

IN THE MATTER OF THE LEVESON INQUIRY

SECOND WITNESS STATEMENT OF CHRISTOPHER GRAHAM

**I, Christopher Graham, of [REDACTED]
[REDACTED] will say as follows:-**

In order to help the Inquiry further, I should like to comment on some points raised in evidence by others.

This second witness statement adds to the account I have already given of events within my own knowledge that occurred subsequent to my appointment as Information Commissioner in June 2009. This supplementary witness statement adds to, but does not subtract from my earlier statement, which I believe to be true.

The facts in this supplementary witness statement are within my own knowledge or obtained from reading the documents relating to this matter.

For ease of reference this statement has been marked up with page numbers or references to documents in the bundle submitted with this statement.

- 1.1 My attention has been drawn to evidence from Ms Pia Sarma of News International. In this connection I also note the implication in the cross examination by Mr Davies that the 'blagging' of ex-directory telephone numbers should not be regarded as a breach of section 55 of the Data Protection Act 1998 ("DPA") because, in many cases, such information could be obtained, apparently lawfully, from

various commercial online providers. My predecessor Richard Thomas touched on this point in his evidence. I have made enquiries about these online services and made an assessment of their legal status.

- 1.2 It is not uncommon practice for phone numbers, including ex-directory numbers, volunteered by customers to be recorded on business databases and retained for later use. Such information may then be shared with other companies, including so called Identity Management Businesses ("IMBs"), provided that individuals have been informed that this will happen and have been given an opportunity not to have their details shared. Appropriate data sharing agreements should also be in place.
- 1.3 The ICO has given advice in this sense from time to time. Where individuals become aware that their personal information is being made available in this way, and they are not happy about it, it is not uncommon for the individuals affected to raise the matter with the company concerned, perhaps following a subject access request ("SAR") under the DPA. The evidence available to my office suggests that IMB companies readily correct the record in response to such requests and the details of individuals wishing to keep their personal information, eg their ex-directory phone numbers, private are removed from the site in accordance with the DPA.
- 1.4 I recognise the risks inherent in processing such volumes of information, but I have no reason to believe that these organisations are operating in a manner that should occasion significantly greater concern to the ICO than

many other data controllers.

- 1.5 In the light of this, it has been put to me that to suggest that the 'blagging' of ex-directory numbers is somehow not a breach of section 55 of the DPA is akin to claiming that because second hand cars are available for sale it is somehow not a crime to take and drive another's car without permission. Phone numbers that are not available via directory enquiry services or IMBs will, ipso facto, be personal information that citizens prefer to keep private.

- 2.1 A number of witnesses from among the newspapers have told the Inquiry that they had been frustrated by the 'refusal' of the Information Commissioner to name names of the 305 journalists who had been identified by the ICO as customers of Steve Whittamore as reported in *What Price Privacy Now?* in 2006. The ICO has also been criticised for not alerting the many thousands of individual targets referred to in the Motorman files.

- 2.2 Richard Thomas has set out his reasons for not making the raw Motorman material available to the various newspaper titles at the time. In the resumed Culture, Media and Sport Select Committee inquiry, following the Guardian revelations about hacking, I made it clear that, while section 59 of the DPA continued to constrain our actions, a number of factors had caused me to make more of the material available to properly authorised parties.

- 2.3 To some extent the position had eased with the passage of time. The courts had granted orders permitting various

litigants access to the material affecting them to assist in civil actions against various newspapers. In some cases, individuals had exercised their right of subject access under the DPA.

- 2.4 While I still resisted the suggestion that I should make available for publication by the Select Committee the names of the 305 journalists, in August 2009 I facilitated a visit to my office in Wilmslow by the Committee Chair John Whittingdale MP to view the material. In their report in 2010 (**Report HC362-11, Document 1, Page 2**) the Committee published an exchange of letters with the ICO on the subject of making more Motorman information available. I also set out my reasons for not going further in a letter to one of the Committee members who was particularly pressing me to publish more information from the files (**Document 2**).
- 2.5 Nevertheless, in my evidence to the Select Committee on 2 September 2009 I expressed surprise that I had not been approached for further information by the newspaper groups themselves. I made an explicit and public offer to the newspapers to come and inspect the Motorman evidence relevant to their titles. I refer the Inquiry to the transcript of evidence at Ev345 Q1807 (**Document 1, Page 6**) and Ev353, Q1861 (**Document 1, Page 14**). I believe I made the same point from the platform at the Society of Editors conference at Stansted in November 2009 although I have not retained my notes from that occasion.

- 2.6 Despite this offer, I was not contacted by any newspaper group seeking access to the Motorman material until February 2011. Instead, there was a strong and sustained campaign by the print media against any suggestion of tougher penalties for section 55 breaches. Very little interest if any was expressed by the newspaper groups as to the contents of the Motorman files themselves until the announcement of the Leveson Inquiry.
- 2.7 Since July 2009, my office has been contacted by the legal representatives of a number of individuals who were looking to bring actions against newspapers for breaches of privacy. Information was provided where a court order had been granted or where individuals made a valid subject access request under the DPA.
- 2.8 On 9 February 2011 Jan Clements and Stephen Pritchard of the Guardian Media Group attended my office and examined the records associated with the Guardian Media Group of newspapers including The Observer. They were provided with copies of documents relating to their publications and redacted copies of information from the ledgers. The comparatively low volume of information involving the Guardian titles meant that less time consuming redaction was needed. Mr Pritchard subsequently wrote an article about the group's relationship with private investigators.
- 2.9 I believe that the ICO has consistently applied section 59 of the DPA in making available relevant material to those with 'lawful authority', either as a result of a court order

or in response to a subject access request or, latterly, following the logic of the court orders that had been made at an earlier stage.

- 3.1 My attention has been drawn to the evidence of Ms Liz Hartley from Associated Newspapers Limited ("ANL"). I should like to put in context the less than satisfactory experience she described to the Inquiry.
- 3.2 Following the announcement of the Leveson Inquiry, my office was contacted by Bob Satchwell, the Director of the Society of Editors, requesting a meeting when I was next in London. Mr Satchwell was keen that I should meet with the Society's President Robin Esser. I agreed to meet the two of them over lunch on 27 July. The conversation was mainly about the future of press self-regulation. This followed my contribution to the BBC Radio 4 PM programme's Privacy Commission on 22 July during which I had drawn on my experience as Director-General of the Advertising Standards Authority.
- 3.3 Towards the end of lunch I was asked by Mr Esser, who is also a senior editorial executive of ANL, whether I would allow his editors to view the Motorman material which was now likely to be of interest to the Inquiry. I explained that access to the Motorman Files had been granted to those with 'lawful authority' and mentioned several instances of material being made available in connection with court proceedings and following court orders. I also mentioned that representatives of The Observer newspaper had visited the ICO in Wilmslow in February to view Motorman material relating to their journalists.

Following the lunch, Mr Satchwell asked me to confirm that my offer was not confined to any one group. This I was happy to do by email on 28 July.

- 3.4 There followed contact by Charles Garside, Assistant Editor of the Daily Mail, seeking access to the Motorman records which related to ANL titles. It was agreed that ANL should have access to the information which the ICO had attributed to ANL titles in the *What Price Privacy?* and *What Price Privacy Now?* reports. This was apparently to enable them to determine what information had allegedly been provided to ANL by Whittamore, to which journalists the information was attributed, and any other information which might assist in an internal investigation.
- 3.5 The Inquiry has already heard that Mr Whittamore recorded orders from journalists in four ledgers with different coloured bindings. Associated Newspapers business was recorded alongside orders from their rivals Express Newspapers in, first, a green ledger and, next, a yellow ledger. These two ledgers also contained records of orders from various titles described as 'other'. It follows that there could be no question of simply handing over the ledgers to the man from the Mail. The ledgers contained much personal information that was not relevant to ANL titles and so not necessary or appropriate for the visitors to see.
- 3.6 An additional complication arose from the somewhat incomplete and inconsistent nature of the spreadsheets that the ICO had created to make sense of the material that had been recovered from Steve Whittamore. The

spreadsheets were prepared as a working tool. They aid the navigation and analysis of the recovered material. But they cannot replace the evidence of the ledgers themselves.

- 3.7 Like a reporter's notebook, the ledgers no doubt made perfect sense to the man who made the entries. But the entries in the ledger are often ambiguous and it is clear that in attempting to transcribe the ledgers on to the spreadsheets some mistakes were made. I believe this may explain some of the discrepancies mentioned in Ms Hartley's evidence. I do not believe it changes the broad thrust of the challenge to the newspaper business and to public policy posed by the activities highlighted in the Information Commissioner's reports of more than five years ago.
- 3.8 In the almost two years since I made my offer to the newspapers, the ICO has moved on. Our investigations team has been engaged in many other projects and priorities, including, I may add, the investigation and prosecution of section 55 breaches that in no way involved the press. Perhaps it was not surprising that the sudden interest of the Mail titles in the Motorman materials caught the office somewhat unprepared and the visit to Wilmslow on 17 August, in the middle of the summer holiday period, did not go well. Subsequent visits have been handled by our Internal Compliance team and I am not aware that there have been problems.
- 3.9 I have made enquiries of my staff to establish what happened when ANL representatives visited the ICO. The

following is my understanding of what occurred.

- 3.10 Just prior to the visit to Wilmslow, our investigators were informed that Mr Garside would not be attending himself, but that other representatives of ANL would be taking his place. Those representatives were Ted Verity, the Deputy Editor of The Mail on Sunday, John Wellington, the Managing Editor of the Mail on Sunday, and Julian Darrall and Edward Young, solicitors with ANL. It had been made clear to Mr Garside that a copy of the information relevant to Associated titles could be made available and the same assurance was given to the ANL representatives.
- 3.11 On the day, however, the ANL team insisted that they wanted best evidence and this meant that they expected to be able to have copies of all documents and relevant pages of the yellow and green ledgers. It was explained that we were not going to provide this as it would take a disproportionate amount of time to redact the ledgers and the information would be contained in the electronic database which was to be provided to them.
- 3.12 It is unfortunate that the information provided on the first disc was not an accurate record of the information in the books as it did not contain all the information linked to ANL. I am satisfied, however, that ANL were subsequently provided with all the information to which they were entitled.
- 3.13 I accept that the operation on the day did not run as smoothly as it should have done. I was not, however,

aware of any dissatisfaction on the part of ANL until I read Ms Hartley's witness statement.

- 4.1 Around the same time as the ANL visit or subsequently the ICO was approached by a number of other media organisations seeking access to the Motorman material as follows.
- 4.2 My office was contacted on 27 July 2011 by Phillip Abrams, Editorial Complaints Director at BBC, following the announcement of the Leveson Inquiry. He had identified potentially relevant information which had originated from one of the ledgers (the yellow book) published on the 'What Do They Know' website. He made further enquiries relating to this over the telephone and by email and we later provided him with the additional information he required. A later conversation related to production companies the BBC may have used at the time of Operation Motorman. My office provided further information to assist the internal investigation. An official in my office had further telephone conversations relating to the confidentiality of the information we provided.
- 4.3 On 12 August 2011, Nicole Patterson, Head of Legal at Express Newspapers wrote to my office requesting access to the underlying data from the *What Price Privacy Now?* report relating their group. I replied by letter on 18 August 2011 inviting her or her representatives to visit my office. Following subsequent email correspondence it was agreed that a copy of the information held electronically could be provided. This was provided under instruction from Nicole Patterson to Anthony Field of

Rosenblatt Solicitors on encrypted disc on 27 October 2011.

- 4.4 On 19 August 2011, Tina Savy-Davies, legal counsel on behalf of Bauer Media, contacted my office regarding references to *Closer* magazine in the *What Price Privacy Now?* report. We subsequently provided the limited amount of data identified in encrypted electronic form on 30 August 2011.
- 4.5 On 28 October 2011, my office received a letter from Harriet Ellis of Linklaters LLP requesting access to the Motorman evidence relating to Times Newspapers Limited and News Group Newspapers Limited. Simon Toms, Interim Director of Legal Affairs at News International confirmed their authority to act on their behalf. My officials extracted relevant information from the Operation Motorman spreadsheets and supplied these to them on an encrypted disc on 10 November 2011. Answers to follow up questions and further information were supplied in encrypted form to Karen Zieger of Linklaters through to 28 November 2011.
- 4.6 The ICO has also been cooperating with the several police operations arising from the phone hacking scandal.
- 4.7 My office has been meeting with and providing information to the Metropolitan Police ("MPS") to assist them in their Operations Weeting, Tuleta and Elveden and other specific enquiries arising from approaches to the MPS by individuals who believe their rights may have been infringed by the activities of newspapers or their

agents. This contact is being coordinated by our Internal Compliance team.

- 4.8 There has also been significant contact with Strathclyde Police since July 2011 in connection with separate police investigations involving Scottish residents who may have featured in the Motorman files.
- 4.9 Additionally, we were approached by HM Inspector of Constabulary ("HMIC") who were considering the relationship between the police and the media. Mike Edgley, Chief Superintendent HMIC Wakefield, and Andy Lang of HMIC attended my office on 17 August 2011 to be briefed on Operation Motorman and the *What Price Privacy?* and *What Price Privacy Now?* reports by my staff. No specific information from the Motorman files was requested.
- 4.10 Finally, the Motorman files have been of interest to the broadcast regulator where certain newspaper groups have significant television interests. On 19 July 2011, my office received a letter from OFCOM seeking information from the Motorman files that might be relevant to their work. The information was provided on 22 August 2011.

The contents of this statement are true to the best of my knowledge and belief

Signed:

Dated:

20/1/12