



Office of the Solicitor
General
11th Floor, 100 Broad Street
Bristol, BS1 2EX

Royal Courts of Justice
Strand, London
WC2A 2LL

Solicitor to the Inquiry
Tel: 020 7947 7361

Solicitors.team@levesoninquiry.gsi.gov.uk

www.levesoninquiry.org.uk

Mr T Crone
By e-mail only

25 November 2011

Dear Mr Crone,

Leveson Inquiry into the culture, practices and ethics of the press

Further Notice under section 21(2) of the Inquiries Act 2005

Under section 21(2) of the Inquiries Act 2005¹, read in conjunction with the Inquiry Rules 2006 (S.I. 2006 No 1838)², Lord Justice Leveson, as Chairman of the Inquiry, has power to require a person, within such period as appears to him to be reasonable, to provide evidence to the Inquiry panel in the form of a written statement, and/or to provide any documents in his custody or under his control that relate to a matter in question at the Inquiry.

You have responded to the Inquiry's first s.21 notice addressed to you. Lord Justice Leveson has now determined that it is appropriate, in view of his Terms of Reference and his investigatory obligations, that you should at this stage be required to provide a further witness statement and further documents in your custody or under your control as more specified below.

The further witness statement you should provide to the Inquiry Panel should cover the following areas:

- (a) Please set out your response to what is written about you commencing at each of the following places in Peter Burden's book *Fake Sheikhs & Royal Trappings*. The Inquiry wishes to know the extent to which you accept the factual assertions and if not why not; whether you accept the opinions therein expressed about you and, if not, why not; and your views on the practical and ethical issues which are raised in these passages.

¹ <http://www.legislation.gov.uk/ukpga/2005/12/contents>

² <http://www.legislation.gov.uk/ukSI/2006/1838/contents/made>

In relation to this and all other questions I should point out that the answers I give are based purely on my recollection of the relevant events – all of which took place several years ago. I have had no access to files or contemporaneous records of any kind relating to the issues raised by you since early July and even before July may not have looked at the relevant records for months or even years. Where I can give answers below, they are my best recollection which, judging by recent experience, may be fallible.

a. Page 69

I have never had a “power of veto over what goes in the Murdoch tabloids”. Like every other newspaper lawyer my pre-publication role was to advise editors and their staff of legal risk arising from what they were considering for publication. Often such risks could be avoided by removing one element of a story or by expressing things in a different way. Sometimes the entirety of a story presented legal danger. Most editors, in my experience, follow legal advice most of the time but ultimately the editor is the only person with a power of veto.

Mr Burden’s reference to assessing “the risk/reward in running a calumnious celebrity story” seems to be a favourite theme of his. He repeats it in the last sentence on page 69 and elsewhere in his book. Assuming that by “calumnious” he means false and defamatory, it is my experience that publication of such stories are all risk and no reward. Especially under the widely-used “no win, no fee” free legal representation arrangements, it is remarkably easy to sue newspapers for libel (or privacy). Newspapers expect to get sued if they publish damaging stories which are incorrect and litigation, especially “no win, no fee” litigation, is horrendously expensive. As for “reward”, only a front page story could possibly increase circulation and my experience is that what seems to the newspaperman to be a great “splash” story rarely translates into more sales. Promotions, e.g. giveaways, frequently have this effect but stories don’t. I have never assessed the “risk/reward” of publishing a story which was known to be false and defamatory and I very much doubt if any editor has either. In fact, I cannot remember a single instance of a decision being made to publish a story known to be false and defamatory. Apart from the probability of incurring

huge legal bills what editor (or lawyer) chooses to pursue a course which is highly likely to lead to the publication of a humiliating correction and apology?

b. Page 81

I can remember Piers Morgan once calling across the news room asking about likely copyright damages if he "lifted" large amounts of an exclusive interview from the first edition of the Mail on Sunday (I can't remember which interview it was). Since I don't like shouting across various people working at their desks I held up five fingers to indicate that damages might be as high as £50,000. There isn't a national newspaper in Britain that hasn't gone too far in lifting exclusive properties from other publications. Mostly the subject matter is an interview given by a celebrity or other person who has been paid handsomely or extracts from an exclusive book buy-up. In fairness, I would not accept Mr Burden's characterisation of this as "destroying other people's lives".

c. Page 116-7

The reference to me on page 116 is accurate in that I did ring Mr and Mrs Firth and ask them whether they would agree to meet Mr Kuttner and Mr Bird in order to discuss their complaint and inaccurate in that I did not speak to them "arrogantly" or make any reference to the proposed visit by Mr Kuttner being unprecedented or, indeed, in any way unusual.

As for the "practical and ethical issues" surrounding this affair, I thought the original story was fairly tacky and did not merit publication. I don't have a detailed recollection of what was said by each side but do remember that Mr Thurlbeck stongly disputed the version of events put forward by Mr and Mrs Firth. They did not, so far as I can remember, pursue a legal claim and I was not therefore greatly involved but my impression was that neither side in the dispute came out of it with much credit.

d. Page 129

Mr Burden discusses the pros and cons of litigating over a "story based upon very flimsy premises" and the "blurring of fact and fiction". He doesn't say what sort of litigation he is talking about but

I presume it is either libel or privacy. In relation to the former, the facts of the story – that in the previous weeks the Duke had paid at least 4 prostitutes, a Lithuanian, a Russian, a Brazilian and an Asian lady, to make professional visits to his house – were provably true. The story was not based upon flimsy premises and (apart apparently from the wrong picture of his country home) did not mix fact and fiction. If he means privacy litigation, then the justification for publishing the story was that at the time of publication the Duke was Assistant Chief of the Defence Staff with responsibility for Reserves and Cadets. His position on the senior “management board” of the armed services gave him close access to confidential national security matters and placed him as an obvious role model for UK’s large Cadet force.

Mr Burden’s point about the ordeal of seeking redress through the courts is, perhaps, not valid in this case because the Duke had foreknowledge that the story was to be published and chose not to seek an injunction – perhaps because of the public interest issues raised above.

e. Page 153-4

Mr Burden describes me as having been Mazher Mahmood’s “boss” which I never was. He also expresses surprise that I “chose to proceed” with the criminal prosecution which led to the Old Bailey trial whereas I had absolutely nothing to do with the decision to prosecute which was taken by the DPP or by senior CPS lawyers. Beyond that, I am not sure what I can say on the “practical and ethical issues”. The News of the World published the story, the police came to the newspaper and asked for the evidence and then they and the DPP or CPS decided to charge and prosecute. My experience is that Mr Mahmood has not concocted stories. His investigations have led to successful prosecutions against hundreds of criminals, most recently the three Pakistani cricketers and their agent for involvement in “spot-fixing” during last year’s Lords test match – a brilliant piece of investigative journalism.

f. Page 164

Mr Burden seems to be suggesting that I was responsible for systematically leaking the contents of the Countess of

Wessex/Mazher Mahmood transcript. That is no truth whatsoever in that. My recollection is that, on the day the News of the World published the interview with the Countess, the Mail on Sunday splashed with their version of what she had revealed during her conversations with Mr Mahmood. It seemed to be based upon a partly accurate but greatly exaggerated leaked version of the story. Over the next few days the dailies added more details – again, largely based upon exaggeration and speculation.

By the end of the week the Countess's lawyers agreed that the News of the World should publish the true account of what she had said in order to make it clear that her indiscretions were far less than were being suggested in the other newspapers.

g. Page 243

Mr Burden refers to me looking "very uncomfortable" in interviews subsequent to the Mosley judgment. He is welcome to his view, but I cannot recall feeling particularly uncomfortable. From memory, I argued that, as the elected President of the FIA, an organisation with over 100 million members (from all cultures and religions worldwide), he should conduct both his professional and private life in the manner of "a fit and proper person" and organising and paying prostitutes to join you in extreme sado-masochistic and bondage orgies approximately once a month for over 40 years fell far short of that standard. If those who run charities and pubs are required (by law) to conduct themselves as "fit and proper persons", then is that not the least one could expect of the elected global head of such a vast organisation?

I felt that these were reasonable public interest arguments for running the story even without the Nazi allegation. The judge found there to be no Nazi element to the activities shown on the Mosley video, but accepted that the newspaper's decision to take this line was not dishonest, i.e. it was not a calculated decision based upon a "risk/reward assessment", as Mr Burden likes to put it. Mr Mosley's case was the party's theme was simply German military. From memory, I don't think he was asked when the German military had last been known to practise torture, rape and violence on shackled prisoners as depicted on the party video.

h. Page 248

Neither of Mr Burden's two references to me on this page make any sense. Stuart Kuttner was not, and as Managing Editor could not, be the person "cracking the whip" in charge of the News of the World. There is a management hierarchy on newspapers with the Editor very firmly at the top and in charge. The Managing Editor has responsibility for budgetary and staff administration and answers to the editor.

I am not familiar with any "MO when it came to handling sting victims". If legal complaints came in about a story they would generally be handled by me. PCC complaints were dealt with by Mr Kuttner. Apart from that I do recognise Mr Burden's characterisation as being accurate.

i. Page 251

Mr Burden describes me as looking "twitchy" at one stage of the proceedings. I wouldn't be surprised if I was. The tension in court during this case was very high and I happened to be suffering from a bad cold and a bit of a temperature. On page 252 Mr Burden says "Tom Crone looked as if he'd swallowed a bad oyster" – probably a fair observation.

j. Page 299

I think I have dealt with this reference above in my comments on page 243.

(b) Please provide a fuller answer to question (3) of the first s.21 notice served on you by the Inquiry on the basis that the question relates to both civil and criminal law.

With respect, and accepting that the question relates both to civil and criminal law, there were very few such conversations but I cannot remember any of them which were not covered by legal professional privilege as explained in my answer when I last wrote to you.

(c) Please explain the basis for the settlement of Clive Goodman's employment tribunal proceedings following the termination of his employment at the News of the World. Inter alia, your explanation should address the allegation that Mr Goodman was paid hush money to prevent or deter him from speaking out about the extent of phone hacking and the number of persons involved (in whatever capacity) at the News of the World.

I played no part in Mr Goodman's employment claim. I know very little about employment law and my role at News Group and News international had nothing to do with this area. I believe the company's then corporate lawyer, John Chapman, had conduct of the matter.

- (d) Please explain the basis for the settlement of Glenn Mulcaire's employment tribunal proceedings following the termination of his employment at the News of the World. Inter alia, your explanation should address the allegation that Mr Goodman was paid hush money to prevent or deter him from speaking out about the extent of phone hacking and the number of persons involved (in whatever capacity) at the News of the World.

I played no part in Mr Mulcaire's employment claim. Please see my answer to (d) above.

- (e) Please set out your account in relation to the claim brought against your former employer by Gordon Taylor. Without prejudice to this request, you should cover:

[Redacted]

- a. The basis for denying the claim at the pre-action stage.

[Redacted]

- b. The basis for denying the claim when the Defence was filed.

- c. The course of negotiations paying particular regard to:
 - i. your instructions;

iv. Mr James Murdoch's evidence to the Commission about the settlement of the claim and, in particular, the meeting on 10 June 2008;

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- vi. The account given to the Inquiry by Mr Lewis on 23 November 2011 (which is available on the Inquiry's website);

- (f) Please state whether you agree with the account of the meeting which took place between you and Mr Mark Lewis after the settlement of Gordon Taylor's claim at El Vino's wine bar and then at a restaurant in Fetter Lane given in evidence to the Inquiry by Mr Lewis on 23 November 2011.

I don't have a particularly clear recollection of the lunch I had with Mr Lewis. It was after Gordon's Taylor's case settled and the invitation was mine and made through Julian Pike who still had contact with Mr Lewis over wrapping up the loose ends of the settlement. Mr Pike was also invited to and attended the lunch which was at a restaurant above a pub in Fetter Lane. As far as I was concerned the lunch was purely a social occasion with someone with whom we had done business. Mr Lewis's recollection in evidence that Mr Pike was not there is wrong -- he was. Mr Pike left at the end of the meal.

After I paid the bill, Mr Lewis and I went downstairs to the bar area. He told me there that we would be hearing from him with claims for Ms Armstrong and another person. We briefly discussed those matters and I left him there finishing the drink I had bought him. For the record, I had raised the probability of hearing from Ms Armstrong with Mr Pike a long time before the lunch. Mr Lewis's recollection of "watching me go pale" is mistaken.

- (g) When were you first aware that the "rogue reporter" explanation as to the extent of phone hacking at, or at the behest of staff at *The News of the World* might be erroneous?

Please see the answer to (h) below.

- (h) When were you first aware that the "rogue reporter" explanation as to the extent of phone hacking at, or at the behest of staff at *The News of the World* was erroneous? How did you become so aware?

I cannot remember when and by whom the "rogue reporter" explanation was first put out but I was of the view that it was erroneous from the outset. Having attended throughout the Goodman/Mulcaire sentencing hearing, I formed a strong impression that what was said about "others at News International" commissioning Mulcaire's accessing in relation to the non-royal victims was based upon more than circumstantial evidence. In addition to that, I had previously learned something during the course of giving legal advice which led me to believe that this explanation could not be right. The advice and circumstances surrounding the advice are matters of legal professional privilege.

- (i) To what extent were you involved (in any capacity including the provision of legal advice) in the surveillance of lawyers acting for litigants claiming damages from Newsgroup Newspapers Limited? Without prejudice to the generality of this request:
- a. Identify the lawyers concerned who were the subject of surveillance;
 - b. State your involvement;
 - c. State the motive for commissioning the surveillance;
 - d. State what limits or parameters, if any, were placed on the surveillance which was commissioned;
 - e. State what the outcome of the surveillance was;
 - f. State the reason why the surveillance was brought to an end in each case.

My involvement in relation to the matters raised above was limited to a short period in, I think, the first half of 2010. I did not "commission private investigators to carry out surveillance" as has been alleged by members of the Select Committee. As best I can remember them, the facts and background are as follows.

In civil litigation there are very strict rules of court and professional standards covering the permissible uses which can be made of documents or confidential information which come into the hands of litigants and their lawyers through the Disclosure process. This regime can become even tighter if confidentiality undertakings form part of the terms under which cases are settled. As I understand them, broadly the rules are that such documents and information cannot be publicised except through the proper course of the specific litigation in which they are disclosed and they cannot be deployed in other litigation except through a fresh Disclosure process in that case or with the authority of the owner of the

document/information or because they have legitimately entered the public domain.

In July 2009 the Gordon Taylor settlement was widely publicised as a direct result of confidential documents and information being improperly leaked to The Guardian. There were very few possible sources for this leak. Mr Pike and I eventually agreed the obvious source was Mark Lewis. There were a number of reasons for this. Access to the documents and information was almost non-existent at the News Group and disclosure was very damaging to the company. It was also entirely contrary to the interests of Mr Taylor himself – and we understood that he was furious over the leak. We learned that at around the time of the leak Mr Lewis had fallen out with his partners at George Davies and Co. We were also told that he seemed to have been experiencing problems in his domestic life. Because of the wide range of documents and information in The Guardian's hands it seemed to us that Mr Lewis was the only possible source.

Mr Pike and I discussed the possibility of making a complaint of professional misconduct against Mr Lewis but decided not to do so in the absence of direct admissible evidence.

In the following months various phone-hacking cases were brought against News Group. Mr Lewis acted for some of the litigants, Ms Charlotte Harris acted for others and a small group of other solicitors' firms were also involved. Without reference to the paperwork I cannot remember the specific details, but Mr Pike referred me to various instances where it looked like information disclosed to Mr Lewis in one of his cases (including the Taylor case) was being deployed by Ms Harris in one of her cases and possibly vice versa. Mr Pike's view, which I shared, was that this information-sharing was occurring in breach of professional conduct rules and/or rules of court. Mr Lewis and Ms Harris had previously worked together at George Davies. We also were of the view that various leaks to the press of information passed by way of Disclosure or otherwise confidential to the cases had probably come from Mr Lewis and/or Ms Harris.

He said he could get Derek Webb to have a look at Mr Lewis and Ms Harris in this context and I agreed with that course. There was never any suggestion that Mr Webb might also look at the families of either person. My understanding was that Mr Webb had worked for the News of the World regularly as an accredited freelance journalist and not as a "private investigator".

To the best of my recollection I heard nothing back from the news desk executive for about three weeks and this was because Mr Webb had been busy for a while on other matters. He then produced a number of photographs which had apparently come back from Mr Webb. There were no pictures of either Mr Lewis or of Ms Harris. There were a number of pictures of a woman shopping at a garden centre. Since the woman was clearly not Ms Harris I pointed out to the news desk executive that there seemed to be have been a case of mistaken identity. Either then or very shortly afterwards, the executive asked if I thought he should send Mr Webb back for another try and I told him not to bother doing so.

Apart from the above I played no part in, nor was I aware of any surveillance of lawyers, Committee members, claimants or anyone else connected to the phone-hacking cases or inquiries.

In case it assists you in answering (i)a above the Inquiry draws your attention to the list of names recently published by Mr Michael Crick: <http://blogs.channel4.com/michael-crick-on-politics/news-of-the-worlds-alleged-surveillance-targets/346> arising from revelations about surveillance conducted by Mr Derek Webb for the News of the World. However, for the avoidance of doubt this list is not to be regarded as delineating the boundary of the Inquiry's interest if in fact other persons were also placed under surveillance by Mr Webb or other persons at the instruction of staff at the News of the World.

- (i) To what extent were you involved (in any capacity) in the decision to commission the surveillance of members of the parliamentary select committees investigating phone

hacking. Again the above link is drawn to your attention in case it assists you to answer this question. Why were members of the said parliamentary select committees placed under surveillance?

Not in any way whatsoever.

(k) To what extent were you involved (in any capacity) in the decision to commission the surveillance of those persons listed as has having been placed under surveillance at the website listed above insofar as they are not covered at paragraphs (i) and (j) above. Why were these people placed under surveillance?

Not in any way whatsoever

The further documents which you should disclose are any documents in your custody, possession or control relating to the above requests.

- The following link takes you to the documents disclosed by Julian Pike of Farrer & Co to the CMS Committee which are referred to in my answers above – particularly, my “briefing note” of May 24, 2008, and the Opinion from Michael Silverleaf QC of June 3, 2008. [Farrer & Co's reply - 31 October 2011 \(PDF 3.65 MB\)](#)

The terms of this formal notice should not necessarily delimit the evidence, including documentary evidence, which you provide to the Inquiry. It may well be that you can give important additional evidence beyond the four corners of the statutory requirements being imposed on you by this notice: if you can, you are encouraged to do so in line with the general invitation extended by Lord Justice Leveson during the course of his opening remarks on 28th July 2011.

Lord Justice Leveson is required under his Terms of Reference to complete his report on the matters or issues under Part 1 of the Inquiry within 12 months. With this in mind, and having regard also to the scale and scope of his foregoing requirements of you, and having regard to the fact the Inquiry intends to call you to give evidence in the week commencing 12 December 2011, he has determined for the purposes of section 21(2) of the Inquiries Act 2005 that you should comply with this notice by 4pm on Friday 2 December 2011.

Lord Justice Leveson is also directed by law to explain to you the consequences of failing to comply with this notice. He therefore draws to your attention the provisions of section 35(1) of the Inquiries Act 2005 which make it a criminal offence to fail without reasonable excuse to do anything which is required by a notice under section 21. He wishes to make it clear

that all recipients of section 21 notices are having their attention drawn to this provision, since it is a formal legal requirement.

He is also directed by law to indicate to you what you should do if you wish to make a claim under sub-section (4) of section 21, namely a claim that you are either unable to comply with this notice at all, or cannot reasonably comply with this notice within the period specified or otherwise. You are invited to consider the full text of section 21, including for these purposes sub-sections (3)-(5), if necessary with the benefit of legal advice. Lord Justice Leveson invites you to make any such claim in writing and as soon as possible, addressed to the Solicitor to the Leveson Inquiry into the Culture, Practices and Ethics of the Press, c/o Royal Courts of Justice, Strand, London, WC2A 2LL.

Furthermore, Lord Justice Leveson has power under section 19(2)(b) of the Act to impose restrictions in relation, amongst other things, to the disclosure or publication of any evidence of documents given, produced or provided to the Inquiry, including evidence produced under section 21. Lord Justice Leveson will be considering the exercise of his powers under section 19 in any event, but if you seek to invite him to exercise those powers in respect of your evidence, including documentary evidence, or any part of it, you should set out your position in writing as soon as possible.

Finally, Lord Justice Leveson draws to your attention the provisions of section 22 of the Act which state that you may not under section 21 be required to give, produce or provide any evidence or document if you could not be required to do so if the proceedings of the Inquiry were civil proceedings in a court in the relevant part of the United Kingdom, or the requirement would be incompatible with a Community obligation. No doubt you will take legal advice as to the effect of this provision, but, in the spirit of openness and with the wish to ensure that all possible aspects of his Terms of Reference are fully considered, he invites you nonetheless to waive privilege in relation to any such document or evidence. Please therefore state in your response to this notice whether you are prepared to do so.

For the avoidance of doubt, this notice only covers one aspect of the Terms of Reference and, as the Inquiry moves into other areas, it may well prove appropriate to serve further section 21 notices.

Yours sincerely

KIM BRUDENELL
Solicitor to the Inquiry