Lord Justice Leveson:

1. The leaking of information from the Inquiry through one route or another has been a continuing problem. Having specifically warned about it on 12 March 2012, I was forced to return to the issue on 26 April 2012 when I said:

   “On three occasions in the recent past, and not for the first time, material has been published by core participants before it has appeared on the Inquiry website and in circumstances that I perceive constitute a breach of the order that I have previously made under Section 19 of the Inquiries Act 2005. Usually, the error has been admitted and apologies offered, but justifications offered have varied. Despite the fact that the majority of the core participants have not had any difficulty understanding and fully complying with the order, it has been suggested that it is ambiguous in relation to witnesses who have given evidence, but whose statements or exhibits have not at that time been placed on the website. For the avoidance of doubt, nobody should be publishing anything using the material from Lextranet, which is intended only to provide core participants with forewarning of statements and exhibits, often before they have been redacted or subject to application to withhold....

   [F]or the avoidance of doubt, I have recast the order that I have made under Section 19 so that from today the order as now re-amended will read:

   “1. Prior to its publication on the Inquiry website, no witness statement provided to the Inquiry, whether voluntarily or under compulsion, nor any exhibit to any such statement, nor any other document provided to the Inquiry as part of the evidence of the witness, not otherwise previously in the public domain, shall be published or disclosed, whether in whole or in part, outside the confidentiality circle comprising of the
Chairman, his assessors, the Inquiry team, the core participants and their legal representatives.

2. This order is made under Section 19(2)(b) of the Inquiries Act 2005 and binds all persons including witnesses and core participants to the Inquiry and their legal representatives and companies, whether acting personally or through their servants, agents, directors or officers or in any other way.

3. Any person, including any company affected by this order, may apply for it to be varied pursuant to Section 20 of the Inquiries Act 2005.

4. In the case of any public authority, restrictions specified in this order take effect subject to Section 20(6) of the Inquiries Act 2005.”

2. All core participants clearly understood that the Order binds them: indeed, everyone with access to the document management system ('Lextranet') on which the statements are posted has been required to sign (and has signed) a confidentiality agreement which recognises the obligations of confidentiality which they are required to observe. As the terms of the Order make clear, however, it also binds “all persons” and because some of the information about which complaint could be made was published in the Evening Standard which is part of Independent Print Ltd (which also includes The Independent and the Independent on Sunday and was not a core participant) the Order was served by the Inquiry on that company: that fact is not in dispute.

3. The reason for the Order is not an unjustified exercise of power, intended to control the operation of a free press; it is described in the fourth recital to the order as a consequence of the view that without express permission:

“... it is conducive to the fulfilment of [my] terms of reference and in the public interest that witness statements provided to the Inquiry should not be published before they are put into evidence by their maker at the Inquiry or, read into evidence, or summarised into evidence by a member of the Inquiry Team as the case may ...”

4. Why is that so? It is important that the Inquiry obtain the benefit of the views of core participants as to questions that should be asked of witnesses for which purpose it is critical that they have advance sight of the statements. To allow a core participant to take advantage of early sight of the statements would be unfair to those who are not core participants. Furthermore, the effect of disclosure in breach of the Order will be to generate a public debate about what the witness intends to say, doubtless with critical comment and unstructured assertion. That disrupts the
fair presentation of the evidence and is unfair to the witness who is likely to find him or herself responding to the press before having had the chance to explain the evidence in public to the Inquiry. Neither is very much being required of those who have had sight of the statements. Usually, it is only a matter of days or perhaps a week before the witness is due to give evidence that the evidence will be published to core participants. As soon as the evidence has been given, the statement is published and it is then open to whomsoever wishes to say whatever they wish about it. The modest restriction covering the days between disclosure and presentation of evidence is, in my judgment, a fair balance which does not represent an unreasonable restriction on the press.

The Independent on Sunday: Mr Andy Coulson

5. In accordance with the arrangements that the Inquiry has put in place, therefore, during the morning of Wednesday 2 May the statement made by Mr Andy Coulson (along with the exhibits) was published on Lextranet so that core participants could suggest questions to counsel to the Inquiry in accordance with Rule 10 of the Inquiry Rules 2006. That statement referred to the terms on which Mr Coulson left his employment with News International and exhibited his termination agreement which identified that he had the benefit of restricted stock units all of which had vested by August 2007 but which he still held while working for the Conservative Party and, subsequently, as Director of Communications in the government. The fact that he was due to give evidence on 10 May 2012 was itself made public (and placed on the website) on Thursday 3 May.

6. On 6 May 2012, the Independent on Sunday ("IoS") published an article, described as an IoS exclusive, to the effect that Mr Coulson held shares in News Corporation at a time when the government was deciding whether to approve the company’s takeover of BSkyB. It recognised that he was giving evidence to the Inquiry on 10 May and observed:

“The shareholding could be picked up by Lord Leveson (sic) this Thursday.”

7. The story was then picked up by other newspapers doubtless on the basis that it was then in the public domain and, having regard to regard to the words ‘not otherwise in the public domain’ no longer subject to the order that I had made. Not surprisingly, complaint was made that the evidence had been leaked. That complaint is of significance because it is very important that the Inquiry can reassure those who are required by law to provide evidence that what they say will be kept confidential until the Inquiry determines otherwise.

8. For that reason, I issued a notice under s. 21 of the 2005 Act directed to Mr John Mullin, the Editor of the IoS asking for confirmation whether the paper had possession or sight of a copy of Mr Coulson’s statement or any draft. In answer Mr Mullin confirmed that he had received the statement “late last Thursday” i.e. 3 May 2012 one week before Mr Coulson was due to give evidence. He later amended the answer to say that he had seen the statement but did not retain a copy. He said that
he had received it from a source other than a core participant or member of the Inquiry team. He did, however, agree that he knew the terms of the Order and took the decision to publish the article.

9. Mr Mullin’s explanation was as follows. On the day prior to seeing the statement (that is to say Wednesday 3 May 2012), he said that the IoS learned from a confidential source that Mr Coulson’s severance package included a NewsCorp shareholding and they were shown documentation that substantiated the information from the source which was not part of a witness statement and, he said, was not an exhibit to a witness statement (although the termination agreement was, in fact, a free standing document which could easily be detached from the statement). He then said that two further confidential sources corroborated the shareholding angle both of whom were long-standing and trusted: none was a core participant. Thus, they had the story “copper-bottomed on the Wednesday evening”, that is to say the day before Mr Mullin saw the statement. The report, therefore, was prepared without reference to any witness statement prepared for the Inquiry. He went further to say that had the IoS been a daily paper, he would have published on the Thursday and that had he done so, he could not then have been criticised for it.

10. During the course of his evidence, Mr Mullin repeated that they had the story from three sources none of whom relied on Mr Coulson’s statement with the result that he believed that the Order did not apply to their story. Nothing in the story came from the statement (which he read because it was human nature to do so although, in retrospect, it would have been better had he not done so). He did not view the statement as a fourth source of the information and later went on:

   “We’re good honest journalists and we try and do our job as best we can do it. This is an issue of massive public importance. The fact that your Inquiry is going on shouldn’t stop us from doing good honest journalism if we go ahead. It was our misfortune that through good honest journalism we got this statement after we had already substantiated the story.”

11. Mr Mullin also explained that six months previously, the IoS had learned there was some issue over Mr Coulson’s financial settlement and, furthermore, that he had been following the story (relating to Mr Coulson) for five years “probably behind The Guardian only” and that it was “quite important” to their readers. He considered that the question of an ongoing financial relationship as a matter of great significance and that putting it in the public mind before Mr Coulson gave evidence was perfectly defensible journalism. He said that he did not know what was going to come out in the Inquiry.

Discussion

12. Although the IoS had been pursuing this story for years and the financial settlement for six months, it is a truly remarkable coincidence that, on the very day that the
information was published by the Inquiry for core participants on Lextranet, Mr Mullin should receive the information about the severance package (with documentation that he did not identify but which substantiated the information) establishing that which was made clear in the statement and exhibit. It is unclear how Mr Mullin can be so emphatic that the information had not, perhaps by one or two stages removed (so that all links to a core participant were removed), been culled from the material that the Inquiry had published or, alternatively, had not been found by the same type of reverse investigation that was exposed in relation to the incident involving the blogger Nightjack whose identity was discovered by hacking into e-mails but later established backwards through legitimate channels. Had he published on the Thursday morning, this aspect might have required further investigation. In the event, however, he was only able to publish on the Sunday and, for the purposes of this analysis, I am prepared to assume that he is right.

13. That is not, however, an end to the matter. When he did publish, Mr Mullin knew perfectly well that he was publishing material that was caught by the Order because he knew that it was material contained in the statement to the Inquiry that he had seen. Indeed, his professed objective was to publish before Mr Coulson gave evidence, asserting that the Inquiry ‘could’ bring it out whereas a moment’s thought would have established beyond a peradventure that the Inquiry would be investigating it and that, in any event, it would enter the public domain as the statement was published. For understandable reasons, Mr Mullin wanted to be the first to publish the detail.

14. The argument that the IoS had the story first and in advance of seeing the material so that their right to publish is not defeated by knowledge that it is contained within an Inquiry statement does not, in my judgment, provide an answer. As IoS well knew, the purpose of the Order is to allow for the orderly presentation of evidence to the Inquiry and once the editor knew that the material was contained within the statement, he was, in fact, publishing the evidence of a witness, not otherwise previously in the public domain. If a proper construction of the Order were otherwise, it would encourage just the type of manipulation that was revealed in the Nightjack episode and, given the unwillingness of any editor or journalist to reveal the source of a story, would be almost impossible to undermine. In the circumstances, I have come to the conclusion that the publication of the article does represent a breach of the Order. I must add that had Mr Mullin thought about the purpose of the Order, he should have appreciated that fact.

Outcome

15. It is important to underline that, at least now, Mr Mullin fully understands the consequences to the Inquiry and the difficulties that arise in circumstances such as these. In his statement, he said:

“I should repeat that the IoS is not a core participant and not party to the confidential evidence to the Inquiry although we are fully aware of the orders which restrict the use of witness statements and exhibits and
have always abided by them. If we believed that a restriction on the use that could be made of evidence was disproportionate or unnecessary we would always apply to the Inquiry to vary the restriction rather than take any other action. I can confirm as editor that I and my journalists are always made fully aware of any orders made by the Inquiry.

I fully understand that the publication of the report could give rise to consternation on first inspection, which was most assuredly not at all our intention, and I apologise for that. The IoS, like the Inquiry, simply want the full facts to come out, and I will, of course, pay particularly close attention to the concerns raised by the s. 21 notice of 8 May 2012 going forward.”

16. Further, in evidence, while not accepting that the decision to publish “was entirely incorrect”, he recognised that, with hindsight, there would have been scope to have sought some informal guidance from the Inquiry. He went on to apologise for the trouble this had caused to the Inquiry and the effort required to investigate the matter observing that this had not been his intention. I accept the apology (recognising the basis on which it is offered) and have concluded that it is not necessary to take any further action in relation to the matter. In the circumstances, I do not intend to use the power available to be in s. 36 of the 2005 Act to certify the matter for the High Court. I ought to add that I am unlikely to take the same lenient view should this situation recur.

The Future

17. Although I am not taking any further action in relation to this incident, I must again underline the significance that I attach to compliance with my Order of 26 April 2012 and also explain the way in which I shall approach issues of fact in the event of further material improperly entering the public domain. First, subject to a proper consideration of the evidence, I make it clear that I shall be prepared to draw the inference that material (not otherwise in the public domain) has, in fact, come from a witness statement protected by the Order if it is first published in an article shortly after a statement containing that material has been disclosed on Lextranet. I expect editors to be similarly suspicious about the provision of material from sources however reliable which appears to relate to witnesses that it is known or can easily be foreseen will be witnesses at the Inquiry in the coming weeks and which could, therefore, be on Lextranet. Those who are within the confidentiality circle will readily be able to check the position. Those who are not within the confidentiality circle should not hesitate to contact the Inquiry team who will be only too pleased to assist with any concerns; they will not seek to stand in the way of any publication unless it is clear that it offends the terms of the Order and I will make myself available at short notice to hear any application under s. 20 of the Act.
18. Second, should I ever be in a position to identify the source of a leak from within the confidentiality circle, I will unhesitatingly certify that finding for the High Court. I do not seek to be draconian and (contrary to some expressed opinion) no inference should be drawn from my attitude to this Order about my approach to regulation of the press. The only effect of this Order which I believe to be in the interests of justice and fair to everyone is that publication will be delayed for what will be no more than a matter of days (between publication on Lextranet and the witness giving evidence): I am seeking to do no more than ensure that the Inquiry can proceed in an orderly fashion and that witnesses should be able to give their evidence without having to respond to a pre-published commentary on that evidence.

14 May 2012