

Leveson Inquiry

Fifth Witness Statement of Richard Thomas CBE

1. This Witness Statement comments on certain matters raised in the Witness Statement of Liz Hartley of Associated Newspapers Ltd (ANL) dated 25.10.11., received by me on 21st November.
2. I regret that, from my own knowledge, I am unable personally to assist the Inquiry in any detail with the assertions made by Ms Hartley in relation to the material inspected by her colleagues in August 2011. I can however make a number of more general points which cast doubt over her conclusions or raise wider points.
3. In 2005 Steve Whittamore had pleaded guilty to the section 55 prosecutions brought against him, based largely on evidence seized from him, at least some of which was a similar nature to that seen by Ms Hartley's colleagues in August 2011.
4. The original papers had been seized in late 2002 / early 2003 and have since been used for various purposes – including the Blackfriars prosecutions, the Southampton prosecutions, the preparation of *What Price Privacy?*, the Freedom of Information request, the preparation of *What Price Privacy?* and inspection by the Chairman of the CMS Select Committee.
5. The Investigations, Legal and Managerial staff involved in the Motorman Prosecutions and/or the preparation of figures for the Fol request and the preparation of the reports have long since left the Office. This includes Alec Owen, Roy Pollitt, Jean Lockett, Jim Adams, Mick Gorrill, Karen Nolan, Phil Taylor, Nick Tyler and Francis Aldhouse.
6. David Clancy – who assisted Ms Hartley's colleagues in August 2011 - worked on data protection policy and related work in 2003. He moved to become an Investigator, probably in 2004 or 2005 to join the new Regulatory Action Division. I do not recall that he had any involvement with the prosecutions or the preparation of the reports. It is unlikely that he would have any detailed familiarity with the material.
7. As Ms Hartley's Statement makes clear, her colleagues saw virtually nothing of the original source material.
8. Exhibits RJT 47 and 48 show that there were a total of 13,343 transactions recorded in the source material and that these were classified by experienced staff in 2006 into three separate categories:
 - (a) 5,025 identified "as transactions that were (of a type) actively investigated in the Motorman enquiry and... .. positively known to constitute a breach of the DPA 1998."

(b) A further 6,330 representing “transactions that are thought to have been information obtained from telephone service providers and are likely breaches of the DPA. However, the nature of these is not fully understood and it is for this reason that they are considered to be probable illicit transactions”.

(c) The balance of 1988 lacking sufficient identification and/or understanding of their nature to determine whether they represent illicit transactions or otherwise.

9. As previously indicated, only transactions in the first category were used for inclusion in both reports. I was aware that all the published figures had been compiled with very considerable care from the source material by one of the ICO investigators, Jim Adams, under the leadership of Mick Gorrill, a former GMP Detective Superintendent, who had been recruited to lead the reformed Regulatory Action Division into which the Investigations Unit was incorporated. Phil Taylor, the ICO lawyer who had lead responsibility at the time of the Blackfriars trial in 2005 and in the preparation of both reports, was also involved. Not least because this was to be a Parliamentary report, I had confidence that great care was being taken to compile and publish accurate and meaningful figures drawn from reliable data, which were explained and qualified by the accompanying text of each report.

10. The classification of the transactions related to the apparent commission of offences - not whether they were offences of disclosing, obtaining or procuring, nor who had committed offences. The focus of the ICO attention was primarily on private investigators as the “middlemen” at the heart of the market. But I suggest that there must be at the very least ethical questions where a journalist is the regular customer of an investigator who commits an offence to obtain the information, whether or not the journalist has also committed a procuring offence in relation to that transaction. Such ethical questions are even more pertinent where (as Ms Hartley states) the investigator could obtain the information “more quickly and reliably than they [the journalists] were able to”, at least some of the information was of a confidential nature and Mr Whittamore was pressing to sell other pieces of information obtained for other clients.

11. Exhibits RJT 47 and 48 include (with names now omitted) the following transactions where the “Top Ten” journalists were the customers :

	(a) Identified Illicit Transactions	Total paid for (a)	(b) Identified Illicit Transactions + Probable Illicit transactions	Total paid for (b)
Journalist J034 – Daily Mail / Femail	212	£13,780	467	£20,362
Journalist J063 – Mail on	59	£5,025	201	£8,660

Sunday (and "a few for the S. Mirror")				
Journalist J167 – Daily Mail / Femail	202	£14,695	503	£21,942
Journalist J193 – Daily Mail	188	£17,170	335	£21,622
Journalist J239 – Evening Standard	192	£23,365	357	£28,062

Exhibit RJT 48 further includes the following data for all journalists:

	Minimum No. of Transactions	Sums paid	Maximum No. of Transactions	Sums paid
Daily Mail	952	£68,665	2841	£143,855
Mail on Sun	266	£21,425	797	£41,132
Evening Standard	130	£17,215	357	£28,062

12. The total sum paid by these three newspapers - over £200,000 – seems high if all that information was obtained legitimately.

13. Ms Hartley's asserts the conclusion (para 35.7) that the transactions "are likely to reflect inquiries that did not involve illegal activity". This appears to have been justified (e.g. para 28) largely by reference to the claim that the "great majority" of cases consisted of addresses and telephone numbers. However, this is not a conclusion that can be drawn:

- Addresses and telephone numbers obtained, for example, from telephone companies remain (using the language of section 55) personal data obtained from a data controller without consent, even where that information might be obtained legally by other means.
- In any event, for most people a mobile or ex-directory phone number is not in the public domain and is treated as a confidential matter.
- Addresses obtained by "reverse tracking" – e.g. from a phone number or a car registration where the address is held by the telephone company or by DVLA – have necessarily been obtained illegally.

- Exhibit RJT 47 states that “[The] 6330 (Occupant Searches) represent transactions that are thought to have been information obtained from telephone services providers and are likely breaches of the DPA. However, the nature of these is not fully understood and it is for this reason that they are considered to be probable illicit transactions”. These transactions were classified (b) in Exhibits RJT 47 and 48 (and in the tables above). They were not included in either of the ICO reports which only referred to the more certain transactions. It is not clear whether the material seen by Ms Hartley’s colleagues was restricted to the 5,025 “positively identified” cases, or (as seems likely by her reference to “occupant search”) also extended to the further 6,330 transactions considered to be “probably illicit”.

14. I do not consider that the absence of certain keywords from the ICO spreadsheets is indicative. Paragraph 5.6 of *What Price Privacy?* states that some of the newspaper invoices or payment slips “**even** [*emphasis now added*] referred explicitly to ‘confidential information’”. This implies that this was exceptional. The fact that as many as 33 of the entries examined by ANL featured the word “blag” raises some questions about how the information was obtained in those cases.
15. If the Inquiry needs or wishes to review the source material in greater detail, I suggest that the ICO be asked to supply the original evidence which it still holds so that the Inquiry can independently undertake or commission such a review.
16. Ms Hartley states (paragraph 22) that no investigation was carried by ANL because the ICO had not prosecuted any journalists and the information published by ICO was insufficiently precise. But it would have been a straightforward matter for any proprietor to conduct an internal investigation by checking back on documented payments which their company had made to Mr Whittamore.
17. A final observation is that I was very surprised to read in paragraph 35.6 that the Daily Mail did not stop using Mr Whittamore until early 2007. This would have been two years after he had been convicted – at a trial where he was described by the Judge as a “broken” man and unable to pay prosecution costs or an RDCO. I hope that this date is simply a mistake in Ms Hartley’s Statement.

I believe the facts in this Witness Statement are true,

Richard Thomas CBE
27th November 2011