

G Phillips

25th September 2011

**LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE
PRESS**

WITNESS STATEMENT OF GILLIAN PHILLIPS

I, Gillian Phillips, of Guardian Media Group, Kings Place, 90 York Way London, N1 9GU, WILL SAY as follows:

1. I am the Director of Editorial Legal Services at Guardian News and Media Limited. I have been the Director of Editorial Legal Services at Guardian News and Media Limited since 5 May 2009. Unless stated otherwise, the facts stated in this witness statement are within my own knowledge and belief. In this witness statement I refer to documents that are exhibited to a GNM bundle of documents, at tab GP.
2. I make this statement in response to a Notice dated 5 August 2011 served on me under section 21(2) of the Inquiries Act 2005 and the Inquiry Rules 2006, by Lord Justice Leveson, as Chairman of the Inquiry. These require me to provide evidence to the Inquiry Panel in the form of a written statement and/or to provide documents as requested in the Notice.
3. In my responses set out below, in order to assist the Inquiry, I will refer in wholly general terms to legal advice which has been sought from and given by me (or not as the case may be) on the topics of interest to the Inquiry. I do not intend to waive (nor am I authorised to waive) privilege in any specific advice given. Accordingly anything I say below is on the basis that I am not waiving privilege either expressly or by implication. I should add that I have retained no documents from my previous employment.
4. I have been asked to provide to the Inquiry Panel documents relating to the following matters or issues:
 - (a) Any in house training documents, policies, protocols, handbooks, guidance, code of conduct, or practice relating to your role as an in house adviser
 - (b) Your job description and/or the person specification for your role
 - (c) Any document containing communications between you and private investigators in the course of your employment
 - (d) Any document containing communications between you and the editor, sub-editor, or any journalist concerning the legality of any method of obtaining information

- including (but not limited to) phone hacking, computer hacking and "blagging"
- (e) Any document requesting your advice or containing advice from you concerning the payment in cash or kind of public officials (including police officers) for information

I will deal with each of these requests below.

(a) in house training documents, policies, protocols, handbooks, guidance, code of conduct, or practice relating to your role as an in house adviser

Attached at tab GP, is a list I have compiled to the best of my ability of the in house and other training carried out between 2005 and my arrival (compiled from the archive records available to me, so it is not necessarily a complete record) and that which has been carried out since my arrival at GNM. I have seen in draft the witness statements of (i) Alan Rusbridger, who refers to the Guardian's Editorial Code and how that operates, and (b) of Darren Singer who explains the GMG Bribery Policy and how that operates and save to say that the training sessions carried out on 2 December and 14 July 2011 specifically included briefings on the Bribery Act, there is nothing I can usefully add on these topics.

(b) job description and/or the person specification

Also attached at tab GP, is my job description and the person specification for my role.

(c) Any document containing communications between you and private investigators in the course of your employment

I have had no written or other communications with private investigators in the course of my employment with GNM and accordingly have no documentation of that nature.

(d) Any document containing communications between you and the editor, sub-editor, or any journalist concerning the legality of any method of obtaining information including (but not limited to) phone hacking, computer hacking and "blagging"

I will have discussed various issues relating to the legality of obtaining and publishing information in a wide variety of circumstances aside from training, including the rare occasions when a degree of subterfuge is considered for the purpose of obtaining public interest material. The detail of that advice is privileged and confidential. Most of it was given orally.

I do not recall any written or other communications with the editor, any sub-editor, or any other journalist concerning anyone at GNM seeking to obtain

information by illegal means and have no documentation of that nature. Please also see my answer to Question 3 below.

(e) Any document requesting your advice or containing advice from you concerning the payment in cash or kind of public officials (including police officers) for information

Other than general discussions arising out of the possible implications of the Bribery Act, while at GNM I have never otherwise to the best of my recollection been asked for advice concerning the payment in cash or kind of public officials (including police officers) for information and have no documentation of that nature.

5. **Q (1) Who you are and a brief summary of your career history in the media and as a lawyer. Q (2) What your responsibilities as an in house legal adviser are?**

I read History (Part I) and Law (Part II) at Cambridge and attended the College of Law in Guildford, where I completed the Legal Practice Course in 1982. I completed my articles with Coward (now Clifford) Chance in 1984, and spent three years post qualification in the litigation department there specialising in commercial / civil litigation. In 1987, I joined the BBC as an in-house lawyer dealing with both pre and post publication and litigation matters. Between 1996/7 I was an in house lawyer at News Group Newspapers (The Sun & The News of the World) before moving, in 1997, to the College of Law, where I lectured in Civil and Criminal Litigation and Employment. In 2000, I joined Times Newspapers Limited (publishers of The Times and The Sunday Times) as an in house lawyer, becoming Head of Litigation. In May 2009, I joined Guardian News & Media Limited as Director of Editorial Legal Services, I have a small team of employed and freelance/ locum lawyers who assist me in that process. I was a member of the Ministry of Justice's Working Group on Libel Reform and was a member of the Master of the Rolls Injunction Committee. I sit as a part-time Employment Tribunal Judge and co-author the College of Law Employment Law handbook.

My role is to advise the Editor and journalists on any editorial and content-related legal issues that arise both before and after publication and to manage legal complaints and litigation. These can involve advising on libel (and in that context on the defences available to libel actions including in the investigative journalism context, the important Reynolds "responsible journalism" defence), contempt of court and court reporting restrictions, data protection, privacy and confidence, copyright, national security, Official Secrets Act, Terrorism Act, Production Orders from the Police under PACE, freedom of information requests, and a variety of contractual matters.

I will also advise and assist on issues relating to the PCC Code and our Editorial Code. Compliance with these are important not just because they reflect our ethical standards and approach but also because they can have a

direct legal relevance in the context of the Reynolds "responsible journalism" defence.

I have three in-house lawyers in my team to assist in this process (one 15 years qualified; one 6 years qualified, and one 11 years qualified who is part-time and is currently on maternity leave) plus a daily freelance locum who is primarily engaged with checking copy that comes in during the day – predominately for the website but also for the main paper - as well as a team of freelance night lawyers who come in to legal the main body of the paper in the late afternoon / early evening and who libel read every story that we publish in the main news sections of the hard copy of the paper. Unlike the news stories, material from features and sport is not automatically read by the lawyers – we read what they refer to us.

I will use the services of external solicitors and / or counsel as I feel appropriate.

In addition, my department provides regular training sessions for editorial staff on all aspects of media law and issues arising – a list of the training we have provided is enclosed at tab GP. The Editorial Legal Department is also responsible for circulating legal warning notices whenever we receive them, for example where reporting restrictions are brought to our attention or when the PCC send out a warning notice. These are all filed on a legal notice board which is available on the intranet and which can be searched. We also produce, since 2009, a weekly newsletter which is sent to all GNM staff by email which summarises the main issues of interest that have arisen in the week, lists any significant legal cases plus summarises any complaints that we have received. Two examples are attached at tab GP.

6. **Q (3) Whether you have ever been asked to advise upon the legality of methods of obtaining information including (but not limited to) phone hacking, computer hacking and "blagging"? If so, please give the best particulars that you can about who sought the advice, when, in what context and the advice that you gave (please see the penultimate paragraph of this notice in relation to legal privilege).**

Please see my answers at paragraphs 4 (c), (d) and (e) above. To the best of my recollection I have never been asked to advise about possibly obtaining information by means of phone hacking or computer hacking. As far as "blagging" is concerned, I will have had discussions during my career about using subterfuge – i.e. pretending to be someone else in order to get information.

During my career, I undoubtedly will have had a number of discussions with journalists and editors concerning the legality of certain actions, the specific details of which I am not willing to reveal as they are legally privileged. However, by way of example only, I will have advised during my career about the risks involved in:

- a journalist going to work somewhere under cover – which can involve the actus reus of obtaining a pecuniary advantage by deception if wages are received, albeit that generally there would not be the required mens rea to amount to an offence;
- where a journalist is seeking to publish a story about a fraud or an illegal practice involving, for example, the production of false passports or driving licences, or arms smuggling, they may need to be involved in the process of producing or obtaining such a document or weapon – again generally there would not be the required mens rea to amount to an offence;
- information obtained by means of secret recording or covert surveillance;
- recording telephone calls and the distinction between that and the sort of illegal interception covered by for example RIPA;
- using information obtained from confidential sources.

I will also have advised on the legality of obtaining and publishing private information – which will have involved considerations of data protection, privacy and the public interest. In such cases, the discussion would normally have considered what the private information was, how it had been obtained and whether there was a public interest in our publishing it.

A published example, which I am willing to refer to, without waiving privilege as to the actual discussions that took place between myself and the journalists was the decision by the Guardian to publish police spotter cards which they were keeping on protesters [see <http://www.guardian.co.uk/uk/2009/oct/25/spotter-cards?INTCMP=ILCNETTXT3487>] – a copy of which appears at tab GP.

Further, in 2011, GNM was the recipient of a PCC complaint from an individual called Rebecca Todd who alleged that an article in the paper which reported on the use of private security firms by energy companies to gather information, was in breach of Clause 1 (Accuracy), Clause 3 (Privacy) and Clause 10 (Clandestine devices and subterfuge) of the Editors' Code of Practice. Ms Todd alleged that GNM had relied upon emails which appeared to have been obtained by illegal means, most likely hacking. Further, she complained that the newspaper had published a photograph of her which she said was private as it was behind Facebook privacy settings which could not be accessed. GNM had not accessed the complainant's emails or downloaded a photograph of her – the documents had been passed to GNM by environmental activists who had collated this evidence as part of their own investigations into suspicious activities in their movement. Although GNM could not be sure how the emails were obtained, its sources had given an assurance that they had not intercepted the complainant's private messages, and in respect of the photograph, GNM understood that it had been obtained

at a time when the privacy settings on Facebook made it accessible. The Indy Media website also showed a screen grab of the complainant's public profile page, which showed she had certainly made at least one photograph of herself generally available at a time when concerned environmentalists were looking into her activities. As all leaked material is likely by its nature to have been obtained at least without authority, GNM had considered carefully whether there was a public interest in publishing it. In this case, it had taken the view that there was. That decision was upheld by the PCC. I attach at tab GP, a copy of the PCC's adjudication.

7. **Q (4) What training, guidance and policies have been provided to you by your employer in order to enable you accurately to advise upon the legality of methods of obtaining information (including keeping up to date)? Do you consider that it has been adequate?**

I consider the training with which I and my staff are provided to be adequate. GNM encourages and permits us to attend such training, conferences etc as I and they consider relevant. For example, in the last year I or my colleagues have attended the following conferences: "Defamation & Privacy Conference", "Freedom of Information in the WikiLeaks Era", "Are we sleepwalking into a privacy law?", "Injunctions are a necessary evil: privacy, free speech and a feral press", "Media Freedom", "Disclosure", "Libel law – next steps for reform", Media Law Resource Centre international conference on media law in Washington DC. I have spoken at conferences and courses on libel, injunctions, costs and privacy and also co-ran a session at the City University Centre for Investigative Journalism Summer School in July this year on a hypothetical case involving leaked documents, whistleblowing and subterfuge.

I also keep myself up to date by reading relevant publications and cases and media law websites and blogs such as Informm. In addition, we have a weekly team meeting where we will often discuss and share views on thorny legal issues and topics. We have had speakers in to talk about the Bribery Act, Data Protection and User Generated Content.

8. **Q (5) Whether you have ever been asked to advise upon the legality of paying public servants (including police constables) for information either in cash or kind. If so, please give the best particulars that you can about who sought the advice, when, in what context and the advice that you gave (please see the penultimate paragraph of this notice in relation to legal privilege).**

Please see paragraph 4 (e) above.

9. **Q (6) What training, guidance and policies have been provided to you by your employer in order to enable you accurately to advise on issues of bribery and corruption? Do you consider that it has been adequate?**

Please see paragraph 4 (b) and (e) and 7 above. I consider it to be adequate.

10. **Q (7) Have you had input into any internal inquiry into phone hacking, computer hacking, "blagging" or bribery or corruption? If so, please describe the same, setting out your role and the outcome.**

Since I have been at GNM, I have had no input into and am not aware that there have been any such internal inquiries.

Following a complaint from solicitors acting for the MP Nigel Griffiths, which arose out of the ICO / Operation Motorman documentation, and which the legal department looked into and rejected, the legal department engaged in correspondence with the ICO in an attempt to gain access to whatever relevant documentation it had. The ICO was initially unwilling to provide information. In February this year [2011], it eventually provided to the legal department some data sheets prepared by the ICO (which it appears are already available in different formats on the web having been disclosed by the ICO pursuant to Fol requests) and some incomplete raw data relating to photocopied extracts from what I understand to be one of the notebooks of Steve Whittamore relating to the use by Observer journalists of Steve Whittamore / JJ Services between 1999 and 2003. These extracts were undated and there was no context provided in either the extracts themselves or by the ICO to assist in dating them. More recently, I asked David Clancy, the ICO's Investigations Manager for a copy of information, if any, relating to the Observer or Observer employees that appeared in what I understand is known as the Yellow Book which, despite the previous discussions with the ICO, had not been previously supplied to us. Mr Clancy told me that "I will be in a position to send you a copy of an encrypted disc with all the information contained on it but will not be able to provide you with redacted pages of the books." At the time of signing this statement I had not received this information. A colleague in the legal department has endeavoured to try and link up the information that we have had from the ICO with published articles. There appear to be public interest issues in most of the articles we have been able to identify. In a number of cases, it is simply not possible on the basis of the information provided by the ICO to work out either who the person was about whom information was being sought, or to locate any articles. In the light of these provisional conclusions and the very real difficulties facing anyone seeking to make sense of the material provided by the ICO, no formal internal inquiry has been conducted.

11. **Q (8) How you understand the system of corporate governance to work in practice at the newspapers owned by your company with particular emphasis on systems to ensure lawful, professional and ethical conduct.**

I have had the benefit of seeing the draft witness statements of (a) Andrew Miller, CEO of Guardian Media Group and (b) Alan Rusbridger and have nothing further to add to what they say about the system of corporate governance, which accords with my understanding of the position.

12. **Q (9) What your role is in ensuring that the system of corporate governance and all relevant policies are adhered to in practice. If you do not consider yourself to have any responsibility for this, please tell us who you consider to hold that responsibility.**

My reporting line is directly to Jan Thompson Managing Editor of GNM and Alan Rusbridger. I have regular (every two weeks) meetings with Jan Thompson. I brief the GNM Executive Committee on a monthly basis about the main legal issues that have arisen during the month, about new complaints and the status of all significant on-going matters.

There is a separate Commercial Legal Department, which deals primarily with licensing, contracts and agreements, terms and conditions, competition law and wider regulatory matters. The Commercial Legal Department advises Guardian Media Group as well as Guardian News and Media. The Commercial Legal Director and I meet regularly on a monthly basis.

The weekly newsletter that Editorial Legal circulate endeavours to highlight potentially problematic areas that may have cropped up during the week – for example where we have had a problem with the use of a word like “scam”.

13. **Q (10) Whether the documents and policies referred to above are adhered to in practice, to the best of your knowledge.**

Yes.

14. **Q (11) Whether these practices have changed, either recently as a result of the phone hacking media interest or prior to that point, and if so, what the reasons for the change were.**

I have had the benefit of seeing the draft witness statement of Alan Rusbridger, which discusses the recent changes to the Editorial Code. I can add nothing useful to what he says.

15. **Q (12) Where the responsibility for checking sources of information (including the method by which the information was obtained) lies: from reporter to news editor/showbiz editor/royal editor to editor, and how this is done in practice (with some representative examples to add clarity). Q (13) To what extent an editor is aware, and should be aware, of the sources of the information which make up the central stories featured in your newspaper each day (including the method by which the information was obtained).**

Depending on the nature of the story, my view is that it is the primary responsibility of the journalist and the relevant editor to check sources. In that regard I have read and concur with what Alan Rusbridger has said about sources in his (draft) witness statement.

As the lawyer, I would want to know that there was evidence of whatever sort necessary to enable a potentially defamatory story to be stood up if challenged or that could form the basis of a Reynolds qualified privilege responsible journalism defence, where sources may be crucial. I would want to know that we have not been in breach of either the PCC Code or our own Editorial Code in terms of how we obtained the information, so I would need to know some details about the reliability / origins of a particular piece of evidence so that I could test as far as I could the reliability of a source to see whether a Reynolds defence might work. I would not ask or expect a journalist to tell me the source / origin of every piece of information that is contained in a story nor to reveal to me truly confidential sources. I would want to know if a source had any commercial or other interest in a story based on his or her information being published as that might affect both their motives and their reliability.

16. **Q (14) The extent to which you consider that ethics can and should play a role in the print media, and what you consider 'ethics' to mean in this context.**

My role as a lawyer is to primarily to advise GNM and its Editor on legal risk on a wide variety of issues in terms of what the law does and does not permit. As part of that exercise I will always point out where relevant the possible impact of anything in the PCC or Editorial Code. Broadly the Codes are an attempt to strike a balance between competing rights and to ensure that methods in obtaining information used are not in all the circumstances unconscionable.

17. **Q (15) The extent to which you, as a legal adviser, felt any financial and/or commercial pressure from the proprietors of your newspaper or anyone else, and whether any such pressure affected any of the decisions you made as legal adviser (such evidence to be limited to matters covered by the Terms of Reference).**

I have never felt under financial or commercial pressure to change my advice.

18. **Q (16) The extent (if any) to which you, as a legal adviser, had a financial incentive in the newspapers owned by your company printing exclusive stories (NB. It is not necessary to state your precise earnings).**

None.

19. **Q (17) Whether, to the best of your knowledge, the newspapers owned by your company used, paid or had any connection with private investigators in order to source stories or information and/or paid or received payments in kind for such information from the police, public officials, mobile phone companies or others with access to the same: if so, please provide details of the numbers of occasions on which such investigators or other external providers of information were used and**

of the amounts paid to them (NB. You are not required to identify individuals, either within your newspaper or otherwise).

I have read and concur with what Alan Rusbridger says in his (draft) witness statement about the use by GNM of private investigators and there is nothing more I feel I can usefully add.

20. **Q (18) What your role was in instructing, paying or having any other contact with such private investigators and/or other external providers of information including advising on any of these activities.**

I have advised in relation to one recent matter involving a journalist's contact with an external source of information. My advice is confidential and privileged, and the source is also confidential within the meaning of section 10 of the Contempt of Court Act 1981.

21. **Q (19) If such investigators or other external providers of information were used, what policy/protocol, if any, was used to facilitate the use of such investigators or other external providers of information (for example, in relation to how they were identified, how they were chosen, how they were paid, their remit, how they were told to check sources, what methods they were told to or permitted to employ in order to obtain the information and so on).**

Not applicable.

22. **Q (20) If there was such a policy/protocol, whether it was followed, and if not, what practice was followed in respect of all these matters.**

Not applicable.

23. **Q (21) Whether there are any situations in which neither the existing protocol/policy nor the practice were followed and what precisely happened/failed to happen in those situations. What factors were in play in deciding to depart from the protocol or practice?**

Not during my employment at GNM to the best of my knowledge.

24. **Q (22) The extent to which you are aware of protocols or policies operating at the newspapers owned by your company in relation to expenses or remuneration paid to other external sources of information (whether actually commissioned by your newspaper or not). There is no need for you to cover 'official' sources, such as the Press Association.**

The Guardian's Editorial Code allows for freelance sources of information to be paid. It requires the approval of the editor or his deputies for any "rare exception" to that rule. There are strict procedures in place with regard to the payment and recovery of expenses by all GNM staff. I have read and concur

with the witness statements of Alan Rusbridger and Darren Singer on these topics and there is nothing more I feel I can usefully add.

25. **Q (23) Whether you, or the newspapers owned by your company (to the best of your knowledge) ever used or commissioned anyone who used 'computer hacking' in order to source stories, or for any other reason.**

Not to my knowledge.

I believe that the contents of this witness statement are true.



Gillian Phillips

28th September 2011
Date

G Phillips
September 2011

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GILLIAN PHILLIPS

Editorial Legal Services
Guardian News & Media Limited
Kings Place
90 York Way
London
N1 9GU