

APPLICATION ON BEHALF OF THE GOVERNMENT FOR CORE PARTICIPANT STATUS

1. This is an application for Core Participant status made under Rules 5(2)(a) and/or (b) of the Inquiry Rules 2006. Two bases are relied upon.
2. **First**, a number of Government Ministers have been asked to give evidence to the Inquiry. It is clearly appreciated that that fact in itself confers no right to Core Participant status. That is evident from the Inquiry's Ruling on Core Participants - Module 3 of 5 April 2012 ('the Ruling'). However, in the Ruling Leveson LJ underlined that "the central theme of the Inquiry is the press and the impact and effect that the press has had on the public, the police and politicians" ([3]). Module 3 was described in [2] as covering "the relationship between national newspapers and politicians along with its impact on media policy, cross media ownership" and as being "concerned with any consequences of the relationship on the creation or implementation of policy at the highest level ...". Its focus was then described in [9] as being on "the political pressures". The Ruling then indicated at [5] that "core participant status ... is only for those far more involved in or responsible for the subject matter of the module than as a witness to specific events ..." It is submitted that, having regard to the central theme and the focus identified, the Government Ministers plainly satisfy that test.
3. That they do so is also indicated by the findings on the particular cases that were considered in the Ruling. Specifically, Mrs Brooks' application was accepted on the basis that "it can justifiably be said that she played, or may have played, a direct and significant role in matters to which this part of the Inquiry relates": [15]. Leveson LJ also appears to have taken into account the broader question, whether it would be right to confer upon her the additional benefits attached to Core Participant status, including in particular advanced sight of witness statements. Applying that reasoning to the Government Ministers:
 - 3.1. They have presumably been asked to give evidence at least in substantial part because they have potentially important evidence to give on the matters the subject of Module 3.
 - 3.2. It would be strange indeed if it would be right, as a matter of fairness, to confer the benefits attached to the status on Mrs Brooks but not on the various senior Ministers.
4. **Secondly**, and more generally, the Government has a clear interest in the issues to be covered by Module 3 - specifically the policy issues. It also has an interest by reason of the inevitable political pressures and the need where appropriate to account to Parliament that come from a high profile public inquiry of this kind in which the most senior Ministers in Government seek to assist the Inquiry in its work by their evidence. It is the Government that bears ultimate responsibility ("at the highest level") for policy on (among other things) media ownership and regulation. This includes its role to date in framing and applying policy, including the taking of individual decisions, under the existing legislative framework. It includes questions about how these matters are handled within Government, the allocation of responsibilities and the processes and procedures which apply. It also includes the Government's role in "the creation or

implementation of policy" for the future. For these purposes, the range of Ministers who are to give evidence can properly and conveniently be taken to be representative of the Government.

5. For the avoidance of doubt, the Government does not currently envisage taking advantage of any of the additional rights accorded to Core Participants beyond those relating to advance access to materials, thus placing Government witnesses on the same footing as other witnesses accorded that status.
6. It is clearly understood that, if Core Participant status is to be accorded, the Inquiry will wish to ensure that any material provided will be strictly controlled. Advance disclosure, it is understood, is conferred on the basis that there are good reasons based on the proper and fair conduct of the Inquiry for that to occur - and those reasons do not extend to use or dissemination for other purposes. Thus, however that status is accorded, there will need to be a list of individuals provided to the Inquiry who would be entitled to see the advance disclosure. It will of course be for the Inquiry to decide whether it considers it is necessary to require Ministers of the Crown personally to provide confidentiality undertakings. It is submitted that that is not necessary - it having been made clear on their behalf that they clearly understand the need for confidentiality and are content to maintain it. It is not known how disclosure has been controlled within the corporate bodies which have been designated as core participants. The precise individuals to whom advanced disclosure can be shown does not appear to be public. The Inquiry is invited to follow a similar approach in relation to Government on the basis that there is no justification for placing the Government in a less favourable position to that of other corporate or public bodies (eg the Metropolitan Police).
7. It is acknowledged that this application could have been made at an earlier stage. The explanation for its timing is that recent events have underlined and brought into sharp focus the desirability of the Government, in fairness to those who are to give evidence, having advance sight of evidence submitted to the Inquiry. That is not merely a matter of fairness to them, ensuring that they are not disadvantaged as compared to other witnesses. It is hoped that it may assist the Inquiry by providing the witnesses with at least some time in their busy schedules to consider the materials and evidence of others on similar or related topics to those on which they will be giving evidence. Further, Ministers, and ultimately the Prime Minister, as the Head of the Government are accountable to the public and to Parliament. Again recent events have served to highlight the need on occasions for the Government to respond very quickly to material which has been released. Both the Secretary of State for Culture, Media and Sport and the Prime Minister have been required to respond urgently in the House of Commons to concerns over matters raised by the Inquiry. That process would be assisted by the sort of access to the materials that Core Participant status would involve.
8. That leaves the question of who should be accorded Core Participant status. It is recognised that the power of the Inquiry requires that that status be accorded to a "person". There is clearly a very considerable degree of common interest amongst those who lead the Government, namely the Prime Minister, Deputy Prime Minister and other senior Ministers. Further, the concern of Government is that there is real potential for

misunderstanding and presentational issues in relation to Core Participant status, with risks of unfair or inaccurate singling out of those individually identified. It is thus made explicitly clear that the purpose of this application, in substance on behalf of the Government, is solely to ensure that fair and appropriate access is secured to the relevant materials for the reasons set out above. It reflects no other concern on the part of any of those Ministers who are to assist the Inquiry with their evidence. It is also acknowledged that, again for the reasons set out above, those to whom those materials are to be provided will be named and limited.

9. In those circumstances, the issue whether 'the Government' can be accorded Core Participant status may be of more theoretical than real importance - the Inquiry will have the requisite and personal limits on circulation of the materials in any event. Whilst, this approach would represent the Government's preferred approach it is recognised that there are difficulties with designating the Government as a "person". The Government acts through its Ministers, who have the powers of an individual and often have the status of statutory corporations. The Government does not have a collective legal identity. It would require a broad approach to be given to the concept of a person to include the group of persons through whom Government acts. If the Inquiry is not attracted by this preferred approach, there will need to be consideration of the most appropriate alternative approach - which would presumably involve according the status to individual Ministers.

4 May 2012

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