

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

WITNESS STATEMENT OF JOHN BATTLE

I, **JOHN BATTLE** of ITN, 200 Gray's Inn Road, London WC1X 8XZ **WILL SAY** as follows:

I have recently received a letter from Kim Brudenell, the Solicitor to the Inquiry, dated 5 August 2011, which contains a series of numbered questions. I have responded to each of those questions in the equivalently numbered paragraphs below.

1 I am an employed barrister and was called to the Bar in 1985.

Since 2001 I have been a lawyer in the broadcast industry and have worked for over ten years as the Head of Compliance at ITN. Prior to that I worked as a lawyer in the newspaper industry. The main newspapers I worked for were The Daily Mail and Mail on Sunday where I worked from 1995 to 2001 as Group Legal Adviser, and Today newspaper where I was Legal Manager from 1990 to 1995.

2 My primary responsibilities as Head of Compliance of ITN are:

- a) Advising editorial staff across ITN on legal / Ofcom regulatory issues on a daily basis, both on pre and post publication issues.
- b) Managing the compliance function at ITN, to ensure appropriate advice is available and systems/ procedures are in place for the editorial departments of ITN.
- c) Liaising internally and briefing ITN personnel (such as the ITN Chief Executive, ITN Director of Business Affairs and Company Secretary, Editors, duty lawyers, ITN management) on compliance/ legal issues.
- d) Drafting responses to legal complaints and managing any litigation.
- e) Drafting responses to complaints from the regulator Ofcom.
- f) Providing internal training to ITN editorial staff.
- g) Managing the system of duty lawyers.

- h) Liaising externally on compliance/ legal issues and complaints with relevant personnel including the Controller of Legal & Compliance at the broadcaster Channel 4 and the Director of Programme Compliance at ITV.
- i) Writing the ITN Compliance Manual. The Manual has been in operation since July 2004.
- j) Drafting and putting into practice new compliance policies – for example, recent policies have included the ITN Anti Bribery Policy (introduced following the Bribery Act 2010), an Online Postings Policy, and a Policy on Journalists Tweeting from Court.
- k) Providing a monthly update of legal and Ofcom complaints to the Director of Business Affairs and Company Secretary.
- l) Attending relevant ITN meetings such as the ITN cross company News Management Group.
- m) The ITN representative on industry committees: the Sports News Access Code Group, the DA Notice Committee, the broadcasters' group concerning filming court proceedings.
- n) Dealing with requests from the police or solicitors for the disclosure of footage.
- o) Advising ITN non-editorial departments such as ITN Source (which manages the ITN archive) on legal issues.

3 I do not believe I have been asked to provide legal advice on the legality of phone hacking, computer hacking and "blagging" to a journalist - apart from advising on news reports on these issues. As to the issue of obtaining information generally, it is part of the role of an in-house lawyer to advise and ensure that methods of obtaining information fall within the law and the industry regulations, the Ofcom Broadcasting Code.

4 My professional training requirements as required by the Bar Council: As an employed barrister, every year I complete at least 12 hours of Continuing Professional Development ("CPD") which consists of attending courses and lectures relevant to my areas of legal practice.

In addition as part of keeping up to date with the law and in preparation for giving advice and internal talks on Legal and Compliance issues, I am sent e-mails almost on a daily basis that set out developments in the law and the Ofcom Broadcasting Code. For example I receive the regular bulletin from Ofcom that sets out their adjudications and changes to the Code and Guidance, e-mails that the Judicial Communications Office sends out about new cases of

relevance to the media and speeches from the judiciary, information leaflets from external solicitors and articles and postings on legal information websites about new case-law, changes to statutes and issues in the law. It is important to keep up to date in a number of areas of law and the updates inform the advice and training I provide to ITN's editorial team.

I believe the training, guidance and policies provided by ITN are at an appropriate level and are adequate to meet the changes and developments in the law and industry regulations.

5 I do not believe I have ever been asked to advise about the legality of paying public servants including police officers for information in cash or in kind – apart from advising on news reports on these issues.

6 With the introduction of the Bribery Act 2010 a policy was established in ITN on the issue of bribery. To inform myself and to write this internal ITN Anti Bribery Policy and to be in a position to brief ITN staff about the legislation, I read the legislation and many reports on external solicitors' websites about the Act and what it meant.

Training has been given internally on this legislation in ITN by me as ITN's Head of Compliance to ITN Management. Training will continue on this new legislation.

I consider that training so far has been acceptable and I anticipate there will be further Seminars on this subject.

7 There had been no internal inquiry at ITN on the issues raised by the Inquiry until the issues were raised by the Inquiry in the letters sent to ITN. Thereafter appropriate checks have been conducted in order to answer the questions asked by the Inquiry.

8 The following shows the framework on how ITN is governed on legal/ compliance issues :

External:

a) **Ofcom:** Ofcom is the regulator of the broadcast media. The Ofcom Broadcasting Code sets out the rules that must be complied with by broadcasters. For example the Code contains sections on:

- Protecting under 18s
- Harm and Offence (formerly "taste and decency")
- Crime
- Religion
- Due impartiality
- Due accuracy
- Elections and referendums
- Fairness

- Privacy
- Sponsorship.

Ofcom produces Guidance on its Code and regularly sends out e-mail bulletins setting out its adjudications.

b) Issues for reference to the Broadcaster:

ITN has an agreement with the broadcasters ITV and Channel 4 to whom we provide news programmes, that requires a number of listed issues to be referred to the broadcaster before broadcast for the broadcaster's input. See Pre-Broadcast Protocols for ITV and Channel 4.

As Head of Compliance I also liaise and inform the broadcasters ITV and Channel 4 on relevant legal or compliance issues, such as complaints from Ofcom and legal complaints.

Internal system

Day to day issues and advice:

- c) The ITN Intranet:** The internal ITN Intranet has a Legal Section. It includes an electronic version of the ITN Compliance Manual, an archive of "Legal Alerts" that have previously been sent out, forms such as a Consent Form to Interview a Child or Young Person, a diary of who is the duty lawyer and their contact details, information on issues such as the Freedom of Information Act and Music Copyright.
- d) Legal Alerts Advisory system:** Legal notices (e.g. court orders restricting reporting) and information on compliance issues (e.g. relevant Ofcom adjudications) are sent out cross company by e-mail entitled "Legal Alerts" to editorial staff and duty lawyers.
- e) The daily editorial meeting:** The ITN Chief Executive and either the Head of Compliance or duty lawyer attend the cross company editorial meeting at 10am most mornings Monday to Friday. At the meeting a senior editorial figure is there from each of ITN's main news departments. The main news issues of the day are discussed. Legal / Compliance issues are a standing item on the agenda.

Personnel

- f) The Head of Compliance:** See role of the Head of Compliance set out in 2) above.
- g) The duty lawyer system:** ITN has a system wherein a lawyer is on duty at all times. A duty lawyer is present in the newsroom until 10pm during week-days and there is an on-call system at the week-end. It is the duty lawyer's job to give advice on legal/compliance issues prior to broadcast. Our freelance lawyers are experienced lawyers and have

particular expertise in media law and compliance issues. For example our duty lawyers include a former Head of Compliance at the BBC, a former in-house lawyer at Channel 4 and freelance barristers from chambers who specialise in media law.

Strategic systems

h) The ITN Compliance Manual: ITN has a Compliance Manual that I wrote and was published in July 2004. It sets out the industry regulations that affect news reporting, the main areas of laws affecting journalism such as libel, copyright, privacy and contempt of court and internal ITN standards and procedures.

The Compliance Manual is on the ITN Intranet. It forms an important part of training at ITN.

I have been preparing the second edition of the Manual over the last two years and it is soon to be published.

i) ITN internal editorial policies: ITN introduces policies on legal / compliance issues that ITN editorial staff may face. For example there are Protocols for:

- Anti-Bribery – which was introduced at the commencement of the Bribery Act 2010
- Online Postings
- Tweeting in court.

j) Meetings:

- Board Meetings: The Chief Executive is responsible for ensuring that ITN operates in a lawful, professional and ethical manner and answers to the ITN board. At the board meeting the board are made aware of and given an update on any Legal complaints and any Ofcom complaints.
- The Head of Compliance and the Director of Business Affairs and Company Secretary (who is a solicitor) meet on a weekly basis to discuss any legal or compliance issues.
- The Head of Compliance attends the regular cross-company ITN News Management Group which discusses relevant issues, including compliance and legal issues and complaints.

k) Training

Training is regularly run at ITN to inform staff of Legal and Compliance issues such as court reporting, copyright, privacy, Ofcom regulations. Training is usually open to all at ITN and is advertised by the Legal Alerts system. Training is given by myself, the Head of Compliance.

In most years there would be a talk on *Basic principles of law and compliance* for new-comers to ITN and to act as a refresher. Occasionally there will be a guest speaker such as an external solicitor. Reference to the ITN Compliance Manual plays an important part in these Seminars.

Number of seminars:

- 2008: 12 Seminars including talks on Music and copyright law, Copyright , Basic Principles of Law and Compliance
- 2009:14 Seminars including talks on Freedom of Information, Legal problems arising live in a programme, Moderating websites and libel law
- 2010: 14 Seminars including talks on Election laws, Copyright and the World Cup, the DA Notice system
- 2011: 9 Seminars to date including the new Bribery Act, Contempt of court

I consider that the training provided is at an acceptable level.

- 9 As Head of Compliance of ITN, my role is to help ensure that ITN complies with the law, Ofcom Broadcasting Code and ITN Compliance Manual and policies and highlight relevant legal/ regulatory issues to the relevant personnel. At ITN there is a strong focus on legal and compliance issues and a strong culture that any legal and compliance issues that arise should be referred up to editorial management and advice sought from the duty lawyer. The framework for ensuring this happens has been set out in detail above.
- 10 It is my experience that the documents and policies are adhered to in practice and the editorial teams work within the law, the Ofcom Broadcasting Code and ITN Compliance Manual. As with any system there may be occasions where the system is not complied with but I believe these instances to be rare.
- 11 To date the practices within ITN have not changed as a result of the media interest in phone hacking, either recently or prior to this point.
- 12 The vast majority of news content broadcast by ITN relies on on-the-record sources and has a clear public interest. The responsibility for making sure information is correct initially lies with the editorial team producing the report. Thereafter the report is subject to a number of checks, including scrutiny by editorial management and, where appropriate, the duty lawyer. In cases of doubt about a source the Editor or their alternate can seek an assurance from the reporter that the source is reliable and raise any concerns. Relying on the integrity and experience of the reporter is important. The Editor may ask the reporter or other members of the editorial team to try to corroborate the information independently of the source. In addition, reference

may have to be made to the broadcaster for their input. Legal advice would normally be sought if any significant statement was being made in a report by an anonymous source.

Reference to responsibility for sources is made at a number of points in the Compliance Manual.

2.2 Journalistic methods to ensure accuracy

Where possible:

- Endeavour to verify information from more than one source;
- Check the accuracy of information;
- Determine what information is already in the public domain

9.14 *When you are relying substantially on one source it is always preferable to try to stand the story up independently of the source. In other words, put the evidence of that individual to one side and see if the story can be confirmed without any reliance at all on the primary source. For example, what documentation backs up the source's allegations?*

9.21 *(Reference is made in the Compliance Manual to the criteria, commonly known as the Reynolds defence). Lord Nicholls set out a list of criteria that would need to be satisfied to secure the Qualified Privilege defence for a particular report said to be "in the public interest". The criteria focus on the importance of proper journalistic procedures.*

The ten point criteria:

1. *The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.*
2. *The nature of the information, and the extent to which the subject-matter is a matter of public concern.*
3. *The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.*

(4-10: see Compliance Manual)

13.5 Source material

As part of the duty of accuracy we must ensure that all facts and figures which cannot be independently verified should be attributed to their sources.

It is a matter of careful editorial judgement how to treat unsubstantiated claims. All such claims must be clearly sourced and must be countered with responses if available.

There is also reference in the Manual to protecting sources:

6.5 Protecting journalistic sources

Where confidentiality is promised to a source of information, this must be honoured and respected. The source must not be disclosed unless the source has given permission to do so.

In some cases the law may provide protection. Section 10 of the Contempt of Court Act 1981 states no court can require disclosure, nor is any person guilty of contempt for refusing to disclose the source of information contained in a publication for which he is responsible unless it is established that it is necessary in the interests of justice, national security or for the prevention of crime or disorder.

If an issue arises concerning your sources, reference must be made to editorial management.

The Compliance Manual also makes the editorial team aware that background information in the making of a report may have to be disclosed in the event of a complaint:

1.12 Disclosure of background material: *"Background material is usually disclosable in legal proceedings - including, for example, e-mails and unbroadcast footage (that could include comments before and after an interview). What happened in the preparation of a report is often a central issue when a legal complaint arises."*

- 13 The Editor will know the sources of information on most of the central reports broadcast each day given that the sources are usually on the record and where the information comes from will be clear – e.g. from a news agency or based on work carried out by a reporter. Use of anonymous sources is not commonplace in ITN reports. All reports go through the processes set out above prior to broadcast, so there are a number of checks and balances to ensure that the report complies with the law and Ofcom Broadcasting code. If the Editor has unresolved concerns about the reliability of the information the report would not be broadcast.
- 14 It is important that ITN personnel act in a professional, lawful and ethical manner. The introduction to the ITN Compliance Manual (that I wrote) sets out my view on ethical conduct:

Introduction

No-one expects you to be an expert in the details of all the regulations and laws that affect news reporting. However it is expected that you can recognise the danger areas

when they arise. It is hoped this Manual will help establish "alarm-bells" in your mind that will ring when you encounter a potential problem.

This Compliance Manual is a guide to the main compliance and legal issues that affect programmes made by ITN. Breach of the law and regulations can lead to serious problems both for ITN and for the broadcasters to whom we provide programmes - including financial penalties, on screen apologies and adverse publicity and even imprisonment (when contempt of court is an issue).

If you believe a report raises a regulatory or legal issue and you are not certain of the answer, seek advice. If your instinct is telling you there is a potential problem, your instinct will often prove to be right and there is nothing to be lost - and everything to be gained - by obtaining a second opinion from editorial management and/or from the duty lawyer. It should also be noted that this Manual is for guidance- it is not a substitute for seeking legal or editorial advice when it is needed.

The Manual sets out normal practice but no Manual can completely cover every eventuality - new issues will arise and the law and industry practice can change and are not always clear-cut. News is an area where decisions sometimes have to be made quickly and circumstances can rapidly change. In some exceptional cases (for example, where an individual's safety is at risk) it may be justifiable to waive a specific guideline if circumstances make this necessary. Such circumstances will be rare but can happen. Obviously appropriate advice should be obtained, if possible, in such circumstances. This Manual does not replace the industry regulations - it summarises the main regulatory issues that affect ITN's programmes and sets out good working practice. Since the Communications Act 2003 commercial television and radio is regulated by Ofcom. (www.ofcom.org.uk)

You should work within the spirit as well as the strict letter of the industry codes and this Manual. Finally it should be noted this Manual applies to everyone working on behalf of ITN - staff and freelances. If you are a manager or commissioning editor you should ensure that those who work for you are aware of the Manual. It also applies to all services provided by ITN - whether for broadcast on television or radio or for telephone content or for publication on the internet.

John Battle ITN - Head of Compliance July 2004

- 15 I have not felt financial or commercial pressure from ITN or anyone else that affected my decisions as a legal adviser.
- 16 I do not have any financial incentive in ITN broadcasting exclusive stories.
- 17 Other than the details stated in the Witness Statements given by other ITN representatives, I am not aware ITN has paid or had any connection with private investigators. I am not aware

ITN has paid or received payments for information from the police, public officials, mobile phone companies or others with access to the same.

18 Any information for broadcast by ITN is subject to the compliances processes and systems set out in this statement prior to broadcast, including receiving legal advice where appropriate.

19 ITN does not have a specific policy on hiring private investigators.

Reference is made to private investigators at 5.22 of the Manual:

- **5.22** The law of Data Protection: *"It can be a criminal offence to unlawfully obtain personal data or procure the disclosure of such information - for example, obtaining bank accounts, employment records or medical details through a third party (such as a private investigator) without the individual's permission".*
- **5.25** Surveillance and the law – *"Using surveillance techniques, such as telephone-tapping, radio-receivers, listening devices or intercepting e-mails, to carry out an investigation can amount to a criminal offence and should be avoided".*

Practices for obtaining information from external providers of information are set down in the ITN Compliance Manual. For example:

- **Politicians, 3.4:** *" should not be paid for an interview or contribution unless there are exceptional circumstances"*
- **Witnesses, 8.27:** *"Legal advice must be obtained before approaching.... Under no circumstances should payment be made or offered to witnesses before a verdict has been reached"*
- **Criminals, 8.28:** *" should not be paid for interviews about their crimes unless an important public interest is served"*
- **Children, 7.3:** *"No payment... unless editorially justified and the payment has been cleared with editorial management"*

20 ITN does not have a specific policy on the use of private investigators or external providers of information other than the terms highlighted in paragraph 19 above.

21 I am not aware of the detailed system for payments of expenses or remuneration paid to external sources of information.

22 I am not aware of occasions when ITN used or commissioned anyone who used "computer hacking" in order to source stories or for any other reason.

23 I have provided my answers to the extent that I can. I am aware that other colleagues from ITN are also giving statements and documents to the Inquiry.

- (a) There is not a formal job description for my role as Head of Compliance of ITN. Paragraph 2 in this Witness Statement sets out my role.
- (b) I am not aware of any communications between me and private investigators
- (c) I am not aware of any communications between me and the editor and any member of the editorial team on these issues
- (d) I am not aware of any documents concerning these issues.

ITN is not prepared to waive legal privilege.

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

Signed:
John Battle

Dated: