

NI Group Limited  
P. Sarma  
Second Statement  
"PS2" – "PS6"  
29 November 2011

IN THE MATTER OF THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND  
ETHICS OF THE PRESS

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SECOND WITNESS STATEMENT  
OF  
PIA SARMA

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- 1 I am the Editorial Legal Director of Times Newspapers Limited ("TNL"), the publishers of The Times and The Sunday Times. For the purposes of this statement I also address the position of The Sun and The News of the World. I have already made one witness statement to the Leveson Inquiry, dated 14 October 2011 (my "First Statement").
- 2 The purpose of this witness statement is primarily to address issues concerning The Times, The Sunday Times, The Sun and The News of the World (together "the NI titles"), raised by the evidence of the previous Information Commissioner, Richard Thomas CBE. At the end of this statement I also note a small point of correction relating to my First Statement.
- 3 NI supports the valuable role which the Information Commissioner's Office ("ICO") plays in protecting the personal data of individuals and in securing rights of access to information. NI does not condone the commission of criminal offences. Nonetheless, there are certain points in the evidence of Mr Thomas which I must, on behalf of TNL and NI, address.
- 4 Save where otherwise specified, the facts and matters to which I refer in this witness statement are based upon information recently received from the ICO and upon analysis of that information carried out by employees of NI and TNL, and members of NI's Leveson inquiry legal team, with whom I have spoken.
- 5 Linklaters were provided with the recent material from the ICO on a confidential basis. Unless and until the Leveson Inquiry orders the production of such material, it remains confidential to the ICO and NI, and nothing in this statement is intended to affect that position.

**The issues**

6 In his first witness statement dated 6 September 2011, Mr Thomas refers at paragraph 13 to "Operation Motorman" in which the ICO obtained evidence under a search warrant executed in March 2003 and which led to the prosecution of certain private investigators, including Steve Whittamore. At paragraph 16, Mr Thomas' quote from the ICO's first report "What price privacy?" includes the following words: "The evidence obtained as part of Operation Motorman included records of information supplied to 305 named journalists working for a range of newspapers." At paragraph 30, Mr Thomas refers to a table on page 9 of the ICO's second report "What price privacy now?" which he says "set out the titles of each publication featured in the material seized under search warrant and the numbers of transactions and journalists identified."

7 The report itself (a copy of which is at Exhibit RJT 2) explained, on page 8, that the ICO had decided that it was in the public interest to disclose more information about the "305 journalists [who] had been identified during Operation Motorman as customers driving the illegal trade in confidential personal information". Such disclosure was provided in the form of the table on page 9 which, said the report, "shows the publications identified from documentation seized during the Operation Motorman investigation [a reference to column 1], how many transactions each publication was positively identified as being involved in [column 2] and how many of their journalists (or clients acting on their behalf) were using these services [column 3]".

8 The table set out on page 9 of the report when it was originally published on 13 December 2006 (the "Original Table", a copy of which page is at Exhibit PS2) contained the following information:

Publication	Number of transactions positively identified	Number of journalists/ clients using services
The News of the World	182	19
The Sunday Times	52	7
The Sun	24	4

9 The Times did not appear in this table at all. The report acknowledged that "some of these cases may have raised public interest or similar issues" but noted that no such defences had been raised by those interviewed and prosecuted in Operation Motorman.

10 This table and the accompanying explanation gave the impression that:

- (a) Each of the transactions was for the provision of illegal services;
- (b) The numbers were accurate and founded on reliable data;
- (c) It was unlikely that any public interest defence could be raised in any of the cases;

- (d) There were no other defences which might be available to the journalists.

**Amendment to the Original Table**

11 At paragraph 22 of his first witness statement, Mr Thomas refers to the 'What Price Privacy Now?' report and says "No serious attempts were made by anyone – including press organisations – to dispute the thrust of our findings." The NI titles were given no opportunity to comment in advance of the publication of either report. However, immediately after its publication, The Sunday Times did raise a number of issues on the Original Table contained in 'What Price Privacy Now?'.

12 By a letter dated 14 December 2006 (a copy of which is at Exhibit RJT 27), Richard Caseby, then Managing Editor of The Sunday Times objected to the allegations made in the table in "What Price Privacy Now?", pointing out the ICO's failure to identify (even privately to The Sunday Times itself) the names of the journalists involved, when the transactions took place, in what circumstances and what information was allegedly obtained. Mr Caseby's letter stated:

*"I do not know, because you have not provided the information necessary to allow The Sunday Times to defend itself, in what circumstances the seven alleged journalists entered into the 52 alleged transactions, when the transactions took place (presumably over four years ago), which present or former Sunday Times' journalists were involved, or what was obtained. I do not know whether the Section 55(2) defences applied, or for that matter (given the modest number of offences apparently prosecuted) whether any of the original obtaining of this information by Mr Whittamore and others involved any criminal offence."*

13 By a letter dated 2 February 2007 in reply (a copy of which is at Exhibit RJT 29), Mr Thomas refused to provide any underlying detail or justification for the figures, but did admit that Mr Caseby's objection had prompted the ICO to check the figures, as a result of which it was discovered that the figures for The Sunday Times were incorrect – instead of 52 transactions involving 7 journalists, there were only four transactions involving one journalist. After providing the new set of figures, Mr Thomas claimed "We have carefully checked all the figures for all the other publications identified in the table and no further error has come to light." His explanation for the error was that it was an "inexplicable" input error made by a contractor.

14 The amended table which was subsequently published contained the following information (the "Amended Table"):

Publication	Number of transactions positively identified	Number of journalists/clients using services
The News of the World	228	23
The Sun	24	4

Publication	Number of transactions positively identified	Number of journalists/ clients using services
The Sunday Times	4	1
The Times	2	1

- 15 These revised figures suggest that of the 48 transactions no longer attributed to The Sunday Times, 46 were attributed to the News of the World, and two to The Times. Of the six journalists no longer attributed to The Sunday Times, it appears that four were attributed to the News of the World, one to The Times, and one simply disappeared.
- 16 In his fifth witness statement, Mr Thomas says at paragraph 16 that "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." The allegations made in the Original and Amended Tables were completely unparticularised and related to a period approximately 4-7 years prior to publication of the ICO's reports. It would have been difficult without more information (which Mr Thomas refused to provide) for the NI titles to conduct an investigation into the allegations.

#### The ICO Spreadsheet

- 17 On 28 October 2011, Linklaters wrote to the ICO on behalf of the NI titles. On 9 November 2011, Simon Ebbitt, Internal Compliance Manager at the ICO sent to Linklaters a CD Rom containing "a copy of records relating to News Group Newspapers Limited and Times Newspapers Limited". On 21 November 2011, Mr Ebbitt sent to Linklaters a further CD Rom containing a revised version of the spreadsheet (as further described below) contained on the first CD Rom and copies of certain of the documents containing the information which is reflected electronically in the spreadsheet. Copies of this exchange of correspondence are at Exhibit PS3.
- 18 We have analysed the version of the spreadsheet contained on the second CD Rom disclosed by the ICO (the "ICO Spreadsheet"), which we understand to be a sub-set (containing only information relevant to the NI titles) of a larger spreadsheet prepared by the ICO. We have done so with the benefit of some explanation as to its contents by Mr Ebbitt (given orally by telephone to Karen Zieger of Linklaters on 11 and 22 November 2011, and in email exchanges with Ms Zieger copies of which are at Exhibit PS4). The ICO Spreadsheet consists of data seized by the ICO at the premises of JJ Services Limited (Steve Whittamore's company) in March 2003, and of ICO comments on that data. It contains six tabs, the most important of which are:
- (a) Tab 2: "Yellow Book". Data extracted from a yellow A4 notebook used as a ledger by Mr Whittamore, each page of which contained (i) the name of the journalist making the request on the left; (ii) details of the search requested in the middle; (iii)

the name of the target and/or information constituting the result of the search on the right. This tab includes that data, plus two columns added by the ICO showing "Newspaper group" and "Newspaper".

- (b) Tab 3: "Blue Book". Data extracted from a blue A4 notebook used as a ledger by Mr Whittamore, each page of which was set out in the same way as the Yellow Book and which has been supplemented by the ICO in the same way.
- 19 It appears that the Amended Table (so far as it relates to the NI titles) is based upon tabs 2 and 3 of the ICO Spreadsheet. The other tabs contain a list of journalists' telephone numbers (Tab 1), and data drawn from invoices (Tabs 4, 5 and 6).
- 20 The majority of the transactions referred to in the ICO Spreadsheet are identified by a series of codes which were used by Mr Whittamore in the underlying Yellow and Blue Books. By an email sent on 21 November at 08.42 Ms Zieger of Linklaters asked Mr Ebbitt to identify the codes for the types of transactions which the ICO would have regarded as illicit. Mr Ebbitt's response by email the same day at 09.11 identified "CRO" (Criminal Records Office), "F&F" (Friends and Family), "Veh Reg" (Vehicle Registration checks) and "XD" (Ex Directory) as "the probable ones", and explained that "other types of transaction such as CCJ, Conv and Mobile Conv could have been obtained with or without an offence under DPA being committed".
- 21 An analysis of the ICO Spreadsheet and the explanations we have been given for its contents, as I explain below, shows that:
- (a) The allegation that all of the transactions with which the journalists were involved were illegal is not justified;
- (b) It is not clear on what basis the numbers of journalists and transactions attributed to the NI titles in the Amended Table were derived from the ICO Spreadsheet, and the ICO has been unable to provide any audit trail showing how it reached the conclusions in the Amended Table;
- (c) The ICO underestimated the possibility that the journalist requesting services might have a public interest defence;
- (d) The ICO appears to have given no consideration to other possible defences, including whether the journalist necessarily realised that illegal methods would be used to procure the information sought (if that occurred).

#### Were the transactions illegal?

- 22 In his second witness statement dated 16 October 2011, Mr Thomas sought to explain how the ICO had selected the journalists and transactions identified in the Amended Table. Referring, at paragraph 6, to a draft of a disclosure letter sent to Lord Ashcroft in response

to a Freedom of Information request (a copy of which is at Exhibit RJT 47), Mr Thomas drew a distinction between two categories of transaction :

- (a) "Certainly illicit": 5,025 Transactions of a type actively investigated in the Motorman enquiry and positively known to constitute a breach of the Data Protection Act 1998 (the "DPA 1998");
- (b) "Probably illicit": 6,330 Transactions that were thought to have involved information obtained from telephone service providers and were likely breaches of the DPA 1998. However the nature of these was not fully understood and they were considered to be "probable illicit transactions".

23 However, it is entirely unclear how these two categories are actually reflected in the transactions selected for inclusion in the Amended Table. There are 3,757 transactions listed in the Amended Table (the total of the transactions recorded in the "Number of transactions positively identified" column). This does not match the number of "certainly illicit" transactions referred to in Exhibit RJT47. In addition, as I will explain below, in the case of two of the NI titles which feature in the Amended Table (The Sun and The Sunday Times), the ICO Spreadsheet does not contain any transactions relating to journalists employed by those titles which would fall within the category of "certainly illicit" transactions referred to in Exhibit RJT47. Therefore the assertions in Mr Thomas' fifth witness statement at paragraph 9 that "only transactions in the first category were used for inclusion in both reports" and at paragraph 13 that transactions in the second category "were not included in either of the ICO reports which only referred to the more certain transactions" are not understood. If this were correct, then neither The Sun nor The Sunday Times should have featured in the Amended Table.

24 Mr Thomas' first category of transaction referred to in Exhibit RJT47 as "certainly illicit" is understood to relate to those information requests which led to the prosecution of Mr Whittamore. Mr Whittamore and others were prosecuted for (i) offences relating to searches of criminal records and (ii) offences in relation to vehicle checks (as reflected in the notes of the sentencing hearing at Blackfriars Crown Court on 15 April 2005 (Exhibit RJT 49)). In all these cases, the information was derived from a corrupt source with access to the Police National Computer, namely a Mr Marshall.

25 The ICO Spreadsheet does include a relatively small number of transactions (less than 50) relating to items of information sought by journalists attributed to the News of The World which potentially fall within this category, in particular (i) searches to identify name or address from car number plate (for which Mr Whittamore's code was "Veh Reg"); (ii) criminal records checks (code "CRO"). There is also one "Veh Reg" search attributed to a journalist wrongly attributed to The Sunday Times (who was in fact employed by The Times). In fact, transactions described as "Veh Reg" account for 4% of all transactions recorded in the ICO Spreadsheet and those described as "CRO" account for 0.4%.

- 26 The scope of Mr Thomas' second category of transaction referred to at Exhibit RJT47 as "probably illicit transactions" is unclear and problematic for at least two reasons.
- 27 First, the draft letter to Lord Ashcroft at Exhibit RJT47 upon which Mr Thomas relies describes this category of transaction as "occupant searches". This is curious because occupant searches are generally carried out by reference to the electoral roll (an entirely legitimate source), and not by reference to information obtained from telephone service providers. It is noteworthy that "Occ" (Occupancy) was not identified by Mr Ebbitt as a category of probably illicit transaction in his email to Ms Zieger of Linklaters dated 21 November 2011 referred to in paragraph 20 above. Occupancy searches account for 52% of the transactions attributed to NI titles in the ICO Spreadsheet.
- 28 Secondly, the words "information obtained from telephone service providers" (used by the draft letter and by Mr Thomas) could potentially include the following categories which appear in the ICO Spreadsheet (i) finding out an ex-directory telephone number (code "XD"); (ii) a search to identify recent call history (code "T/p Billing enquiries"); (iii) a request for information on a person's 'Friends and Family numbers' (code "F&F"), all of which were identified by Mr Ebbitt as probable categories of illicit transaction. XD searches account for 15% of the total transactions; T/p Billing enquiries account for 1.7%; and F&F account for 0.6%. There are significant numbers of XD transactions attributed to The News of the World, The Sun, The Times and The Sunday Times in the ICO Spreadsheet. However, although a small number of T/p Billing enquiries and F&F transactions (less than 25) are attributed to The News of the World, there are none attributed to The Sun, The Times or The Sunday Times.
- 29 The overall position is that the vast majority of the 'probably illicit' transactions attributed to the NI titles are XD transactions. But, it is not appropriate to assume that XD transactions involving requests for ex-Directory telephone numbers are illicit. As I explain below, an ex-directory telephone number is not personal data of a type which could not have been obtained legitimately.
- 30 I understand the term "ex-directory number" to mean a landline telephone number of a person who has requested that such number not be listed in the telephone directory (or, now, in the online equivalent). What Mr Whittamore meant when he categorised a request as "XD" is unknown. I assume, although this may not be the case, that the term does not include as ex-directory numbers those which are available from directory enquiries but which are not in the telephone book. The fact that a number is ex-directory in both senses does not mean that it can only be obtained illegally.
- 31 When considering this point it is important to bear in mind that the vast majority of people who have ex-directory numbers have them in order to avoid cold calling and not in order to stop people who genuinely wish to contact them as individuals (rather than as sales

targets) from doing so. Such people (and their families) frequently give their ex-directory phone numbers to a wide range of businesses and other organisations.

32 With that in mind, in the years prior to March 2003, I understand from information provided to me by Richard Caseby (who is now Managing Editor of The Sun) that there were several methods for legitimately obtaining an ex-directory telephone number:

- (a) Using the services of a company which had legally compiled a database containing details including ex-directory telephone numbers. The database would be compiled from sources including customer databases in respect of which the customers had given their consent to their details being passed on. One such company is GB Group which in May 2002 had a database of 48 million individuals' addresses and telephone numbers (according to a GB Group press release dated 13 May 2002). GB Group's database now contains 50.9 million telephone numbers, and the company advertises the "GB Accelerator e-Trace V4" product which (according to a press release dated February 2011) "delves into the largest pool of landline and mobile telephone numbers available, sourced from a range of previously unavailable datasources and following close consultation with the Information Commissioner's office". Another company, called Tracing People UK currently advertises that it has a database containing over 13.3 million currently listed UK ex directory numbers. Tracing People UK says on its website that "The ex directory numbers and unlisted numbers are sourced perfectly legally" and that "The trace will be completed in total accordance with UK Law". I exhibit material from GB Group and Tracing People UK at Exhibit PS5. Another useful and legal source at the time was the storing of numbers from old telephone directories, which might well remain valid after a subscriber had decided to become ex-directory.
- (b) Using the services of an enquiry agent who had kept old hard copy telephone directories which could be used as above;
- (c) Using the electoral roll and the telephone directory to identify the name and telephone number of a neighbour, and asking them for the telephone number of the person in question.

33 The reason a journalist is likely to want a landline telephone number of a person is to call them. Telephoning people to talk to them about stories is a core part of a journalist's job. Many of the people journalists want to speak to are ex-directory and the journalist may not know their address either. In consequence the journalist may have a perfectly legitimate reason for using the services of an enquiry agent to get hold of addresses and numbers.

34 So far as I am aware, it is not possible to "hack" into a landline telephone in the same way that a voicemail box for a mobile phone may be hacked. The suggestion by Mr Alexander Owens, a former ICO investigator, in paragraph 5.3 of his witness statement to the

Leveson Inquiry, that journalists were seeking ex-directory numbers in order to engage in phone hacking is quite unjustified. Mr Owens' suggestion in paragraph 5.5 that the subjects of ex-directory search requests were victims of phone hacking is likewise unfounded.

- 35 In his fifth witness statement at paragraph 13, Mr Thomas responds to a suggestion that transactions (attributed to journalists from one of the Associated Newspapers Limited titles) were likely to reflect inquiries that did not involve illegal activity because they were requests for addresses and telephone numbers. With respect, Mr Thomas' response does not address the point. His first and third bullet points contain an inherent assumption that the actual source of the data was an illegal one, without any justification for such assumption. His second bullet point merely asserts the "confidentiality" of most phone numbers, without addressing the question of whether such a number can nevertheless be obtained lawfully. His fourth bullet point asserts that the Amended Table was not based upon any "probably illicit" requests for telephone numbers; as stated above, if that were so, The Sun and The Sunday Times should not have appeared in the Amended Table at all.
- 36 In conclusion, the impression given by the Amended Table that all transactions recorded in it were illegal is wholly misleading. As to the first category referred to in Exhibit RJT47 as certainly illicit transactions, relatively few of the transactions attributed to NI titles (and none attributed to The Sun or The Sunday Times) bear the codes Veh Reg or CRO. As to the second category referred to in Exhibit RJT47 as probably illicit transactions, most of the transactions attributed to NI titles bear the code XD, but there are no proper grounds for concluding that such transactions were "probably illicit".

#### **No audit trail**

- 37 I will next address the impression given by the 'What price privacy now?' report that the numbers were accurate and founded on reliable data.
- 38 To start with, the accuracy and reliability of the data was seriously undermined by Mr Thomas' own admission of errors in early 2007, for which he was unable to provide any explanation.
- 39 The ICO Spreadsheet includes more journalists and many more transactions than are attributed to the NI titles in the Amended Table. The ICO has been unable to explain how it derived the figures in the Amended Table from the ICO Spreadsheet. There no longer exists (if there ever did) an audit trail showing the connection between the two documents. There are a number of problems.
- 40 First, it is not clear from the ICO Spreadsheet which journalists are those against whom allegations are made in the Amended Table. For example:
- (a) In the Amended Table, it is alleged that one Sunday Times journalist entered into allegedly illegal transactions with Mr Whittamore. However tab 3 of the

spreadsheet (in a column added by the ICO) attributes seven journalists to The Sunday Times; although in fact only one of those individuals actually worked for The Sunday Times.

- (b) In the Amended Table, it is alleged that one Times journalist entered into allegedly illegal transactions with Mr Whittamore. The spreadsheet only attributes one journalist to The Times (in a column recording comments made by Whittamore); but that journalist was the individual who actually worked for The Sunday Times. The spreadsheet does contain the name of one journalist who worked for The Times; but he is one of those wrongly attributed to The Sunday Times.
- (c) In the Amended Table, it is alleged that four Sun journalists entered into allegedly illegal transactions with Mr Whittamore. The spreadsheet includes the names of six journalists who actually worked for The Sun. We cannot be certain which of the six Sun journalists are those against whom allegations are made by the ICO.

41 Secondly, it is not clear from the ICO Spreadsheet which transactions are the subject of criticism by the ICO and are recorded in the Amended Table. That is partly because the ICO Spreadsheet records individual pieces of information sought, rather than individual transactions (which may have involved more than one request for information). The ICO has drawn on the ICO Spreadsheet to reach conclusions about the number of transactions in which each NI title was engaged, but without recording (or keeping records of) how it reached such conclusions. The explanation offered by Mr Thomas in his second witness statement does not really assist NI in trying to reconstruct the ICO's path of reasoning.

42 For example, in the Amended Table, it is alleged that one Sunday Times journalist entered into four allegedly illegal transactions. The only journalist whose name appears and who was actually employed by The Sunday Times made more than four individual requests for information. Likewise, in the Amended Table, it is alleged that one Times journalist entered into two allegedly illegal transactions. The only journalist whose name appears and who was actually employed by The Times made more than two individual requests for information. Insofar as the ICO Spreadsheet contains specific references to The Times these relate to transactions (described as Occ and CCJ) which Mr Ebbitt has not identified as probable categories of illicit transaction.

### Public interest defence

43 I will now address the misleading impression given by the 'What price privacy now?' report that it was unlikely that any public defence could be raised in any of the cases.

44 The report expressly raised the possibility that "some of these cases may have raised public interest or similar issues". But it implicitly rejected that possibility by noting that no such defences had been raised by those interviewed and prosecuted in Operation Motorman.

- 45 Those prosecuted in Operation Motorman were private investigators and sources who had sought and provided information on a corrupt basis. It does not follow at all that journalists might not be entitled to a public interest defence. Moreover, none of the counts charged concerned ex-directory numbers, although they make up the vast majority of the instances in which allegations are made against NI journalists.
- 46 Mr Thomas states in his third and fourth witness statements that no journalist was even investigated by the ICO or CPS in this connection, and none were prosecuted.
- 47 However, it appears that those interviewed in Operation Motorman with a view to possible prosecution did include journalists. Counsel for the Crown told HHJ Samuels QC at Blackfriars Crown Court on 15 April 2005 during Mr Whittamore's sentencing hearing that "a number of journalists were interviewed" and that "A decision was taken that there was insufficient evidence to base charges against those individuals" (see the notes of the hearing at Exhibit RJT 49, page 6). The Judge observed "If the Crown investigated the journalist seeking the information and felt that the criminal proceedings were inappropriate then a presumption of innocence applies and their names should be protected". We do not know which journalists from which newspapers were interviewed or whether due to the nature of the story they were pursuing there might have been any grounds available to them, if ultimately charged, to raise a public interest defence.
- 48 Since many of the NI journalists identified by the ICO no longer work for the relevant titles and the ICO Spreadsheet does not specify the dates on which information was requested, it is difficult after 8 or more years to identify the reasons. However, with assistance from others at NI and TNL, I have identified some examples of articles which illustrate the type of journalism to which the requests may have contributed. In order to maintain confidentiality in the names of the people subject of the articles and in the names of the journalists involved, these examples are contained in a confidential exhibit, Exhibit PS6.
- 49 It must be noted that in relation to information such as names and addresses the privacy interest of most individuals is not all that strong (I exclude the exceptional cases of persons in witness protection programmes and the like). For most people, even if they are ex-directory, many hundreds if not thousands of people know where they live and what their telephone number is. Consequently, it does not require a very strong public interest to justify a journalist obtaining their address and telephone number in order to contact them.

#### Other defences

- 50 The ICO has produced no evidence to suggest that any of the journalists attributed to NI knew that the services they were procuring involved illegal conduct on the part of Mr Whittamore. The explanation given above in relation to legal sources of ex-directory telephone numbers is in point here. It is possible that the journalist may not have had either the address or telephone number of the person they wished to speak to. In those

circumstances, the journalist would not have known whether the person's telephone number was ex-directory or not. The request may well have been: can you get me an address and telephone number for X? An address can be obtained quite legally from the electoral roll, but without an address it is difficult to find even an 'in directory' phone number. Moreover, the code "XD" was that used by Mr Whittamore. It is not known whether Mr Whittamore may have used that code as a shorthand only for actual ex-directory enquiries or, more generally and irrespective of the means employed (and perhaps even if a number was contained in the telephone directory), any time a journalist asked him to obtain a name and telephone number for an individual.

- 51 If any journalists had been prosecuted as part of Operation Motorman (in relation to "certainly illicit" transactions), it is quite possible that they would have raised the defence that they did not know the information was to be obtained illegally. Presumably those journalists who were interviewed were interviewed in relation to the strongest cases available, but they were not prosecuted. If that was the case in relation to 'certainly illicit' transactions, it is even more likely that, if a journalist were prosecuted in relation to any of Mr Thomas' "probably illicit" transactions (including XD transactions), he or she would successfully raise the defence that he had no reason to know that Mr Whittamore would procure the information by illegal means.

### Conclusion

- 52 For the reasons I have explained, the Amended Table and the accompanying explanations provided by the ICO do not provide a sound basis for the conclusion that NI journalists (and particularly not those on The Times, The Sunday Times and The Sun) were knowingly engaged in commissioning illegal services. The grounds on which Mr Owen suggests, at paragraph 5.10 of his witness statement, that the Amended Table "grossly understates" the position are not understood.
- 53 Finally, the table of maximum and minimum sums of money allegedly paid by each newspaper for illegal services found in Exhibit RJT 48 (an internal ICO document prepared in response to the Freedom of Information request), is based upon the Amended Table and is therefore similarly unjustified.

**Correction to my First Statement**

54 At paragraph 28 of my First Statement, I noted that neither The Times nor The Sunday Times had had a privacy action issued against them since 2007. In fact the position is that The Sunday Times has not had a privacy action issued against it since 2007, and The Times not since 2009.

I believe that the facts stated in this witness statement are true.

Signed

Dated *29.11.11*.....