H J Whittow
5 July 2012
2nd
Exhibit: "HJW2"

IN THE MATTER OF THE LEVESON INQUIRY

SECOND WITNESS STATEMENT OF HUGH JOHN WHITTOW

I, **HUGH JOHN WHITTOW,** of Express Newspapers, The Northern & Shell Building, Number 10 Lower Thames Street, London, EC3R 6EN, **WILL SAY AS FOLLOWS:**

A. I am the editor of The Daily Express. I make this, my second statement, in response to a request of the Leveson Inquiry (the "Inquiry") pursuant to a letter dated 2 July 2012. A copy of this letter can be found at pages 1- 3 of Exhibit "HJW2".

B. I confirm that all matters in this statement are true and, unless I specify to the contrary, are based upon my own knowledge and a review of the relevant documents. Where matters are not within my own knowledge, I state the source and believe the same to be true.

C. There is now produced and shown to me a paginated bundle of documents marked as Exhibit "HJW2". References to documents in this witness statement are references to documents in that exhibit.

D. For convenience, I have reproduced as subheadings the questions asked of me in the 2 July letter.

Question 1: Who you are and your current job title;

1. I am the Editor of The Daily Express, a role I have held since February 2011.

Question 2: To what extent were you personally involved in drawing up this proposal for a new system of self-regulation based on contractual obligations, as now set out by Lord Black?

2. I attended a meeting at the offices of The Daily Telegraph on 15 December 2011 which was attended by Lords Black and Hunt and the editors of various other newspapers.

3. Lord Black's proposals ("the Proposals") were broadly discussed at that meeting and general concerns were raised by some attendees. I did not speak at the meeting.

4. I have not discussed this matter on a one to one basis with Lord Black but I have attended a number of internal meetings with Lord Hunt, Paul Ashford, Editorial Director at Northern & Shell ("the Company"), and the editors of the Company's other newspaper titles. I have also discussed the matter on several occasions with Mr Ashford.

5. I have had no further involvement in the drawing up of the Proposals.

Question 3: How far would you personally, in your capacity as editor, expect to be involved in the final decision as to whether your publication signed up to the contractual obligations envisaged by this system? Please explain in full how that decision would be taken.

6. As I have referred to above at paragraph 4, there have been several internal meetings about this matter at which the views and opinions of the editors of the Company's four newspaper titles were sought by Mr Ashford.

7. Any decision as to whether The Daily Express would sign up to the contractual obligations would be taken by the board of directors ("the Board") and not by me personally.

Question 4: In so far as you are able to do so, please indicate whether your publication is at present fully ready and committed to enter into these contractual obligations. If it is not at present fully ready and committed, please explain why, and detail any changes that would need to be made to the proposal, any further development to proposal required, or any preparatory steps that would need to be taken at your publication, in order to put it in the position of being fully ready and committed to enter into these obligations. If there are no circumstances in which it would be prepared to enter into obligations of this nature, please explain why not.

8. By letters dated 20 March 2012 and 18 May 2012 respectively, Martin Ellice, the Joint Managing Director of Northern & Shell made submissions to PressBof on the draft proposals as they then were. I attended a meeting at which the response was discussed and the draft agreed upon and I agree with their content. A copy of each of these submissions can be found at pages 4 – 9 of Exhibit "HJW2".

9. The letter dated 20 March 2012 in particular sets out some of the concerns which the Company has in respect of the Proposals, including those in relation to the duration of the proposed contract and that there are no specific rights which would allow the parties to terminate the contract.

10. The submission also raised significant concerns about the role it was envisaged would be played by PressBof. In my view PressBof is not an appropriate body to:

    10.1 Supervise and/or amend the regulations and the Editors' Code:

    10.2 Determine the amount and frequency of the fees paid by those who are party to the scheme;

    10.3 Determine and impose fines, penalties and/or sanctions.

11. Mr Ashford has been taking charge of the consultation process in respect of the Proposals and any decision taken to enter into a contract will be made by Mr Ashford and the other Directors.

Question 5: What specific differences would membership of a system of the kind set out by Lord Black, underpinned by contractual obligations, make to the culture, practices and ethics of your publication?

12. In my first witness statement, I explained the basis upon which The Daily Express operates. In light of those matters, I do not think that joining a system such as that described in the Proposals would make any significant difference to how The Daily Express is run.

Question 6: Is there any other comment you wish to make on the proposal put forward by Lord Black, or on the proposals put forward by others, that are now published on the inquiry website?

13. I can confirm that I do not have any comment to make on the Proposal further to those comments that I make above.

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true.

HUGH JOHN WHITTOW

Dated: 5 July 2012

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Exhibit: "HJW2"

IN THE MATTER OF THE LEVESON INQUIRY

SECOND WITNESS STATEMENT OF HUGH JOHN WHITTOW

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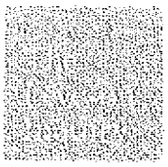
H J Whittow
5 July 2012
2nd
Exhibit "HJW2"

IN THE MATTER OF THE LEVESON INQUIRY

EXHIBIT "HJW2"

This is the exhibit marked "HJW2" referred to in the Second Witness Statement of
Hugh John Whittow
dated this 5 July 2012



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Mr Hugh Whittow
The Daily Express

By email only c/o: anthonyf@rosenblatt-law.co.uk

2 July 2012

Dear Mr Whittow

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

The Inquiry is grateful to you for the time and thought that you have already given to the Inquiry by providing evidence.

There are a number of further issues on which your assistance would be appreciated. Lord Justice Leveson's expectation is that witnesses will be willing to assist his Inquiry by providing both a statement and documents voluntarily and in the public interest. However, given the timescales within which the Inquiry is operating, and the desirability of ensuring, with very limited exceptions, consistency of approach to potential witnesses, Lord Justice Leveson has decided to proceed in a formal manner using the powers conferred upon him by statute in relation to these issues. No discourtesy is of course intended by this.

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

Under section 21(2) of the Inquiries Act 2005[1], 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.

Lord Justice Leveson has 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 evidence to the Inquiry Panel in the form of a witness statement as more specified below.

It is not the Inquiry's current expectation that you will be invited to amplify your response by giving oral evidence. It should be understood that your statement will enter the public domain

[1] http://www.legislation.gov.uk/ukpga/2005/12/contents
[2] http://www.legislation.gov.uk/uksi/2006/1838/contents/made

in the form in which you provide it to the Inquiry, subject to redaction of your personal details, and it should therefore be prepared with that in mind.

Please respond to this notice in writing by **4.30pm on 9th July 2012.**

Your witness statement should cover at least the following matters or issues:-

(1) Who you are and your current job title.

Proposal for Self Regulation

Lord Black has submitted to the Inquiry a proposal for "a New and Effective System of Self-Regulation"[3]. In his submission Lord Black states:

> *"Responses to the industry consultation from within an extremely diverse set of businesses have inevitably been varied. Parts of the industry – particularly the regional and periodical press – have been understandably anxious about such substantial change, especially when the current system works well for them (as the Inquiry has heard) and above all for their readers. They have rightly been worried about the potential increase in costs and bureaucracy of a new system. But at the other end of the spectrum, some national publishers have argued for even tougher controls. At the end of the day, therefore, this proposal seeks so far as is possible to balance these views. But there is no doubt to me that the vast majority of the industry sees them as credible, likely to prove effective and that they will take part. Northern and Shell has indicated that it is willing to participate, subject to detailed contract terms."*

(2) To what extent were you personally involved in drawing up this proposal for a new system of self-regulation based on contractual obligations, as now set out by Lord Black? ✓

(3) How far would you personally, in your capacity as editor, expect to be involved in the final decision as to whether your publication signed up to the contractual obligations envisaged by this system? Please explain in full how that decision would be taken. ✓

(4) In so far as you are able to do so, please indicate whether your publication is at present fully ready and committed to enter into these contractual obligations. If it is not at present fully ready and committed, please explain why, and detail any changes that would need to be made to the proposal, any further development to proposal required, or any preparatory steps that would need to be taken at your publication, in order to put it in the position of being fully ready and committed to enter into these obligations. If there are no circumstances in which it would be prepared to enter into obligations of this nature, please explain why not.

(5) What specific differences would membership of a system of the kind set out by Lord Black, underpinned by contractual obligations, make to the culture, practices and ethics of your publication?

(6) Is there any other comment you wish to make on the proposal put forward by Lord Black, or on the proposals put forward by others, that are now published on the Inquiry website at http://www.levesoninquiry.org.uk/about/module-4-submissions-on-the-future-regime-for-the-press/

[3] http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Submission-by-Lord-Black-of-Brentwood1.pdf

Lord Justice Leveson is 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 to 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.

Yours sincerely

Kim Brudenell

Kim Brudenell
Solicitor to the Inquiry

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Jim Raeburn, Esq,
Secretary and Treasurer,
Press Standards Board of Finance,
21 Lansdowne Crescent,
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EH12 5EH

20th March 2012

Dear Mr. Raeburn,

Thank you for your e-mail of 9 March inviting comments on the draft contractual framework for a new system of self-regulation to be established as a successor to the Press Complaints Commission.

Northern & Shell have a number of general preliminary points to make on the establishment of the proposed new regulatory body, before going on to consider the detailed Membership Contract Framework and proposed Regulations.

The first general point that we would like to make is that, in order to step away from the PCC as previously constituted and replace it with a new system of self-regulation held together by a contractual framework, we would not, at the moment, be prepared to sign up to such a contract if the new regulatory body is headed by the same entities as previously, which includes PressBof. It is our firm belief that to encourage the continued confidence of the media consumer, the whole system must be overhauled.

We are being asked to comment on the minutiae of the detail without first having agreed the make-up of the new regulator. It is crucially important that the new regulatory body is constituted and acceptable to all before we concentrate on the detail.

We accept that time is of the essence but we do not believe that we should rush into these proposals without full and proper consultation.

The second general point we would like to make is that the proposed Framework and Regulations do not offer the media consumer anything other

than the remedies they had under the PCC. If we are to change the system as previously constituted, it is not enough to step up the powers of the new regulator whilst not simultaneously offering something to complainants. We believe that the new regulator should have the power to deal with claims under a certain monetary limit and have the power to award limited compensation as an alternative to litigation.

The third general point is that, as currently drafted, the draconian powers of the new regulator seem to us to be statutory regulation in all but name, and unless the powers are softened somewhat and some form of accountability is drafted into the contract, we would consider that statutory regulation might be preferable.

We have rather a lot of specific comments to make about the Membership Contract Framework and the proposed Regulations. I will set them out as per the documents themselves and hope that you are able to follow my remarks.

MEMBERSHIP CONTRACT FRAMEWORK

2 Duration of the Contract

We are concerned that a period of at least five years from the date of inception of the new regulatory scheme has been inserted whilst there is no opportunity and no specific rights for a Regulated Entity to terminate its contract with the Regulator (Clause 10.1).

We consider that the period of at least five years is too long in such circumstances and there must be provision for a Regulated Entity to review its position.

3.1 Obligations of the Regulated Entity

3.1.1 Compliance with the Editor's Code: we do not believe that PressBoF is an appropriate body to supervise the operation of the Editor's Code. A new Code Committee within the Regulator should be appointed who will supervise any amendment and up-date with full consultation with Regulated Entities and other relevant industry bodies. (Clause 6.2)

3.1.2 Compliance with the Regulations: we do not believe that PressBof is an appropriate body to supervise or amend the Regulations. That task should be the responsibility of a newly constituted Board, independent of the Regulator and of PressBof. (Clause 5 of the Regulations)

3.1.3 Reporting: we do not believe that it should be the responsibility of the Regulated Entity to disclose matters relating to the Regulated Entity including, without limitation, notifying the regulator of any significant breaches of the Editor's Code, nor do we believe that the Regulator should reasonably expect notice of those matters. The contractual framework is

tautological in construction, requiring such notice which, if not given, would constitute a breach for which the Regulated Entity could be expelled. This negates the whole purpose of the contractual framework of a new Regulator.

3.1.4 Co-operation: we do not believe that a Regulated Entity should be required to provide access to premises, persons, records and information at the absolute discretion of the Regulator. These powers are draconian and go well beyond what is acceptable in any form of contractual endeavor. They are akin to the powers exercised by the Police, SFO, FSA and HMRC without any of the statutory backing and accountability or remedies in the event of a breach of any law by the Regulator.

5 **Contractual powers of the Regulator**

5.1.3 we do not believe that the Regulator should have the power to audit, monitor and investigate a Regulated Entities' compliance with the Editor's Code and the regulations together with a general right to audit the Regulated Entity's compliance with the terms of the contract in the manner envisaged by Clause 3.1.4.

5.1.4 we do not believe that PressBof is the appropriate body to determine and impose fines, penalties or sanctions (the difference is unclear in the drafting) or issue guidance in relation thereto.

6 **Variations to the Regulations and the Editor's Code**

6.1 see our response in relation to 3.1.1

6.2 see our response in relation to 3.1.2

9 **Membership fee and enforcement fund**

9.1 we do not believe that PressBof is the appropriate body with the discretion to determine the amount and frequency of the fee paid by each regulated Entity. We believe that the enforcement of the membership fee needs to be determined in greater detail, as does the consequence of non-payment.

10 **Termination**

10.1 see our response to 2

14 **Equitable remedy**

We do not believe that the phrase 'threatened breach' has any place here.

REGULATIONS

The Regulator's Functions

6

5. See our comments to 3.1.2

Standards and Compliance

B) Investigations

22. We believe that the Head of Standards and Compliance may seek assistance from third parties, such as lawyers and experts, but only where this is necessary and proportionate, such assistance being communicated to the Regulated Entity and the Regulated Entity being given the opportunity to make submissions as to any such assistance.

29. The Standards and Compliance Panel should invite representatives from the Regulated Entities which are the subject of the investigation to attend for part of its meeting unless there are compelling reasons why this would be inappropriate.

31.7 Such undertaking should not be inconsistent with the performance of the contract.

In conclusion, we would stress that these are our initial thoughts and are not conclusive comments on the Membership Contract Framework or proposed Regulations.

Yours sincerely,

Martin Ellice
Joint Group Managing Director

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Jim Raeburn Esq.
Secretary and Treasurer
Press Standards Board of Finance
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18 May 2012

Dear Mr Raeburn

Thank you for your e-mail of 4 May.

I write in response to your earlier e-mail of 26 April 2012 requesting comments on several documents following our initial consultation submissions on 20 March 2012.

I appreciate your desire to have a document to put to the Leveson Inquiry before 2 June but I am afraid that, in their current formats, we do not feel that the proposals reflect a workable structure with which to move forward. We do not disagree that a solution needs to be found but we do not think that this is the right way to reach such a solution. What should be a contractual negotiation has turned into a consultation process without any of the potential parties having seen or heard the views of the others.

Our short response to the second draft of documents is that the consultation process is being rushed forward too quickly and we do not believe that this is the best way to engage with the Leveson Inquiry or the current problems of press regulation. We would not want to be a part of a body too hastily conceived, given too wide a power and one that we feel is structurally unworkable.

We see that some of our views have been taken into account in the new draft documents but note that there is still some debate about the position of PressBoF. We made it quite clear in our letter of 20 March 2012 that we would not be prepared to sign a contract with a NewCo if PressBoF continued to be involved. We are of the view that the new body should be wholly independent of what has gone before and, as it is presently stated, the new body will not have the independence, or the accountability, with which we would be comfortable.

We do not feel that a Community Interest Company is the correct vehicle for NewCo, nor do we feel the Trust Board should be the Directors of a CIC.

The proposals give the new regulator powers well in excess of those it needs.

Again, we are being asked to comment on the minutiae of the detail of the contract between NewCo and ourselves, without having first agreed the make-up of the new body.

Despite our short comments on the draft proposals we are more than willing to engage in the process and we would like to find a workable solution to put forward. We will continue to be involved in all consultations and discussions hoping that a solution can be reached.

Yours sincerely

Martin Ellice
Group Joint Managing Director