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

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**WITNESS STATEMENT OF JOHN HAMILTON RYLEY**

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I, **JOHN HAMILTON RYLEY**, of British Sky Broadcasting Limited, Grant Way, Isleworth, Middlesex TW7 5QD **WILL SAY:**

*Introduction*

1. I am the Head of News at Sky News, which is part of British Sky Broadcasting Limited (“BSkyB”).
2. I make this witness statement in response to the notice sent by the Leveson Inquiry to BSkyB on 10 April 2012 (the “Notice”).
3. Except where I say so below, the matters referred to in this statement are within my knowledge and are true and where the matters are not within my own knowledge I indicate the source of my belief and believe them to be true.
4. In this witness statement I speak for the activities of Sky News, and not BSkyB as a whole. I understand from Sky’s legal team that it has had confirmation from the Inquiry that the notices served on it focus on Sky News, and not the broader company, most of whose activities are not journalistic.

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5. The structure of this witness statement follows the three main numbered requests in the Notice.

*(1) Who you are and a brief summary of your career history*

6. I have been a broadcast journalist for 25 years and Head of Sky News for the last six years. Prior to holding this position, I was Executive Editor at Sky News (from 2000 to 2006) and before that an Executive Producer from 1995, which is when I joined Sky News. Between 1989 and 1995 I worked at ITN first as a producer on News at Ten then as a Programme Editor. My professional career began in 1987 when I was a BBC graduate trainee, then a producer on the nine o'clock news.
7. As Head of Sky News, I have ultimate editorial responsibility for all of Sky News' content gathering activities and output on all platforms. In addition, I take responsibility for the strategic direction of the organisation (for example, by driving the move towards the availability of news on mobile devices as well as on linear television), I lead on or authorise key initiatives (for example, Sky News' pioneering campaign for and organisation of the first UK election leaders' debate and Sky News' leading role in the campaign to bring cameras into courtrooms in England and Wales), and I represent Sky News at external events.
8. Sky News has a lean management structure. On the news gathering side there is a Head of News Gathering who reports directly into me. His direct reports consist principally of the Head of Home News, to whom the large majority of Sky News' domestic-based journalists report, and the Head of International News. On the output side, Sky News' Executive Editor reports directly to me, and in turn has as his direct reports the majority of the Sky News Executive Producers, as well as Sky News' Managing Editor, whose responsibilities include ensuring compliance with the Ofcom Broadcasting Code (the "Code"), which sets out a considerable number of strict rules by which broadcasters must abide, including in relation to issues such as privacy. A number of Sky News' senior presenters also report directly to me, as does the Launch Director of the soon to launch Sky News

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Arabia, a multi-platform Arabic news service for the Middle East and North Africa. I also have a number of other direct reports on the operational side of the business, such as, for example, a Head of Operations, a Creative Director and a Head of Studio Output. However, all of Sky News' day-to-day news content flows through the news gathering and output departments.

9. For domestic based news stories, almost everything that is gathered and reported receives the attention of the Head of Home News or the Head of News Gathering. If either of them has any significant concerns about the story, or any legal or Code issues are raised, they will usually approach the in-house lawyers who support the Sky News function. I will get involved if the issue is very significant, although given the volume of news that we broadcast as a multi-platform news organisation producing television, internet, mobile, tablet and radio news, the authority to take significant decisions on editorial matters is necessarily devolved to my direct reports, as well as the Heads of Home and International News. Relevant editorial heads of department therefore regularly have to make significant judgment calls about stories, deployments and expenditure at speed. Some of these decisions will involve the personal safety of our personnel – such as deployments to a war zone or a natural disaster, and some will focus on the pursuit of a story.
10. Sky News prides itself on the impartiality, objectivity and accuracy of its output and on the integrity of its journalists. To achieve the standards that it does, and to comply with its legal and regulatory obligations, the organisation relies in large part on expert, informed, ethical, and innovative journalistic and editorial decision-making by both its journalists and its editors. To help ensure that its journalists have the tools to make such decisions, Sky News provides initial and regular training to them. When journalists first join the organisation, they are provided with an introductory pack of documents (provided to the Inquiry under cover of Sky News' letter to it of 16<sup>th</sup> September 2011) which sets out the legal and regulatory framework that governs broadcast journalism and contains documents dealing with effective and ethical reporting. This pack features the

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Code, with which journalists are instructed to familiarise themselves. Sky News' Managing Editor provides updates on editorial, production, legal, regulatory and ethical issues in a daily "message of the day" sent out by e-mail to all Sky News staff, and Sky News has a comprehensive e-learning tool which journalists are encouraged to make use of, and which includes case studies raising legal and regulatory issues which they may face, such as privacy and contempt of court issues. In addition to this, the in-house lawyers who support Sky News give regular training sessions to journalists on common legal issues and challenges.

*(2) Please give a full account of the occasions on which BSkyB, its servants or agents have accessed the email/s of third parties.*

Background

11. As a non-stop news organisation, Sky News' primary focus is on hard, live, breaking news, not the sort of long-form investigative journalism in which extensive research and elaborate means of gathering information may be deployed. When Sky News does undertake investigative journalism, it is extremely rare for it to authorise conduct which might involve contravention of the law or, for that matter, the Code. Sky News takes both compliance with the law and the Code very seriously – something borne out by the fact that since January 2005, it has only been found in partial breach of the Code in relation to fairness and privacy on two occasions – but on a very limited number of occasions it has authorised conduct that is potentially unlawful. The justification will always have as its foundation a powerful public interest in the reporting of a story which could not be reported without some potentially unlawful conduct (such as access to third party e-mails), and a senior editorial decision that the significance of the manner in which the story is obtained is outweighed by the value in the public being made aware of the story.
12. Instances of potentially illegal activity by Sky News journalists are extremely rare, but have been authorised exceptionally where the view of the relevant senior editor has been that the public interest in the story justifies the behaviour. An

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example was when, in 2004, a Sky News journalist purchased an Uzi machine gun to highlight the easy availability of weapons in the UK. The evidence obtained by Sky News was used in a successful prosecution of the vendor, who was imprisoned for five and a half years. A further example was in 2003, when a Sky News reporter breached airside security at Heathrow to expose weaknesses in the system.

13. In two cases of which I am aware during my twelve years as a senior executive, Sky News has authorised a journalist to access the e-mail accounts of individuals suspected of criminal activity. In both of those cases, Sky News believes the action was editorially justified and in the public interest, as well as being consistent with the Code guidance on invasions of privacy, the guiding principle of which is that any infringement must be warranted, and that broadcasters must be able to show that the public interest outweighs the interest in privacy. Section 8 of the Code cites as examples of public interest "*revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.*"
14. Historically, Sky News has had no written guidelines specifically in relation to the authorisation of potentially unlawful conduct which, as set out above, happens very infrequently. Until recently, Sky News' approach to authorising stories which might involve legal or regulatory considerations has been to require the approval of a senior editor (at the level of the Head of Home News / the Head of International News or higher), and frequently that editor will also consult Sky's in-house lawyers, although this latter step has not been a prerequisite. Those in senior editorial positions at Sky News are well aware of the ethical standards which Sky News demands, and have received training, legal advice, and years of experience which enable them to make appropriate judgments on whether and how to proceed with a given story, for example an assessment of whether relevant public interest factors (such as those cited in the Code) outweigh privacy considerations. I believe that challenging editorial decisions have been addressed

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and taken properly in this organisation, and the way in which judgments have been taken has helped us to effectively and professionally produce our high-quality journalism, of which I am extremely proud.

15. Nevertheless, following further consideration of the two incidents of a Sky News journalist accessing e-mails of third parties, I have taken a decision to introduce written guidelines which will mandate that any future proposal to gather a story using potentially unlawful means be approved in advance by the relevant senior editor, the Head of Sky News (or designated deputy) and Sky's in-house legal department. This process will have very little impact on the day-to-day operation of Sky News, since it is extremely rare for stories to be investigated using means which might be unlawful. The written guidelines are currently being developed, and in the meantime Sky News' senior editors (namely the Executive Editor, the Head of News Gathering, the Head of Home News, the Head of International News and the Head of Planning) have been informed that any story gathered using potentially unlawful means would have to be approved in this way.
16. As part of its on-going commitment to acting responsibly and in light of the current, heightened interest in editorial practices, BSkyB undertook at its own instigation a review of editorial practices at Sky News. The process involved a first review, which concluded in July 2011, of Sky News payment records by BSkyB's internal audit team and a second review of more than 135,000 emails by BSkyB's external legal advisors, Herbert Smith LLP. These reviews, which have both now concluded, found no evidence of illegal or improper conduct or cause for concern, and, relevantly for the purposes of the Notice, no evidence of any incidents (other than those described in this witness statement) of a Sky News journalist accessing any third party e-mails.

The two stories involving access of e-mails of third parties by Sky News

17. With that background, I turn to the two cases in which Sky News has accessed the e-mails of third parties who were suspected of criminal activity. I would like to make clear that it is only in relation to these two stories that I am aware of this

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ever having happened during my twelve years as a senior executive at Sky News. My knowledge is based not just on my own recollection but also on discussions with Sky News editors and journalists during the course of the last year. The effect of these discussions was that no-one asked about the subject was aware of any other incidents of a Sky News journalist accessing third party e-mails. The journalists covered in this description are Sky News' Head of Home News (Mark Evans), Sky News' then Managing Editor and Deputy Head (Simon Cole), Sky News' current Managing Editor (Peter Lowe), Sky News' Executive Editor (Chris Birkett), Sky News' City Editor (Mark Kleinman), Sky News' Crime Correspondent (Martin Brunt), Sky News' investigative journalists (Jason Farrell and Roddy Mansfield) and Sky News' North of England Correspondent (Gerard Tubb).

18. The stories in question are those detailed in Sky News' letter to the Inquiry on 4<sup>th</sup> April 2012, a copy of which is exhibited at pages 1-3 of JHR1. They involved access to third party e-mails by the same journalist, Gerard Tubb. Authorisation for the third party access on each occasion was given by the then Managing Editor and Deputy Head of Sky News, Simon Cole, who was Tubb's line manager. To the best of my knowledge (and that knowledge is also informed by speaking with Tubb and by the reviews referred to above), Cole was the only person who was consulted on, and aware of, the proposal to access the accounts before that actually happened. For the avoidance of doubt, Cole, as Deputy Head of Sky News, had the authority to make significant editorial decisions like these, and was a very experienced broadcast journalist with more than 30 years' journalistic experience.

The first story: John and Anne Darwin

19. The first story involved access to e-mails justified on the basis of the exceptional public interest in the story which involved uncovering evidence which exposed criminal activity and helped secure the conviction of a fraudster. It related to the case of John and Anne Darwin, the couple who stood trial for deception offences

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in summer 2008 following the faked death of John Darwin in a canoeing accident some years earlier. For ease of reference, I have, with the assistance of the Sky legal team, put together an account of the chronology of the access to third party e-mails, and I set that out on pages 4-5 of exhibit **JHR1**. This account, and the details below, is based on my understanding derived from direct discussions that I have had with Gerard Tubb and Mark Evans, accounts of discussions that the Sky in-house legal team has had with the same people and with Simon Cole, and the documents that I have seen and referred to below. These discussions have taken place over several months since September 2011 in the context first of responding to the Inquiry's 11<sup>th</sup> August notice, then in the internal review of the incidents, and most recently for the purposes of responding to the Notice. The documents that I refer to below have for the most part, and except where stated otherwise or where I was the recipient of the document, been provided to me by Tubb in response to my request to him that he provide copies of all materials evidencing exchanges between him and Sky editors/journalists in relation to e-mail access. In locating materials relevant to the Notice, I have also reviewed my own e-mail account, asked Mark Evans to do likewise with his account, and relevant e-mails from Simon Cole's account have been reviewed by Sky's external lawyers.

20. In summary, Gerard Tubb had been closely following the story from December 2007, when John Darwin handed himself in. He secured a number of exclusives on the subject between December 2007 and May 2008. When the police released information, in December 2007, that John Darwin had used the pseudonym John Jones, Tubb ascertained, from open-source internet searches, that the same John Jones had previously objected to a planning application, which gave his email address. In March 2008 John Darwin pleaded guilty to offences of deception, but Anne Darwin denied them. Tubb believed that the e-mail account under the name of John Jones may have contained e-mails passing between the Darwins during John's disappearance, but it became apparent to him from sources close to the prosecution that this e-mail account would not be examined by the prosecution.



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Accordingly, on 12 May 2008 he shared with Simon Cole his belief that the e-mail account may contain information relevant to the trial, and that the authorities would be unlikely to access them. After consideration of the public interest justification, Cole gave him permission to access them with the intention of disclosing any relevant information to the police. On 14 May, Tubb wrote to Cole referencing their 12 May discussion and the concept of "*bringing the Darwins to justice*". A copy of that e-mail is exhibited at page 6 of exhibit **JHR1**.

21. In early June 2008, and prior to accessing any e-mails, Tubb again spoke to sources close to the prosecution who confirmed that the police would not be examining the John Jones e-mail account. The account in question was a Yahoo! Account and Tubb knew that the security of those accounts was at the time notoriously weak and access would be possible if either the password to the account or a security question (such as the account holder's favourite film) could be guessed. Tubb accordingly accessed the account on 13 June 2008. Having gained access to the account, he discovered e-mails from Anne Darwin which led to the identification of a number of e-mail accounts in her name. Simon Cole gave Tubb oral permission to access these further accounts on the same basis as the access to the first. Within five days, Tubb had accessed at least one further account, but was still struggling to access a further two accounts. He e-mailed Cole on 18 June to report on his progress. Over the next day, Tubb and Cole exchanged e-mails on Tubb's progress, and Tubb concluded the exchange by saying that he had located enough material in relation to Anne Darwin "*to make her put her hands up for sure*." A copy of the exchanges is attached at pages 7-8 of exhibit **JHR1**.
22. I should clarify one reference in the e-mail exchange referred to above: at one point Gerard Tubb notes that he has "*found 5 voicemail messages from her trying to contact him last October*." I am informed by Tubb that these were voice messages that sat in an e-mail account, rather than on any telephone. As I understand it, they were delivered via a system by which people could

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communicate to each other by voice via a computer over the internet. Contemporaneous reporting of Tubb's nomination for a BAFTA award for his work on the Darwins also referenced access to these voice files. I enclose at page 9 of exhibit **JHR1** a story from the University of Hull (where Tubb was at university) website which makes this reference. For the avoidance of doubt, I am not aware of any Sky News reporter ever having accessed voicemails on telephones or otherwise having engaged in telephone hacking.

23. On 23 June 2008, Simon Cole and Gerard Tubb met with the Head of Home News, Mark Evans, to discuss provision of the pertinent e-mails to the police. I am told by Tubb that during that meeting, it was agreed, given Anne Darwin's impending trial, that the e-mails should be provided as soon as possible. Tubb was asked to put all the e-mails he thought relevant into a database and analyse them.
24. On 27 June 2008, Tubb e-mailed Cole and Mark Evans, as well as a producer involved in the production of the Sky News documentary into the Darwins, which was aired after Anne Darwin's conviction, to confirm that he had accessed the remaining e-mail accounts and to summarise what he perceived as the highlights. Cole replied to indicate that I wanted to be updated on the documentary. I should make clear that at this stage I was not aware of any details of Tubb's investigation into the Darwins, and specifically I was not aware that it had involved access to their e-mail accounts. A copy of the e-mail exchange is at page 10 of **JHR1**, and a copy of a further e-mail exchange between Tubb and Cole on 30 June, on the subject of briefing me about the issue the following day, is at page 11 of **JHR1**. The reason that I was to be briefed was so that I could confirm that I was happy that Sky News should run the story and provide the e-mails to the police.
25. On 1 July 2008, I met with Mark Evans and Gerard Tubb who briefed me on the background to the Darwins story. Following the meeting, I asked Mark Evans to send me an e-mail to confirm what we had discussed immediately after our meeting. I enclose that e-mail at page 12 of **JHR1**. That e-mail referenced

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external and internal legal advice (taken after the e-mails had been accessed) on the risks of prosecution associated with running the story and disclosing the e-mails to the police. Since the whole purpose of the access had been to uncover evidence to assist the police to prosecute a crime, my view was that there was a clear public interest in the police being provided with the relevant material and, having been appraised of the above background, I authorised Mark Evans and a Sky lawyer to visit Cleveland Police on 9 July 2008 to share their findings with them. Specifically, the police were provided with a number of the e-mails which were most significant to the offences for which Anne Darwin was charged, the log-in and password details of the various accounts accessed, and a summary of why Sky News believed that her defence must fail.

26. On 23 July 2008 Anne Darwin was convicted for offences of deception (so too was John Darwin, but unlike his wife, he had pleaded guilty). The police in public statements following Anne Darwin's conviction acknowledged the "*pivotal*" role played by Sky News in providing it with evidence supporting the prosecution. Sky News in its reporting of the conviction specifically referred to the fact that it had provided to the police emails to which it had had exclusive access. Enclosed at exhibit **JHR2** is a DVD of Sky News' report of Anne Darwin's conviction. Sky's on-line contemporaneous reporting of the events, which can still be found on-line at a number of sites, including <http://news.sky.com/home/uk-news/article/15048345> and <http://news.sky.com/home/interactive-flash-module/15040512> - make very explicit reference to the source material that Sky News referenced – for example the first of these articles states that "*Sky News has uncovered documentary evidence which demonstrates conclusively why John Darwin came back to Britain*" and the second notes that "*Sky Correspondent Gerard Tubb has uncovered hundreds of secret messages sent between John Darwin – canoe man – and his wife Anne*". I have enclosed at pages 13-14 of exhibit **JHR1** the first of these articles, but the second of them is interactive and it is not possible to provide it in a documentary format.

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27. Following the conviction of Anne and John Darwin, Gerard Tubb has informed me that he was faced with a number of questions from a variety of sources, including the public, the investigating authorities, and other members of the press, as to whether money obtained by the Darwins might remained unaccounted for. Over August and September 2008 Tubb gained further authorisation from Simon Cole to continue to access the e-mail accounts of the Darwins (which he had already accessed) to ascertain if they contained any information that might assist the investigation on this point. In addition, Tubb had discovered a further e-mail account of John Darwin's, which he believed might contain relevant information, and which he was trying to access. An e-mail exchange between Tubb and Cole on 4 September 2008, attached at page 15 of **JHR1**, explains Tubb's efforts. A follow-up e-mail a week later shows that Tubb gained access to the account but that there was no information in it (page 16 of **JHR1**).
28. Gerard Tubb informed me during our recent discussions that he believes he continued sporadically and infrequently to access the already accessed Darwin e-mail accounts until around January 2009 in the context of looking for information relating to the location of the money, but found nothing further, and ceased access at that point. I note that the CPS, after what they described as a "*painstaking operation over the past two and a half years*" announced in February 2012 recovery of over £500,000 of money obtained by the Darwins.
29. I am informed by Gerard Tubb that at the same time as investigating the whereabouts of some of the money that the Darwins had obtained, he also discussed with Simon Cole that sources connected to the case believed that one or more third parties may have helped John Darwin after he faked his death. Cole agreed that Tubb should explore matters further, which he did between September 2008 and January 2009, using public information. Through searches of publicly-available online postings and discussions with a number of his journalistic sources, Tubb identified an e-mail account connected to John Darwin which was set up using an alias and appeared to be in use by another person for the purpose of re-

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routing e-mails. Its security question and answer had been used by John Darwin elsewhere in the time that he had been missing. Tubb was authorised by Cole to access the account. He ascertained that the account contained no e-mails or communications of any kind. On 1 January 2009 Tubb e-mailed Mark Evans reporting on these matters and seeking permission to hire a Panamanian freelance journalist to make enquiries to check whether the person whom he believed may have used the account travelled to Panama to visit John Darwin. I enclose at pages 17-18 of JHR1 a copy of this e-mail. I point out that the freelance journalist is referred to in the e-mail as a "private eye" but the Sky legal team has ascertained from Tubb that this was an inaccurate description, and that he was in fact a freelance journalist.

30. The Panamanian check returned nothing. My understanding is that Tubb had also ascertained from public sources by this time that the person who may have used the e-mail account referred to above operated other e-mail accounts. However, he did not believe that there was sufficient basis to access these as, unlike the account referred to above, these did not, from publicly available information, suggest any link with John Darwin. He did not attempt to access those accounts and informs me that in January 2009, concluded that the investigation was not leading anywhere and discontinued it.
31. Tubb told me that he believes he read somewhere between 200 and 250 e-mails from the various e-mail accounts of Anne and John Darwin that he accessed. He also used details on the e-mail accounts to view items that John Darwin had purchased from Amazon and eBay. At no time during Tubb's access to the e-mails of John and Anne Darwin did he forward, reply, alter, delete or otherwise, save for reading them, alter the properties in any of the e-mails he accessed.

The second story: Martin and Lianne Smith

32. The second instance of authorising access to third party e-mails was also justified on the basis of an exceptional public interest – this time in seeking to identify, expose, and therefore learn from potentially serious failings in local authority

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child welfare provision which could have had tragic consequences, namely the death of two very young children. The story related to Lianne Smith, a child care worker who in late 2007 had fled to Spain with her three-year old daughter and her husband Martin Smith, who was at the time under investigation in the UK for the suspected rape of a minor. Again for ease of reference, I have, with the help of the Sky legal team, put together at page 19 of exhibit **JHR1** a chronology of the case and the timings of e-mail access, which is based on the same sources as mentioned in paragraph 19 above. After over two years living abroad, Martin Smith was arrested on around 8 May 2010 and extradited to the UK shortly thereafter. Some ten days after his arrest, on 18 May, Lianne Smith killed their daughter and son (who had been born in Spain in 2009) in a Spanish hotel.

33. As the North of England correspondent, Gerard Tubb was assigned to cover Martin Smith's appearance in Carlisle Magistrates' Court on 19 May. He had not previously been following the story, but began to research it and learned that the Smiths had been on the run, and that Lianne Smith had previously been a child care worker with a Local Authority. He believed from this that they would likely have used e-mail accounts to keep in contact with people in the UK. He further ascertained that Martin Smith had been arrested in November 2007 on multiple charges of child sex offences and that shortly thereafter the local Social Services had launched child protection proceedings over their daughter, which had apparently prompted the couple to go on the run. He discovered that the Local Authority in the area that the Smiths had lived until October 2007 had placed Rebecca Smith, the couple's daughter, under child protection procedures following a referral from the local constabulary, and that following the family's move in October 2007, their file was passed to the new Local Authority. He also discovered from public sources that Lianne Smith had set up a nursery in Barcelona and the e-mail address that she had been using in Spain.
34. A number of discussions on the background to the story took place between Gerard Tubb and his line manager Simon Cole, which culminated on 22 May in

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Tubb e-mailing Cole to ask for permission to attempt to access Lianne Smith's e-mail account. He believed from what he had discovered via publicly available information that there had been a serious failing by authorities to follow up on a child who they must have realised was at very severe risk, and had such follow up been done, that child's life may have been saved. There was a strong public interest in establishing if such failings had occurred and ensuring that appropriate lessons were learned in the event of future similar cases. Tubb believed that by accessing Lianne Smith's e-mails, he could establish that she had been living openly in Spain, and could have been located. He also had suspicions she may have been in contact with her former colleagues at the local Local Authority, who were the very people he believed should have followed up on the welfare of the couple's daughter after her disappearance. A copy of Tubb's e-mail to Cole seeking authorisation and Cole's response giving it is set out at page 20 of **JHR1**.

35. Gerard Tubb told me during my most recent discussion with him that during June 2010, he had succeeded in accessing Lianne Smith's e-mail account, which was a "gmail" account, in much the same way as he had in the Darwin case. Having gained access, he established that she had been paying taxes in her own name in Spain. He also discovered that she had sent e-mails to a number of media organisations between 8 May 2010, when Martin Smith was arrested, and 18 May 2010, when she killed her children, seeking help as she was struggling to cope. I enclose at page 21 of **JHR1** an e-mail from Simon Cole to a number of the editorial staff at Sky News on 11 June, summarising what Tubb had discovered, but not indicating that the information had been obtained by accessing Lianne Smith's e-mail account. I do not believe that any of these staff, except Mark Evans, became aware at any point how Tubb had obtained his information. They were included in the e-mail from Cole because they were involved in news planning and needed to be aware of stories that might imminently run.
36. As with the case of the Darwins, the e-mails in the account that Gerard Tubb had accessed gave information on other e-mail accounts used by the couple. He

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sought and was given oral authority to access these further accounts by Simon Cole on 10 June, but did not pursue the content of these accounts until some months later, in around December 2010. This was partly because he was a Sky News correspondent whose predominant work was reporting breaking news, not carrying out investigative journalism, but also because Martin Smith was on remand awaiting trial for a number of serious charges, so the story could not advance and be broadcast prior to the outcome of that trial in any event.

37. In around December 2010, Gerard Tubb accessed further e-mails and contacted Simon Cole to report his findings, which included that Rebecca Smith had been registered in her real name at the local state school in Barcelona, where the couple were living. Copies of e-mails between Cole and Tubb in December 2010 and early January 2011 are attached at pages **22-25** of exhibit **JHR1**.
38. On 15 December 2010 Martin Smith was found guilty of child sex offences. On 10 January 2011 it was announced that his sentencing would not take place until 11 March 2011. On learning this information, Gerard Tubb e-mailed Simon Cole to ask whether, given the delay in sentencing, Sky News should report its findings without further delay. A copy of that e-mail is attached at page **26** of exhibit **JHR1**. However, at that time, several major international news stories were breaking so a decision was taken that, despite the public interest justification for the email access, the Smith story was no longer an editorial priority and should not be pursued.
39. Tubb did not take copies of the emails he accessed, nor reply to, forward, or alter them in any way other than reading them. He believes he accessed a total of no more than 100 emails in this case.
40. To the best of my recollection, I was not made aware of the fact that e-mails of the Smiths had been accessed until September 2011, when Sky was preparing its response to the 11<sup>th</sup> August notice from the Inquiry. I understand that this was also the first time that the Sky's internal lawyers had been made aware of the matter. The reason for this was that the story was not going to be broadcast. As



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with the Darwins' case, Simon Cole had authority to give the green light to the access, subject to the appropriate public interest justification.

Conclusions on accessing third party e-mails

41. I understand that accessing third party e-mails without authorisation can constitute an offence, and that any decision to do so must be considered very carefully.
42. I firmly believe that the two cases involving access to third party e-mails were justified on the basis that there was an exceptionally strong public interest to each story. I understand that there is no "public interest" defence to accessing third party e-mails but believe that there are occasions where the absence of a statutory defence should not necessarily be a bar to responsible investigations and reporting, for example where that reporting (as in the case of the Darwins) exposes criminal behaviour and helps bring those responsible to justice, or (in the case of the paedophile and his wife) is carried out with a view to exposing systemic failings which seriously affect the most vulnerable members of the public, in the hope that by doing so reforms will be made or lessons learned. I also understand that, in considering whether to charge a journalist with a criminal offence that may have been committed in the course of their work, the CPS will assess, amongst other things, whether the public interest served by the conduct in question outweighs the overall criminality. I see that in guidelines only just issued (on 18 April), the Director of Public Prosecutions has set out non-exhaustive criteria to assist in the analysis of whether the public interest served by the journalistic conduct in question outweighs its overall criminality, and that conduct which discloses a criminal offence or a failure to comply with a legal obligation are listed as examples of conduct serving the public interest.
43. I believe that Sky News' approach to the tensions that can arise between the law and responsible investigative journalism is consistent with that of other news organisations. For example, the BBC's Director General, Mark Thompson, has argued publicly that there are occasions when it is acceptable to break the law in pursuit of a story. In an article for the Times on 22 July 2011, he wrote, "*It is*

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*important that the ability of serious investigative journalists to do their work is not blunted or unnecessarily constrained.*" In evidence to the Inquiry, The Guardian's investigations editor David Leigh admitted hacking a telephone in pursuit of a story about corruption in the arms industry and indicated that such actions could be justified in the public interest. On the rare occasions that we at Sky News face such a decision, we recognise that it requires proper editorial oversight and a finely balanced judgment based on individual circumstances.

44. I should add, in the case of the Darwins, that the Cleveland Police made use of the material provided to them by Sky News to secure Anne Darwin's conviction for offences of deception. The police overtly acknowledged the value of the evidence they had received from Sky News, describing it in the news conference after the verdict as "*pivotal*" and "*vital*". Sky News in its reporting of her conviction made it clear that it had supplied e-mails passing between the Darwins, to which it had had "*exclusive access*", to the police. Sky News' reporting on the Darwins' case was nominated for both BAFTA and Royal Television Society awards in 2009, which evidences the views of those in the industry that the work done had real value. A contemporaneous report of the comments of the judging panel for the RTS awards notes that Tubb's work "*was praised as a fine example of diligent investigation, with good use of the internet as a research tool.*" It will be clear from this that Sky News did not attempt to conceal the source of the information that it had obtained.

(2) (cont.) *Without prejudice to the generality of this request the reply should include:*

(a) *The date of each occasion on which a third party's e-mail was accessed.*

45. There were a number of different occasions on which Gerard Tubb gained access to e-mail accounts in both stories described above. In the case of the Darwins, this was between 13 June 2008 and around January 2009, with the large majority of access being during June 2008, some further access in August and September, and infrequent access thereafter until around January 2009. In the case of the paedophile and his wife, access to the e-mail accounts occurred between June

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2010 and January 2011 – the majority of such access being at the beginning and end of these periods, with very little in between.

*(b) The sender and the recipient of the e-mail which was accessed and/or the identity of the e-mail account holder.*

46. The account holders of the e-mails that were accessed were Anne and John Darwin in the first case, and the paedophile and his wife in the second. By accessing the e-mail accounts of these individuals, Tubb had access to all of the contents of those accounts. His aim in each case was specific however: in that of the Darwins it was, until her trial in July 2008, to establish Anne's complicity and therefore the majority of e-mails on which he focussed were those between John and Anne; after her trial he re-visited largely the same e-mails but with a different focus, namely to see if he could understand whether any of the money obtained by the fraud remained untraced. In the second case it was to establish whether the paedophile and his wife were leading an undisguised life and could have been located.

*(c) The identity and position of the person who authorised access to the third party's e-mail.*

47. In both cases, Simon Cole, then Managing Editor and Deputy Head of Sky News.

*(d) The basis for so authorising access to a third party's e-mail.*

48. The sole basis for authorisation was an overriding public interest in the stories which were being pursued, as I have explained in more detail above.

*(e) Identify any written policy or procedure under which such access was authorised.*

49. There are no written policies or procedures which deal specifically with access to third party e-mail accounts. As explained above, all Sky News journalists are provided with legal and Code documentation and guidance, as well as a variety of other training documentation in relation to subjects such as ethical and responsible reporting, and are offered regular training sessions in relation to these subjects. Senior editors with authority to permit such access, including Simon Cole, are aware (from their knowledge of the legal and regulatory requirements,

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their training and their experience in the role) on what basis there might be an overriding public interest. As noted above, as a result of further consideration of the two incidents described in this statement, written guidance is being developed to further improve existing checks and controls regarding any activity which might be illegal.

*(f) Identify who in the management chain was aware that BSkyB was accessing the e-mails of third parties.*

50. Prior to access, only Simon Cole was aware in each case. In the case of the Darwins, the Head of Home News (Mark Evans), the Head of Sky News (myself), and the Sky legal department were all advised of what had happened shortly after access in late June and early July 2008 as further detailed above, and the question of providing the e-mails identified through Gerard Tubb's activities to the police was considered. In the case of the paedophile and his wife, I understand that Mark Evans was made aware of the access after it had first happened but beyond him and Cole, it was not until around September 2011, when the Sky legal team co-ordinating the response to the Inquiry's notice of 11<sup>th</sup> August 2011 spoke to Tubb and advised me accordingly, that there was broader management awareness.

*(3) A full explanation for your failure in your letter to the Inquiry dated 16<sup>th</sup> September 2011 to provide details of the matters now included in your letter to the Inquiry dated 4<sup>th</sup> April 2012.*

51. In preparing the response to the 11<sup>th</sup> August notice from the Inquiry, I recall that the Sky legal team co-ordinating the response gave careful consideration to the two incidents described above and, in consultation with external legal advisers, concluded that while further investigation of them was merited in order to establish all the relevant facts, the matters referred to in this statement were not relevant to the matters the notice asked us about. In this context, I note that the Inquiry's notice of 11<sup>th</sup> August 2011 asked for documents relating to current or past training materials, guidance, practices, codes of practice, codes of conduct,

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handbooks or policies on, or bearing upon, amongst other things, the Computer Misuse Act 1990 and the Regulation of Investigatory Powers Act 2000 ("RIPA"). It did not ask for incidents of access to third party e-mails, and, while Sky News' 16<sup>th</sup> September letter was not strictly confined to the questions asked, we did not believe that anything in the Terms of Reference required these details to be included.

52. I understand that Sky's in-house legal team has provided a more detailed explanation in its letter to the Inquiry of 19<sup>th</sup> April 2012.

*Documents requested in the Notice*

53. I have enclosed at exhibit **JHR1** the documents that I have located, been provided pursuant to my or the Sky legal team's request, and am aware of which I believe are relevant to the Notice and are not privileged. As noted above, there are no written policies or procedures applicable to the accessing of third party e-mails for journalistic purposes, although written guidance to further strengthen Sky News' editorial controls is being developed following further consideration of these activities, which all staff will be required to follow. In relation to the specific question of potentially unlawful conduct, this guidance will mandate that the relevant senior editor, Head of Sky News and the Sky lawyers supporting Sky News approve any such conduct in advance.

**Statement of Truth**

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

Signed..



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

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**WITNESS STATEMENT OF  
JOHN HAMILTON RYLEY**

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

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**EXHIBIT JHR1**

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This is the exhibit JHR1 referred to in the first witness statement of John Hamilton Ryley dated 19 April 2012.

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**IN THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND  
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**EXHIBIT JHR2**

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This is the exhibit JHR2 referred to in the first witness statement of John Hamilton Ryley dated 19 April 2012.