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

THIRD WITNESS STATEMENT OF JAMES HARDING

I, James Harding c/o The Times, Times Newspapers Limited, of 3 Thomas More Square, London E98 1XY, will say as follows:

This is my response to the notice under Section 21 of the Inquiries Act, dated 29 June 2012.

Q1. Who are you and your current job title?

I am the Editor of The Times.

Q2. To what extent were you personally involved in drawing up the proposal for a "New and Effective System of Self-Regulation" submitted to the Inquiry by Lord Black?

I was not personally involved in drawing up the proposal. I attended a meeting on 15 December 2011 at the offices of The Telegraph with other national and regional paper Editors which was called by Lord Hunt. Lord Hunt set out a proposal to use contracts to bind members of a new press body and to review the way the press body worked, with the aim of being able to do so without the need for any statutory overlay. I then met him again with my Managing Editor and Pia Sarma, the Editorial Legal Director in January 2012. John Witherow also attended that meeting as did an editorial lawyer for The Sun. I met Lord Black with John Witherow and Pia Sarma, the TNL Editorial Legal Director in June of this year to discuss the proposals. Paul Chinnery, the NI General Counsel, joined by telephone.

Q3. 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.

I would expect to be fully involved in the final decision for The Times. I have discussed and will continue to discuss my views with John Witherow, the Editor of The Sunday Times. I have discussed and will continue to discuss these proposals with the directors of TNHL, the holding company for the publisher of The Times which includes the independent directors responsible for ensuring the editorial independence and integrity of The Times. I have discussed and will continue to discuss the decision with Tom Mockridge, CEO of News International, the parent company.

Q4. 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 proposals required, or any preparatory steps that would need to be taken at your publication.

I am in principle in favour of the proposal to bind participating members of a new press body by contracts.

The Times' approach to a new regulatory regime is, in short, this. First, newspapers need to treat people better. This means there needs to be meaningful reform of the PCC, so that it is replaced by an independent and muscular regulator that can provide people wronged by the press with effective

redress and investigate wrong-doing by newspapers. Second, the press should question politicians, not answer to them. A free press, able to challenge the power of the state, is an essential protection of individual liberty and a prerequisite of a free society. For these reasons, The Times remains opposed to the introduction of a Press Law, a Leveson Act or any statutory settlement that, in some form or other, gives Parliament oversight of the Press.

The regulator as envisaged by Lord Hunt and Lord Black will put an end to the widespread public perception that journalists, like MPs and bankers before them, have been marking their own homework. It will be independent. The appointment of the head of the regulator will require the approval of the independent and industry members of the appointment committee. The independent members, required as they are to represent the interests of the public, will ensure that the press cannot parachute someone in who will not stand up for the rights of people wronged by newspapers. The industry members acting in the interests of a free press will ensure that a pressure group pursuing an agenda cannot use the powers of the regulator to chill, rather than defend, free speech and investigative reporting.

The regulator will also have teeth. It will be able to fine newspapers when they refuse to comply. It will have the power to launch investigations into newspapers that are seen to be falling short of the standards expected of the industry or engaged in persistent wrongdoing. It will demand that newsrooms account for their newsgathering practices, calling on newspapers to answer to an annual assessment of their actions. It will be able to draw in digital newsrooms, including bloggers, web services and tablet/smartphone news providers.

To be clear, there is no perfect answer to the two questions that have dogged the Leveson Inquiry. First, how do we create a future-proof regulator that covers the press, both in print and online? Second, how do we compel all newspapers to sign up to the new regulatory regime while safeguarding freedom of expression? The system being developed by Lord Black and Lord Hunt does, though, address both of those questions and offers a workable answer. The regime gives the regulator new powers and, through the use of long-term commercial contracts, binds newspapers into the system. It has the capacity to sign up future digital newsrooms. It provides at least some incentives for news organisations seeking to command public confidence to sign up – and an effective mechanism to ensure that they stay on board.

I have, of course, followed closely the debates in the Leveson Inquiry about the idea of introducing a law that provides a statutory underpinning to the creation of an independent regulator. When I gave oral evidence before the Inquiry, Lord Justice Leveson was kind enough to air the idea of providing a guarantee of press freedom in the preamble to any such legislation, along the lines of the protection of the independence of the judiciary set out in the Constitutional Reform Act. This, understandably, appeals to some people as it inches towards something resembling the free speech protections provided by the First Amendment of the US Constitution. However, I am not convinced. Journalists, like everyone else, are subject to the law. We are also, rightly, required to work within laws that affect information gathering, defamation and libel. But the establishment of a new regulatory regime approved by Parliament should be resisted.

Let us assume that the Law is drafted in such a way that it recognises the new regulator, but does not compel newspapers to abide by the new regulator. In these circumstances, the law does not fix the so-called "Desmond problem" of non-participation. The Law is decorative. It answers the clamour that has been heard for strong action, but, rather than answering the problem presented by wrongdoing in newspapers, it creates a new problem. It undermines the fundamental principle of an independent

press in Britain. Parliament would be taking responsibility for the Fourth Estate. A Press Law, even very loosely drafted, provides Parliament with a mechanism to manage the future regulation of the press. Politicians and governments unhappy with their coverage will be able to amend – or threaten to amend – the Law to tighten controls on the press. This would have an impact on the behaviour of both politicians and reporters. Journalists should not curry favour from people in power, nor fear retribution. One of the purposes of the Inquiry has been to address the public concerns about an unhealthily close set of relationships between the press and politicians. A parliamentary solution to the problem of the press would only serve to make those relationships closer.

Now let us assume that the Law is not decorative, but effective – i.e. it establishes a new regulator and requires any newspaper or any journalist working for any newspaper to comply with that regulator. This is a serious affront to freedom of expression. It constitutes the state licensing of the press. This is, of course, emotive language. It is also an accurate description: a newspaper or newspaper journalist operating within the law but unwilling to submit to this regulator would be denied the right to freedom of speech. And that, arguably, is not the worst aspect of such a law. It has the tendency to discriminate against the established newsrooms and advantage on-line start-ups. This is of course assuming the statute was drafted to cover the established press but not digital media. If the plan is to regulate by law both old and new media, that presents a very different problem in drafting effective and comprehensive legislation. But even assuming that such a comprehensive law could be drafted, the risk is that it would create incentives for exactly the kind of behaviour this Inquiry is trying to prevent. It would incentivise news organizations to stop publishing in print and instead distribute their information online. It would incentivise them to move their operations outside the UK. It would also be in danger of being obsolete almost as soon as it hit the statute book.

Managing the press is, of course, difficult. Regulating free speech is entirely different from regulating gas prices or train times. A free press is an essential guarantee of a free society. A Press Law – i.e. a statutory response to the problems presented to the Leveson Inquiry – would impinge on those freedoms.

Q5. 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?

I am proud of the culture, practices and ethics of The Times.

The principle of securing public confidence has to underpin any commitment to a new press body. The Times will continue to seek to do that through its letters to the Editor, its cooperation with the regulator's complaints procedure and its practice of publishing full and clear corrections. The proposals include a requirement to produce an annual statement providing details of the compliance process including how pre-publication advice is dealt with, how stories are verified, compliance with the Code, editorial complaints and training of staff. To satisfy these requirements annually each publication must be conscious of its practices. Specific records will need to be kept on serious breaches of the Code or the regulations to be included in the statement. The regulations require members to deal promptly with complaints and to comply with any investigation. I anticipate that a serious breach could carry a financial penalty but would definitely result in much public opprobrium.

Q6. 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 have been published on the Inquiry website?

Investigating the legal and ethical wrong-doing of powerful people requires commitment and, on occasion, courage. If there is to be a more muscular regulator, as there should be, to look out for the interests of the people that newspapers write about, there should also be more reliable legal protections for journalists pursuing stories in the public interest. I was pleased to see the Director of Public Prosecutions has consulted the press on the interim guidelines assessing the public interest in cases affecting the media. I am submitting my observations on what I generally thought was a well-balanced and considered approach to the issue in principle. However, the CPS guidelines still fall short of creating a public interest defence for any offence related to information gathering.

My final comment must be on the role of legislation. Throughout the Inquiry the question has been asked, "What is wrong with statutory underpinning?" In The Times leader in January, we stated that the possibility of a 'Leveson Act' which can later be used, if necessary, to introduce tighter regulation of the press through Government is a dangerous threat to free speech. That view has not changed. While this may not be seen by some to be a real threat, in reality it puts at stake a principle which is too fundamental to an open society to be entertained. John Wilkes stated that the independence of the press is the right of every citizen. This does not equate to a press which takes liberties without sanction for misconduct. But it acknowledges that an independent press is a fundamental right of the public, a guarantee of individual liberty and a pillar of a free society.

Signed...

JAMES HARDING

Date.....13/7/12.....