/>8 PROFESSOR CURRAN: Yes.<br/>9 Q. Forcing you to sell the excess?<br/>10 PROFESSOR CURRAN: That's correct. And the thinking behind<br/>11 that is not a single acquisition of a major newspaper<br/>12 has been denied in the last 46 years. So if the<br/>13 Leveson Inquiry is concerned with a policy for<br/>14 supporting plurality, which I submit is in your terms of<br/>15 reference, then it must be concerned with ways of<br/>16 tackling the problem of media concentration, which<br/>17 constrains the plurality of the press.<br/>18 Q. We see in the recent recommendations from Ofcom that<br/>19 they don't favour absolute caps. So that's one aspect.<br/>20 But the other aspect as well is that why can't all this<br/>21 be dealt with adequately by a combination of existing<br/>22 competition laws and the plurality test which we see in<br/>23 the Enterprise Act, which is imported back into the<br/>24 Communications Act of 2003. In other words, why do we<br/>25 need this rigidity?</p> <p style="text-align: center;">Page 20</p>  |

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| <p>1 PROFESSOR CURRAN: The simple answer is history. Our<br/>2 competition policy has failed. If you're faced with<br/>3 a situation where no major newspaper acquisition has<br/>4 been stopped, clearly something has to change.<br/>5 Ofcom is a deeply impressive organisation. Its<br/>6 research is wonderful, and the people I have met in it<br/>7 are very impressive. But it operates within a framework<br/>8 which is deregulatory. The DCMS paper that came out<br/>9 this week essentially said technology is generating<br/>10 diversity and competition, which is what it said ten<br/>11 years ago. The Government has changed, but the message<br/>12 is the same.<br/>13 So Ofcom will be operating in a deregulatory<br/>14 framework probably. It also operates within the<br/>15 thinking about the press that is shaped by the press.<br/>16 I suspect that is something that you will realise<br/>17 when you deliver your report: that thinking about press<br/>18 regulation is strongly influenced by the press.<br/>19 So my response to the notion of an intimate<br/>20 plurality test, is I think that's a way of parking<br/>21 a problem, rather than solving it.<br/>22 It is unbelievably difficult for an agency to tackle<br/>23 the massive concentration that's developed over the last<br/>24 40 years.<br/>25 Only a striking tocsin call from an inquiry such as</p> <p style="text-align: center;">Page 21</p>  | <p>1 And this may seem a very extraordinary policy to<br/>2 propose.<br/>3 LORD JUSTICE LEVESON: You commented upon the reaction that<br/>4 I'm going to face talking about press regulation.<br/>5 I shudder to think of the reaction I'm going to face on<br/>6 this type of recommendation.<br/>7 PROFESSOR CURRAN: I understand entirely the point you are<br/>8 making. Let me nonetheless put the case for this. Then<br/>9 let me put --<br/>10 LORD JUSTICE LEVESON: I'm not saying you are not right.<br/>11 PROFESSOR CURRAN: I understand. The temptation is to bite<br/>12 off what one can chew and leave the rest for another<br/>13 day.<br/>14 If one goes back to the second Royal Commission on<br/>15 the Press. They regretted the way in which daily and<br/>16 Sunday papers were being bundled together. And they saw<br/>17 that as a reduction of plurality.<br/>18 We've come to accept that as being the natural and<br/>19 normal state of affairs. I think the second Royal<br/>20 Commission on the Press was right, and our assumption of<br/>21 what's normal is not right.<br/>22 But in response to your comments about hostages to<br/>23 fortune, doing what is possible, the bar could be set at<br/>24 different levels. One could set it at 25 per cent,<br/>25 30 per cent, 20 per cent. We have gone for the</p> <p style="text-align: center;">Page 23</p>           |
| <p>1 this might possibly start a new ball rolling.<br/>2 Q. Can I understand how it would work? You have a press<br/>3 entity which has overtopped the 15 per cent. It will be<br/>4 the 20 per cent if we're looking at a single market. So<br/>5 you are at 25 per cent. How does one get rid of the<br/>6 excess 5 per cent?<br/>7 PROFESSOR CURRAN: They will simply have to sell their<br/>8 properties.<br/>9 Q. Sell their?<br/>10 PROFESSOR CURRAN: Sell their properties. So in the case of<br/>11 News International, it will be divested of those papers<br/>12 that enable it to come within the 20 per cent target.<br/>13 And that would almost certainly lead to a form of<br/>14 ownership that has more dispersed shareholdings, which<br/>15 would be enormously in the public interest.<br/>16 Q. I can see how it might work at least in principle with<br/>17 News International, because they're at 35 per cent at<br/>18 the moment, and they would say, "Okay, we will sell<br/>19 the Times and the Sunday Times, and that will bring us<br/>20 just below 20 per cent".<br/>21 How would it work with DMGT, the Daily Mail and the<br/>22 Mail on Sunday? They would have to choose which to<br/>23 sell. It would be all or nothing, wouldn't it?<br/>24 PROFESSOR CURRAN: Yes, it would be. So the Mail and the<br/>25 Sunday Mail -- the Mail on Sunday -- would be separated.</p> <p style="text-align: center;">Page 22</p> | <p>1 20 per cent in order to effect a substantial change,<br/>2 because we think substantial change is desirable.<br/>3 MR JAY: Can I move on to the funding aspect of this, which<br/>4 is levies.<br/>5 You refer expressly, Professor Curran, to a levy on<br/>6 search engine and social media advertising sales, which,<br/>7 given that that is so profitable, as it were, could<br/>8 easily generate, on your arithmetic, GBP50 million-worth<br/>9 of funds for reinvestment.<br/>10 Are you also proposing a levy on media organisations<br/>11 otherwise?<br/>12 PROFESSOR CURRAN: No. So the levy would only be for market<br/>13 leaders -- sorry, for -- let me retract.<br/>14 The levy on social media and search engine<br/>15 advertising would be restricted to that, not to other<br/>16 forms of Internet advertising. And the thinking behind<br/>17 that is there's been an enormous migration of<br/>18 advertising from the press to the Internet, not<br/>19 concerned in many cases, or in some cases, with<br/>20 journalism.<br/>21 That is a potential source of revenue that could<br/>22 fertilise new shoots, and that is to return to the<br/>23 Channel 4 model. To look for profitable areas of the<br/>24 media and to use part of those profits to generate<br/>25 greater plurality, which is a concern of this Inquiry.</p> <p style="text-align: center;">Page 24</p> |

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| <p>1 Q. Given that the majority of Internet traffic is not<br/>2 news-related, why isn't this wrong in principle?<br/>3 PROFESSOR CURRAN: Well, the problem is essentially that<br/>4 advertising is increasingly being decoupled from the<br/>5 production of journalism, and that is the underlying<br/>6 crisis, the cause of the crisis.<br/>7 So one response is to say that it is desirable to<br/>8 have healthy journalism. How can you have healthy<br/>9 journalism where you look for where revenue has been<br/>10 redistributed, and part of that revenue is ploughed back<br/>11 into journalism? And the justification for that is the<br/>12 public interest.<br/>13 Q. Then, finally on this section, professor, we have the<br/>14 Public Media Trust. Could you tell us about that<br/>15 please?<br/>16 PROFESSOR CURRAN: The Public Media Trust is the body that<br/>17 would promote diversity in the press. It would fund<br/>18 investigative units like the Bureau of Investigative<br/>19 Journalism. It would fund jobs for young journalists in<br/>20 a way that's been developed in the Netherlands, and it<br/>21 would also promote new start-ups under different forms<br/>22 of ownership, and provide support where there is<br/>23 a demonstrable need.<br/>24 This is targeted towards the local press. Local<br/>25 newspapers are closing. Local newspaper offices within</p> <p style="text-align: center;">Page 25</p>  | <p>1 LORD JUSTICE LEVESON: Is that by compulsion of law in<br/>2 Norway?<br/>3 PROFESSOR CURRAN: Yes, it is.<br/>4 If I could say in relation to that, when the subsidy<br/>5 scheme was developed in Sweden, there was very<br/>6 considerable opposition from the Conservative Party, on<br/>7 the grounds that that was a threat to press freedom.<br/>8 40 years later, all political parties in Sweden support<br/>9 the operation of the subsidy because publications that<br/>10 support the wide spectrum of opinion get support.<br/>11 So a system that supports press diversity gets<br/>12 support from the diversity of the political spectrum.<br/>13 MS PHILLIPS: And people. Norway has the highest newspaper<br/>14 readership in the world I believe -- unless it's<br/>15 Finland.<br/>16 PROFESSOR CURRAN: I think Finland is. But it's very high.<br/>17 MR JAY: Thank you.<br/>18 May we move on to part 2 now, and this is<br/>19 Angela Phillips. Ethical practice: a new settlement for<br/>20 British news publishing.<br/>21 First of all, the analysis of the problem, the cycle<br/>22 of ethical crises and the sharp divide. Could I ask<br/>23 you, please, to elaborate that point.<br/>24 MS PHILLIPS: I think if we look back at British newspapers,<br/>25 we get ourselves into this kind of pickle on a kind of</p> <p style="text-align: center;">Page 27</p>  |
| <p>1 newspapers are closing. There is a growing problem in<br/>2 the local press that people in London tend not to<br/>3 notice. It is extremely important in terms of the<br/>4 health of our democracy that something be done about the<br/>5 crisis in the local press, and our proposal is a way of<br/>6 trying to inject money into a flagging sector.<br/>7 Q. Isn't there a danger though that this trust builds up<br/>8 journalism, including journalism which you may rightly<br/>9 say is in the public interest and serves our democracy,<br/>10 but at the end of the day, no one wants to read it?<br/>11 PROFESSOR CURRAN: I think there has to be clear criteria.<br/>12 So, for example, if a local website applied for a grant,<br/>13 it would have to have a certain level in order for it to<br/>14 be eligible to apply. So there has to be a clear<br/>15 demonstration that there is a level of demand.<br/>16 Secondly, there would have to be demonstration of<br/>17 need, a need in terms of a problem of local newspaper<br/>18 closure. In other words, you would have to show that<br/>19 the applicant would promote diversity where there is<br/>20 a gap.<br/>21 And the thinking behind this is completely standard<br/>22 in Norway, in Sweden, in Finland. This is not new<br/>23 territory. So it's not something that is unthinkable.<br/>24 It's something which has been developed and successfully<br/>25 implemented in a way which promotes diversity.</p> <p style="text-align: center;">Page 26</p> | <p>1 ten-year cycle.<br/>2 I think when something happens as regularly as it<br/>3 does in the British newspaper, you have to sort of look<br/>4 at what are the systemic reasons why this is happening.<br/>5 I think that's partly why the question of media<br/>6 power actually can't be completely uncoupled from the<br/>7 question of ethics.<br/>8 We have some very powerful newspaper organisations<br/>9 that run -- and I think I quote Paul Dacre here himself,<br/>10 who said to you quite recently -- described his<br/>11 organisation as being "extremely hierarchical".<br/>12 In the tabloid and mid-market press, we have press<br/>13 that's very much directed from above, which is very<br/>14 hierarchical, where people at the bottom, new entry<br/>15 journalists, are under an enormous amount of pressure to<br/>16 deliver. And the kind of stories they are asked to<br/>17 deliver are stories that will be interesting to the<br/>18 public.<br/>19 One of the things that I find most alarming about<br/>20 the way in which that pressure operates is journalists<br/>21 who talk about the way in which their own ethical<br/>22 compass is being distorted by what they're being asked<br/>23 to do. And there is an increasing amount of evidence of<br/>24 that, that the newspaper industry is divided between the<br/>25 very popular press, where pretty much anything goes, as</p> <p style="text-align: center;">Page 28</p> |

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| <p>1 long as you make sure you don't get into a very<br/>                 2 expensive libel suit. But that means that quite a lot<br/>                 3 can kind of go under the wire that is pretty dodgy, but<br/>                 4 you know that the people who you have just maligned<br/>                 5 cannot do anything about it.<br/>                 6 Then we have another -- probably -- I haven't looked<br/>                 7 at the figures, but there's probably more journalists<br/>                 8 who work for what I would call "the ethical press", and<br/>                 9 I think that one of the problems of this Inquiry is that<br/>                 10 they tend to get lost, and we have to bring them back<br/>                 11 into the picture.<br/>                 12 I was talking recently to a bunch of magazine<br/>                 13 journalists who are absolutely outraged at the<br/>                 14 possibility that new regulation will be brought in,<br/>                 15 which they consider to be completely unsuitable for<br/>                 16 their purposes, and all because, as they put it, a bunch<br/>                 17 of tabloid hacks can't behave ethically.<br/>                 18 I do think they have got a point.<br/>                 19 I think that whatever we end up with here, it's got<br/>                 20 to support ethical journalism, while at the same time<br/>                 21 trying to curb what I can quite happily call "unethical<br/>                 22 journalism", because I think they are two different<br/>                 23 things. They tend to be quite often done by two<br/>                 24 different groups of people.<br/>                 25 I think it would be a pity if we end up with changes<br/>                 Page 29</p>                                 | <p>1 upset their children. I think we have completely lost<br/>                 2 that even as an ethical benchmark. I think we need to<br/>                 3 try and get back to it.<br/>                 4 So everything that's in this paper is actually about<br/>                 5 trying to create a framework which will encourage<br/>                 6 journalism to return to a more ethical place, and that<br/>                 7 is about changing the culture.<br/>                 8 I think a change in culture requires journalism and<br/>                 9 journalistic organisations to be involved in the new<br/>                 10 settlement. Because unless they are fully involved and<br/>                 11 engaged in it, none of the change we need to see will<br/>                 12 actually take place.<br/>                 13 Q. What you're proposing is the creation of a new regulator<br/>                 14 which you are calling "The News Publishing<br/>                 15 Commission" -- of course the label doesn't matter --<br/>                 16 which is independent, is backed by statute but is<br/>                 17 voluntary. So people aren't compelled to join it, but<br/>                 18 there are a series of strong incentives which you<br/>                 19 believe will cause people to want to join it. Is that<br/>                 20 a fair epitome --<br/>                 21 MS PHILLIPS: That is what we are looking for. There's been<br/>                 22 a lot of debate backwards and forwards, and I know that<br/>                 23 this is the key issue: just how statutory should this<br/>                 24 be?<br/>                 25 I think we have to be very weary of licensing the<br/>                 Page 31</p>   |
| <p>1 that are very slight because the only people who really<br/>                 2 matter are the editors of the very biggest newspapers.<br/>                 3 Because we have to keep reminding ourselves that they<br/>                 4 are the problem. Why do we expect them to be the<br/>                 5 solution?<br/>                 6 So I think what we need to be doing is looking for<br/>                 7 a system which creates a balance. It's got to protect<br/>                 8 what I would call "real journalism", which is<br/>                 9 journalists doing their job properly. Ethical<br/>                 10 journalists in the public interest. But that does not<br/>                 11 quite provide the same level of protection to journalism<br/>                 12 which might be amusing, but quite often hurts people.<br/>                 13 Now, I don't want to see the end of the tabloid<br/>                 14 press, and I'm a great believer in journalism being<br/>                 15 funny when it can be. I think humour in newspapers is<br/>                 16 enormously important, and I think Britain probably leads<br/>                 17 the world in having newspapers that are often extremely<br/>                 18 funny. But I don't think you should produce humorous<br/>                 19 articles by way of destroying people's lives.<br/>                 20 I think there used to be a kind of a way of looking<br/>                 21 at stories where the editorial position was: don't send<br/>                 22 their children crying to school. And that was a kind of<br/>                 23 an ethical benchmark.<br/>                 24 Do not say things about people which are so<br/>                 25 inflammatory that you destroy their families and you<br/>                 Page 30</p> | <p>1 press, and I think compulsion requires licensing.<br/>                 2 I think that a licensing regime is a dangerous road<br/>                 3 to go down. But we do need a clear underpinning. We do<br/>                 4 need an organisation that is able to take action. And<br/>                 5 we do need an organisation that provides sufficient<br/>                 6 incentives to join, that no organisation that is engaged<br/>                 7 in serious journalism can afford not to join it.<br/>                 8 I realise that this is a very fine balance.<br/>                 9 This is an area where there's been a huge amount of<br/>                 10 debate, I have to say, and I'm quite interested in the<br/>                 11 completely alternative position that the Media Standards<br/>                 12 Trust have come up with, which is the idea of an<br/>                 13 external auditor. I only read that quite recently,<br/>                 14 because it's only an idea that they came to quite<br/>                 15 recently themselves.<br/>                 16 But I think that a lot of the organisations such as<br/>                 17 ourselves -- where our main role is to co-ordinate and<br/>                 18 to try and create bridges between civil society<br/>                 19 organisations. I think what we're all looking for is an<br/>                 20 organisation which clearly has teeth, but doesn't amount<br/>                 21 to licensing.<br/>                 22 I think, looking across Europe -- and I'm delighted<br/>                 23 that you are going to be listening to somebody from<br/>                 24 Reuters Institute who has done much more research on<br/>                 25 this than I have. But looking across Europe, it seems<br/>                 Page 32</p> |



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| <p>1 to me that the only place where there is statutory<br/>2 regulation is in Denmark.</p> <p>3 I think one of the problems of statutory regulation<br/>4 is you might actually have a tendency to water things<br/>5 down. Because nobody is going to want to take a licence<br/>6 away from a newspaper.</p> <p>7 So I think what you end up with is exactly what we<br/>8 have, and issues of plurality. People will say, "Well,<br/>9 you can't ask a newspaper group to divest". We, on the<br/>10 one hand, want plurality. On the other hand we can't<br/>11 take action, because to take action is seen to be<br/>12 draconian. And I think we would find ourselves in<br/>13 exactly the same situation if we had compulsory<br/>14 registration of the press. Nobody would actually be<br/>15 able to do anything.</p> <p>16 We need a regulatory regime which has a sufficient<br/>17 flexibility so that real action can be taken, short of<br/>18 saying, "You can no longer publish". Which I think<br/>19 would be anathema and would cause, quite rightly,<br/>20 uproar.</p> <p>21 Q. In relation to your voluntary scheme -- I know there are<br/>22 incentives to it, and we will look at those -- but why<br/>23 would the most powerful bodies wish to touch this scheme<br/>24 with a metaphorical bargepole? Isn't it an aspect of<br/>25 their power, they say, "Well, your scheme is far too</p> <p style="text-align: center;">Page 33</p>  | <p>1 that Alastair Brett -- originally mouthed this idea, and<br/>2 Hugh Tomlinson has fleshed it out.</p> <p>3 I notice -- and I'm slightly concerned about the<br/>4 fact that Hugh Tomlinson has picked up the idea of<br/>5 making this organisation responsible for issuing press<br/>6 cards. Which, I have to say, we would absolutely<br/>7 oppose, and I would go into that in some detail if you<br/>8 like. But the idea of licensing individual journalists<br/>9 is, in many ways, even worse than the idea of<br/>10 licensing --</p> <p>11 LORD JUSTICE LEVESON: It's an idea that emanates from<br/>12 Mr Dacre.</p> <p>13 MS PHILLIPS: I believe it does. I have read that. And<br/>14 I was really upset to discover that Lord Black has<br/>15 picked it up as well. Because there is something almost<br/>16 surreal about somebody who says that he is ideologically<br/>17 opposed to the statutory regulation of the press and yet<br/>18 is prepared to set up an organisation which effectively<br/>19 the tabloid press would decide who was allowed to be<br/>20 a journalist in this country.</p> <p>21 I just -- I'm absolutely -- I am actually astonished<br/>22 that they could make such a proposal, because it seems<br/>23 to me to be such an extraordinary limitation of the<br/>24 freedom of the press. Much more draconian than anything<br/>25 that anybody else has suggested. It would mean that</p> <p style="text-align: center;">Page 35</p>  |
| <p>1 independent; it doesn't involve us as editors at the<br/>2 centre. That in essence it's anathema. We're not going<br/>3 to sign up." Why do you think they would?</p> <p>4 MS PHILLIPS: I think that that is a very, very real<br/>5 problem, and I know it's exactly the problem you are<br/>6 grappling with. You have to have an organisation that<br/>7 you want people to join. How do you make them do it?</p> <p>8 My feeling is that if you attach to it a tribunal<br/>9 system with an adjudicatory function, that provides --<br/>10 it's quite similar to the scheme that Hugh Tomlinson has<br/>11 come up with. I think you've already heard from him.</p> <p>12 Q. No, later on today.</p> <p>13 MS PHILLIPS: So it has been looked at, and it is clearly<br/>14 possible, and I gather there is a similar arrangement<br/>15 that operates in the building industry.</p> <p>16 If you provide a tribunal system which has a faster,<br/>17 shorter, cheaper means of resolving disputes, those<br/>18 people who are in the tent have a means of sorting out<br/>19 their problems in a straightforward way. Those who are<br/>20 outside the tent will have no recourse but to the<br/>21 courts. And one would hope that the courts would take<br/>22 a fairly dim view of their not being a member of the<br/>23 organisation, and that that would have an effect on the<br/>24 way in which legal action would be brought.</p> <p>25 Now, that is, as I understand it, what the scheme</p> <p style="text-align: center;">Page 34</p> | <p>1 very large numbers of people who do work -- but probably<br/>2 they are completely unaware of the existence of those<br/>3 journalists who work at the bottom of the field, who<br/>4 they never come into contact with, because they run very<br/>5 large organisations where they run their journalists.</p> <p>6 And if a journalist transgresses, it would be very<br/>7 easy for them to say, "Off you go, and I'm going to take<br/>8 your press card away". And that person would never be<br/>9 able to work anywhere else, even if they were following<br/>10 the instructions of their editor. I think that's an<br/>11 appalling power to put in the hands of very<br/>12 hierarchical, extremely powerful organisations. I won't<br/>13 have it. It's not in our system.</p> <p>14 MR JAY: In terms of the incentives though, because the<br/>15 voluntary system, you do want to corral everybody within<br/>16 it. Your first level of incentives, in no particular<br/>17 order, is the fast-track arbitration system, which would<br/>18 be mandatory, would it, for those who have signed up, so<br/>19 that a complainant, knowing that publication X is<br/>20 a member of the scheme, would have to go down that route<br/>21 in the first instance, rather than to litigate; is that<br/>22 right?</p> <p>23 MS PHILLIPS: That is the idea, yes.</p> <p>24 Q. How would the public wear that, though? That in some<br/>25 cases, if they're traduced by journal X, they are forced</p> <p style="text-align: center;">Page 36</p> |

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| <p>1 to go down the tribunal arbitration route. In another<br/>2 case it's journal Y, who hasn't voluntarily participated<br/>3 in the system, they have to go off to court. Do you<br/>4 feel there would be public acceptance of such a regime?<br/>5 MS PHILLIPS: I think that's unfair. I'm aware of that.<br/>6 I think it's a problem.<br/>7 I can't see an immediate solution to the problem.<br/>8 If we're going to have a voluntary organisation, it<br/>9 seems to me that the effort has to go into corralling at<br/>10 least the biggest organisations into the system.<br/>11 I'm really looking forward to the person who comes<br/>12 up with a perfect solution which will solve all the<br/>13 problems.<br/>14 LORD JUSTICE LEVESON: So am I.<br/>15 MS PHILLIPS: But I think that if you come up with<br/>16 a voluntary system, which does have sufficient<br/>17 incentive, and which has organised itself in such a way<br/>18 that members of the organisation are seen to be<br/>19 respectable organisations, I think it will join.<br/>20 My worry is that this is an idea that needs to be<br/>21 generated by the newspapers themselves. It's<br/>22 interesting that some of the ideas in the latest version<br/>23 of the Press Council's suggestion do seem to be moving<br/>24 a little bit in this direction.<br/>25 My major concern about the Press Council idea --</p> <p style="text-align: center;">Page 37</p>   | <p>1 have brought in an element of an independent assessor or<br/>2 something, to decide who will be on all these different<br/>3 bodies, but basically they control it.<br/>4 As they do now.<br/>5 They decide who is going to be their -- I mean, how<br/>6 can you decide who is going to be the independent person<br/>7 on your panel?<br/>8 The other thing I have noticed is that in their<br/>9 arbitration panel, they would agree that they wouldn't<br/>10 have serving editors, but the people who would take<br/>11 their place would be ex-editors and people with senior<br/>12 editorial responsibility.<br/>13 They don't, for example, suggest that journalism<br/>14 academics might have a role in their organisation.<br/>15 I mean, I'm not entirely surprised. And they don't<br/>16 suggest that rank and file journalists or the NUJ --<br/>17 they really want to run it themselves. And I think<br/>18 that's a real problem.<br/>19 Q. May we look at other aspects of your proposal. This is<br/>20 all part of the incentives, really.<br/>21 The public interest aspect, bottom of your page 8.<br/>22 Is this right, Ms Phillips, that reliance on the public<br/>23 interest defence can only be relied on in either civil<br/>24 proceedings or elsewhere if you are signed up to the<br/>25 system?</p> <p style="text-align: center;">Page 39</p>   |
| <p>1 well, twofold. One is the appalling idea about licensed<br/>2 press cards, which practically keeps me awake at night.<br/>3 But the other one of course is that it isn't<br/>4 independent. The entire system is still run by editors<br/>5 and proprietors, and that is just wrong.<br/>6 I think there is an extraordinary arrogance<br/>7 amongst -- I suppose one would expect it. They are very<br/>8 important people. They earn huge salaries, and they are<br/>9 surrounded by people who agree with them. But they<br/>10 don't really seem to have -- it's interesting that when<br/>11 Paul Dacre was speaking to you, he talked about the fact<br/>12 that he felt it was a pity that there was nobody here<br/>13 who represented the tabloids. Well, what I would say to<br/>14 him is it is a pity that you don't have a greater<br/>15 understanding of the life lived by ordinary journalists.<br/>16 Because I think there is a real disconnect, and I think<br/>17 it is astonishing that the Press Council doesn't think<br/>18 that it's necessary to bring into their organisation<br/>19 ordinary journalists. They just don't like the idea.<br/>20 They don't like the idea that they might be<br/>21 questioned by their juniors, perhaps.<br/>22 But any system -- and every level of their system as<br/>23 they have drawn it up -- is dominated by editors and<br/>24 proprietors who are also responsible for appointing the<br/>25 other people. There is an element of -- I think they</p> <p style="text-align: center;">Page 38</p> | <p>1 MS PHILLIPS: What I was looking here -- and I'm glad you<br/>2 have somebody from the Irish Press Council coming,<br/>3 because what I was looking at was their ideas about the<br/>4 way in which membership of this organisation would not<br/>5 give you a complete defence, but it would be part of<br/>6 your defence.<br/>7 LORD JUSTICE LEVESON: You have to be a bit careful about<br/>8 that, haven't you, because -- for two reasons.<br/>9 First of all, it's quite difficult to see why<br/>10 somebody who had been maligned by the press should be in<br/>11 a more difficult position about recovering a remedy if<br/>12 the particular press body was signed up to a scheme as<br/>13 opposed to if it wasn't. The damage to them is the<br/>14 same.<br/>15 But secondly, in relation to the press body, it's<br/>16 quite difficult to see why a press body shouldn't be<br/>17 able to say, "Well, look, it's true I'm not in this club<br/>18 for these reasons. I'm happy to explain them. But<br/>19 actually I maintain my own very, very high ethical<br/>20 approach. Here is my system. Here are my rules for my<br/>21 journalists. Here is how it worked in my case." It's<br/>22 difficult to say why they should be treated differently<br/>23 if their ethical stance is indeed the same as that of<br/>24 somebody that has signed up to the club.<br/>25 MS PHILLIPS: I think that in the end they wouldn't be</p> <p style="text-align: center;">Page 40</p> |

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| <p>1 treated differently, because if they could do all that,<br/>2 if they could say, "We have these ethical standards; we<br/>3 have everything in place," and if they brought that to<br/>4 court, then the probability is that they would be able<br/>5 to --</p> <p>6 LORD JUSTICE LEVESON: That's true, but then it's not<br/>7 a carrot.</p> <p>8 MS PHILLIPS: I don't think we need provide a carrot for<br/>9 a highly ethical organisation. What we're trying to get<br/>10 into this -- I mean, it seems to me that it's likely<br/>11 that the most ethical journalist organisations, who do<br/>12 have all this inner compliance and they have it all<br/>13 sorted out, probably will join, because they will want<br/>14 to be inside the tent.</p> <p>15 So I think that what you're suggesting is -- it's<br/>16 difficult to see exactly where they would -- they<br/>17 wouldn't really have an interest in not joining.</p> <p>18 LORD JUSTICE LEVESON: Except that it will cost them money.</p> <p>19 MS PHILLIPS: It will cost them money to join, but they will<br/>20 also have recourse to adjudication, which will be a lot<br/>21 cheaper than going to court.</p> <p>22 LORD JUSTICE LEVESON: This is the arbitral idea that I have<br/>23 floated periodically over the last nine months. So I'm<br/>24 pleased you think it's not a bad one.</p> <p>25 MS PHILLIPS: I think it solves a lot of problems. I think</p> <p style="text-align: center;">Page 41</p> | <p>1 would be able to take that to court, just as they do in<br/>2 Finland. But I think that it would certainly put those<br/>3 people at a disadvantage.</p> <p>4 My feeling about the right of reply is that the --<br/>5 most of the objections to right of reply are to do with<br/>6 the use, understandably, of it in practice.</p> <p>7 My reason for supporting the right of reply is<br/>8 mostly because it will change culture. And I think that<br/>9 it is the one instrument that we have at our disposal<br/>10 which reaches into a newsroom. Because journalists,<br/>11 even those who have been kind of hardened on the flame<br/>12 of tabloid journalism, if somebody comes to them and<br/>13 says, "You have got this completely wrong, and I have<br/>14 the right to correct what you wrote, what you said that<br/>15 was wrong," are affected. People don't like being<br/>16 corrected after the fact.</p> <p>17 I think that it will make journalists more careful.<br/>18 I think one of the biggest problems we are facing at the<br/>19 moment, which is also to do with the enormous financial<br/>20 pressure, is that journalists are under increasing<br/>21 pressure to work faster and faster and faster,<br/>22 particularly, certainly in the press. And if you're<br/>23 working too fast, you don't have time to check properly.<br/>24 If you don't have time to check properly, you make<br/>25 mistakes. And journalists who are making mistakes ought</p> <p style="text-align: center;">Page 43</p> |
| <p>1 for newspapers like the Guardian, or indeed Private Eye,<br/>2 who is always a useful one to look at, it would be very<br/>3 much in the interests of Private Eye to join this<br/>4 organisation actually, because when they have had legal<br/>5 action taken against them, it has been very, very<br/>6 expensive. And it might be possible for them to deal<br/>7 with those sorts of issues in a lower court at much less<br/>8 expense.</p> <p>9 LORD JUSTICE LEVESON: Yes.</p> <p>10 MS PHILLIPS: And still go on doing exactly what they do.</p> <p>11 LORD JUSTICE LEVESON: What Mr Hislop said when he gave<br/>12 evidence was: why on earth should he be part of a team<br/>13 that allowed his magazine to be judged by the very<br/>14 people that he spent his life criticising?</p> <p>15 MS PHILLIPS: Well, I absolutely agree with that. But it's<br/>16 the team that has to change.</p> <p>17 MR JAY: Can I ask you, please, to explain the section of<br/>18 your evidence which deals with the right of reply?<br/>19 Differentiating as well between those who have signed up<br/>20 to the system and those who have not. How does that<br/>21 work.</p> <p>22 MS PHILLIPS: I think it's a problem. I'm not going to<br/>23 pretend it isn't a problem. I think that those who<br/>24 aren't signed up to the system would -- I mean, the<br/>25 right of reply would still exist in law, and people</p> <p style="text-align: center;">Page 42</p>              | <p>1 to correct.</p> <p>2 What we're suggesting, which is completely different<br/>3 to anything that's been suggested before, is that given<br/>4 that we now have the possibilities of the Internet, we<br/>5 have the possibilities of doing very fast corrections.<br/>6 And people can't just say, "Well, it takes up too much<br/>7 space". The space is limitless.</p> <p>8 Q. The space issue would still apply to paper editions.</p> <p>9 MS PHILLIPS: Well, what we're talking about is the paper<br/>10 editions -- and the home page of every news organisation<br/>11 always has a direct big button link to a corrections and<br/>12 clarifications page, where you would have brief<br/>13 descriptions of each correction and each clarification,<br/>14 and that would be linked to the place where you will<br/>15 find the rest.</p> <p>16 LORD JUSTICE LEVESON: If there is a compulsory right of<br/>17 reply, isn't there a risk that that could be hijacked by<br/>18 somebody whose views were perfectly legitimately<br/>19 criticised, and be used as an opportunity to further<br/>20 develop views which the press were perfectly entitled,<br/>21 within their free speech rights, to say something about?</p> <p>22 MS PHILLIPS: You are absolutely right, and that's why we<br/>23 are saying that it should be a right of reply to do with<br/>24 matters of fact.</p> <p>25 I think that where you have a specific space, which</p> <p style="text-align: center;">Page 44</p>                                   |

11 (Pages 41 to 44)

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| <p>1 is a right of reply space, which is what I would like to<br/>2 see online, underneath every article -- I was told in<br/>3 fact by science and health journalists that that was the<br/>4 wrong place, that any correction should be at the top,<br/>5 underneath the headline, which is what you have to do in<br/>6 a science publication. But that is a fine detail.</p> <p>7 I think that the correction needs to be with the<br/>8 article. Because increasingly now everything is stored<br/>9 online. If people go back to the article in the future,<br/>10 they will see the correction immediately. It is there.<br/>11 And it's not part of the comments column. The comments<br/>12 column is the place for debate. The corrections column,<br/>13 space, should be a place for rejoinder saying, "You got<br/>14 that wrong".</p> <p>15 MR JAY: Is the right exercisable even if the newspaper<br/>16 says, for good reason, "We haven't made a mistake"?</p> <p>17 MS PHILLIPS: That's where it would have to go to<br/>18 arbitration. We have two levels within the<br/>19 organisation. There's an ombudsman and there is<br/>20 arbitration. And if there is a real dispute, then it<br/>21 would need to go to arbitration and decision would need<br/>22 to be made.</p> <p>23 But what I would hope is that just by having<br/>24 a change in the law, every single newsroom, big or<br/>25 small, would have its own compliance procedure to</p> <p style="text-align: center;">Page 45</p>       | <p>1 court and risk money or whatever, unless there's some<br/>2 costs shifting arrangement. So it has complexity.</p> <p>3 MS PHILLIPS: It does have complexity. There is a right of<br/>4 reply in both Germany and Finland. It's not the first<br/>5 place that it's come up. There are different kinds of<br/>6 right of reply in other countries in Europe, but in both<br/>7 those countries it's statutory.</p> <p>8 My feeling is that should we have a statutory right<br/>9 of reply, and we have an organisation that has an<br/>10 ombudsman and possibilities of conciliation, that<br/>11 I don't see that being a reason to stay outside, but --<br/>12 but then I think, which is another reason why I am<br/>13 interested at least in the Media Standards Trust idea,<br/>14 which is completely different from ours, which looks at<br/>15 compliance. And the Media Standards Trust is also<br/>16 suggesting a right of reply. And if you have<br/>17 a compliance mechanism where every large organisation<br/>18 has to put certain things in order, then right of reply<br/>19 would be one of them, and that does --</p> <p>20 LORD JUSTICE LEVESON: How does the system work in Germany?</p> <p>21 MS PHILLIPS: I'm going to refer you to your next person<br/>22 from Reuters who has done much better research on that.</p> <p>23 LORD JUSTICE LEVESON: Yes. I have read it, but I couldn't<br/>24 remember. But I'll be reminded. Thank you.</p> <p>25 MR JAY: The other aspects of your system, and this chimes</p> <p style="text-align: center;">Page 47</p> |
| <p>1 prevent them having to go to court, because it's not<br/>2 actually that difficult to say, "If you think we have<br/>3 got it wrong, here is your opportunity to reply".</p> <p>4 Q. So if you're signed up to your voluntary system and<br/>5 there is a dispute as to whether there has been<br/>6 a factual error, then the arbitrator of the dispute will<br/>7 be ombudsman at first level, arbitration system at<br/>8 second level. But if you are not signed up, the<br/>9 aggrieved person would have to go to court to exercise<br/>10 his or her statutory right of reply. Is that a fair<br/>11 summary?</p> <p>12 MS PHILLIPS: That is a problem. And it's not a problem<br/>13 that I think I can immediately solve, but I do hope you<br/>14 can.</p> <p>15 LORD JUSTICE LEVESON: It's rather more serious than that as<br/>16 well. It might have a problem with a capital "P",<br/>17 because those who don't want to correct may very well<br/>18 say, "Well, the financial disincentive of having to go<br/>19 to court is so great that we will have far fewer people<br/>20 going to court if we are not in the scheme than if we<br/>21 are in the scheme. Because if we are in the scheme,<br/>22 it's easy for somebody to say, 'I would like you to<br/>23 correct this.'" And it's not expensive, and one could<br/>24 have a system that dealt with all that. But if they are<br/>25 and not in the scheme, therefore the person has to go to</p> <p style="text-align: center;">Page 46</p> | <p>1 with what some others have recommended as well, is<br/>2 a conscience clause and a whistleblower's code, which<br/>3 are self-explanatory.</p> <p>4 Are there any other points either of you would wish<br/>5 to develop which you feel you've not sufficiently<br/>6 covered orally? Of course we have read the written<br/>7 submission very carefully.</p> <p>8 MS PHILLIPS: No.</p> <p>9 LORD JUSTICE LEVESON: Thank you very much.<br/>10 Professor, anything from you?</p> <p>11 PROFESSOR CURRAN: No.</p> <p>12 LORD JUSTICE LEVESON: Thank you both very much indeed.<br/>13 I have said to all those who have contributed to<br/>14 this part of the Inquiry, and have obviously put a lot<br/>15 of thought into what they have said, how grateful I am<br/>16 to them for the work they've done.</p> <p>17 Quite how I'm going to be able to express that to<br/>18 the person who is responsible for a document that takes<br/>19 up half a lever arch file, I'm not quite sure, but<br/>20 I will find appropriate words. Thank you.</p> <p>21 (The witness withdrew)</p> <p>22 LORD JUSTICE LEVESON: We will have a few minutes' break.<br/>23 (11.17 am)</p> <p>24 (A short break)</p> <p>25 (11.26 am)</p> <p style="text-align: center;">Page 48</p>   |

12 (Pages 45 to 48)

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| <p>1 MR JAY: Next witness, please, is Professor John Horgan.</p> <p>2 LORD JUSTICE LEVESON: Thank you.</p> <p>3 MR JAY: Tab 91.</p> <p>4 LORD JUSTICE LEVESON: Thank you.</p> <p>5 PROFESSOR JOHN HORGAN (sworn)</p> <p>6 Questions by MR JAY</p> <p>7 MR JAY: Thank you. Professor. May we have your full name,</p> <p>8 please.</p> <p>9 <b>A. John Horgan.</b></p> <p>10 Q. Thank you. You kindly provided us with a short witness</p> <p>11 statement, which of course we will amplify orally, or</p> <p>12 rather you will amplify it orally.</p> <p>13 Insofar as there are factual matters in that</p> <p>14 statement, do you attest to their truth?</p> <p>15 <b>A. I do indeed.</b></p> <p>16 Q. Thank you very much.</p> <p>17 As for who you are, you have had a long career in</p> <p>18 print and broadcast journalism in Ireland and then</p> <p>19 a career in politics in the Irish Senate, the Dail and</p> <p>20 the European Parliament?</p> <p>21 <b>A. That's correct.</b></p> <p>22 Q. But in September of 2007 you were appointed Ireland's</p> <p>23 first Press Ombudsman; is that correct?</p> <p>24 <b>A. That's correct.</b></p> <p>25 Q. You are also Emeritus Professor of Journalism in Dublin</p> <p style="text-align: center;">Page 49</p>  | <p>1 <b>crack of the whip.</b></p> <p>2 <b>Nothing really eventuated. Then in the middle 90s,</b></p> <p>3 <b>after the collapse of a big newspaper group, the</b></p> <p>4 <b>government set up a commission on the newspaper</b></p> <p>5 <b>industry, of which I was a member, and which all major</b></p> <p>6 <b>newspaper interests were also represented.</b></p> <p>7 <b>The report of that body recommended the</b></p> <p>8 <b>establishment of a Press Ombudsman in 1996. But nothing</b></p> <p>9 <b>really happened after that. Nobody took ownership of</b></p> <p>10 <b>it, and it wasn't developed in any sense.</b></p> <p>11 <b>Then after the 2002 general election, the then</b></p> <p>12 <b>minister for justice, Michael McDowell, set up an expert</b></p> <p>13 <b>group to make recommendations to him. And that expert</b></p> <p>14 <b>group reported in 2003, recommending a statutory system</b></p> <p>15 <b>of regulation for the press.</b></p> <p>16 <b>I think it's fair to say that that lit the fire</b></p> <p>17 <b>under the topic in a way that it hadn't been lit before,</b></p> <p>18 <b>and the press industry realised that if this eventuality</b></p> <p>19 <b>was to be avoided, they would have to come up with</b></p> <p>20 <b>something that was credible, authoritative, independent</b></p> <p>21 <b>and on all these fronts sufficiently acceptable to</b></p> <p>22 <b>government, so the government would not proceed with its</b></p> <p>23 <b>plans.</b></p> <p>24 <b>They then set up the Press Industry Steering</b></p> <p>25 <b>Committee, which negotiated and deliberated for some</b></p> <p style="text-align: center;">Page 51</p>                  |
| <p>1 City University.</p> <p>2 LORD JUSTICE LEVESON: Professor Horgan, thank you very much</p> <p>3 indeed for being prepared to travel to help me. You're</p> <p>4 entitled to say, "Well, we have sorted this out" -- and</p> <p>5 we will discuss that -- "and it's your problem". So I'm</p> <p>6 very grateful to you. Thank you.</p> <p>7 <b>A. Nothing is ever completely sorted in my experience.</b></p> <p>8 MR JAY: Thank you. We know from your evidence that the</p> <p>9 Press Council in Ireland was set up in the summer of</p> <p>10 2007, and then you were appointed by the Press Council</p> <p>11 in Ireland.</p> <p>12 Can we understand, please, the circumstances in</p> <p>13 which the Press Council was set up? You refer to</p> <p>14 extensive discussions involving industry representatives</p> <p>15 and representatives of the public interest.</p> <p>16 Who were those latter representatives?</p> <p>17 <b>A. I think it's important to go into the prehistory,</b></p> <p>18 <b>a little bit to understand what lit the fire under the</b></p> <p>19 <b>Press Council in 2007 effectively.</b></p> <p>20 <b>Newspaper and public sector bodies had been</b></p> <p>21 <b>discussing the possibility of a Press Council of some</b></p> <p>22 <b>sort in Ireland for way back to the early 1980s, when it</b></p> <p>23 <b>was a period of considerable industrial unrest in</b></p> <p>24 <b>Ireland, and trade unions started campaigning for</b></p> <p>25 <b>a Press Council which they felt would give them a fair</b></p> <p style="text-align: center;">Page 50</p> | <p>1 <b>four years. That included all the representatives of</b></p> <p>2 <b>all the major newspaper interests in Ireland, including</b></p> <p>3 <b>representatives of News International and of the</b></p> <p>4 <b>Mirror Group.</b></p> <p>5 <b>And it had a very significant, in my view, public</b></p> <p>6 <b>interest input in that the chairman of that group was</b></p> <p>7 <b>Professor Thomas Mitchell, a retired provost of Trinity</b></p> <p>8 <b>College Dublin, and the facilitator of the group was</b></p> <p>9 <b>Maurice Hayes, then a senator.</b></p> <p>10 <b>Senator Hayes, although he had some newspaper links,</b></p> <p>11 <b>had an excellent track record as Northern Ireland's</b></p> <p>12 <b>first ombudsman, secretary to the Patten Commission, and</b></p> <p>13 <b>I think it's fair to say that both of those individuals</b></p> <p>14 <b>would have underlined the importance of independence of</b></p> <p>15 <b>any regulatory mechanism as a pre-condition for its</b></p> <p>16 <b>acceptance by government, or indeed by them.</b></p> <p>17 Q. So was the Press Council set up really on a quid pro quo</p> <p>18 that certain advantages would flow in legislation, and</p> <p>19 then we know in a couple of years there was the</p> <p>20 Defamation Bill in Ireland which afforded those</p> <p>21 advantages?</p> <p>22 <b>A. Well, my understanding from Professor Mitchell is that</b></p> <p>23 <b>the quid pro quo effectively was the withdrawal of the</b></p> <p>24 <b>government scheme for statutory regulation of the press.</b></p> <p>25 <b>In that process, there was a Pauline conversion of a</b></p> <p style="text-align: center;">Page 52</p> |

13 (Pages 49 to 52)

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| <p>1 <b>kind on the part of the minister for justice, who had</b><br/> 2 <b>been primarily very positive towards the scheme of</b><br/> 3 <b>statutory regulation, but who became converted to the</b><br/> 4 <b>idea that it was important to have an independent</b><br/> 5 <b>non-statutory system, and who managed in the face of</b><br/> 6 <b>what I understand were at times considerable</b><br/> 7 <b>difficulties to persuade his government colleagues of</b><br/> 8 <b>the wisdom of this approach.</b></p> <p>9 <b>The discussion on defamation took place also, but it</b><br/> 10 <b>was in a separate box, if I may put it like that. The</b><br/> 11 <b>defamation legislation was not a quid pro quo for the</b><br/> 12 <b>establishment of the Press Council as such, but it was</b><br/> 13 <b>taking part in a different part of the same forest, if</b><br/> 14 <b>I make put it like that.</b></p> <p>15 Q. I understand.</p> <p>16 Taking it slightly out of sequence in terms of your<br/> 17 evidence, the Defamation Act of 2009 did a number of<br/> 18 things. One of the relevant matters in terms of an<br/> 19 incentive really was to provide a defence of fair and<br/> 20 reasonable publication in a defamation action, and you<br/> 21 explain that. But that defence is available only for<br/> 22 those who have signed up to the system; is that right?</p> <p>23 <b>A. Yes and no. Under our constitution, the parliament</b><br/> 24 <b>cannot confer a privilege on any one individual or group</b><br/> 25 <b>that is not available to the population as a whole.</b></p> <p style="text-align: center;">Page 53</p> | <p>1 Q. Is there also provision in the Act --</p> <p>2 LORD JUSTICE LEVESON: Sorry, you wanted to add something?</p> <p>3 <b>A. Yes. One of the things I'd like to say, again to</b><br/> 4 <b>clarify this, that without the benefit of knowledge of</b><br/> 5 <b>what went on behind closed doors in the four years</b><br/> 6 <b>leading up to the creation of the Press Council, it</b><br/> 7 <b>might be thought that this legislation represents</b><br/> 8 <b>a framework imposed by the state on the private sector.</b><br/> 9 <b>Whereas in fact -- and Professor Thomas Mitchell has</b><br/> 10 <b>briefed me extensively on this -- by and large the</b><br/> 11 <b>provisions relating to the Press Council that found</b><br/> 12 <b>their place in the Defamation Act were those proposed by</b><br/> 13 <b>the Press Council itself to the government.</b></p> <p>14 <b>It's been fairly well known that during the course</b><br/> 15 <b>of these discussions contact was maintained between the</b><br/> 16 <b>Press Industry Steering Group and the minister for</b><br/> 17 <b>justice, but the minister for justice's role in all</b><br/> 18 <b>these matters was entirely reactive. He heard what the</b><br/> 19 <b>steering committee had to say. He said what he liked.</b><br/> 20 <b>He said what he didn't like. But at the end of the day,</b><br/> 21 <b>what went into the Act was by and large what was</b><br/> 22 <b>proposed by the steering committee.</b></p> <p>23 LORD JUSTICE LEVESON: But behind it all, do I gather from<br/> 24 what you were saying somewhat earlier, was the threat of<br/> 25 statutory regulation?</p> <p style="text-align: center;">Page 55</p> |
| <p>1 <b>So the defence that is available to member</b><br/> 2 <b>publications of the Press Council is also in theory</b><br/> 3 <b>available to other publications, if they can satisfy</b><br/> 4 <b>a court that they operate to standards and procedures in</b><br/> 5 <b>no way inferior to those that have been accepted</b><br/> 6 <b>publicly by member publications. This, again, has not</b><br/> 7 <b>been tested in court.</b></p> <p>8 <b>My honest view is that it would be quite difficult</b><br/> 9 <b>for publications that are not members of the Council to</b><br/> 10 <b>satisfy a court that they operate to such standards.</b></p> <p>11 Q. I understand.</p> <p>12 In terms of the Council itself, the Defamation Act<br/> 13 makes provision, on my understanding, for the minister<br/> 14 by order, by secondary legislation, to recognise a body<br/> 15 as the Press Council for the purposes of the Act, but in<br/> 16 order to be so recognised, the schedule to the<br/> 17 Defamation Act has certain requirements or boxes which<br/> 18 need to be ticked in order for that to occur, and one<br/> 19 relevant box is: the relevant Council must ensure the<br/> 20 protection of freedom of expression of the press, and<br/> 21 then also their public interest protections, ensuring<br/> 22 ethical, accurate and truthful reporting by the press?</p> <p>23 <b>A. That's correct.</b></p> <p>24 Q. This is a form of statutory backstop.</p> <p>25 <b>A. That's right, yes.</b></p> <p style="text-align: center;">Page 54</p>  | <p>1 <b>A. Absolutely.</b></p> <p>2 LORD JUSTICE LEVESON: So in other words, it behoved the<br/> 3 press interests to come up with a solution that was less<br/> 4 than the club that was being held over them?</p> <p>5 <b>A. That is absolutely the case. And in fact my membership,</b><br/> 6 <b>or our membership of the Alliance of Independent Press</b><br/> 7 <b>Councils of Europe indicates that in quite a few</b><br/> 8 <b>countries this threat has been the engine which has</b><br/> 9 <b>generated or promoted the successful establishment of</b><br/> 10 <b>press councils of the same kind in many European</b><br/> 11 <b>countries.</b></p> <p>12 <b>So even though before this threat was made, there</b><br/> 13 <b>had been moves towards the establishment of something</b><br/> 14 <b>like this, the 1996 report of the commission, which</b><br/> 15 <b>wasn't under such a threat, recommended the</b><br/> 16 <b>establishment of an ombudsman. As I said, it was the</b><br/> 17 <b>real and present danger of that that created the</b><br/> 18 <b>situation in which we found ourselves.</b></p> <p>19 LORD JUSTICE LEVESON: It might be thought that there's a<br/> 20 clear and present danger in the UK at the moment for the<br/> 21 press. At least that's certainly how they perceive it.<br/> 22 The issue is where the line should be drawn.</p> <p>23 <b>A. Absolutely. Yes.</b></p> <p>24 <b>The experience of the steering committee, and</b><br/> 25 <b>certainly of the early years of the Council, as I've</b></p> <p style="text-align: center;">Page 56</p>  |

14 (Pages 53 to 56)

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| <p>1 <b>been informed, is that the one critical aspect of what</b><br/> 2 <b>the industry proposed to establish, without which no</b><br/> 3 <b>possible measure of government acceptance or approval</b><br/> 4 <b>would have been available, was independence.</b><br/> 5 <b>The independence was the key to the authority of</b><br/> 6 <b>whatever structure was set up. Independence from the</b><br/> 7 <b>industry as well of course as independence from</b><br/> 8 <b>government.</b><br/> 9 MR JAY: And this is safeguarded in the Act itself, which we<br/> 10 have examined, but under the schedule to the Act, there<br/> 11 are specific provisions which cover the structure of the<br/> 12 council, the number of members it should have, who needs<br/> 13 to be independent members, who can be press members.<br/> 14 <b>A. That's correct, yes.</b><br/> 15 Q. And there are other matters such as --<br/> 16 LORD JUSTICE LEVESON: Just remind me, could you, are there<br/> 17 serving editors?<br/> 18 <b>A. Technically the way that the Council is constituted is</b><br/> 19 <b>that its public interest members are self-nominated for</b><br/> 20 <b>acceptance on the basis of public advertisement and</b><br/> 21 <b>interview, and are chosen by a four-person appointments</b><br/> 22 <b>committee, chaired by the chairman of the Press Council,</b><br/> 23 <b>who is an independent member of the Council. The other</b><br/> 24 <b>three members of which have no connection with the media</b><br/> 25 <b>industry whatsoever.</b></p> <p style="text-align: center;">Page 57</p> | <p>1 <b>reserved effectively for regional newspaper editors.</b><br/> 2 <b>It has been the practice of the major newspaper</b><br/> 3 <b>interests, almost without exception since the beginning,</b><br/> 4 <b>to nominate to the Press Council, and indeed to the Code</b><br/> 5 <b>Committee on which they also have similar nomination</b><br/> 6 <b>rights, senior editorial executives, not necessarily</b><br/> 7 <b>editors.</b><br/> 8 <b>That has been wholly satisfactory from the Press</b><br/> 9 <b>Council's point of view, not least because editors don't</b><br/> 10 <b>change very often. Whereas the rotational factor which</b><br/> 11 <b>has operated in the Press Council, including among the</b><br/> 12 <b>industry members, has meant that the knowledge of our</b><br/> 13 <b>practices and procedures and the way we come to</b><br/> 14 <b>decisions and so on -- the way I come to decisions --</b><br/> 15 <b>has become much more rapidly spread throughout the press</b><br/> 16 <b>industry as a whole, than if editors were sitting there</b><br/> 17 <b>in perpetuity.</b><br/> 18 LORD JUSTICE LEVESON: How long do they serve for?<br/> 19 <b>A. They can serve for a maximum of two terms, which is six</b><br/> 20 <b>years. But already, even though we are only four and a</b><br/> 21 <b>half years into the Council's existence, there has been</b><br/> 22 <b>a very substantial rotation. I think only one of the</b><br/> 23 <b>original industry representatives is currently a member</b><br/> 24 <b>of the Council.</b><br/> 25 MR JAY: Thank you.</p> <p style="text-align: center;">Page 59</p> |
| <p>1 <b>The industry members of the Council and the NUJ</b><br/> 2 <b>member of the Council -- I think it's important to</b><br/> 3 <b>recognise that the NUJ member of the Council does not</b><br/> 4 <b>regard himself as an industry representative, because</b><br/> 5 <b>the interests of journalists are not always coterminous</b><br/> 6 <b>with those of editors or indeed proprietors.</b><br/> 7 <b>But the industry members of the Council are</b><br/> 8 <b>nominated by the various organisations that took part in</b><br/> 9 <b>the steering committee: the national newspapers, the</b><br/> 10 <b>regional newspapers, the periodicals and the union.</b><br/> 11 <b>But under the articles of association, the function</b><br/> 12 <b>of the appointments committee is to ratify those</b><br/> 13 <b>nominations. In other words, it is not an automatic</b><br/> 14 <b>right of nomination.</b><br/> 15 <b>I cannot readily foresee a situation in which any</b><br/> 16 <b>nomination made by any of those industry bodies would</b><br/> 17 <b>not be accepted, but under the articles of association,</b><br/> 18 <b>it has to be ratified by an independent appointments</b><br/> 19 <b>committee.</b><br/> 20 LORD JUSTICE LEVESON: Those persons at the moment are in<br/> 21 fact serving editors?<br/> 22 <b>A. I beg your pardon. I should have come back to that</b><br/> 23 <b>point.</b><br/> 24 <b>Only one of them is a serving editor. That is an</b><br/> 25 <b>editor of a regional publication who fills the slot</b></p> <p style="text-align: center;">Page 58</p>            | <p>1 The Act also makes provision for funding. There's<br/> 2 an express requirement that there's no funding from<br/> 3 sources other than subscribing journals. There's also<br/> 4 a requirement that the Press Council should appoint an<br/> 5 ombudsman to deal with complaints.<br/> 6 <b>A. Yes.</b><br/> 7 Q. So this is all recognised in the relevant statute,<br/> 8 although --<br/> 9 <b>A. It is, yes.</b><br/> 10 Q. -- the structure was in place voluntarily before the<br/> 11 statute arrived; is that right?<br/> 12 <b>A. That's right, yes.</b><br/> 13 Q. We have the text of the Defamation Act 2009, which is<br/> 14 online and can be considered.<br/> 15 Can I ask you, please, as well, the code of practice<br/> 16 is there as well as statutory obligation in the Press<br/> 17 Council to establish that --<br/> 18 <b>A. Yes.</b><br/> 19 Q. -- in certain principles?<br/> 20 <b>A. The code was actually drawn up as part of the work of</b><br/> 21 <b>the original steering committee. It has then been</b><br/> 22 <b>entrusted to the Code Committee, which is a committee of</b><br/> 23 <b>the Council, and which, if it's to make any alterations</b><br/> 24 <b>or changes to the code, does so in consultation with the</b><br/> 25 <b>council, which also of course has the right to suggest</b></p> <p style="text-align: center;">Page 60</p>   |

1 changes to the Code Committee.  
 2 Any changes that have been made in the last four  
 3 years have really been minimal, and there hasn't been  
 4 any great perception of any need for change. The only  
 5 possibility in the near future is that we might, as  
 6 indeed the PCC did some time ago, put in a more specific  
 7 reference to the problems of reporting suicide than is  
 8 contained in the existing code.  
 9 Q. In terms of what the ombudsman does -- that's you.  
 10 You're recognised of course in the statute -- your role  
 11 is to receive and adjudicate on complaints.  
 12 Can I raise with you two points. Is it obligatory  
 13 under the system that if a relevant press entity has  
 14 signed up to it, that the complainant must bring his or  
 15 her complaint in the first instance to you?  
 16 A. No, it's the other way round. It's obligatory on any  
 17 complainant -- if somebody comes to us with a complaint  
 18 about newspaper X or magazine X, they are told gently  
 19 but firmly that they have to go to the newspaper itself,  
 20 to give the newspaper, the publication, the opportunity  
 21 to sort it out informally.  
 22 Very early in the job, I was approached by one  
 23 complainant who was very emotionally involved in the  
 24 complaint, and didn't want to confront the paper  
 25 directly, was fearful of what the paper might do if they

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1 did, and so I took this up independently and directly  
 2 with the newspaper.  
 3 I subsequently got a very severe telling off, which  
 4 I think in the circumstances was quite justified, from  
 5 the editor of the newspaper concerned, who told me that  
 6 he would have welcomed the opportunity to have sorted  
 7 this complainant's problems out informally and directly.  
 8 And the situation might never have come to my attention,  
 9 or I might never have needed to investigate it.  
 10 Over the years, our insistence on this procedure has  
 11 had, I think, a couple of beneficial results. It has  
 12 demystified the power of the press for complainants to  
 13 some degree, and it has meant that all our publications  
 14 have considerably enhanced over the years their  
 15 independent complaint handling mechanisms, which, in the  
 16 time that I was a journalist, were primitive in the  
 17 extreme, and often fairly unhelpful to people who wanted  
 18 to raise issues.  
 19 Q. So the first port of call in relation to the subscribing  
 20 journals, as it were, must be to the journal itself?  
 21 A. That's right.  
 22 Q. Is there a time limit, as it were, within which the  
 23 complaint must be resolved internally before you can go  
 24 to the ombudsman?  
 25 A. Yes. There is a succession of time limits. Because we

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1 try to ensure that from the time a complaint has been  
 2 formally registered with us, if a decision of myself is  
 3 required, that that decision is reached within a maximum  
 4 period of three months. And, for example, if somebody  
 5 writes to a newspaper or a magazine to complain, the  
 6 procedures of which all our publications are aware is  
 7 that if after two weeks that complaint has not been  
 8 replied to, or has been replied to in a way that's  
 9 unsatisfactory to the complainant, then they come to us  
 10 and we take it up.  
 11 We provide, if you like, more fire power for the  
 12 complainant. It also gives the publication concerned  
 13 a second chance, when we get involved in our  
 14 investigation, to think that maybe they had been a bit  
 15 too dismissive and maybe they could be a bit more  
 16 conciliatory in the latter stages of the investigation.  
 17 Q. I see. Then from your decision, there's a right of  
 18 appeal to the Press Council itself; is that right?  
 19 A. There is, yes.  
 20 Q. At the moment we're just talking about subscribing  
 21 journals?  
 22 A. That's right.  
 23 Q. Having exhausted remedies internally, and then to the  
 24 ombudsman and then to the Press Council, does the  
 25 complainant still have the ability to go to court?

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1 A. The complaint -- absolutely. Various other press  
 2 councils that I'm aware of have voluntary or other  
 3 procedures in place by which they ask complainants to  
 4 sign undertakings that they won't go to court. But  
 5 under the Irish constitution, nobody can be denied  
 6 access to the courts, and that's a very important right.  
 7 The only thing that we do is that we do insist that  
 8 if at any time the subject matter of a complaint to us  
 9 also becomes the subject matter of legal proceedings, we  
 10 will defer any further investigation or consideration of  
 11 the matter until after those court proceedings have been  
 12 concluded or withdrawn.  
 13 I don't have any factual evidence, but I am aware of  
 14 only one case in four and a half years in which,  
 15 subsequent to a decision being taken by myself or by the  
 16 Council, the complainant has taken legal proceedings  
 17 against the publication concerned.  
 18 And those proceedings, I think, were probably  
 19 settled outside court, rather than became the subject of  
 20 a court hearing.  
 21 Q. If during the course of handling a complaint it would  
 22 become obvious to you that there's a strong prima facie  
 23 case that the complaint raises a systemic issue or  
 24 a very serious, which the regulator, I suppose the Press  
 25 Council, should be considering as part of its wider

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| <p>1 remit, what if anything can you do about that?</p> <p>2 <b>A. I can't do anything personally. It would be a matter</b></p> <p>3 <b>for the Press Council to decide whether there were any</b></p> <p>4 <b>systemic issues that needed its attention on the basis</b></p> <p>5 <b>of any decision that I might make.</b></p> <p>6 Q. So the Press Council would be reviewing your decisions</p> <p>7 as a matter of course, and if it felt that your decision</p> <p>8 raised a generic or systemic issue, then it would be up</p> <p>9 to it to take the matter further? Have I correctly</p> <p>10 understood it?</p> <p>11 <b>A. As I understand it, it would be capable of taking the</b></p> <p>12 <b>matter further. However, the Council doesn't have</b></p> <p>13 <b>formally under its own statute, if you like, the</b></p> <p>14 <b>articles of association, it doesn't have the power to</b></p> <p>15 <b>conduct own initiative investigations.</b></p> <p>16 <b>It has, where it has perceived that there are</b></p> <p>17 <b>systemic issues, approached it in a slightly more</b></p> <p>18 <b>oblique fashion. For example, over the last number of</b></p> <p>19 <b>years, the Council has sponsored a number of fairly</b></p> <p>20 <b>useful seminars on matters to do with the reporting of</b></p> <p>21 <b>crime, the reporting of children, privacy issues, in</b></p> <p>22 <b>which both industry and NGOs and other interest groups</b></p> <p>23 <b>and bodies, as well as members of the public, have</b></p> <p>24 <b>participated.</b></p> <p>25 Q. I understand. If we were to --</p> <p style="text-align: center;">Page 65</p> | <p>1 <b>perhaps very infrequent publication.</b></p> <p>2 <b>So even though everybody would like to see everybody</b></p> <p>3 <b>in, and steps are taken to that effect from time to</b></p> <p>4 <b>time, the general catchment is good.</b></p> <p>5 <b>There has been a development recently in that the</b></p> <p>6 <b>Council has had an application for membership from</b></p> <p>7 <b>a news website. That has created a new situation for</b></p> <p>8 <b>the Council, which is in the process of establishing the</b></p> <p>9 <b>appropriate criteria for accepting any applications of</b></p> <p>10 <b>this kind. And I think that's part of the way in which</b></p> <p>11 <b>things are likely to go in the future.</b></p> <p>12 Q. In terms of public confidence in the system, you are</p> <p>13 saying, "We have coverage", is there satisfaction</p> <p>14 generally within Ireland that the reach, the coverage,</p> <p>15 is sufficient?</p> <p>16 <b>A. I'm not sure that there is as yet, because in our</b></p> <p>17 <b>experience both in the general public and among</b></p> <p>18 <b>journalists, detailed knowledge of what we do and how we</b></p> <p>19 <b>do it is confined, to a greater or lesser extent, to</b></p> <p>20 <b>people who have come into contact with us, either as</b></p> <p>21 <b>journalists or as complainants.</b></p> <p>22 <b>To that effect, we've begun quite recently a public</b></p> <p>23 <b>awareness campaign, with the co-operation of our own</b></p> <p>24 <b>member publications, to ensure that the services we</b></p> <p>25 <b>offer, which are effectively a public interest service</b></p> <p style="text-align: center;">Page 67</p> |
| <p>1 LORD JUSTICE LEVESON: That is oblique, because that may be</p> <p>2 illuminating the problem or the concern, without really</p> <p>3 tasking the target of that concern.</p> <p>4 <b>A. Yes. That can be seen as a limitation.</b></p> <p>5 MR JAY: Of course, if one is dealing with a journal which</p> <p>6 isn't a member of this voluntary system, then the</p> <p>7 aggrieved party must go to court.</p> <p>8 <b>A. To court or to the journal itself.</b></p> <p>9 Q. Or to the journal itself.</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. What degree of recruitment to the system is there in</p> <p>12 Ireland? Can you help us?</p> <p>13 <b>A. There's not the need for any great degree of recruitment</b></p> <p>14 <b>to the system. All the national newspapers, including</b></p> <p>15 <b>all the UK papers that are published in Ireland, are</b></p> <p>16 <b>members of the Press Council and have been ever since</b></p> <p>17 <b>its inception.</b></p> <p>18 <b>In relation to regional newspapers, upwards of</b></p> <p>19 <b>90 per cent of the regional papers are also members of</b></p> <p>20 <b>the Council. In relation to periodicals, I would say</b></p> <p>21 <b>about 60 per cent of the relevant category of</b></p> <p>22 <b>publications are members, but that 60 per cent would</b></p> <p>23 <b>include a much larger percentage of total paid sales,</b></p> <p>24 <b>because a lot of the magazines that wouldn't be members</b></p> <p>25 <b>would be very small, with very small circulations and</b></p> <p style="text-align: center;">Page 66</p>   | <p>1 <b>provided by the private sector, become more widely</b></p> <p>2 <b>known. And that's what we're doing at the moment.</b></p> <p>3 LORD JUSTICE LEVESON: Has anybody threatened or intimidated</p> <p>4 a concern that they might leave?</p> <p>5 <b>A. No. Never.</b></p> <p>6 LORD JUSTICE LEVESON: To what extent have major newspapers</p> <p>7 been the subject of critical adverse findings? I'm not</p> <p>8 asking for names.</p> <p>9 <b>A. I think every major newspaper has been the subject of</b></p> <p>10 <b>critical adverse findings in one form or another.</b></p> <p>11 <b>I can't think of any offhand that hasn't been.</b></p> <p>12 <b>In my experience, also, the sanction that we</b></p> <p>13 <b>operate, which is the requirement to publish in certain</b></p> <p>14 <b>modalities any decision upholding a complaint against</b></p> <p>15 <b>them, is taken extremely seriously by the editors of all</b></p> <p>16 <b>our publications. The public may not see it as</b></p> <p>17 <b>seriously as they do, but in my experience, editors take</b></p> <p>18 <b>it extremely seriously and would take considerable steps</b></p> <p>19 <b>to avoid finding themselves in that situation.</b></p> <p>20 LORD JUSTICE LEVESON: I have received differing views about</p> <p>21 that from different quarters, but there it is.</p> <p>22 <b>A. Yes.</b></p> <p>23 MR JAY: Can I ask you, please, Professor Horgan, about the</p> <p>24 UK titles also published in Ireland? We know that the</p> <p>25 Northern &amp; Shell titles or some of them do. Can you</p> <p style="text-align: center;">Page 68</p>  |

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| <p>1 recall which UK titles publish in Ireland?</p> <p>2 <b>A. I can. The principal ones -- I have a list here which</b></p> <p>3 <b>I had better read through to refer to, so I don't leave</b></p> <p>4 <b>anybody out.</b></p> <p>5 <b>The main ones would be, of course, the Mirror Group</b></p> <p>6 <b>Newspapers, the News International Group newspapers.</b></p> <p>7 <b>There are some papers which are effectively not</b></p> <p>8 <b>published in Ireland, like the Guardian, the Express,</b></p> <p>9 <b>the Financial Times, the Observer. Because they are</b></p> <p>10 <b>subject to the PCC regime rather than to ours.</b></p> <p>11 <b>But you may take it that all the substantial British</b></p> <p>12 <b>publications in -- the Daily Express is a 50 per cent</b></p> <p>13 <b>shareholder in the Irish Daily Star, and that is</b></p> <p>14 <b>a member of the Press Council, and has never threatened</b></p> <p>15 <b>to withdraw, although I believe its parent company did</b></p> <p>16 <b>in relation to the PCC in England.</b></p> <p>17 Q. So the gateway to entry to the Press Council in Ireland</p> <p>18 is publication in Ireland?</p> <p>19 <b>A. Publication in Ireland.</b></p> <p>20 Q. So the Guardian, which only publishes here, is in the</p> <p>21 slightly anomalous position.</p> <p>22 <b>A. It is. It has a small calculation in Ireland, 5,000 or</b></p> <p>23 <b>thereabouts. The same would be true of the Times, the</b></p> <p>24 <b>Financial Times. They would all be less than 10,000,</b></p> <p>25 <b>I'm fairly sure. But circulation is not the gauge; it's</b></p> <p style="text-align: center;">Page 69</p>  | <p>1 <b>on that. I couldn't read it then. I can't read it now.</b></p> <p>2 LORD JUSTICE LEVESON: Well, yes.</p> <p>3 MR JAY: This may be a difficult question to test</p> <p>4 empirically, but are you aware of any difference between</p> <p>5 the number and nature of complaints that you receive</p> <p>6 against UK-based titles and those based in the Republic</p> <p>7 of Ireland?</p> <p>8 <b>A. Well, in the brief period available to me to respond to</b></p> <p>9 <b>the outline that I was sent by yourselves, I was able to</b></p> <p>10 <b>establish only that the UK titles, which represent about</b></p> <p>11 <b>30 per cent of the total national titles, are</b></p> <p>12 <b>responsible for about 22 per cent of the complaints.</b></p> <p>13 <b>On the other hand, without going into that in</b></p> <p>14 <b>considerably more detail, you do run the risk of</b></p> <p>15 <b>comparing apples with oranges, because circulations</b></p> <p>16 <b>would have to be assessed. The fact that larger papers</b></p> <p>17 <b>will inevitably tend to attract larger numbers of</b></p> <p>18 <b>complaints, and larger numbers of multiple complaints.</b></p> <p>19 <b>So it's very difficult.</b></p> <p>20 <b>But I can say, I think -- and I did ask my case</b></p> <p>21 <b>officer to have a good look at our cases over the last</b></p> <p>22 <b>number of years, to see if there was there any</b></p> <p>23 <b>discernible difference between complaints against</b></p> <p>24 <b>indigenous titles and complaints against UK-based titles</b></p> <p>25 <b>in relation to, for example, did people complain more</b></p> <p style="text-align: center;">Page 71</p> |
| <p>1 <b>whether they're actually published in Ireland.</b></p> <p>2 Q. Have any concerns been voiced about UK titles who have</p> <p>3 subscribed to the system on the basis that there's</p> <p>4 a statutory underpinning to it, and therefore that's in</p> <p>5 some way anathema?</p> <p>6 <b>A. Again, I understand from people who are involved with</b></p> <p>7 <b>the steering committee that the statutory recognition of</b></p> <p>8 <b>the Press Council and the various elements associated</b></p> <p>9 <b>with that were at first seen by some of the UK titles as</b></p> <p>10 <b>being the thin end of a very big wedge in relation to</b></p> <p>11 <b>statutory regulation.</b></p> <p>12 <b>But all those concerned persisted really on the</b></p> <p>13 <b>basis, not least of the fact that they felt that it</b></p> <p>14 <b>wasn't the thin edge of the wedge and could argue that</b></p> <p>15 <b>case as they saw it fairly convincingly, but also to</b></p> <p>16 <b>have a Press Council in Ireland, without the</b></p> <p>17 <b>participation of those UK based, but Irish published</b></p> <p>18 <b>newspapers, would be pointless to a large degree.</b></p> <p>19 LORD JUSTICE LEVESON: So that's where the original threat</p> <p>20 came in: "Well, of course you don't need to come on</p> <p>21 board, but be careful what you wish for".</p> <p>22 <b>A. Yes. And that threat was still there. If the UK papers</b></p> <p>23 <b>had not come on board, the government might have been</b></p> <p>24 <b>less inclined to withdraw its proposals for statutory</b></p> <p>25 <b>regulation, although I can't read the government's mind</b></p> <p style="text-align: center;">Page 70</p> | <p>1 <b>about UK titles under principle 5 or under principle 4,</b></p> <p>2 <b>whereas complaints about indigenous papers might have</b></p> <p>3 <b>been under principle 1. There's absolutely no</b></p> <p>4 <b>discernible differentiation between the basis of the</b></p> <p>5 <b>complaints against indigenous publications and those</b></p> <p>6 <b>against UK-based publications.</b></p> <p>7 LORD JUSTICE LEVESON: There's another reason why we have to</p> <p>8 view those figures with caution, isn't there? Because</p> <p>9 you're only recording the complaints that get to you.</p> <p>10 If the complaint went to the paper and was resolved --</p> <p>11 <b>A. That's true.</b></p> <p>12 LORD JUSTICE LEVESON: -- you would never hear about it.</p> <p>13 <b>A. That's true.</b></p> <p>14 LORD JUSTICE LEVESON: That would require you to have some</p> <p>15 understanding about the comparative merits of the</p> <p>16 indigenous complaint handling mechanisms as opposed to</p> <p>17 the UK-based handling mechanisms. I'm not asking you to</p> <p>18 comment on it, I'm merely identifying that, whereas you</p> <p>19 provide us with a snapshot, we have to be careful what</p> <p>20 we read into the picture.</p> <p>21 <b>A. Absolutely. Considerably more information -- some of it</b></p> <p>22 <b>may not be readily available -- would be needed to come</b></p> <p>23 <b>down hard and fast on that issue.</b></p> <p>24 LORD JUSTICE LEVESON: But it may not matter either which</p> <p>25 way. If the system is working, then the system is</p> <p style="text-align: center;">Page 72</p>  |

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| <p>1 working for the UK-based as well as for the Irish-based.</p> <p>2 <b>A. That's my very distinct impression.</b></p> <p>3 MR JAY: When you say "the system is working", implicit in</p> <p>4 that is that generally speaking, you receive</p> <p>5 co-operation from the titles under scrutiny in relation</p> <p>6 to any complaint; is that right.</p> <p>7 <b>A. Yes, indeed. In the very early stages, it could be</b></p> <p>8 <b>argued that the UK titles had a little bit of a head</b></p> <p>9 <b>start in the sense that many of their executives would</b></p> <p>10 <b>have had experience of dealing with the PCC, but that</b></p> <p>11 <b>evened out fairly rapidly. And we have no complaints at</b></p> <p>12 <b>all in relation to the amount and degree of co-operation</b></p> <p>13 <b>that we have from any of our publications.</b></p> <p>14 Q. Is it your view, Professor Horgan, that the system which</p> <p>15 exists in Ireland, with a degree of statutory</p> <p>16 recognition, constitutes a limitation on freedom of</p> <p>17 expression?</p> <p>18 <b>A. No. For a couple of reasons.</b></p> <p>19 <b>First of all, because the limitations that could be</b></p> <p>20 <b>construed as being part of the articles of association,</b></p> <p>21 <b>and indeed the defamation legislation, are by and large</b></p> <p>22 <b>limitations that were proposed by the industry itself,</b></p> <p>23 <b>and endorsed by the industry itself, as a necessary</b></p> <p>24 <b>balancing of the right to publish against the rights of</b></p> <p>25 <b>individuals and others who might have been affected by</b></p> <p style="text-align: center;">Page 73</p>                                    | <p>1 <b>would be accepted by the public to any degree if another</b></p> <p>2 <b>model was proposed.</b></p> <p>3 <b>Again, looking at the European experience, I've been</b></p> <p>4 <b>quite surprised to see how many of our European</b></p> <p>5 <b>colleagues operate in press councils in which there</b></p> <p>6 <b>would be a one-third/one-third/one-third representation,</b></p> <p>7 <b>in which public interest representatives would only have</b></p> <p>8 <b>a third of the representation, newspaper owners and</b></p> <p>9 <b>managers would have a third, and journalists would have</b></p> <p>10 <b>a third.</b></p> <p>11 <b>There would be a smaller number of press councils</b></p> <p>12 <b>like ours, the Swedish one, the PCC and others, which</b></p> <p>13 <b>the principle that the majority are public interest</b></p> <p>14 <b>representatives has been established as a necessary</b></p> <p>15 <b>basis for its independence.</b></p> <p>16 <b>That said, I can tell you that although I don't take</b></p> <p>17 <b>part in any discussion or decision in relation to</b></p> <p>18 <b>appeals, I'm reliably informed that in such occasions</b></p> <p>19 <b>there has never in four and a half years been a split as</b></p> <p>20 <b>between the industry representatives and the public</b></p> <p>21 <b>interest representatives on any issue. On every single</b></p> <p>22 <b>issue members of both groups on the Council have found</b></p> <p>23 <b>themselves on either side of the argument.</b></p> <p>24 Q. A similar question. You have touched on this, but may</p> <p>25 I ask you to develop it. How important is the presence</p> <p style="text-align: center;">Page 75</p> |
| <p>1 <b>the abuse of editorial or journalistic power, or by</b></p> <p>2 <b>other breaches of the code of practice.</b></p> <p>3 <b>The code itself has a very substantial preamble,</b></p> <p>4 <b>setting out the fact that it is based on a belief in</b></p> <p>5 <b>importance of the freedom of the press. And the obvious</b></p> <p>6 <b>implication of that is that people who drew up the code</b></p> <p>7 <b>do not see any of the subsequent principles in the code</b></p> <p>8 <b>as infringing in any overly substantial way on this.</b></p> <p>9 <b>The seismic shift really that has taken place,</b></p> <p>10 <b>because of the establishment of the Council and of my</b></p> <p>11 <b>own office, is that although the industry has created,</b></p> <p>12 <b>with the involvement of public interest individuals, a</b></p> <p>13 <b>code of practice, that code is administered by myself</b></p> <p>14 <b>and by the Council.</b></p> <p>15 <b>So on matters such as the definition of the public</b></p> <p>16 <b>interest, that is not a matter for the newspapers. They</b></p> <p>17 <b>may advance it in defence of something that they've</b></p> <p>18 <b>done, but the final decision on that is taken by myself</b></p> <p>19 <b>or on appeal by the Council.</b></p> <p>20 Q. In terms of the structure, you have told us about that.</p> <p>21 But can I ask you some evaluative questions.</p> <p>22 How important is it that the public interest members</p> <p>23 of the Press Council have a majority?</p> <p>24 <b>A. I think it's essential. I don't think that the</b></p> <p>25 <b>independence of the body as a whole, including myself,</b></p> <p style="text-align: center;">Page 74</p> | <p>1 of journalist representation on the Council?</p> <p>2 <b>A. I think it's extremely important. The fact that they</b></p> <p>3 <b>have representation independently of the newspaper</b></p> <p>4 <b>owners and newspaper editors has been extremely</b></p> <p>5 <b>important, and in fact I would -- again, just from</b></p> <p>6 <b>hearsay, from talking to members of the Council, they</b></p> <p>7 <b>regard the NUJ membership as being essential.</b></p> <p>8 <b>They also regard the membership of the newspaper</b></p> <p>9 <b>industry representatives, albeit in a minority position,</b></p> <p>10 <b>as being extremely useful in the sense that they simply</b></p> <p>11 <b>know more about the business directly than anybody who</b></p> <p>12 <b>is appointed as an independent member.</b></p> <p>13 Q. The chair of the Council, who I'm sure is a very</p> <p>14 important figure, is appointed from the public interest</p> <p>15 members; is that right?</p> <p>16 <b>A. That's right.</b></p> <p>17 Q. How does that work in practice?</p> <p>18 <b>A. In practice the appointments committee publishes an</b></p> <p>19 <b>advertisement inviting applications for the post.</b></p> <p>20 <b>Existing members of the -- existing public interest</b></p> <p>21 <b>members of the Council are free to apply and members</b></p> <p>22 <b>outside the Council are free to apply.</b></p> <p>23 <b>If an outside applicant is appointed chairman, as</b></p> <p>24 <b>happened when Professor Mitchell was succeeded by Dáithí</b></p> <p>25 <b>O'Ceallaigh -- and I must apologise on his behalf for</b></p> <p style="text-align: center;">Page 76</p>   |

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| <p>1 his inability to be here today -- if an outside member<br/>2 is appointed as chairman, there is a procedure which<br/>3 ensures that he or she becomes at the same time also<br/>4 a member of the Council, an independent member of the<br/>5 Council.</p> <p>6 It's -- it is -- the significant thing about it<br/>7 really is that the industry has no effective hand or<br/>8 part in the appointment of the chairman, and this is an<br/>9 important part of the guarantee of independence that<br/>10 Professor Mitchell and others wanted to ensure.</p> <p>11 Q. The appointments committee obviously appoints the public<br/>12 interest members of the Council. It comprises people<br/>13 who have no relationship with the industry.</p> <p>14 A. That's correct.</p> <p>15 Q. How important is that in terms of public perception and<br/>16 public satisfaction with the system?</p> <p>17 A. I suspect it's not widely understood or recognised by<br/>18 the public at the moment, which is part of our public<br/>19 awareness campaign, because the appointments committee<br/>20 meets extremely infrequently. Its members serve for<br/>21 a maximum of two terms of five years, and should<br/>22 a member -- and it renews its own membership on the same<br/>23 basis as it was originally appointed.</p> <p>24 But if there were any doubts about the independence<br/>25 of the Council or of the chairman, the details of this</p> <p style="text-align: center;">Page 77</p> | <p>1 independence. For example, one of the things that has<br/>2 to be operational before a complaint can be investigated<br/>3 is whether the complainant is personally affected.</p> <p>4 Under the original articles of association, if I made<br/>5 a decision that somebody wasn't personally affected,<br/>6 that decision was appealable to the Council. It is now<br/>7 regarded as an administrative decision which I may take<br/>8 and which is not appealable.</p> <p>9 There are one or two other areas in which I have<br/>10 been given discretion, for example to rule out vexatious<br/>11 or frivolous complaints without the possibility of this<br/>12 being made subject to a decision by the Council. And<br/>13 I think in practice my independence of the Council is<br/>14 now pretty well-recognised.</p> <p>15 Q. Is there an issue, though, arising from the fact that<br/>16 you're appointed by the Press Council?</p> <p>17 A. Somebody has to appoint the ombudsman, and I think the<br/>18 majority -- the Press Council with a majority of<br/>19 independent members is probably better than either the<br/>20 industry as a whole or the -- or the independent members<br/>21 as a whole. I don't think that has been an issue.</p> <p>22 I think certainly there would have been some concern<br/>23 initially that, as somebody who had worked as<br/>24 a journalist for quite a number of years, that I might<br/>25 have been biased in one direction rather than another.</p> <p style="text-align: center;">Page 79</p> |
| <p>1 scheme would, I am sure, help to remedy that.</p> <p>2 Q. In terms of the ombudsman, we received some evidence<br/>3 yesterday from the BIOA, from Mr Thomas, that they're of<br/>4 the opinion that the ombudsman is not an ombudsman<br/>5 properly so-called within the Irish system as there<br/>6 isn't sufficient independence from the Press Council.</p> <p>7 Moreover, the scheme looks more like a conciliation<br/>8 scheme than the ombudsman scheme.</p> <p>9 That may or may not cause you any concern, but do<br/>10 you have any comment on that?</p> <p>11 A. Yes. I think that is based on an inadequate<br/>12 understanding of exactly what I do. And I'm a member of<br/>13 the BIOA or an associate member of the BIOA myself. It<br/>14 hasn't been a matter of considerable urgency to me to<br/>15 take these criticisms on board, but I'm happy to respond<br/>16 to them.</p> <p>17 I'm independent of the Council in the sense that my<br/>18 contract guarantees my independence. The Council has<br/>19 nothing to do, good, bad or indifferent, with any<br/>20 decision that I might take. I don't discuss my<br/>21 decisions with members of the Council, and they don't<br/>22 seek to enquire how I am working in relation to any<br/>23 particular complaint.</p> <p>24 In fact, in recent years also the Council has agreed<br/>25 to amend its articles of association to give me greater</p> <p style="text-align: center;">Page 78</p>                         | <p>1 But there are poachers and gamekeepers, and sometimes<br/>2 people move from one to the other.</p> <p>3 Q. I think in terms of reporting, though, you report to the<br/>4 Press Council. How does that operate in practice?</p> <p>5 A. I make a monthly report to them of mostly administrative<br/>6 matters, because the Press Council -- the members of the<br/>7 Press Council are the board of directors of the company,<br/>8 and they have the legal and fiduciary responsibility,<br/>9 whereas I'm in effect the manager, effectively, the<br/>10 budget, both for the Press Council and for my own<br/>11 office.</p> <p>12 So I keep them apprised of matters in relation --<br/>13 administrative matters. But in relation to decisions,<br/>14 the only way that a decision of mine goes to the Press<br/>15 Council is by way of appeal either from a newspaper or<br/>16 from a complainant.</p> <p>17 So in the matter of my decisions, as I say, on<br/>18 complaints, there's complete independence and complete<br/>19 separation.</p> <p>20 Q. Can you give us a general idea of what percentage of<br/>21 your decisions are appealed and approximately how many<br/>22 appeals are upheld? Just give us a flavour of it.</p> <p>23 A. Initially quite a substantial number of my decisions<br/>24 would have been appealed, either by newspapers or by<br/>25 complainants, on the grounds that, well, it was free</p> <p style="text-align: center;">Page 80</p>  |

20 (Pages 77 to 80)

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| <p>1 <b>and, you know, why not have a second bite at the cherry?</b></p> <p>2 <b>But over the years the number of my decisions -- the</b></p> <p>3 <b>number of appeals against my decisions that have been</b></p> <p>4 <b>allowed by the Press Council has been very low. I think</b></p> <p>5 <b>last year there was only one of a fairly large number of</b></p> <p>6 <b>decisions, and I think, perhaps related to that, the</b></p> <p>7 <b>volume of appeals has diminished slightly. But it does</b></p> <p>8 <b>remain an open door for anybody who feels that they are</b></p> <p>9 <b>entitled to it.</b></p> <p>10 <b>Indeed, some of my decisions, it's fair to say, when</b></p> <p>11 <b>you're applying a very broad principle to a very</b></p> <p>12 <b>specific set of circumstances, some of the decisions are</b></p> <p>13 <b>close to -- as close to 50/50 as you can find, and it</b></p> <p>14 <b>would be quite legitimate for the Council to make --</b></p> <p>15 <b>to -- I can give you an example, if you would be</b></p> <p>16 <b>interested.</b></p> <p>17 <b>A number of years ago the family of a young man who</b></p> <p>18 <b>was shot in Bolivia, in the course of a police raid on</b></p> <p>19 <b>a hotel where they suspected that an assassination squad</b></p> <p>20 <b>was lurking, a photograph of this young man's body</b></p> <p>21 <b>riddled with bullet holes was published in one of our</b></p> <p>22 <b>newspapers. The family complained under principle 5,</b></p> <p>23 <b>which said -- effectively they argued that it caused</b></p> <p>24 <b>them undue pain and distress, and it was not necessary</b></p> <p>25 <b>and so on.</b></p> <p style="text-align: center;">Page 81</p> | <p>1 decision to publish or not? Do you see the slightly</p> <p>2 different test?</p> <p>3 <b>A. There is -- there is a freedom of the press issue</b></p> <p>4 <b>underlying all these decisions. The preamble to the</b></p> <p>5 <b>code of practice states very explicitly that newspapers</b></p> <p>6 <b>are entitled to publish what they consider to be news</b></p> <p>7 <b>and to comment on it.</b></p> <p>8 <b>At the same time principle 5 of the code of practice</b></p> <p>9 <b>effectively replicates the relevant principle of the</b></p> <p>10 <b>European Convention on Human Rights in relation to</b></p> <p>11 <b>privacy, and many of my decisions would be -- and of the</b></p> <p>12 <b>Council's on appeal, would be an exercise of the</b></p> <p>13 <b>balancing function between the right to freedom of</b></p> <p>14 <b>expression and the right to privacy.</b></p> <p>15 <b>So the right of the newspaper to publish what it</b></p> <p>16 <b>considers to be news is always a factor in my decisions.</b></p> <p>17 MR JAY: To what extent do you take into account the</p> <p>18 newspaper's view of the interest, or rather the</p> <p>19 balancing exercise? The newspaper's view as to whether</p> <p>20 it's an intrusion into privacy may differ from your</p> <p>21 view.</p> <p>22 <b>A. Yes, absolutely. But the code of practice says very</b></p> <p>23 <b>clearly that the definition of the public interest is in</b></p> <p>24 <b>the last analysis a matter for the Council and the</b></p> <p>25 <b>ombudsman, rather than for the newspaper. And I could</b></p> <p style="text-align: center;">Page 83</p>                          |
| <p>1 <b>I upheld the complaint, but the appeal by the</b></p> <p>2 <b>newspaper concerned was allowed by the Press Council on</b></p> <p>3 <b>the grounds that the political context and overall</b></p> <p>4 <b>significance of these events made the photograph</b></p> <p>5 <b>relevant, and that justified publication.</b></p> <p>6 Q. I can see there are arguments both ways.</p> <p>7 <b>A. There are, and there often are, yes.</b></p> <p>8 LORD JUSTICE LEVESON: Because each decision is</p> <p>9 fact-sensitive anyway.</p> <p>10 <b>A. It is.</b></p> <p>11 LORD JUSTICE LEVESON: And therefore there's an element of</p> <p>12 subjectivity in your application of the principles to</p> <p>13 the facts.</p> <p>14 <b>A. Absolutely. If you're asked to interpret and apply</b></p> <p>15 <b>a principle which says that newspapers and other</b></p> <p>16 <b>publications should show sympathy and discretion to</b></p> <p>17 <b>people in situations of stress, distress, whether</b></p> <p>18 <b>they've shown enough or not enough is essentially, at</b></p> <p>19 <b>the end of the day, a value judgment.</b></p> <p>20 LORD JUSTICE LEVESON: Could I just ask you this, for</p> <p>21 interest as much as anything else.</p> <p>22 When you're reaching these decisions, are you</p> <p>23 considering whether you believe it comes within the rule</p> <p>24 or not, or are you considering whether the newspaper was</p> <p>25 entitled to come to the view that it took of the</p> <p style="text-align: center;">Page 82</p>   | <p>1 give you one or two examples of those again, if you're</p> <p>2 interested.</p> <p>3 <b>There was an occasion early on in our existence when</b></p> <p>4 <b>a reporter obtained some information by subterfuge about</b></p> <p>5 <b>a minor celebrity who had tragically died, and it was</b></p> <p>6 <b>argued by the newspaper that the degree of subterfuge</b></p> <p>7 <b>involved, which involved a hidden tape-recorder, it</b></p> <p>8 <b>involved perhaps a misunderstanding of the function of</b></p> <p>9 <b>the journalist as a journalist or as a friend of the</b></p> <p>10 <b>deceased -- that it was held that this did not</b></p> <p>11 <b>sufficiently -- was not sufficiently in the public</b></p> <p>12 <b>interest for this subterfuge to be adopted.</b></p> <p>13 <b>There's an educative process going on on all sides</b></p> <p>14 <b>in which the differentiation between what is in the</b></p> <p>15 <b>public interest and what the public is interested in has</b></p> <p>16 <b>to be maintained.</b></p> <p>17 LORD JUSTICE LEVESON: Is that a problem about encouraging</p> <p>18 mediation and resolution because there is less scope for</p> <p>19 you to develop a corpus, if you like, of jurisprudence</p> <p>20 which facilitates the better understanding of the code</p> <p>21 as you see it?</p> <p>22 <b>A. I don't think so. Our conciliation processes are of two</b></p> <p>23 <b>kinds really. We do straightforward mediation --</b></p> <p>24 <b>conciliation, which is done by correspondence, and</b></p> <p>25 <b>occasionally with the occasional telephone call. But</b></p> <p style="text-align: center;">Page 84</p> |

21 (Pages 81 to 84)

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| <p>1 more recently we have started to move into face-to-face<br/>2 mediation in a very small number of cases, as an<br/>3 experiment, but the -- our experience of those cases has<br/>4 led us to believe that we should go further into this<br/>5 area, and that many -- that many -- that some -- perhaps<br/>6 an increasing number of complaints can be resolved on<br/>7 the basis of face-to-face mediation, other than in<br/>8 situations in which people are exchanging correspondence<br/>9 and simply digging themselves into bunkers from which<br/>10 they don't want to emerge.</p> <p>11 I'm not sure if that answers your question.</p> <p>12 LORD JUSTICE LEVESON: Well, no, I was just concerned<br/>13 whether a mediation that didn't lead to an adjudication<br/>14 meant that there was less available material out there<br/>15 for the press to understand how you were perceiving the<br/>16 balance.</p> <p>17 <b>A. Well, that's not quite the case because mediation is<br/>18 confidential. But conciliation which leads to an agreed<br/>19 outcome of the case as between the complainant and the<br/>20 publication has to be -- that agreed outcome has to be<br/>21 referenced by me as the paper having taken sufficient<br/>22 remedial action.</b></p> <p>23 So there is a decision by me as ombudsman, and<br/>24 perhaps -- and if it's acceptable to both sides,<br/>25 a decision by me is a decision, and that decision is</p> <p style="text-align: center;">Page 85</p>                        | <p>1 I will come to the conclusion that an offer made by the<br/>2 newspaper was simply inadequate, and the complaint has<br/>3 to be upheld for that reason.</p> <p>4 The equality of arms issue, I don't know that<br/>5 there's any easy resolution to it. The -- except<br/>6 insofar as I do follow general ombudsman principles in<br/>7 that I'm not a consumer advocate in the first instance,<br/>8 although I may become so in certain circumstances, but<br/>9 more of an arbitrator.</p> <p>10 We do advise -- we do advise complainants as to the<br/>11 principles of the code which might be more appropriate<br/>12 than others in relation to making a complaint. We won't<br/>13 leave them wandering in the forest without any guidance,<br/>14 and to that extent we do participate in the equality of<br/>15 arms scenario.</p> <p>16 MR JAY: Can we briefly look at some statistics?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. It's at page 01548, tab 90. The print is quite small,<br/>19 but we will manage.</p> <p>20 If we just take 2011 as the most recent year, 343<br/>21 complaints in all, but only 42 decisions --</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. -- by "PO". That's you?</p> <p>24 <b>A. That's me, yes.</b></p> <p>25 Q. Of those you upheld 17, you rejected 15. So we're up to</p> <p style="text-align: center;">Page 87</p> |
| <p>1 specified in our records.</p> <p>2 LORD JUSTICE LEVESON: Okay.</p> <p>3 <b>A. So there is a corpus there, both in relation to<br/>4 decisions, both in relation to determinations, if you<br/>5 like, and both in relation to cases in which sufficient<br/>6 remedial action has been taken.</b></p> <p>7 LORD JUSTICE LEVESON: Have you ever declined to consider<br/>8 that the sufficient remedial action has been taken?</p> <p>9 <b>A. Oh yes. Yes, quite frequently. If -- very often I will<br/>10 uphold a complaint in spite of the fact that the<br/>11 newspaper has made what it thinks is a pretty<br/>12 substantial offer. But if the newspaper -- if the<br/>13 newspaper offer has been accepted by the complainant,<br/>14 I don't really have a function beyond ratifying that.<br/>15 It would not be in my interests to say that I refuse to<br/>16 accept this solution in spite of the fact that it has<br/>17 been agreed by the parties. I think that would be a bit<br/>18 over the top.</b></p> <p>19 LORD JUSTICE LEVESON: But does that raise a problem with<br/>20 equality of arms? The person who is complaining is not<br/>21 quite as knowledgeable or as aware, perhaps, as the<br/>22 newspaper or press body with which he or she is dealing?</p> <p>23 <b>A. It could do. It hasn't been that in my experience, but<br/>24 it could do, and I should continue to be aware of that,<br/>25 and -- but in many of my -- in many of my decisions</b></p> <p style="text-align: center;">Page 86</p> | <p>1 32. SRA --</p> <p>2 <b>A. Ten.</b></p> <p>3 Q. -- is ten. That's sufficient remedial action. So that<br/>4 is the 42.</p> <p>5 Can I understand with the conciliated, the 19, where<br/>6 do they come from?</p> <p>7 <b>A. The conciliated -- six of them came from formally<br/>8 conciliated. In others words these were cases in which<br/>9 the complainant was not satisfied with the response of<br/>10 the publication and came to us. We investigated it, and<br/>11 we pushed the boat out further, and there were further<br/>12 discussions as a result of which a solution agreeable to<br/>13 both parties was arrived at.</b></p> <p>14 The 13 informally conciliated were the ones which<br/>15 were conciliated by the newspaper' or magazine's<br/>16 internal complaint handling mechanism after an initial<br/>17 approach to us had directed the complainant in that<br/>18 direction.</p> <p>19 Q. But the majority of the complaints don't reach any of<br/>20 the other boxes?</p> <p>21 <b>A. That's correct, yes.</b></p> <p>22 Q. What's just happened to them?</p> <p>23 <b>A. Well, of the over 250 complaints that were not formally<br/>24 processed, the huge majority, 144, were complaints which<br/>25 weren't pursued beyond preliminary enquiry by the</b></p> <p style="text-align: center;">Page 88</p>                    |

22 (Pages 85 to 88)

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| <p>1 <b>complainant.</b></p> <p>2 <b>Now, that doesn't mean to say the code wasn't</b></p> <p>3 <b>breached. It means that for one reason or another the</b></p> <p>4 <b>complainant decided not to take it any further.</b></p> <p>5 Q. I get it.</p> <p>6 <b>A. There were only four complaints ruled out as presenting</b></p> <p>7 <b>no prima facie evidence. So we do take them all fairly</b></p> <p>8 <b>seriously.</b></p> <p>9 Q. Were there another group of complaints, therefore, which</p> <p>10 were conciliated before we get to the decision-making</p> <p>11 stage?</p> <p>12 <b>A. No, only the ones that are informally or formally</b></p> <p>13 <b>conciliated. And my case officer is the person who is</b></p> <p>14 <b>primarily involved in all the conciliation work. When</b></p> <p>15 <b>it reaches me, it's basically because a decision has to</b></p> <p>16 <b>be made.</b></p> <p>17 <b>I may on occasion seek further information from</b></p> <p>18 <b>either the publication or the complainant before making</b></p> <p>19 <b>a decision. But I would usually make sure that if</b></p> <p>20 <b>I have to look for additional information, that</b></p> <p>21 <b>information will be made available to the other party in</b></p> <p>22 <b>fairness, so that they can comment on it before I come</b></p> <p>23 <b>to my final decision.</b></p> <p>24 Q. Can I ask, please, your range of remedies: the schedule</p> <p>25 to the Act says that there may be other remedies</p> <p style="text-align: center;">Page 89</p>                              | <p>1 <b>very frequently includes a correction of inaccurate</b></p> <p>2 <b>facts.</b></p> <p>3 Q. Do you have power to insist exactly where your decision</p> <p>4 should be published in the journal?</p> <p>5 <b>A. I have proposed, and the Press Council has adopted,</b></p> <p>6 <b>a set of publication guidelines which I have -- I'm not</b></p> <p>7 <b>sure whether I made them available to you earlier on or</b></p> <p>8 <b>not, but I can leave a copy with you. And that</b></p> <p>9 <b>specifies in considerable detail where decisions of the</b></p> <p>10 <b>Press -- of myself and/or the Press Council on appeal</b></p> <p>11 <b>have to be published.</b></p> <p>12 <b>These have been refined over the years to remove any</b></p> <p>13 <b>ambiguities, and newspapers, and indeed complainants</b></p> <p>14 <b>themselves, are aware of the requirements to publish in</b></p> <p>15 <b>some detail.</b></p> <p>16 Q. Who is responsible for drawing up the code, can you</p> <p>17 remind us?</p> <p>18 <b>A. The original code was -- the code was originally drawn</b></p> <p>19 <b>up by the steering committee. It has been since</b></p> <p>20 <b>modified in some small particulars by the Code Committee</b></p> <p>21 <b>and the Council working in concert, but broadly speaking</b></p> <p>22 <b>we operate on the basis that if it isn't broken, there's</b></p> <p>23 <b>no need to fix it.</b></p> <p>24 LORD JUSTICE LEVESON: And the Code Committee comprises</p> <p>25 members of the Council or a different section of people?</p> <p style="text-align: center;">Page 91</p>                                  |
| <p>1 available to you, beyond publishing a decision?</p> <p>2 <b>A. Mm-hm.</b></p> <p>3 Q. What in practice are they?</p> <p>4 <b>A. In practice the sanction that we have is the requirement</b></p> <p>5 <b>for the newspaper or magazine to publish a decision</b></p> <p>6 <b>upholding a complaint.</b></p> <p>7 <b>The conditions for recognition laid down in the Act</b></p> <p>8 <b>make it quite clear under the schedule to the Act that</b></p> <p>9 <b>one of the -- that:</b></p> <p>10 <b>"The procedure for investigating, hearing and</b></p> <p>11 <b>determining a complaint to the Press Ombudsman shall..."</b></p> <p>12 <b>And there's a number of subsections there. And it</b></p> <p>13 <b>adds:</b></p> <p>14 <b>"... provide for the taking of remedial action by</b></p> <p>15 <b>the member of the Press Council in respect of whom the</b></p> <p>16 <b>complaint was made consisting of any or all of the</b></p> <p>17 <b>following."</b></p> <p>18 <b>So as long as the Press Council satisfies at least</b></p> <p>19 <b>one of these procedures, it can be recognised. And</b></p> <p>20 <b>broadly speaking, we satisfied Parliament and the</b></p> <p>21 <b>minister in relation to number 1 of that, the</b></p> <p>22 <b>publication of the decision, and to a degree number 2,</b></p> <p>23 <b>the publication of a correction of inaccurate facts,</b></p> <p>24 <b>because although we don't determine the form of any</b></p> <p>25 <b>correction as such, the decision of the Press Ombudsman</b></p> <p style="text-align: center;">Page 90</p> | <p>1 <b>A. No, there are -- there are no members of the Council on</b></p> <p>2 <b>the Code Committee. They're again bodies nominated</b></p> <p>3 <b>by -- they're nominated bodies that have to put the</b></p> <p>4 <b>Press Council together. The only non- -- the only other</b></p> <p>5 <b>person -- member of the Code Committee is myself.</b></p> <p>6 <b>I'm -- I'm ex officio a member of the Code Committee.</b></p> <p>7 <b>And it is chaired by a journalist who is an</b></p> <p>8 <b>independent -- a very independent and wise person whose</b></p> <p>9 <b>running of that Code Committee is very widely accepted</b></p> <p>10 <b>within the industry, and certainly by me.</b></p> <p>11 MR JAY: Are there serving editors on the committee?</p> <p>12 <b>A. The serving editors have the right to be on the</b></p> <p>13 <b>committee, but in most cases they send deputies or</b></p> <p>14 <b>senior executive people rather than --</b></p> <p>15 LORD JUSTICE LEVESON: So the chairman is not --</p> <p>16 <b>A. So the chairman is not a serving editor, no. He's</b></p> <p>17 <b>actually a retired journalist.</b></p> <p>18 LORD JUSTICE LEVESON: A retired journalist?</p> <p>19 <b>A. Yes.</b></p> <p>20 LORD JUSTICE LEVESON: And do you involve academics?</p> <p>21 <b>A. No. There are no public interest members on the Code</b></p> <p>22 <b>Committee as such.</b></p> <p>23 MR JAY: Is your jurisdiction and the Press Council's</p> <p>24 jurisdiction based only on breaches of the code, or are</p> <p>25 there any wider issues that you are enabled to consider?</p> <p style="text-align: center;">Page 92</p> |

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| <p>1 <b>A. It is based only on the provisions of the code. But the</b><br/> 2 <b>code -- it's very important, I think, for the public to</b><br/> 3 <b>recognise this. The code is a selection of very general</b><br/> 4 <b>principles which have to be applied in very particular</b><br/> 5 <b>circumstances. I think that whereas I am guided by the</b><br/> 6 <b>code, and if there are instances in which the provisions</b><br/> 7 <b>of the code conflict with my personal opinion, I don't</b><br/> 8 <b>have the luxury to indulge my personal opinion in</b><br/> 9 <b>relation to the application of the code. But I would</b><br/> 10 <b>hope that in the application of the code to these</b><br/> 11 <b>particular circumstances, either by myself or on appeal</b><br/> 12 <b>by the Council, that this application will be informed</b><br/> 13 <b>by a large measure of common sense and of equity.</b></p> <p>14 Q. So it won't always be a strict legal reading of the<br/> 15 code; you'll inform it with wider principles?</p> <p>16 <b>A. That's correct, yes.</b></p> <p>17 Q. I'm looking at the code now because we have obtained<br/> 18 a copy. There isn't, I think, a definition of the<br/> 19 public interest, but there's reference to it,<br/> 20 particularly in principle 5, privacy. Have I correctly<br/> 21 read it?</p> <p>22 <b>A. There isn't a definition, but it says it is for the</b><br/> 23 <b>ombudsman and the Press Council to define the public</b><br/> 24 <b>interest in each case. But the general principle is</b><br/> 25 <b>that the public interest is invoked in relation to</b></p> <p style="text-align: center;">Page 93</p> | <p>1 LORD JUSTICE LEVESON: Or maybe your footballers don't<br/> 2 create this sort of issue for you.</p> <p>3 <b>A. I'm the last person to comment on the morality of our</b><br/> 4 <b>footballers, one way or the other.</b></p> <p>5 <b>No, the principal issues that -- there are two</b><br/> 6 <b>separate sets of issues, if you like. Some of them</b><br/> 7 <b>arise under principle 5, which is the privacy principle,</b><br/> 8 <b>and I think it fair to say that newspapers generally,</b><br/> 9 <b>and myself and the Press Council in operating the code</b><br/> 10 <b>of practice, would be guided to some extent by the</b><br/> 11 <b>cultural realities of -- and context of the country in</b><br/> 12 <b>which we live and move and have our being. And these</b><br/> 13 <b>may vary from country to country.</b></p> <p>14 <b>But all I can say is that I believe that the</b><br/> 15 <b>interpretation of the privacy aspect of our code is</b><br/> 16 <b>fairly close to -- reflects fairly closely the cultural</b><br/> 17 <b>context of our country.</b></p> <p>18 <b>In relation to misrepresentation, that's basically</b><br/> 19 <b>principle 1, where it is a breach of the code, not only</b><br/> 20 <b>to publish something that's inaccurate, but something</b><br/> 21 <b>that is a distorted report or misrepresents a situation.</b></p> <p>22 <b>We haven't had any complaint about the private lives</b><br/> 23 <b>of individuals being misrepresented by a newspaper or by</b><br/> 24 <b>another publication under principle 1. It simply hasn't</b><br/> 25 <b>arisen.</b></p> <p style="text-align: center;">Page 95</p> |
| <p>1 <b>a matter capable of affecting the people at large so</b><br/> 2 <b>that they may legitimately be interested in receiving</b><br/> 3 <b>and the press legitimately interested in providing</b><br/> 4 <b>information about it.</b></p> <p>5 <b>I didn't draft that definition, but it has stood the</b><br/> 6 <b>test of the last four and a half years fairly well.</b></p> <p>7 Q. So have you built up a body of case law, as it were,<br/> 8 which gives further content to that quite general<br/> 9 definition?</p> <p>10 <b>A. Yes, we have. Everything is published on the website,</b><br/> 11 <b>and where specific issues of the public interest are</b><br/> 12 <b>raised, either by publications or by complainants, these</b><br/> 13 <b>have to be addressed in the decisions.</b></p> <p>14 Q. One provision of the PCC code which gives rise almost to<br/> 15 endless controversy is the public interest provision<br/> 16 which speaks to correcting a misleading impression or<br/> 17 statement.</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. There's one school of thought which says, well, if<br/> 20 a footballer is happily married and might have made one<br/> 21 or two --</p> <p>22 LORD JUSTICE LEVESON: It's hypocrisy, isn't it?</p> <p>23 MR JAY: It's the hypocrisy provision, yes.</p> <p>24 Do you have any approach to that sort of problem<br/> 25 which might be of interest to this Inquiry?</p> <p style="text-align: center;">Page 94</p>  | <p>1 LORD JUSTICE LEVESON: Your previous answer raises itself<br/> 2 a rather interesting issue. You say that the<br/> 3 interpretation of the privacy aspect of the code fairly<br/> 4 reflects -- and closely reflects -- the cultural context<br/> 5 of the country.</p> <p>6 <b>A. Mm-hm.</b></p> <p>7 LORD JUSTICE LEVESON: That might mean that the cultural<br/> 8 context veers more towards privacy in Ireland than it<br/> 9 does here. Or it might mean that it's further away from<br/> 10 it.</p> <p>11 I would just be interested, because it's in that<br/> 12 area that all sorts of issues arise.</p> <p>13 <b>A. It is. My view on that has to be wholly</b><br/> 14 <b>impressionistic.</b></p> <p>15 LORD JUSTICE LEVESON: I appreciate that.</p> <p>16 <b>A. But it is that there would be, culturally speaking,</b><br/> 17 <b>a greater respect for privacy in Ireland than perhaps</b><br/> 18 <b>there is in the United Kingdom.</b></p> <p>19 LORD JUSTICE LEVESON: Therefore the problems don't arise.</p> <p>20 <b>A. Don't arise to the same extent or with the same</b><br/> 21 <b>intensity.</b></p> <p>22 LORD JUSTICE LEVESON: I appreciate that.</p> <p>23 MR JAY: Two general points to conclude with, professor.<br/> 24 Are there any lessons you feel that we should learn<br/> 25 from your experience in Ireland?</p> <p style="text-align: center;">Page 96</p>  |



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| <p>1 <b>A. I'm not in the business of prescribing, I suppose, but</b><br/>                 2 <b>I would emphasise probably, more than anything else,</b><br/>                 3 <b>a number of factors of our experience which I think</b><br/>                 4 <b>would be useful to anybody who is involved in this kind</b><br/>                 5 <b>of exercise, things that we have found valuable.</b><br/>                 6 <b>First of all, the importance of independence.</b><br/>                 7 <b>Secondly, the importance --</b><br/>                 8 LORD JUSTICE LEVESON: That's the importance of independence<br/>                 9 from everybody.<br/>                 10 <b>A. From everybody.</b><br/>                 11 LORD JUSTICE LEVESON: Obviously from the Government and<br/>                 12 executive powers.<br/>                 13 <b>A. But also from the press industry. The importance of</b><br/>                 14 <b>incentivisation. The importance of an appeals system,</b><br/>                 15 <b>I think, which we have built into our system, and which</b><br/>                 16 <b>relatively few systems have, as undermining and</b><br/>                 17 <b>enhancing public confidence in the system.</b><br/>                 18 <b>There may be another advantage, although it's very</b><br/>                 19 <b>difficult to quantify, and that is that anecdotally</b><br/>                 20 <b>newspaper lawyers have told me that they believe that</b><br/>                 21 <b>some of our decisions have saved them substantial</b><br/>                 22 <b>amounts of money, but they've not told me what decisions</b><br/>                 23 <b>they were or whether they were decisions to uphold</b><br/>                 24 <b>complaints or not to uphold complaints.</b><br/>                 25 LORD JUSTICE LEVESON: That's probably wise.</p> <p style="text-align: center;">Page 97</p> | <p>1 <b>a statute?</b><br/>                 2 Q. Yes.<br/>                 3 <b>A. I think they probably could have, but I think it would</b><br/>                 4 <b>have taken a lot longer and might not have been quite as</b><br/>                 5 <b>satisfactory.</b><br/>                 6 <b>I think the incentivisation aspect of the statute</b><br/>                 7 <b>has been extremely important in securing that</b><br/>                 8 <b>whole-hearted support of the industry for what we do.</b><br/>                 9 MR JAY: Thank you very much, professor.<br/>                 10 LORD JUSTICE LEVESON: Professor, thank you very much indeed<br/>                 11 for coming. It's very kind of you.<br/>                 12 MR JAY: May we sit again at 1.40?<br/>                 13 LORD JUSTICE LEVESON: Yes. That's probably a sensible way<br/>                 14 to divide ourselves.<br/>                 15 Thank you very much.<br/>                 16 (12.37 pm)<br/>                 17 (The short adjournment)<br/>                 18<br/>                 19<br/>                 20<br/>                 21<br/>                 22<br/>                 23<br/>                 24<br/>                 25</p> <p style="text-align: center;">Page 99</p> |
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| <p>1 <b>A. It's very wise indeed, because I wouldn't want to be</b><br/>                 2 <b>influenced by that kind of consideration.</b><br/>                 3 <b>So those are the main aspects of our operation and</b><br/>                 4 <b>our structures, I think, that would be valuable in any</b><br/>                 5 <b>system in which people are attempting to counterbalance</b><br/>                 6 <b>the necessary freedom of the press and the freedom of</b><br/>                 7 <b>expression with a system that gives people who are the</b><br/>                 8 <b>object of press attention some reasonable redress and</b><br/>                 9 <b>also affords a measure of accountability, creates</b><br/>                 10 <b>a greater degree of accountability and openness in</b><br/>                 11 <b>relation to the operations of the press than was the</b><br/>                 12 <b>situation hitherto.</b><br/>                 13 MR JAY: Are there any warnings that you might give us about<br/>                 14 possible teething problems or even further defects in<br/>                 15 the system which we should consider?<br/>                 16 <b>A. The bottom line really is that the success or failure of</b><br/>                 17 <b>any system of this kind depends on two things in my</b><br/>                 18 <b>view. It depends on the robustness of the measures that</b><br/>                 19 <b>are put in place to ensure redress, and it depends on</b><br/>                 20 <b>the whole-heartedness of the endorsement and uptake of</b><br/>                 21 <b>these by the newspaper industry themselves.</b><br/>                 22 <b>These two things are absolutely essential.</b><br/>                 23 Q. Could everything have been achieved in Ireland without<br/>                 24 a statute at all?<br/>                 25 <b>A. Without the threat of a statute, do you mean? Without</b></p> <p style="text-align: center;">Page 98</p> | <p>1<br/>2<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p> |
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