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RESPONSE FROM HARBOTTLE & LEWIS LLP TO
THE CULTURE MEDIA AND SPORT COMMITTEE
AND
THE HOME AFFAIRS COMMITTEE

Preliminary matters

1 This document responds to questions raised by the Rt Hon Keith Vaz MP (Chairman of the Home Affairs Committee ("HAC")) in a letter dated 21 July 2011 and by John Whittingdale OBE MP (Chairman of the Culture, Media and Sport Committee ("CMSC")) in a letter dated 29 July 2011. Both letters are at Appendix A to this response.

2 This document proceeds as follows:

a. First, a basic chronology of relevant events.

b. Second, a detailed explanation of the limited nature of the work which News International instructed Harbottle & Lewis LLP ("the Firm") to do.

c. Third, some observations on the evidence given to the Committees by Messrs Murdoch (senior and junior) and others.

d. Fourth, an explanation of the law of legal professional privilege and confidentiality, in order to deal with the misconception that a solicitor is permitted (or even obliged) to report to the police material supplied to him by his client if that material shows that the client has been involved in criminal conduct.

e. Fifth, an explanation of what happened to the Firm's file after the matter had been completed, in order to deal with suggestions from some quarters that it should have been unearthed earlier and that there is something untoward in the fact that it was not.

3 In view of the ongoing criminal investigation we have contacted the Metropolitan Police about the contents of this document. As a result we have been requested by the Metropolitan Police not to include any reference at all to the contents of the emails which the Firm reviewed in 2007 at the present time. This is not (for the avoidance of doubt) because those emails are being

included in order to put the Firm's work (and some of the evidence given to the CMSC) in context.

a. Mr Goodman and Glenn Mulcaire were arrested on **8 August 2006**. A police investigation into their activities followed, and News International immediately engaged external solicitors (Burton Copeland, specialist criminal defence lawyers) to deal with that investigation. It is apparent from the evidence which was given to the CMSC in 2009 by Colin Myler, Tom Crone, Andy Coulson, Les Hinton and Stuart Kuttner that Burton Copeland undertook a very substantial exercise, far more substantial than that undertaken by the Firm. We return in more detail to this evidence below.

b. Mr Goodman pleaded guilty on **29 November 2006** to conspiracy to intercept voicemail messages on mobile phones belonging to three members of the Royal Household. Sentencing was deferred to **26 January 2007**, when Mr Justice Gross sentenced Mr Goodman to 4 months imprisonment. On the same day Mr Coulson announced that he was retiring as editor of the News of the World.

c. On **5 February 2007**, News International (Mr Hinton) wrote to Mr Goodman terminating his employment. The letter states *"I recognise this episode followed many unblemished, and frequently distinguished, years of service to the News of the World. In view of this, and in recognition of the pressures on your family, it has been decided that upon your termination you will receive one year's salary. In all the circumstances, we would of course be entitled to make no payment whatever. ... You will be paid, through payroll, on 6 February 2007, 12 months' base salary, subject to normal deductions of tax and national insurance"* We draw attention to this passage because the topic of payments to Mr Goodman after his conviction has been the subject of questions by the CMSC on more than one occasion[1]. We do not know what his annual salary was, nor the period of notice to which he was entitled, nor whether News International did in fact, as Mr Hinton said it was going to, pay Mr Goodman a year's salary on 6 February 2007. Mr Hinton also explained that Mr Goodman had a right to appeal internally against his dismissal.

[1] Paragraph 445 of the CMSC's Second Report dated 24 February 2010 refers to evidence from News International about the amounts paid to Mr Goodman on the termination of his employment. The paragraph summarises that evidence as being that Mr Goodman was paid "*notice, legal costs and a compensatory award. The group declined to confirm the amounts but said the awards were below the £60,600 statutory minimum*".

g. On **14 March 2007**, Mr Goodman therefore submitted a lengthy list of the documents which he wanted News International to provide for the purposes of his appeal. These included emails passing between himself and various News of the World executives on various topics.

h. We do not know for certain what happened between the date of Mr Goodman's request for documents on 14 March 2007 and the Firm being instructed on 9 May 2007. However, the following may reasonably be deduced from an email of instructions sent by Mr Chapman to Mr Abramson on 10 May 2007. (Copies of this document together with the fax from Mr Chapman to Mr Abramson to which it refers are at Appendix B. Certain names have been redacted at the request of the Metropolitan Police.)

   i. News International refused Mr Goodman's request for documents.

   ii. News International gathered together all the emails *"which* [News International's] *IT department were able to recover from archive"* fitting the categories set out by Mr Goodman in his request. It seems from an email from Simon Lowndes (Head of Managed Services in News International's Information Technology Department) dated 14 May 2007 that these emails were placed into "5 sub-folders" in a Human Resources folder for Mr Cloke on News International's server.

   iii. Mr Chapman and Mr Cloke had themselves been through these emails for the purpose of finding any evidence *"to support the contentions made by Goodman in his letter of 2 March 2007, paragraphs i and ii - i.e. that his illegal activities were known about and supported by* [REDACTED], *and that* [REDACTED], *and others were carrying out similar illegal procedures"*. Mr Chapman and Mr Cloke *"found nothing that amounted to reasonable evidence of either of the above contentions"*.

i. On **9 May 2007** Mr Chapman telephoned Mr Abramson (then a partner in the Firm). They had worked together before on a number of civil litigation matters for News International. There is no note of the conversation on the file, but Mr Chapman then sent instructions to Mr Abramson by email on **10 May 2007** (see Appendix B). This email set out the history above about Mr Goodman's dismissal and appeal, and the

emails and sent them to the Firm in hard copy by courier on either **16 or 17 May 2007**. (Even then some of the emails appeared only in cut off form.)

m. In relation to the review of the emails, the time records held by the Firm suggest the following as a summary of work during the retainer:

   i. The team of junior employees spent a total between them of about 46 hours (spread between **15 and 24 May 2007**) on this matter, their time mostly being spent in searching through the email sub-folders by remote access.

   ii. Out of a total of 8 hours 24 minutes recorded by Mr Abramson on this matter between **9 and 30 May 2007**, 1 hour and 42 minutes were specifically attributed to reading the emails. On **18 May 2007**, Mr Cloke emailed Mr Abramson asking *"if we could have the results next week. I'd like to write to CG on Thursday if at all possible."* (We return below to what this indicates about the purpose of the exercise being done by the Firm.) Mr Abramson also recorded 30 minutes on **22 May 2007** in meeting the junior team to review progress, and this meeting almost certainly included some consideration of whatever emails had by then been found and thought of potential relevance. In addition, Mr Abramson made a time entry of 24 minutes for a telephone discussion with News International on **24 May 2007**; there is no note of this conversation on the file.

n. On Friday **25 May 2007**, Mr Abramson sent an email to Mr Chapman at 13:13 headed *"Draft for discussion this pm"*. The email set out the proposed text of a letter recording the findings of the email review. It stated *"We have on your instructions searched the emails that you were able to let us have access to from the accounts of* [REDACTED]. *I can confirm that we did not find any evidence that proved that* [REDACTED] *knew that Clive Goodman, Glen Mulcaire or any other journalists at the News of the World were engaged in illegal activities prior to their arrest."*

o. There was then a short telephone discussion, probably about the draft, that same day: emails from 24 May 2007 show a call being arranged for 14:15 on 25 May 2007, and Mr Abramson's time records show a short call on 25 May 2007. Subsequently, at **16:12 on 25 May 2007**, Mr Chapman sent an

It involved a payment to Mr Goodman: the Firm does not know whether this payment was in addition to the year's salary which Mr Hinton's letter of 5 February 2007 had indicated would be paid to Mr Goodman on 6 February 2007. The Firm had no involvement whatever in this settlement (although Mr Abramson was subsequently instructed by News International in 2008 in relation to a complaint by Mr Goodman that News International had breached a "non-disparagement" clause in the agreement, which is how the Firm has knowledge of the terms of settlement at all.) We have not set out the amount of the payment to Mr Goodman because the compromise agreement is expressed to be confidential, and it is for both News International and Mr Goodman to decide whether that confidentiality is to be waived. However, we comment below on the implications of this settlement, in July 2007, of Mr Goodman's appeal for James Murdoch's claim that News International was still "resting" on the letter of 29 May 2007 in 2008-2010.

The Retainer: what the Firm was asked to do

6 The Firm would like to draw the following points to your attention about its retainer in May 2007.

7 The retainer was expressly limited to the context of Mr Goodman's employment dispute. The Firm was being asked to assist News International in dealing with Mr Goodman's internal appeal against his dismissal. The instructions might fairly be paraphrased as: "If we reject Goodman's appeal against dismissal and he brings employment tribunal proceedings, what is the risk of him establishing from these emails that other people were aware of his phone hacking activities, or were doing the same thing themselves?" The point of the exercise which the Firm was asked to do was directly, specifically and solely related to assisting News International in assessing how to handle Mr Goodman's appeal against dismissal. Thus in context, the advice of the Firm in the letter of 29 May 2007 was only that if News International pushed this matter to an employment tribunal, there was nothing in the emails reviewed which provided "reasonable evidence" that Mr Goodman's grounds of appeal were well founded. It went no further than that (and even in that context it seems not to have been relied upon by News International in any event, as we explain below.)

8 There was absolutely no question of the Firm being asked to provide News International with a clean bill of health which it could deploy years later in wholly different contexts for wholly different purposes. If the letter was to be communicated to any third party, then so far as the Firm was aware that third

£500,000 and £1 million"[6]). If, therefore, the Firm had been asked in 2009 or 2010 whether News International could use its 2007 advice, which had been given to assist in assessing how to handle Mr Goodman's employment dispute, for the very different purpose of bolstering its stance before Parliament, or indeed for any other purpose outside the defunct Goodman employment dispute, the Firm would undoubtedly have refused unless it could have been satisfied that the letter was not going to be presented in a misleading manner. This would have required proper explanation to be given of the limited nature of the Firm's retainer, as well as the specific purpose of the exercise which had been performed in 2007 and its limited scope.

10 If the Firm had initially been given a retainer as broad as instructions *"to find out what the hell was going on"* or (to put it more formally) to undertake an investigation which News International could use for broader purposes, such as laying it before Parliament as independent support for the "one rogue reporter" theory, the Firm would have refused the instructions. Instructions of that nature would amount to asking whether there was evidence of wide criminal conduct by News International's employees: this would have been a criminal matter, and the Firm has no expertise in that field. Any solicitors accepting instructions of that nature would probably have done at least the following:

a. insisted on unlimited access to all emails and other records of News International, rather than being restricted to a limited selection produced by News International itself;

b. insisted on direct access to key witnesses;

c. insisted on News International instructing both specialist criminal lawyers and forensic accountants;

d. engaged specialists in forensic computer analysis to assist in finding emails and other electronic evidence; and

e. required access to the documents seized by the police from Mr Mulcaire.

A review of this nature would have taken a long time (as opposed to a fortnight, which is the period between the Firm commencing work through remote access to the emails on 15 May 2007 and the letter being written on 29

[6] Evidence given by Mr James Murdoch before the CMSC on 19 July 2011 in answer to Q265.

13 Finally on the question of its retainer, the Firm would like to draw attention to the fact that its remit was specifically limited by News International to a search for evidence supporting Mr Goodman's first two contentions in his 2 March 2007 letter: (a) that certain named individuals knew about and supported his interception of voicemail messages, and (b) that other News of the World staff were themselves carrying out the same activities (i.e. phone hacking). This was not a broad instruction to search for evidence of other criminal acts (and again, as civil litigators without criminal law expertise, the Firm would not have accepted such instructions). Whatever was shown to Lord Macdonald by Messrs Hickman & Rose, it cannot have been evidence relating to knowledge of phone hacking since, as Lord Macdonald has pointed out in his evidence, he was conflicted in relation to phone hacking and could not look at documents relating to that issue[10]. He said that the emails he was shown were *"to do with an entirely separate issue"* from phone hacking[11]. It is apparent from Lord Macdonald's own evidence, therefore, that the material on which he was commenting fell outside the scope of News International's 2007 instructions to the Firm. As Lord Macdonald said in his evidence before the CMSC in July 2011[12]:

> I do not know what Harbottle and Lewis were looking at it for. If they were looking at it in terms of whether it supplied more evidence of phone hacking, that is one question. If they were looking at it for evidence of wider criminality, that is another question.

As explained above, the Firm was indeed engaged to look for "more evidence of phone hacking", and was not engaged to look for "evidence of wider criminality".

Comments on various aspects of evidence given to Parliament

14 The Firm has been asked by the CMSC (question 15 of its letter of 29 July 2011) to set out any matters in respect of which it believes that the CMSC or its predecessor may have been given misleading or inaccurate information about the review undertaken by the Firm.

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there was only one rogue reporter.") is accurate (if it was stated in the terms reported). The Firm did not "come to" the CMSC and did not write its letter for submission to the CMSC.

[10] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1006: *'I said, "I can't look at anything that has anything to do with phone hacking." They said, "This is an issue that isn't to do with phone hacking; it's entirely separate".'*

[11] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1020, and see too answers to Q1055-6 (*"not connected with phone hacking"*, *"not to do with hacking"*).

[12] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1067.

would have been more likely to have fought Mr Goodman through tribunal proceedings, especially given the terms of settlement previously indicated in Mr Hinton's 5 February 2007 letter.

d. The CMSC has suggested to witnesses that News International settled its litigation with Mr Taylor and/or Mr Clifford at the levels which it did because the civil disclosure exercise had produced evidence[14] suggesting that phone hacking was not confined to Mr Goodman. If it transpires that this is the case, then it must follow that News International knew at that time that the letter could not be "rested on" in a wider context than that in which it had been provided. It must also follow that News International knew at that time that there was other evidence (not contained in the "5 sub-folders") which demonstrated that there was a wider problem at News International in respect of phone hacking. Thereafter, News International could not possibly have "rested on" the letter even assuming that it had done so before.

e. In this context, the CMSC may wish to consider whether News International has waived any right to claim privilege over the legal advice it received (internally and externally) about the need to settle the Taylor litigation and the quantum of that settlement. In civil litigation, if a party deploys in evidence privileged material, then he waives privilege in all associated material so that the Court and the other party can see that what has been released from privilege is a fair account of the advice received, and that a misleading impression has not been created[15]. At the July 2011 hearing News International (by Mr James Murdoch and others) gave extensive evidence of the legal advice it received in settling the Taylor litigation as follows:

> **Mr James Murdoch:** Thirdly, the company sought distinguished outside counsel to understand that, if the case were litigated and if it were to be lost, which was the great likelihood, what the financial quantum would be or what that would cost the company. It was advised that, with legal expenses and damages, it could be between £500,000 and £1 million or thereabouts. I do not recall the exact number of the advice. I think that it was £250,000 plus expenses, plus litigation costs—something like that[16]

[14] Such as the "For Neville" email. See Guardian Newspaper article dated 22 July 2011.
[15] The classic authority is the decision of Mustill J (later Lord Mustill) in **The Nea Kateria** [1981] Com LR 138.
[16] Evidence given by Mr James Murdoch before the CMSC on 19 July 2011 in answer to Q242.

they were, but also to the advice from Mr Crone[20]. It would be of interest to learn whether the dialogue between News International and its lawyers about whether to settle Mr Taylor's claim, and if so at what level, included any reference to any documents which had emerged in the civil law disclosure exercise (including, but not limited to, advice given to News International about the impact of the "For Neville" email which was produced by Mr Taylor's lawyers during that litigation.)

g. The suggestion that News International could possibly have continued to "rest on" the letter even after the CMSC's Second Report was published in February 2010, with its finding of "collective amnesia" by News of the World witnesses, is hard to credit.

16 In addition, the Firm would like to draw to the CMSC's attention to the following evidence given to it in 2009[21].

> **Mr Myler:** I think the first thing to remember is that as soon as Mr Goodman and Mr Mulcaire were arrested News International had an outside firm of solicitors to absolutely oversee the investigation to cooperate with the police, to be a bridgehead, to give whatever facility the police required. It was completely hands-off, if you like, for transparency from the company's point of view. [22]
>
> **Q1388 Paul Farrelly:** Who were the solicitors who handled the investigation?
> **Mr Crone:** Burton Copeland. They are probably the leading firm in this country for white collar fraud.
>
> **Q1389 Paul Farrelly:** Did that investigation go wider than investigating the circumstances because the court case was coming up of the Mulcaire/Goodman connection? Did it go wider and ask people such as the deputy editor, the managing editor, the news editor, the chief reporter as to whether they had been involved in any way with Mr Mulcaire? Did it go wider?
> **Mr Crone:** Sorry, this is for me?
>
> **Q1390 Paul Farrelly:** No, this is to Mr Myler because Mr Myler gave evidence to the PCC.
> **Mr Myler:** I think Mr Crone is the best person to answer.

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[20] Under English law, legal professional privilege applies just as much to the dialogue between a client and its in-house lawyer, like Mr Crone, as it does to the dialogue between a client and its external lawyer. Thus it is possible for News International to withhold documents or material from its evidence on the basis of legal professional privilege attaching to communications to and from Mr Crone.

[21] This evidence was given in relation to the CMSC's Second Report of Session 2009-10, "*Press standards, privacy and libel*" published on 24 February 2010.

[22] Evidence given by Mr Myler before the CMSC on 21 July 2009 in answer to Q1384.

Q1397 Paul Farrelly: I want to wrap-up fairly shortly. When the other names came into the frame after November 29, did the remit of the investigation in News International broaden?
Mr Crone: Yes, to some extent but the questions had already been asked. Was anyone involved with Mulcaire, or doing this, that or the other? Burton Copeland had looked at all of the financial records; and there was subsequently an email check done which went to 2,500 emails; and that produced no evidence either.

Q1398 Paul Farrelly: The question: was anyone else involved with Mulcaire? The answer was: no. Nothing else was found?
Mr Crone: No evidence was found.

Q1663 Mr Farrelly: Can I just ask you about Clive Goodman. You say you were deceived. How was Clive Goodman able to pay £12,300 to Glenn Mulcaire? Was it actually in readies or did it go through the accounts department in a masked way?
Mr Kuttner: I think the answer to the first part is it was in cash, it was a cash payment. The answer to the second part is that it was all accounted for in the documentation and that is the material that either directly on their own account to the investigating police team, or through Burton Copeland, the solicitor who was looking into these things at News International, was all disclosed.

Q1719 Tom Watson: When you found out about the arrests. Presumably you commissioned an inquiry?
Mr Coulson: Yes. Obviously we wanted to know internally very quickly what the hell had gone on. Then I brought in Burton Copeland, an independent firm of solicitors to carry out an investigation. We opened up the files as much as we could. There was nothing that they asked for that they were not given.[23]

Q2168 Paul Farrelly: ...Can I just ask you on what basis did you feel able to give that answer, that to your recollection Tom Crone said that various investigations had been undertaken internally as the facts established themselves as the charges and trial developed. Can you tell us on what basis you gave us that answer?

Mr Hinton: ...He [Andy Coulson] had numerous conversations, the charges were laid, he invoked the help of Tom Crone, who is a company lawyer with a lot of experience,,, We bought in a firm of solicitors and there were many, many conversations with the police, and not involving me.

17 Evidence was also given by News International to the Press Complaints Commission ("PCC") on the role of Burton Copeland. The PCC report on phone message tapping allegations dated 9 November 2009 refers at

[23] See also answers to questions 1470, 1471 and 1558 asked by the CMSC in 2009.

21 Even if, therefore, some emails reviewed by the Firm had been suggestive of criminal conduct by employees of News International, then the Firm could not possibly have reported this to the police without client consent. That would have been against the Firm's obligations under clear modern law of the highest authority and a very serious breach of professional conduct. Further, neither common law, statute or regulation imposed any relevant obligation on the Firm to break its duties of confidence by reporting to any external authority. Criticism of the Firm for failing to report News International to the police or any other external body is therefore wholly misplaced, regardless of what the emails do or do not show.

What happened to the file

22 It has been suggested in some quarters that it is surprising that it took until April 2011 for the Firm's file on this matter to have come to light. We therefore think it would be of assistance to the Committees to understand what happened.

a. Once the Firm's letter had been issued on 29 May 2007, this retainer came to an end[26]. The Firm issued its bill on 13 June 2007, and News International paid it on 31 July 2007. The file went into archive storage with an external storage company, Restore, on 10 November 2008[27].

b. One by one, all those who had been involved in the retainer left the Firm in the normal course of events, as set out above. After the last member of the junior reviewing team left on 28 January 2011, there was literally no-one left at the Firm who had had any involvement in the original retainer at all.

c. The first time that the Firm's 2007 involvement was mentioned to Parliament, so far as the Firm can ascertain, was in the evidence given to the CMSC leading to its Second Report dated 24 February 2010. The Firm's name was not mentioned in oral evidence, but was mentioned in written evidence and this was recorded in the appendices to the Second Report (which also quoted in full the letter of 29 May 2007). The letter

[26] Apart from a small amount of time spent in June-July in obtaining for News International, at its request, a transcript of the sentencing remarks of Mr Justice Gross on 26 January 2007. A separate bill for this task of £560 plus VAT and disbursements was issued on 31 July 2007.

[27] The file would have been archived sooner but for the fact that, as mentioned in paragraph 5s above, Mr Abramson was subsequently instructed by News International in February 2008 in relation to an alleged breach by News International of the compromise agreement it had entered into with Mr Goodman. This work was carried out on the same file using the same file number. The documents were stored on the same paper and electronic files as those relating to the previous retainer.

hacking activities. It was not retained to look for evidence of wider criminal activities and did not do so.

b. It was not given free rein to look through whatever it wanted. It was asked to search through some emails which had been assembled by News International and isolated into a specific area on News International's server (the "5 sub-folders"). It was given no access to other documents or to witnesses.

c. Its exercise was specifically and only to assist News International in handling an internal appeal by Mr Goodman against his dismissal. This was a classic civil litigation exercise in assessing the potency of documentary evidence in an employment dispute. It was a short and limited exercise lasting two weeks and mostly involving junior employees. All this was known to News International.

d. The desktop exercise done by the Firm is to be contrasted with the far longer, far more detailed and (no doubt) far more expensive exercise undertaken by Burton Copeland in the 9 months which that firm is said to have spent in the News International offices. It may therefore be that Mr Rupert Murdoch was confused or misinformed as to which lawyers had been retained for what purpose when he gave evidence that the Firm had been retained to *"find out what the hell was going on"*. At any rate, this was an inaccurate and misleading account of the Firm's retainer.

e. The Firm was not retained to provide News International with a "good conduct certificate" which it could show to Parliament, or anyone else, years after the event and for a wholly different purpose. Such use of the Firm's advice was expressly prohibited under its terms of engagement. The Firm did not know that News International was subsequently going to deploy its 2007 advice in this way (in 2009-2010) and would not have given its consent to that use had it been sought.

f. The Firm rejects the evidence of Mr James Murdoch that News International "rested on" the letter of 29 May 2007 for its alleged belief (until late 2010) that Mr Goodman was a lone "rogue reporter". It is noteworthy that it has taken until 2011 for News International to make this assertion.

APPENDIX A

Culture, Media and Sport Committee
House of Commons / Millbank London SW1P 3JA
Tel 020 7219 6188 Fax 020 7219 2031 Email cmscom@parliament.uk Website www.parliament.uk/cmscom

Harbottle and Lewis LLP
Hanover House
14 Hanover Square
London W1S 1HP

Dear Harbottle and Lewis

29 July 2011

Thank you for your letters of 20th, 21st July and 28th July. I am pleased to note that you have received a waiver of privilege from News Corp and News International, in relation to questions from the Select Committee.

You will be aware that in his evidence to the CMS Committee on 19 July 2011, James Murdoch referred to the review of internal emails that Harbottle and Lewis carried out for News International in May 2007. On 27 May 2007, Harbottle and Lewis wrote to Jon Chapman, News International's Director of Legal Affairs at the time, that :

> We have on your instructions reviewed the emails to which you have provided access from the accounts of:
>
> Andy Coulson, Stuart Kuttner, Ian Edmondson, Clive Goodman, Neil Wallis, Jules Stenson
>
> I can confirm that we did not find anything in those emails which appeared to us to be reasonable evidence that Clive Goodman's illegal actions were known about and supported by both or either of Andy Coulson, the Editor, and Neil Wallis, the Deputy Editor, and/or that Ian Edmondson, the News Editor, and others were carrying out similar illegal procedures.

On 19 July 2011, James Murdoch told the Committee that the review of emails conducted by Harbottle & Lewis was one of the things that News International rested on when reassuring the Committee in 2009 that phone hacking was the work of one rogue reporter (Q346, Q362). James Murdoch told the Committee that when News International re-examined the file of emails retained by Harbottle and Lewis in 2011 it determined that there was a requirement to bring it to the attention of the police (Q335, Q339, Q363 and Q365).

Questions for written answer

1. When was Harbottle and Lewis first instructed in respect of matters concerning alleged or suspected phone-hacking?

2. Were these instructions given on behalf of News International Ltd, News Group Newspapers Ltd, or on behalf of both?

3. Please could you provide details of the instructions, including a copy of any document in which the instructions were reduced into writing.

4. Which individual gave the instructions on behalf of News International Ltd/News Group Newspapers Ltd, and to which individual at Harbottle and Lewis were the instructions addressed?

5. Please supply details of Harbottle and Lewis's primary point of contact at News International Ltd/News Group Newspapers Ltd. You have explained in your letter of 20 July to the Chairman that Mr Lawrence Abramson acted in this matter on a retainer from New International. Please confirm whether or not any other member of your firm was involved in preparing advice under this retainer, and please identity any such person.

6. What description of the emails provided was supplied to Harbottle and Lewis by News International Ltd/News Group Newspapers Ltd? Please supply a copy of any relevant letter or communication from the Correspondence File mentioned in your letter of 20 July.

7. Please indicate whether Harbottle and Lewis became aware at any time that the documentation supplied was incomplete and, if so, please describe in what way it was incomplete.

8. Please indicate whether any particular type of activity was excluded from the scope of the investigation commissioned from Harbottle and Lewis.

9. Did the investigation ext3nd to other individuals at the newspaper, for instance Neville Thurlbeck and Ross Hindley/Hall if not, why not?

10. Please describe any additional documentation requested by Harbottle and Lewis in connection with their investigation.

11. Please set out what advice was given orally, by whom, to whom, and when.

12. Please set out what advice was given in writing, by whom, to whom, and when.

13. Please confirm whether or not the documents provided to Harbottle and Lewis provided any grounds for reasonable suspicion that a criminal act might have been or might be committed by any employee or director of News International Ltd or of News Group Newspapers Ltd, and if so, what advice was given by Harbottle and Lewis?

14. Please confirm when Mr Abramson closed his file and retained it in archived storage. Please also confirm whether or not the contents of the file

APPENDIX B

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

0171 782 6094

[On headed notepaper]

PRIVATE & CONFIDENTIAL
BY COURIER

Clive Goodman Esq.
[redacted]

5 February 2007

Dear Clive

I am sorry to have to be writing this letter, but am afraid that events of the last few days and months provide us no choice but to terminate your employment with News Group Newspapers Limited.

This action, I know you understand, is the consequence of your plea of guilty, and subsequent imprisonment on 26 January, in relation to conspiracy to intercept voicemail messages. This obviously constitutes a very serious breach of your obligations as an employee, such as to warrant dismissal without any warnings. In the circumstances of your plea and the court's sentence, it is reasonable for us to dismiss you without any further enquiries.

I recognise this episode followed many unblemished, and frequently distinguished, years of service to the News of the World. In view of this, and in recognition of the pressures on your family, it has been decided that upon your termination you will receive one year's salary. In all the circumstances, we would of course be entitled to make no payment whatever.

To summarise, in formal language, the following arrangements apply with immediate effect (but may be varied or revoked in the event of a successful disciplinary appeal):

(a) Your dismissal takes effect immediately and your final day of employment is therefore today.

0171 782 6094

Daniel Cloke Esq.
Group Human Resources Director
News International
1 Virginia Street
London E198 1HR

March 2, 2007

Dear Mr Cloke,

Re.: Notice of termination of employment

I refer to Les Hinton's letter of February 5, 2007 informing me of my dismissal for alleged gross misconduct.

The letter identifies the reason for the dismissal as "recent events". I take this to mean my plea of guilty to conspiracy to intercept the voicemail messages of three employees of the royal family.

I am appealing against this decision on the following grounds:

i The decision is perverse in that the actions leading to this criminal charge were carried out with the full knowledge and support of [redacted] Payment for Glen Mulcaire's services was arranged by [redacted]

ii The decision is inconsistent, because [redacted] and other members of staff were carrying out the same illegal procedures. The prosecution counsel, the counsel for Glen Mulcaire, and the Judge at the sentencing hearing agreed that other News of the World employees were the clients for Mulcaire's five solo substantive charges. This practice was widely discussed in the daily editorial conference, until explicit reference to it was banned by the Editor. As far as I am aware, no other member of staff has faced disciplinary action, much less dismissal.

iii My conviction and imprisonment cannot be the real reason for my dismissal. The legal manager, Tom Crone, attended virtually every meeting of my legal team and was given full access to the Crown Prosecution Service's evidence files. He, and other senior staff of the paper, had long advance knowledge that I would plead guilty. Despite this, the paper continued to employ me. Throughout my suspension, I was given book serialisations to write and was consulted on several occasions about royal stories they needed to check. The paper continued to employ me for a substantial part of my custodial sentence.

0171 782 6094

News International Newspapers Limited

1 Virginia Street, London, E98 1HR
Telephone: 020 7782 6300 Fax: 020 7481 0517

PRIVATE & CONFIDENTIAL

12th March 2007

Mr. Clive Goodman
[redacted]

Dear Mr. Goodman,

Thank you for your letter of 2nd March 2007.

I would like to request your attendance at an appeal hearing on Tuesday, 20th March 2007 at 10.00 am at the offices of News Magazines Limited at 2 Chelsea Manor Gardens, London SW3 5PN (when you arrive there, please ask for me at Reception). The purpose of the hearing is to consider, under the News International disciplinary procedure, your appeal against your dismissal on 5th February, on the grounds raised in your letter of 2nd March.

The appeal will be heard by Colin Myler, Editor of the News of the World, and I will also be in attendance. In addition, there will be a note taker present. You are entitled to be accompanied as specified in the Company's Disciplinary procedure. Please let me know in advance if you decide to bring a companion and their name and contact details.

If there are any documents you wish to be considered at the appeal hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

0171 782 6094

Daniel Cloke Esq.
Group Human Resources Director
News International
1 Virginia Street
London E98 1HR

March 14, 2007 [redacted]

Dear Mr Cloke,

Thank you for your letter of March 12. Although I can confirm that I will be able to attend the planned appeal hearing on March 20, for the reasons set out below, I believe it would be sensible and reasonable to postpone the hearing.

I note that you are proposing to alter substantially the normal procedure for such a hearing. I am not convinced that the proposed alterations are necessary. However, in light of the exceptional circumstances you identify in your letter, I think it would be sensible for me to be accompanied by my legal representative rather than a work colleague. Please confirm to me you are happy to proceed on this basis.

I will let you have copies of relevant documents in my possession as soon as possible.

In the meantime, I would be grateful if you could provide the following documents:

i A transcription of the sentencing hearing from the Old Bailey on January 26, 2007.

ii Full details available by a print out of every story payment requested by me from October 2005 until my arrest – to include details of which executive approved each credit for payment, which executive authorised each credit for final payment, and from which budget each credit came. Also, the same audit trail for story payment requests from me that were not authorised for payment.

iii Emails and other documents relating to my transfer from the Editorial Management budget to the News budget and any further relevant documents.

iv Copies of emails passing between [redacted] and me, [redacted] and me, [redacted] and me, [redacted] and me, and [redacted] and me for the period October 2005 until January 26 2007.

B10

APPENDIX C

> a lawyer must be able to give his client an absolute and unqualified assurance that whatever the client tells him in confidence will never be disclosed without his consent.

5 This is not a peculiarity of English law. In the **Three Rivers** decision, Lord Scott set out authorities not only from this jurisdiction but also from the United States, Europe, Canada, Australia and New Zealand which all speak with one voice (see paras 31-34). Lord Scott concluded that all these authorities

> recognise that unless the clients can be assured that what they tell their lawyers will not be disclosed by the lawyers without their (the clients') consent, there will be cases in which the requisite candour will be absent

and concluded that it is necessary as a matter of policy that

> communications between clients and lawyers, whereby the clients are hoping for the assistance of the lawyers' legal skills in the management of their (the clients') affairs, should be secure against the possibility of any scrutiny from others, whether the police, the executive, business competitors, inquisitive busybodies or anyone else

6 Unsurprisingly this state of the law is reflected in the Code of Conduct issued by the Solicitors Regulation Authority: see Rule 4.01 (*"You and your firm must keep the affairs of clients and former clients confidential except where disclosure is required or permitted by law or by your client (or former client)."*) There are very few circumstances in which disclosure is either required or permitted by law, none of which arise in this case. The only one which could have any relevance is what is known as the "fraud exception": privilege never attaches to communications between lawyer and client if the client has a secret intention of using the advice to enable him to further or facilitate crime or fraud. Please note that this applies only where the client consults a lawyer with the motive of obtaining advice which will assist him in the commission of an offence (not privileged), as distinct from a client consulting a lawyer about an offence which has already been committed (privileged). This distinction runs through all the authorities but is neatly encapsulated in a dictum of Lord Sumner in **O'Rourke v Darbishire** [1920] AC 581 at 613:

> To consult a solicitor about an intended course of action, in order to be advised whether it is legitimate or not, or to lay before a solicitor the facts relating to a charge of fraud, actually made or anticipated, and make a clean breast of it with the object of being advised about the best way to meet it, is a very different thing from consulting him in order to learn how to plan, execute or stifle an actual fraud.

For the lawyer to appreciate that this exception is engaged, however, the lawyer must have prima facie evidence suggesting that he is being used by the client in that way. The Firm had no such evidence (and for the avoidance of doubt, is making no suggestion in this response that News International had such a purpose).

PH20

RESPONSE FROM HARBOTTLE & LEWIS LLP TO
THE CULTURE MEDIA AND SPORT COMMITTEE
AND
THE HOME AFFAIRS COMMITTEE

Preliminary matters

1 This document responds to questions raised by the Rt Hon Keith Vaz MP (Chairman of the Home Affairs Committee ("HAC")) in a letter dated 21 July 2011 and by John Whittingdale OBE MP (Chairman of the Culture, Media and Sport Committee ("CMSC")) in a letter dated 29 July 2011. Both letters are at Appendix A to this response.

2 This document proceeds as follows:

a. First, a basic chronology of relevant events.

b. Second, a detailed explanation of the limited nature of the work which News International instructed Harbottle & Lewis LLP ("the Firm") to do.

c. Third, some observations on the evidence given to the Committees by Messrs Murdoch (senior and junior) and others.

d. Fourth, an explanation of the law of legal professional privilege and confidentiality, in order to deal with the misconception that a solicitor is permitted (or even obliged) to report to the police material supplied to him by his client if that material shows that the client has been involved in criminal conduct.

e. Fifth, an explanation of what happened to the Firm's file after the matter had been completed, in order to deal with suggestions from some quarters that it should have been unearthed earlier and that there is something untoward in the fact that it was not.

3 In view of the ongoing criminal investigation we have contacted the Metropolitan Police about the contents of this document. As a result we have been requested by the Metropolitan Police not to include any reference at all to the contents of the emails which the Firm reviewed in 2007 at the present time. This is not (for the avoidance of doubt) because those emails are being

kept secret: full copies of the materials which the Firm preserved in 2007 have been passed by the Firm to the Metropolitan Police. Rather, it is because we have been advised by the police that it is essential in order to preserve the integrity of their criminal investigation that these emails are not released into the public domain at present. This document therefore contains no references at all to their contents.

Basic chronology

4 Before commencing the history, we should explain its sources. No-one who worked on this matter in 2007 is still at the Firm. Those involved at the time were:

a. Lawrence Abramson, who was at the time a partner in the Firm. He was in overall charge of the exercise and was responsible for the letter of 29 May 2007 which is now the focus of attention. He left the firm on 31 May 2010 and became a partner in Fladgate LLP, another London firm of solicitors.

b. An assistant solicitor specialising in employment law, who was brought into the matter because, as we explain in more detail below, the Firm's retainer was a narrow one focused on an employment dispute with Clive Goodman. This assistant recorded only 3 hours 18 minutes of time on the file and (it is clear from the records held by the Firm) played no part in reviewing the emails in question. We have therefore thought it appropriate not to identify him/her by name, given the intensity of media scrutiny on this case. This assistant left the Firm's employment in February 2010.

c. A team of three junior employees: two paralegals and one trainee solicitor. Again, we have not felt it appropriate to identify them in the circumstances. They were given the task of sifting through the electronic records to which News International provided access. They respectively left the firm's employment on 28 May 2007, 30 May 2007 and 28 January 2011.

Because there is no-one now at the Firm who has first hand personal knowledge of the relevant events in 2007, the Firm has had to place heavy reliance on what can be reconstructed from the documentary record.

5 The bulk of this section deals with the work done by the Firm, but some events before and after the Firm's retainer (as evidenced by the documents contained in the Firm's file and certain publicly available information) are

included in order to put the Firm's work (and some of the evidence given to the CMSC) in context.

a. Mr Goodman and Glenn Mulcaire were arrested on **8 August 2006**. A police investigation into their activities followed, and News International immediately engaged external solicitors (Burton Copeland, specialist criminal defence lawyers) to deal with that investigation. It is apparent from the evidence which was given to the CMSC in 2009 by Colin Myler, Tom Crone, Andy Coulson, Les Hinton and Stuart Kuttner that Burton Copeland undertook a very substantial exercise, far more substantial than that undertaken by the Firm. We return in more detail to this evidence below.

b. Mr Goodman pleaded guilty on **29 November 2006** to conspiracy to intercept voicemail messages on mobile phones belonging to three members of the Royal Household. Sentencing was deferred to **26 January 2007**, when Mr Justice Gross sentenced Mr Goodman to 4 months imprisonment. On the same day Mr Coulson announced that he was retiring as editor of the News of the World.

c. On **5 February 2007**, News International (Mr Hinton) wrote to Mr Goodman terminating his employment. The letter states *"I recognise this episode followed many unblemished, and frequently distinguished, years of service to the News of the World. In view of this, and in recognition of the pressures on your family, it has been decided that upon your termination you will receive one year's salary. In all the circumstances, we would of course be entitled to make no payment whatever. ... You will be paid, through payroll, on 6 February 2007, 12 months' base salary, subject to normal deductions of tax and national insurance"* We draw attention to this passage because the topic of payments to Mr Goodman after his conviction has been the subject of questions by the CMSC on more than one occasion[1]. We do not know what his annual salary was, nor the period of notice to which he was entitled, nor whether News International did in fact, as Mr Hinton said it was going to, pay Mr Goodman a year's salary on 6 February 2007. Mr Hinton also explained that Mr Goodman had a right to appeal internally against his dismissal.

[1] Paragraph 445 of the CMSC's Second Report dated 24 February 2010 refers to evidence from News International about the amounts paid to Mr Goodman on the termination of his employment. The paragraph summarises that evidence as being that Mr Goodman was paid *"notice, legal costs and a compensatory award. The group declined to confirm the amounts but said the awards were below the £60,600 statutory minimum"*.

d. On **2 March 2007**, Mr Goodman wrote to News International's Group Human Resources Director, Daniel Cloke (copied to Mr Kuttner and Mr Hinton), appealing against the dismissal. His first two grounds of appeal were as follows: *"(i) The decision is perverse in that the actions leading to this criminal charge were carried out with the full knowledge and support of* [REDACTED]. *Payment for Glen Mulcaire's services was arranged by* [REDACTED]. *(ii) The decision is inconsistent, because* [REDACTED] *and other members of staff were carrying out the same illegal procedures. ..."* (The names and job titles of the News International employees mentioned here and at paragraphs 5(h)(iii), 5(n) and 5(o) below have been redacted at the request of the Metropolitan Police so as to preserve the integrity of their criminal investigation.)

e. On **6 March 2007**, Mr Hinton gave evidence to the CMSC in relation to its enquiry into self-regulation of the press. We refer to this extract from his evidence[2]:

> **Q95 Chairman:** You carried out a full, rigorous internal inquiry, and you are absolutely convinced that Clive Goodman was the only person who knew what was going on?
> **Mr Hinton:** Yes, we have and I believe he was the only person, but that investigation, under the new editor, continues.

We do not know what the "full rigorous internal inquiry" was which Mr Hinton had in mind on 6 March 2007. Obviously it was not the exercise subsequently carried out by the Firm, since that had not yet begun. Nor can it have been the exercise in reading internal emails carried out by Jon Chapman, Director of Legal Affairs at News International, and Mr Cloke since it is clear that this was prompted only by Mr Goodman's request for those emails on 14 March 2007 (see below). Perhaps this was a reference to the work done by News International and Burton Copeland in relation to the police enquiry.

f. On **12 March 2007**, Mr Cloke replied to Mr Goodman explaining the procedure for the appeal. Mr Cloke said *"If there are any documents you wish to be considered at the appeal hearing, please provide copies as soon as possible. If you do not have these documents, please provide details so that they can be obtained."*

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[2] This evidence was given in relation to the CMSC's Seventh Report of Session 2006 – 07, "*Self-regulation of the press*" published on 11 July 2007.

g. On **14 March 2007**, Mr Goodman therefore submitted a lengthy list of the documents which he wanted News International to provide for the purposes of his appeal. These included emails passing between himself and various News of the World executives on various topics.

h. We do not know for certain what happened between the date of Mr Goodman's request for documents on 14 March 2007 and the Firm being instructed on 9 May 2007. However, the following may reasonably be deduced from an email of instructions sent by Mr Chapman to Mr Abramson on 10 May 2007. (Copies of this document together with the fax from Mr Chapman to Mr Abramson to which it refers are at Appendix B. Certain names have been redacted at the request of the Metropolitan Police.)

   i. News International refused Mr Goodman's request for documents.

   ii. News International gathered together all the emails *"which* [News International's] *IT department were able to recover from archive"* fitting the categories set out by Mr Goodman in his request. It seems from an email from Simon Lowndes (Head of Managed Services in News International's Information Technology Department) dated 14 May 2007 that these emails were placed into "5 sub-folders" in a Human Resources folder for Mr Cloke on News International's server.

   iii. Mr Chapman and Mr Cloke had themselves been through these emails for the purpose of finding any evidence *"to support the contentions made by Goodman in his letter of 2 March 2007, paragraphs i and ii - i.e. that his illegal activities were known about and supported by* [REDACTED], *and that* [REDACTED], *and others were carrying out similar illegal procedures"*. Mr Chapman and Mr Cloke *"found nothing that amounted to reasonable evidence of either of the above contentions"*.

i. On **9 May 2007** Mr Chapman telephoned Mr Abramson (then a partner in the Firm). They had worked together before on a number of civil litigation matters for News International. There is no note of the conversation on the file, but Mr Chapman then sent instructions to Mr Abramson by email on **10 May 2007** (see Appendix B). This email set out the history above about Mr Goodman's dismissal and appeal, and the

review which had already been carried out by Mr Chapman and Mr Cloke, and went on to say *"Because of the bad publicity that could result in an allegation in an employment tribunal that we had covered up potentially damaging evidence found on our email trawl, I would ask that you, or a colleague, carry out an independent review of the emails in question and report back to me with any findings of material that could possibly tend to support either of Goodman's contentions. We will make available to you access to the emails in question as soon as possible"*. The limited nature of this retainer is the subject of further comment below.

j. On **14 May 2007**, Mr Abramson sent Mr Chapman a retainer letter and the Firm's standard terms of engagement. Importantly these terms include the following: *"Our advice is provided to you and may not, without our prior written consent, be disclosed to any other party. You will not refer to us or to our advice in any public documents or communication without our prior written consent"*. We return to the purpose of this term, which is a common one in the contractual terms on which professionals such as solicitors and accountants are prepared to do business, below.

k. For the purposes of its exercise, the Firm was given remote electronic access to emails on News International's server rather than being supplied with paper copies. The Firm was therefore given instructions as to how to access "the Public Folder within the News International MS Exchange email system". As mentioned above, the emails which the Firm was to review were contained in five sub-folders within the system. There has been some reference in the evidence of News International witnesses to a search of "2,500" emails, but because this was a remote access exercise only, the Firm is not now able to say how many emails were contained in those sub-folders. On **15 May 2007** Mr Abramson assembled and briefed a team of three junior employees (a trainee solicitor and two paralegals). (It is standard practice in civil litigation to use junior employees to review large bodies of documentation because this is the most cost-effective process.) They were instructed to carry out the remote searches, assemble any material which might be of interest, and draw it to Mr Abramson's attention for his review and consideration.

l. It seems that electronic access was not entirely straightforward: some emails appeared only in cut off form and there was difficulty in (for example) opening attachments to emails. Presumably for these reasons, the file shows that News International (Mr Lowndes) printed off some

emails and sent them to the Firm in hard copy by courier on either **16 or 17 May 2007**. (Even then some of the emails appeared only in cut off form.)

m. In relation to the review of the emails, the time records held by the Firm suggest the following as a summary of work during the retainer:

   i. The team of junior employees spent a total between them of about 46 hours (spread between **15 and 24 May 2007**) on this matter, their time mostly being spent in searching through the email sub-folders by remote access.

   ii. Out of a total of 8 hours 24 minutes recorded by Mr Abramson on this matter between **9 and 30 May 2007**, 1 hour and 42 minutes were specifically attributed to reading the emails. On **18 May 2007**, Mr Cloke emailed Mr Abramson asking *"if we could have the results next week. I'd like to write to CG on Thursday if at all possible."* (We return below to what this indicates about the purpose of the exercise being done by the Firm.) Mr Abramson also recorded 30 minutes on **22 May 2007** in meeting the junior team to review progress, and this meeting almost certainly included some consideration of whatever emails had by then been found and thought of potential relevance. In addition, Mr Abramson made a time entry of 24 minutes for a telephone discussion with News International on **24 May 2007**; there is no note of this conversation on the file.

n. On Friday **25 May 2007**, Mr Abramson sent an email to Mr Chapman at 13:13 headed *"Draft for discussion this pm"*. The email set out the proposed text of a letter recording the findings of the email review. It stated *"We have on your instructions searched the emails that you were able to let us have access to from the accounts of* [REDACTED]. *I can confirm that we did not find any evidence that proved that* [REDACTED] *knew that Clive Goodman, Glen Mulcaire or any other journalists at the News of the World were engaged in illegal activities prior to their arrest."*

o. There was then a short telephone discussion, probably about the draft, that same day: emails from 24 May 2007 show a call being arranged for 14:15 on 25 May 2007, and Mr Abramson's time records show a short call on 25 May 2007. Subsequently, at **16:12 on 25 May 2007**, Mr Chapman sent an

email to Mr Abramson suggesting some changes to the text. Mr Chapman's suggested version stated as follows (we have added marking to show the changes): *"We have on your instructions ~~searched~~ reviewed the emails ~~that you were able to let us have access to~~ to which you have provided access from the accounts of* [REDACTED]. *These emails cover the period from [ ] to [ ]. I can confirm that we did not find ~~any evidence that proved~~ anything which appeared to us to prove that either* [REDACTED] or [REDACTED] *knew that Clive Goodman, Glen Mulcaire or any other ~~journalists at~~ person employed or engaged by the News of the World ~~were engaged~~ was involved in illegal activities prior to ~~their~~ the arrest of Messrs Goodman and Mulcaire. Equally, having seen a copy of Clive Goodman's notice of appeal of 2 March 2007, we did not find anything that we consider to be directly relevant to the grounds of appeal put forward by him."*

p. Mr Abramson responded briefly by email the same day at 17:53 : *"I can't say the last sentence* [i.e. the sentence beginning "Equally"] *in the penultimate para, I'm afraid. Can we discuss next week?"*

q. The time records do not show any further telephone discussion. Instead, at 12:50 on Tuesday **29 May 2007**, Mr Chapman sent Mr Abramson an email (copied to Mr Cloke) which began *"After discussing this further, Daniel and I would like to try to get slightly closer to the wording of my original instruction email which stated ..."*. Mr Chapman then quoted his 10 May 2007 email, and went on *"I would suggest the following"*. He then set out what became the text of the 29 May 2007 letter, apart from a sentence which read (in Mr Chapman's text) *"These emails cover the period from [ ] to [ ]"*.

r. At 13:03 on 29 May 2007, Mr Abramson sent Mr Chapman an email stating *"I think I can say this. I'll get it finalised. Would you prefer a letter or an email?"*. Mr Chapman responded at 13:54 with *"Great. Would be good to have it on letterhead"*, and asking Mr Abramson to *"drop the sentence which reads 'These emails cover the period from [] to [ ]'."* which Mr Abramson did. The final letter was issued that day.

s. At some point in July 2007, News International settled Mr Goodman's potential claim for unfair dismissal. This was on the terms of a confidential compromise agreement which News International negotiated itself, without involving the Firm, directly with Mr Goodman's solicitors.

It involved a payment to Mr Goodman: the Firm does not know whether this payment was in addition to the year's salary which Mr Hinton's letter of 5 February 2007 had indicated would be paid to Mr Goodman on 6 February 2007. The Firm had no involvement whatever in this settlement (although Mr Abramson was subsequently instructed by News International in 2008 in relation to a complaint by Mr Goodman that News International had breached a "non-disparagement" clause in the agreement, which is how the Firm has knowledge of the terms of settlement at all.) We have not set out the amount of the payment to Mr Goodman because the compromise agreement is expressed to be confidential, and it is for both News International and Mr Goodman to decide whether that confidentiality is to be waived. However, we comment below on the implications of this settlement, in July 2007, of Mr Goodman's appeal for James Murdoch's claim that News International was still "resting" on the letter of 29 May 2007 in 2008-2010.

The Retainer: what the Firm was asked to do

6 The Firm would like to draw the following points to your attention about its retainer in May 2007.

7 The retainer was expressly limited to the context of Mr Goodman's employment dispute. The Firm was being asked to assist News International in dealing with Mr Goodman's internal appeal against his dismissal. The instructions might fairly be paraphrased as: "If we reject Goodman's appeal against dismissal and he brings employment tribunal proceedings, what is the risk of him establishing from these emails that other people were aware of his phone hacking activities, or were doing the same thing themselves?" The point of the exercise which the Firm was asked to do was directly, specifically and solely related to assisting News International in assessing how to handle Mr Goodman's appeal against dismissal. Thus in context, the advice of the Firm in the letter of 29 May 2007 was only that if News International pushed this matter to an employment tribunal, there was nothing in the emails reviewed which provided "reasonable evidence" that Mr Goodman's grounds of appeal were well founded. It went no further than that (and even in that context it seems not to have been relied upon by News International in any event, as we explain below.)

8 There was absolutely no question of the Firm being asked to provide News International with a clean bill of health which it could deploy years later in wholly different contexts for wholly different purposes. If the letter was to be communicated to any third party, then so far as the Firm was aware that third

party would be Mr Goodman (as had been indicated in Mr Cloke's email of 18 May 2007). But it went no further than that. The Firm was not being asked to provide some sort of "good conduct certificate" which News International could show to Parliament, or the police, or anyone else outside the context of Mr Goodman's employment claim. Nor was it being given a general retainer, as Mr Rupert Murdoch asserted it was, *"to find out what the hell was going on"*[3]. The problem of clients seeking to use advice which is being provided for one purpose for another, different and unforeseen, purpose is one which arises regularly for professionals and it was therefore covered in the Firm's standard terms and conditions: *"Our advice is provided to you and may not, without our prior written consent, be disclosed to any other party. You will not refer to us or to our advice in any public documents or communication without our prior written consent"*.

9 If News International had ever approached the Firm (as it should have done) to seek consent for the 29 May 2007 letter being deployed before Parliament as evidence of its corporate innocence, the Firm would not have agreed without further discussion. The reason for that is that the exercise which was done in 2007 was simply not one which was designed to bear the weight which News International now seeks to place upon it. It was a short review lasting only two weeks in total[4]. By far the bulk of the time spent on it was recorded by three junior employees. The partner involved, Mr Abramson, had spent in total time amounting to only one working day on the exercise, and a great deal less than that in actually reviewing the emails. The exercise had been conducted only by civil practitioners, because this was a classic civil litigation question: a client asking the Firm to evaluate, in the context of a civil law employment dispute, what impact certain documents might have if they came to be disclosed in that potential litigation. No lawyers specialising in (or indeed with any real knowledge of) criminal law had been involved at all, precisely because this was a civil law question. No witnesses had been interviewed; this was a "desk top" exercise. The bill was £10,294 plus VAT [5] which is, in context, not a large sum (compare this with the evidence of Mr James Murdoch that News International was advised that the litigation costs for the Gordon Taylor and Max Clifford cases *"were expected to be between*

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[3] Evidence given by Mr Rupert Murdoch before the CMSC on 19 July 2011 in answer to Q366. This is a reference to an uncorrected transcript of oral evidence, as are all the following references to the July 2011 evidence in this response.

[4] Review of the emails began on 15 May 2007 and the letter was written on 29 May 2007.

[5] It is noteworthy that the bill was sent to Mr Cloke in News International's HR department and thus presumably came out of the HR budget, on the basis that it was an employment related matter.

£500,000 and £1 million"[6]). If, therefore, the Firm had been asked in 2009 or 2010 whether News International could use its 2007 advice, which had been given to assist in assessing how to handle Mr Goodman's employment dispute, for the very different purpose of bolstering its stance before Parliament, or indeed for any other purpose outside the defunct Goodman employment dispute, the Firm would undoubtedly have refused unless it could have been satisfied that the letter was not going to be presented in a misleading manner. This would have required proper explanation to be given of the limited nature of the Firm's retainer, as well as the specific purpose of the exercise which had been performed in 2007 and its limited scope.

10 If the Firm had initially been given a retainer as broad as instructions *"to find out what the hell was going on"* or (to put it more formally) to undertake an investigation which News International could use for broader purposes, such as laying it before Parliament as independent support for the "one rogue reporter" theory, the Firm would have refused the instructions. Instructions of that nature would amount to asking whether there was evidence of wide criminal conduct by News International's employees: this would have been a criminal matter, and the Firm has no expertise in that field. Any solicitors accepting instructions of that nature would probably have done at least the following:

a. insisted on unlimited access to all emails and other records of News International, rather than being restricted to a limited selection produced by News International itself;

b. insisted on direct access to key witnesses;

c. insisted on News International instructing both specialist criminal lawyers and forensic accountants;

d. engaged specialists in forensic computer analysis to assist in finding emails and other electronic evidence; and

e. required access to the documents seized by the police from Mr Mulcaire.

A review of this nature would have taken a long time (as opposed to a fortnight, which is the period between the Firm commencing work through remote access to the emails on 15 May 2007 and the letter being written on 29

[6] Evidence given by Mr James Murdoch before the CMSC on 19 July 2011 in answer to Q265.

May 2007) and would have cost a very great deal of money (far more than £10,000).

11 The reason that none of these things happened is that what the Firm did was only a short and limited exercise, undertaken for the one specific purpose of assisting News International in deciding internally how to handle Mr Goodman's employment claim. The Firm undertakes civil litigation and such a question was within the scope of its expertise; that was precisely why News International had instructed the Firm on this narrow civil law question. But the wider purposes for which News International now claims to have been relying upon the letter were not within the scope of the Firm's expertise (or retainer).

12 In this context, the Firm would like to comment on some evidence given to the HAC on 19 July 2011 by Lord Macdonald (who has recently advised News Corporation on a small selection of the emails which were on the Firm's file). Lord Macdonald stated that the Firm *"prepared a letter that was to be forwarded to the DCMS Committee ... the communication was sent to the Committee, and that file remained, as I understand it, in Harbottle & Lewis's offices"*[7], and also *"There seemed to be a process whereby information was going to be given to a Select Committee—the DCMS Committee—about whether or not the company had come into possession of any more material relating to phone hacking or associated criminality"*[8]. The Firm would like to observe, with respect, that this is not accurate. The letter of 29 May 2007 was **not** prepared *"to be forwarded"* to the CMSC and the process in which the Firm was instructed was **not** one in which *"information was going to be given to a Select Committee"*. The letter of 29 May 2007 was not addressed to the CMSC and was not intended for use before Parliament. Nor was it so used until years after it had been written. As explained above, if the Firm had been asked for permission for the letter to have been used in that way, it would have refused unless it could have been satisfied that the letter was not going to be presented in a misleading manner. The Firm had no idea that News International was going to submit the 2007 letter to the CMSC in 2009-10, and first knew that this had been done only when the letter was (briefly) referred to in the CMSC's Second Report dated 24 February 2010[9].

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[7] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1003-4.
[8] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1018.
[9] CMSC's Second Report dated 24 February 2010 at para 435. It follows from the above that the Firm also, with respect, does not think that a remark which Mr Farrelly MP is widely reported to have made (*"Harbottle & Lewis stand right up there with all the other people who have come to us and maintained*

13 Finally on the question of its retainer, the Firm would like to draw attention to the fact that its remit was specifically limited by News International to a search for evidence supporting Mr Goodman's first two contentions in his 2 March 2007 letter: (a) that certain named individuals knew about and supported his interception of voicemail messages, and (b) that other News of the World staff were themselves carrying out the same activities (i.e. phone hacking). This was not a broad instruction to search for evidence of other criminal acts (and again, as civil litigators without criminal law expertise, the Firm would not have accepted such instructions). Whatever was shown to Lord Macdonald by Messrs Hickman & Rose, it cannot have been evidence relating to knowledge of phone hacking since, as Lord Macdonald has pointed out in his evidence, he was conflicted in relation to phone hacking and could not look at documents relating to that issue[10]. He said that the emails he was shown were *"to do with an entirely separate issue"* from phone hacking[11]. It is apparent from Lord Macdonald's own evidence, therefore, that the material on which he was commenting fell outside the scope of News International's 2007 instructions to the Firm. As Lord Macdonald said in his evidence before the CMSC in July 2011[12]:

> I do not know what Harbottle and Lewis were looking at it for. If they were looking at it in terms of whether it supplied more evidence of phone hacking, that is one question. If they were looking at it for evidence of wider criminality, that is another question.

As explained above, the Firm was indeed engaged to look for "more evidence of phone hacking", and was **not** engaged to look for "evidence of wider criminality".

Comments on various aspects of evidence given to Parliament

14 The Firm has been asked by the CMSC (question 15 of its letter of 29 July 2011) to set out any matters in respect of which it believes that the CMSC or its predecessor may have been given misleading or inaccurate information about the review undertaken by the Firm.

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there was only one rogue reporter.") is accurate (if it was stated in the terms reported). The Firm did not "come to" the CMSC and did not write its letter for submission to the CMSC.

[10] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1006: *'I said, "I can't look at anything that has anything to do with phone hacking." They said, "This is an issue that isn't to do with phone hacking; it's entirely separate".'*

[11] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1020, and see too answers to Q1055-6 (*"not connected with phone hacking"*, *"not to do with hacking"*).

[12] Evidence given by Lord Macdonald before the CMSC on 19 July 2011 in answer to Q1067.

15 The principal point on which the Firm wishes to comment in this respect is the suggestion in the evidence of the Murdochs that Mr Abramson's letter of 29 May 2007 was one of three things upon which News International relied (or as Mr James Murdoch frequently put it, "rested on") in maintaining until late 2010 the belief that Mr Goodman was a solitary "rogue reporter". The Firm does not accept that that is so. This is not perhaps the forum in which the proposition advanced by Mr James Murdoch can best be challenged, but for now the following points are made.

a. As set out above, the exercise undertaken by the Firm was short, limited in terms of access to documents, without any access at all to witnesses, undertaken by civil practitioners, and undertaken for a narrow and specific purpose in an employment dispute. All these matters were known to News International, which therefore could not reasonably have relied upon it for any broader purpose and (it is to be inferred) did not in fact do so.

b. It is notable that the evidence of Mr James Murdoch on 19 July 2011 is the very first time that any witness on behalf of News International suggested that the letter had been of such fundamental importance. Not one of Messrs Crone, Myler, Kuttner, Coulson or Hinton made any such suggestion in their evidence in 2009. Although there was extensive reference in their 2009 evidence to the exercise which had been done for News International by Burton Copeland (as set out below), not one of these witnesses referred to the letter of 29 May 2007 or even so much as mentioned the Firm's name. The letter was only supplied to the CMSC, after oral evidence, as a result of, and in response to, CMSC Question 8[13]. This would be a surprising sequence of events if News International had in fact been "resting" on the letter as was suggested.

c. In fact, it is hard to see that News International "rested on" the letter even in 2007 and even for the limited purpose for which it was created. As set out above, that purpose was to assist News International in handling Mr Goodman's appeal against dismissal. If News International had "rested on" the letter of 29 May 2007 as establishing that Mr Goodman's grounds of appeal were ill-founded, it seems unlikely that it would have settled Mr Goodman's claim on the terms of the July 2007 Settlement Agreement: it

[13] "Are there any written reports, either internal or by the lawyers you appointed, of the investigations into the activities of Goodman and Mulcaire, or other inquiry agents? If so the Committee would be grateful for sight of these."

would have been more likely to have fought Mr Goodman through tribunal proceedings, especially given the terms of settlement previously indicated in Mr Hinton's 5 February 2007 letter.

d. The CMSC has suggested to witnesses that News International settled its litigation with Mr Taylor and/or Mr Clifford at the levels which it did because the civil disclosure exercise had produced evidence[14] suggesting that phone hacking was not confined to Mr Goodman. If it transpires that this is the case, then it must follow that News International knew at that time that the letter could not be "rested on" in a wider context than that in which it had been provided. It must also follow that News International knew at that time that there was other evidence (not contained in the "5 sub-folders") which demonstrated that there was a wider problem at News International in respect of phone hacking. Thereafter, News International could not possibly have "rested on" the letter even assuming that it had done so before.

e. In this context, the CMSC may wish to consider whether News International has waived any right to claim privilege over the legal advice it received (internally and externally) about the need to settle the Taylor litigation and the quantum of that settlement. In civil litigation, if a party deploys in evidence privileged material, then he waives privilege in all associated material so that the Court and the other party can see that what has been released from privilege is a fair account of the advice received, and that a misleading impression has not been created[15]. At the July 2011 hearing News International (by Mr James Murdoch and others) gave extensive evidence of the legal advice it received in settling the Taylor litigation as follows:

> **Mr James Murdoch:** Thirdly, the company sought distinguished outside counsel to understand that, if the case were litigated and if it were to be lost, which was the great likelihood, what the financial quantum would be or what that would cost the company. It was advised that, with legal expenses and damages, it could be between £500,000 and £1 million or thereabouts. I do not recall the exact number of the advice. I think that it was £250,000 plus expenses, plus litigation costs—something like that[16]

[14] Such as the "For Neville" email. See Guardian Newspaper article dated 22 July 2011.
[15] The classic authority is the decision of Mustill J (later Lord Mustill) in **The Nea Kateria** [1981] Com LR 138.
[16] Evidence given by Mr James Murdoch before the CMSC on 19 July 2011 in answer to Q242.

Mr James Murdoch: The advice was very, very clear as to what sort of damages could be expected to be paid and it was quite clear and quite likely that if litigated, the company would lose that case. [17]

Q260 Mr Sanders: In 2009, Mr Crone and Mr Myler informed us that they decided to settle Mr Taylor's claim on the advice of the company's external legal advisers. Was that advice from Farrer & Co. solicitors?
James Murdoch: Farrer & Co. has done work for us. I do not know precisely which external counsel Mr Crone and Mr Myler engaged on that, but I can clarify it.
Q261 Mr Sanders: Did you see the advice, whether it was from Farrer & Co. or anyone else?
James Murdoch: No. I received the advice orally from Mr Myler and Mr Crone.
Q262 Mr Sanders: What was their advice?
James Murdoch: It was as I described it.
Q263 Mr Sanders: Simply to settle?
James Murdoch: And that outside legal advice had been taken on the expected quantum of damages. Their advice was that the case would be lost and that, in the absence of any new evidence—I was certainly not made aware of any new evidence—it was simply a matter related to events that came to light in 2007 and in the criminal trials before I was there. It was a matter in the past.

Mr Murdoch: The amount paid rested on advice from outside counsel on the amount we would be expected to pay in damages, plus expenses and litigation costs.[18]

Mr Murdoch: What we knew, and what I knew, at the time was that we had senior distinguished outside counsel to whom we had gone to ask, "If this case were litigated, and if the company were to lose the case, what sort of damages would we expect to pay?" The company received an answer that was substantial. [19]

f. The CMSC may therefore consider asking (or indeed requiring) News International to disclose that advice and all related documents which go to show the reasons for the decision to settle at that quantum. This would extend not only to the advice received from external lawyers, whoever

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[17] Evidence given by Mr James Murdoch before the CMSC on 19 July 2011 in answer to Q255.
[18] Evidence given by Mr James Murdoch before the CMSC on 19 July 2011 in answer to Q264.
[19] Evidence given by Mr James Murdoch before the CMSC on 19 July 2011 in answer to Q286. It is worth noting the terms of the evidence given to the CMSC by Mr Myler on this topic on 21 July 2009: "***Q1430 Adam Price:*** *Some people have said that the fact you agreed to such a large sum suggests that you were concerned about some of the information which would leak out as a result of that case?*
Mr Myler: *It was actually quite simple: our outside lawyers' advice, who had taken counsel's advice, was very strongly that we had to settle, and should settle. That advice was shared internally by our internal lawyers and I agreed. It really was as straightforward as that."*

they were, but also to the advice from Mr Crone[20]. It would be of interest to learn whether the dialogue between News International and its lawyers about whether to settle Mr Taylor's claim, and if so at what level, included any reference to any documents which had emerged in the civil law disclosure exercise (including, but not limited to, advice given to News International about the impact of the "For Neville" email which was produced by Mr Taylor's lawyers during that litigation.)

g. The suggestion that News International could possibly have continued to "rest on" the letter even after the CMSC's Second Report was published in February 2010, with its finding of "collective amnesia" by News of the World witnesses, is hard to credit.

16 In addition, the Firm would like to draw to the CMSC's attention to the following evidence given to it in 2009[21].

> **Mr Myler:** I think the first thing to remember is that as soon as Mr Goodman and Mr Mulcaire were arrested News International had an outside firm of solicitors to absolutely oversee the investigation to cooperate with the police, to be a bridgehead, to give whatever facility the police required. It was completely hands-off, if you like, for transparency from the company's point of view.[22]
>
> **Q1388 Paul Farrelly:** Who were the solicitors who handled the investigation?
> **Mr Crone:** Burton Copeland. They are probably the leading firm in this country for white collar fraud.
>
> **Q1389 Paul Farrelly:** Did that investigation go wider than investigating the circumstances because the court case was coming up of the Mulcaire/Goodman connection? Did it go wider and ask people such as the deputy editor, the managing editor, the news editor, the chief reporter as to whether they had been involved in any way with Mr Mulcaire? Did it go wider?
> **Mr Crone:** Sorry, this is for me?
>
> **Q1390 Paul Farrelly:** No, this is to Mr Myler because Mr Myler gave evidence to the PCC.
> **Mr Myler:** I think Mr Crone is the best person to answer.

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[20] Under English law, legal professional privilege applies just as much to the dialogue between a client and its in-house lawyer, like Mr Crone, as it does to the dialogue between a client and its external lawyer. Thus it is possible for News International to withhold documents or material from its evidence on the basis of legal professional privilege attaching to communications to and from Mr Crone.

[21] This evidence was given in relation to the CMSC's Second Report of Session 2009-10, "*Press standards, privacy and libel*" published on 24 February 2010.

[22] Evidence given by Mr Myler before the CMSC on 21 July 2009 in answer to Q1384.

Q1391 Paul Farrelly: This is the basis of the evidence you gave to the PCC.
Mr Myler: Mr Crone was there. This arrest took place, I believe, in August 2006. I think you should allow Mr Crone ------

Q1392 Paul Farrelly: To your knowledge, did that investigation go wider?
Mr Myler: Wider than what?

Q1393 Paul Farrelly: Than simply the relationship between Goodman and Mulcaire. Did the people either interview them or ask them to come forward under the basis of an amnesty if they had done something wrong to reveal themselves? Did it go to the accounts department?
Mr Myler: I do not know whether or not the police ------

Q1394 Paul Farrelly: No, it is not the police. It is the News International investigation when you arrived. I want to know what your knowledge was of how far the remit went?
Mr Myler: My recollection was that a very thorough investigation took place where there was a review of everything from how cash payments were processed. You have to remember that the Mulcaire contract, which the judge in the Goodman/Mulcaire trial said was absolutely above board and legal, meant that the staff had access to him 24/7. He was conducting enquiries perfectly legally and lawfully that meant journalists could call him for checks on electoral rolls or whatever. As I understand it, the inquiry was thorough; and to the executives that were there at the time they were happy with that.

Q1395 Paul Farrelly: Mr Crone, how wide was the inquiry? You understand the questions I am asking?
Mr Crone: Yes. I got back the Tuesday after the arrests. They were arrested on one Tuesday and I was there the week after. By the time I got back, which must have been August 15, Burton Copeland were in the office virtually every day or in contact with the office every day. My understanding of their remit was that they were brought in to go over everything and find out what had gone on, to liaise with the police ------

Q1396 Paul Farrelly: Everything to do with Mulcaire and Goodman?
Mr Crone: Yes, but what you have got to realise is, at the time the only case being looked at was an access of a Royal household - voicemails. The other names did not become known to us or, as far as I know, anyone else apart from the prosecution and the police, and the defence lawyers probably knew slightly earlier; the other names did not come out until November 29, which is five months later. What I think was being enquired into was what had gone on leading to the arrests; what, in the relationship with Mulcaire, did we have to worry about. Burton Copeland came in; they were given absolutely free-range to ask whatever they wanted to ask. They did risk accounts and they have got four lever-arch files of payment records, everything to do with Mulcaire, and there is no evidence of anything going beyond in terms of knowledge into other activities.

Q1397 Paul Farrelly: I want to wrap-up fairly shortly. When the other names came into the frame after November 29, did the remit of the investigation in News International broaden?
Mr Crone: Yes, to some extent but the questions had already been asked. Was anyone involved with Mulcaire, or doing this, that or the other? Burton Copeland had looked at all of the financial records; and there was subsequently an email check done which went to 2,500 emails; and that produced no evidence either.

Q1398 Paul Farrelly: The question: was anyone else involved with Mulcaire? The answer was: no. Nothing else was found?
Mr Crone: No evidence was found.

Q1663 Mr Farrelly: Can I just ask you about Clive Goodman. You say you were deceived. How was Clive Goodman able to pay £12,300 to Glenn Mulcaire? Was it actually in readies or did it go through the accounts department in a masked way?
Mr Kuttner: I think the answer to the first part is it was in cash, it was a cash payment. The answer to the second part is that it was all accounted for in the documentation and that is the material that either directly on their own account to the investigating police team, or through Burton Copeland, the solicitor who was looking into these things at News International, was all disclosed.

Q1719 Tom Watson: When you found out about the arrests. Presumably you commissioned an inquiry?
Mr Coulson: Yes. Obviously we wanted to know internally very quickly what the hell had gone on. Then I brought in Burton Copeland, an independent firm of solicitors to carry out an investigation. We opened up the files as much as we could. There was nothing that they asked for that they were not given.[23]

Q2168 Paul Farrelly: ...Can I just ask you on what basis did you feel able to give that answer, that to your recollection Tom Crone said that various investigations had been undertaken internally as the facts established themselves as the charges and trial developed. Can you tell us on what basis you gave us that answer?

Mr Hinton: ...He [Andy Coulson] had numerous conversations, the charges were laid, he invoked the help of Tom Crone, who is a company lawyer with a lot of experience,,, We bought in a firm of solicitors and there were many, many conversations with the police, and not involving me.

17 Evidence was also given by News International to the Press Complaints Commission ("PCC") on the role of Burton Copeland. The PCC report on phone message tapping allegations dated 9 November 2009 refers at

[23] See also answers to questions 1470, 1471 and 1558 asked by the CMSC in 2009.

paragraph 9.2 to Mr Myler's evidence that "*Burton Copeland were given 'every financial document which could possibly be relevant' to the paper's dealings with Mulcaire and they confirmed that 'they could find no evidence from these documents or their other enquiries which suggested complicity by The News of the World or other members of its staff beyond Clive Goodman in criminal activities'*".

18 The Firm draws attention to this evidence because it indicates that there has been some confusion in the mind of Mr Rupert Murdoch, or perhaps that he has been misinformed, about the role of the Firm. As stated above, his account of the instructions to the Firm were that it had been retained *"to find out what the hell was going on"*[24]. It is quite clear that that is not what the Firm was instructed to do. But the evidence above suggests that Mr Rupert Murdoch may in fact have been thinking of the instructions given to Burton Copeland[25]. Given that News International has waived privilege over its instructions to and advice from the Firm, the CMSC might consider asking News International similarly to waive privilege over its instructions to and advice from Burton Copeland.

Privilege and Confidentiality

19 It has been suggested that if the Firm had found evidence, in the course of its retainer by News International, of criminal offences having been committed by News International executives, then the Firm would have been entitled (or even obliged) to report its findings directly to the police. The Firm wishes to explain the correct position, as to which the law is clear.

20 When a client consults a lawyer to take advice in a relevant legal context, then what the client tells the lawyer is subject to legal advice privilege. This means that the lawyer is obliged to keep what he or she learns about the client's affairs in the course of the retainer completely confidential, unless and until the client decides otherwise. (It is for this reason that it has been so difficult for the Firm to provide this response to the Committees.) We have set out in Appendix C a summary of the relevant law.

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[24] Evidence given by Mr Rupert Murdoch before the CMSC on 19 July 2011 in answer to Q366.

[25] A further indication that Mr Rupert Murdoch may have been thinking of the role of Burton Copeland rather than the Firm is his answer to Q169 in his evidence before the CMSC on 19 July 2011: "**Q169 Mr Watson:** What did News International do subsequent to the arrest of Clive Goodman and Glenn Mulcaire to get to the facts? ***Rupert Murdoch:*** We worked with the police on further investigation and eventually we appointed—very quickly appointed—a very leading firm of lawyers in the City to investigate it further." The Firm was not retained till May 2007, which cannot be viewed as being "very quickly appointed" after the arrests in August 2006.

21 Even if, therefore, some emails reviewed by the Firm had been suggestive of criminal conduct by employees of News International, then the Firm could not possibly have reported this to the police without client consent. That would have been against the Firm's obligations under clear modern law of the highest authority and a very serious breach of professional conduct. Further, neither common law, statute or regulation imposed any relevant obligation on the Firm to break its duties of confidence by reporting to any external authority. Criticism of the Firm for failing to report News International to the police or any other external body is therefore wholly misplaced, regardless of what the emails do or do not show.

What happened to the file

22 It has been suggested in some quarters that it is surprising that it took until April 2011 for the Firm's file on this matter to have come to light. We therefore think it would be of assistance to the Committees to understand what happened.

a. Once the Firm's letter had been issued on 29 May 2007, this retainer came to an end[26]. The Firm issued its bill on 13 June 2007, and News International paid it on 31 July 2007. The file went into archive storage with an external storage company, Restore, on 10 November 2008[27].

b. One by one, all those who had been involved in the retainer left the Firm in the normal course of events, as set out above. After the last member of the junior reviewing team left on 28 January 2011, there was literally no-one left at the Firm who had had any involvement in the original retainer at all.

c. The first time that the Firm's 2007 involvement was mentioned to Parliament, so far as the Firm can ascertain, was in the evidence given to the CMSC leading to its Second Report dated 24 February 2010. The Firm's name was not mentioned in oral evidence, but was mentioned in written evidence and this was recorded in the appendices to the Second Report (which also quoted in full the letter of 29 May 2007). The letter

[26] Apart from a small amount of time spent in June-July in obtaining for News International, at its request, a transcript of the sentencing remarks of Mr Justice Gross on 26 January 2007. A separate bill for this task of £560 plus VAT and disbursements was issued on 31 July 2007.

[27] The file would have been archived sooner but for the fact that, as mentioned in paragraph 5s above, Mr Abramson was subsequently instructed by News International in February 2008 in relation to an alleged breach by News International of the compromise agreement it had entered into with Mr Goodman. This work was carried out on the same file using the same file number. The documents were stored on the same paper and electronic files as those relating to the previous retainer.

was referred to in para 435 of the Report, which commented that Mr Abramson's conclusions made "interesting reading". There was no criticism of the letter and no-one made any request of News International or the Firm for the file or materials related to the retainer. It simply did not occur to the Firm to retrieve the file from archive to see if any original documents from the 2007 had been retained on it.

d. It is worth recalling that what is of principal interest on the file is not the documents which evidence the dialogue between lawyer and client, but the hard copies of emails which were either supplied in hard copy on 16 or 17 May 2007, or were printed off by the reviewing team at the Firm and given to Mr Abramson for his consideration. It is not surprising that the Firm should have retained these documents: its practice, as is common among solicitors, is to preserve and retain documents at the end of a retainer for a number of years. As a result, this selection of documents from News International's records was preserved and still existed on the file. It seems that the Firm's copies of these documents from News International's own records are now the only remaining copies (on paper or in electronic form) still in existence.

e. It was not until 24 March of this year when the Firm was asked by News International's then solicitors, Burton Copeland, to provide papers from the file that it was retrieved from archive. A full set of the News International emails was provided to Burton Copeland on 1 April 2011.

Conclusion

23 On 14 July 2011, Mr Rupert Murdoch gave an interview to the Wall Street Journal. The article reads "*Mr Murdoch said the company had handled the crisis 'extremely well in every way possible', making just 'minor mistakes'. He asserted, however, that a London law firm the company initially hired to investigate, Harbottle & Lewis LLP, had made a 'major mistake' in underestimating the scope of the problem.*"

24 The Firm rejects News International's self-serving view of the Firm's role in events. The Firm's position is summarised as follows.

a. It was instructed only to look for evidence (in five sub-folders provided by News International) suggesting either that certain named individuals knew of and supported Mr Goodman's involvement in phone hacking activities, or that others at The News of the World were also carrying out phone

hacking activities. It was not retained to look for evidence of wider criminal activities and did not do so.

b. It was not given free rein to look through whatever it wanted. It was asked to search through some emails which had been assembled by News International and isolated into a specific area on News International's server (the "5 sub-folders"). It was given no access to other documents or to witnesses.

c. Its exercise was specifically and only to assist News International in handling an internal appeal by Mr Goodman against his dismissal. This was a classic civil litigation exercise in assessing the potency of documentary evidence in an employment dispute. It was a short and limited exercise lasting two weeks and mostly involving junior employees. All this was known to News International.

d. The desktop exercise done by the Firm is to be contrasted with the far longer, far more detailed and (no doubt) far more expensive exercise undertaken by Burton Copeland in the 9 months which that firm is said to have spent in the News International offices. It may therefore be that Mr Rupert Murdoch was confused or misinformed as to which lawyers had been retained for what purpose when he gave evidence that the Firm had been retained to *"find out what the hell was going on"*. At any rate, this was an inaccurate and misleading account of the Firm's retainer.

e. The Firm was not retained to provide News International with a "good conduct certificate" which it could show to Parliament, or anyone else, years after the event and for a wholly different purpose. Such use of the Firm's advice was expressly prohibited under its terms of engagement. The Firm did not know that News International was subsequently going to deploy its 2007 advice in this way (in 2009-2010) and would not have given its consent to that use had it been sought.

f. The Firm rejects the evidence of Mr James Murdoch that News International "rested on" the letter of 29 May 2007 for its alleged belief (until late 2010) that Mr Goodman was a lone "rogue reporter". It is noteworthy that it has taken until 2011 for News International to make this assertion.