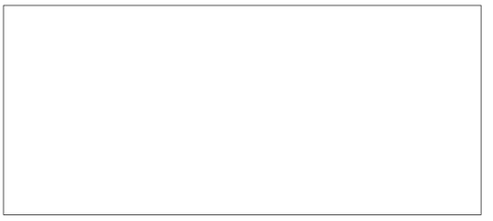

WITNESS STATEMENT OF DAVID PERRY Q.C.

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

Date statement made: 30 March 2012



David Perry Q.C.

1. I provide this witness statement to explain my role in the prosecution of Glenn Mulcaire and Clive Goodman and to address a number of specific issues raised by Counsel to the Leveson Inquiry into the Culture, Practices and Ethics of the Press. The information contained within this statement is true to the best of my recollection, knowledge and belief. If I cannot recall any detail I will make that clear.

2. For the purposes of preparing this statement I have considered the following documents:

   (i) An email, dated 2 August 2006, written by Ms. Carmen Dowd, then Head of the Special Crime Division of the Crown Prosecution Service, and sent to Mr. Robert Green and Mr. Mark Maberly of the Metropolitan Police (MOD200003116-MOD200003117).

   (ii) A note of a conference held on 21 August 2006 prepared by Detective Superintendent Williams of the Metropolitan Police (MOD200003612-MOD200003614).

   (iii) A note dated 14 July 2009 which I prepared together with Mr. Louis Mably, of Counsel (MOD200003931).

   (iv) The Prosecution Case Summary, dated 15 November 2006.

   (v) An Opening Note prepared for the Plea and Case Management Hearing in the case of *R v Glenn Mulcaire and Clive Goodman*, before Gross J. which took place on 29 November 2006 at the Central Criminal Court.

   (vi) An Opening Note dated 19 December 2006 prepared for the sentencing hearing which took place on 26 January 2007.

   (vii) The transcript of the hearing before Gross J. on 26 January 2007.

3. I have also seen a statement prepared by the Director of Public Prosecutions for the purposes of the Inquiry.

The Prosecution of Mulcaire and Goodman

4. In late July 2006 I was instructed to act as leading counsel in the prosecution of Mulcaire and Goodman. Junior counsel was Mr. Louis Mably. Mr. Mably and I appeared as counsel for the prosecution at the Central Criminal Court on 29 November 2006. On that

date the defendants pleaded guilty to an offence of conspiring to intercept communications. In addition, Mulcaire pleaded guilty to five offences of unlawfully intercepting communications contrary to section 1(1) of the Regulation of Investigatory Powers Act 2000. The case was adjourned by Gross J.. The sentencing hearing took place on 26 January 2007. On that date I opened the case for the prosecution and counsel for the defendants addressed the court in mitigation. Mulcaire was sentenced to a total of six months' imprisonment and Goodman to four months.

The email dated 2 August 2006

5. It appears from the email dated 2 August 2006 that on that day Ms. Dowd and I met and discussed the case, although I have no clear recollection of the conversation. It seems that Ms. Dowd and I discussed proposed charges and issues concerning the seizure of material from Mulcaire and Goodman's business and home addresses.

6. I had been instructed, together with junior counsel, Mr. Mably on 28 July 2006. I believe that the meeting on 2 August 2006 was the first conference in which I met with anyone from the Crown Prosecution Service to discuss the case. Ms. Dowd asked me to advise on the general approach to be taken by the prosecution. I do recall being informed that consideration had been given by the Crown Prosecution Service to bringing charges under the Computer Misuse Act 1990 and the Regulation of Investigatory Powers Act 2000. It appears from the email that at that stage I favoured proceeding by way of a conspiracy charge, that is a conspiracy to contravene the 2000 Act.

7. I note that in the email Ms. Dowd states:

> "*Although not able to provide a review decision until the evidence has finally been submitted, Counsel does agree with me that the data provided does present a strong case thus far.*"

8. While my recollection of this meeting is hazy, I believe that the opinions I expressed as to the prosecution approach at this stage were based on what I was told by Ms. Dowd rather than as a result of any consideration of the case papers (which may not have been available until some later stage).

9. I also note that the email records that there was some discussion concerning search and seizure. I have no recollection of discussing this aspect of the case in detail and I believe

that the discussion would have been of a general nature: what search and seizure powers were available to the police etc..

The 21 August 2006 Conference

10. On 21 August 2006 a case conference took place at my chambers, 6 King's Bench Walk, London, EC4Y 7DR. Again, given the passage of time my recollection of this conference is not at all clear. I have been provided with a note of the conference prepared by Detective Superintendent Williams of the Metropolitan Police. From this note I can see that those present at the conference included myself, Mr. Mably, Ms. Dowd, Ms. Kim O'Neil (the Crown Prosecution Service Caseworker) and a number of police officers. The conference was held to discuss the case generally. So far as I recall the prosecution papers (evidence and exhibits) had not yet been served and my recollection is that at this stage we, as counsel, did not have all the papers subsequently used at the Crown Court.

11. I have been asked to address a number of issues arising from Detective Superintendent Williams' note of the conference.

12. So far as our instructions were concerned, I believe that the essential matter on which we were asked to advise concerned the charges and the shape of the case. In relation to the former, I was of the view that offences of conspiracy to commit unlawful interception were appropriate. In relation to the latter I was concerned to keep the case within manageable proportions. I remember that there were a number of issues which we took into consideration. First, whether the defendants in the criminal proceedings would seek to involve in the case members of the Royal Family. Second, whether the evidence concerning the interception of communications received by members of the Royal Household represented the extent of the defendants' criminality. I recall that we were confident that we could avoid a situation which might lead to members of the Royal Family being required to give evidence and so far as the extent of the Mulcaire's criminality was concerned, we were informed that they had been involved in other instances of unlawful interception. I cannot now recall whether I was told of the precise number of individuals whose communications had been intercepted, but the conference note records that there were other victims and that I advised that we should select five or six individuals as representative of a wider number of individuals whose voicemails had been intercepted. (This advice was subsequently reflected in the indictment which

contained five counts (16 to 20) relating to the interception of voicemail messages of five named individuals.)

13. Another issue that arose for consideration was whether there was evidence of anyone else (other than Mulcaire and Goodman) being involved in the criminal wrongdoing. On this aspect of the case I have a clear recollection of asking whether there was any evidence implicating any other individual employed by News International in the criminality and being informed by the police (I cannot recall which officer) that there was not.

14. The conference note also contains a reference to a "*production order*". This is a reference to a production order under Schedule 1 to the Police and Criminal Evidence Act 1984. As the Inquiry will be aware certain material, known as 'excluded material', is exempt from any production order or warrant under the 1984 Act unless the police could have obtained a search warrant to look for it prior to the enactment of the 1984 Act. Included within the definition of 'excluded material' is 'journalistic material' (defined in section 13 of the 1984 Act). The discussion at the conference touched upon the powers of the police under Schedule 1 to the 1984 Act. To the best of my recollection there were two issues that arose for consideration. First, whether there was any basis for obtaining evidence generally by way of a production order. Second, whether a production order should be sought to obtain evidence concerning payments made by Goodman and Mulcaire. I note that the conference note contains the following:

    "*On scope of case at the moment pursue production order s1*

    - *see what it shows*

    - *If identifies another defendant – consider.*"

    I believe that this reflects a discussion concerning an order in relation to payments made to Goodman and Mulcaire rather than other evidence of a more general nature. In fact this came to nothing as the information concerning the payments was provided voluntarily by legal representatives acting on behalf of the newspaper (I believe).

15. The conference note also records that there was some discussion concerning the possibility of seeking a restraint order. This would have been a reference to a restraint order under the Proceeds of Crime Act 2002 (sections 40 and 41). This discussion must have been in respect of Mulcaire (who was subsequently made the subject of a confiscation order in the amount of £12,300) and it appears from the note (which accords with my recollection) that we did not have a figure for the 'benefit' Mulcaire had derived

from his criminal conduct (later assessed to be £12,300). The note records a figure of (I think) £25,000. I have no recollection of this figure. I assume it refers to some identified amount of money available to Mulcaire. However, it appears from the note that the discussion proceeded on the basis that even were the sum to be dissipated, Mulcaire would have other assets with which to satisfy a confiscation order. Accordingly, there would have been no proper basis in law for proceeding to restrain his assets. I recall that it was at a later stage in the process (possibly in November 2006) that I was informed of the benefit figure in Mulcaire's case.

16. The conference note also records that there was some discussion of what is noted as "*Technical argument on interception*". My recollection is that Mr. Mably and I were aware of the decision in *R (NTL Group Ltd) v Crown Court at Ipswich* [2002] EWHC 1585 (Admin), in which Lord Woolf C.J. had appeared to suggest that an unlawful interception occurred only if the communication (a voicemail message) was intercepted prior to it being accessed by the intended recipient. I am fairly confident that my advice on this point was that this analysis of the relevant provisions of the Regulation of Investigatory Powers Act 2000, while arguable, should not prevent us from proceeding with the case on the basis that interception before access was not an essential ingredient of the offence and that we should be prepared to meet the point if raised by the defence. My confidence on the point is supported by the terms of the indictment settled for the Crown Court proceedings: the counts included in the indictment were not based on whether the voicemail messages had been intercepted before or after they had been accessed by their intended recipient.

Subsequent Events

17. Following the conference on 21 August 2006 the case was prepared for the Plea and Case Management Hearing which took place on 29 November 2006. In advance of that hearing Mr. Mably reviewed the unused material in the case. This review exercise was carried out for the purpose of ensuring that the prosecution had complied with its obligations under the Criminal Procedure and Investigations Act 1996. Section 3 of the 1996 Act (as amended by section 32 of the Criminal Justice Act 2003) requires the prosecutor to disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for

the accused. It follows that when Mr. Mably considered the unused material he would have done so for a specific and limited purpose: to ensure that any material which undermined the prosecution case or assisted the defence case was disclosed to the accused. He would not have been looking for evidence that might implicate others at News International and so far as I am aware he did not give consideration to that point.

The Sentencing Hearing

18. The sentencing of Mulcaire and Goodman took place on 26 January 2007. I have been asked why I informed Gross J. that "*others at News International were involved*". I should point out that it appears from my Note (paragraph 2(vi) above) and the transcript of the sentencing hearing that I did not make this assertion. However, the following transcript references have been drawn to my attention:-

(i) *"This information would have been passed on not to Mr Goodman – I stress the point – but to the same organisation"* [Mr Saunders, Counsel for Mr Mulcaire at page 147H of the transcript];

(ii) *"As to Counts 16-20, you had not dealt with Goodman but with others at News International"* [Gross J. at page 179H of the transcript].

I cannot recall my thoughts at the time these comments were made but reading the transcript now does not convey the implication that other individuals were necessarily involved in unlawful interception (as opposed to receiving information).

Note dated 14 July 2009

19. So far as the Note dated 14 July 2009 is concerned, I believe that Mr. Mably and I were asked to prepare this note at the request of the Crown Prosecution Service at a time when they were looking again at the prosecution decision-making and strategy. The Note refers to what I was told in conference (on 21 August 2006), namely that there was no evidence

that would support a case against any other individual employed by News International. I have dealt with the point above. The rest of the Note is, I hope, self-explanatory.

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