

PLEASE NOTE AS OF 06 JULY 2011 THE PCC HAS WITHDRAWN THIS REPORT.

Please see the following statement (<http://www.pcc.org.uk/news/index.html?article=NzIOMg==>) for full details.

**EMBARGO: 00.01hrs
09.11.09**

PCC report on phone message tapping allegations

1.0 Background

1.1 On the 9th July 2009, the *Guardian* newspaper published a story under the headline "Revealed: Murdoch's £1m bill for hiding dirty tricks". It alleged that News Group newspapers had "paid out more than £1m to settle legal cases that threatened to reveal evidence of his journalists' repeated involvement in the use of criminal methods to get stories". It said that these three cases were linked to the conviction under the Regulation of Investigatory Powers Act of Clive Goodman, the former Royal Editor of the *News of the World*, in 2007 for hacking into messages left on the mobile phones of members of the Royal Household. The *Guardian* story said that the payments 'secured secrecy' and that the legal actions were therefore 'suppressed' - and it revealed that one of the cases involved Gordon Taylor, the chief executive of the Professional Footballers' Association.

1.2 There were further allegations in the *Guardian's* coverage, most significantly that "one senior source at the Met told the *Guardian* that during the Goodman inquiry, officers had found evidence of News Group staff using private investigators who hacked into 'thousands' of mobile phones. Another source with direct knowledge of the police findings put the figure at 'two or three thousand' mobiles".

1.3 The article also said that Gordon Taylor's legal team had successfully asked the court to produce details from an old inquiry by the Information Commissioner about possible breaches by journalists of the Data Protection Act, which the article said involved 31 News Group journalists. The article said that the activity referred to in the Information Commissioner's report predated the phone message hacking, and although the two issues were not linked (there was no suggestion that Gordon Taylor had been identified as a victim of a breach of the DPA in the Information Commissioner's report), "faced with this evidence [about the use of a private investigator] News International... started offering huge cash payments to settle the [Gordon Taylor] case out of court".

1.4 A separate comment piece on the 9th July by the journalist Nick Davies, who had researched the story, alleged that: "according to one source with direct knowledge of the Scotland Yard evidence, News of the World journalists were systematically using private investigators who would break the law to obtain information, hacking into thousands of mobile phones and supplying raw material which was then converted into stories that made no reference to their real source". This was contrasted with previous public statements by News International employees - to the PCC and to the Select Committee for Culture, Media and Sport - that Goodman was the only person at the News of the World involved in the hacking. The comment piece again referred to the evidence seized by the Information Commissioner during his Operation Motorman inquiry, which had found evidence of journalists using a private investigator called Steve Whittamore to obtain information using subterfuge. Neither the news article nor the comment piece informed readers about when

these activities had apparently taken place, although this became clearer during Mr Davies's appearance before the Culture, Media and Sport Select Committee (see below).

2.0 Relevance of the Guardian allegations to the PCC

2.1 In 2007, following the convictions of Clive Goodman and Glenn Mulcaire - a private investigator used by the News of the World - for the phone message hacking offences, the PCC took action to find out how the situation at the paper could have arisen in the first place, invited the new editor of the News of the World to demonstrate how repetition would be avoided, and took steps to ensure that the press as a whole had sufficiently robust procedures in place to ensure that such a situation could not arise elsewhere. It was not the Commission's intention - nor was it within its remit - to try to duplicate the police investigation by trying to establish whether there had been other transgressions. However, it did consider that it had a role in shining a light on how the situation could have been allowed to develop, and in making recommendations aimed at minimising the chances of repetition - both for the good of the industry but also to underpin public confidence in undercover journalism.

2.2 The PCC therefore had a number of questions for the *News of the World* arising from the convictions of Mulcaire and Goodman. During this process, the editor of the *News of the World*, Colin Myler, told the PCC that Goodman was the only staff member to have engaged in such practices, and that the behaviour was 'aberrational'. Yet the *Guardian's* July 2009 article suggested that the evidence unearthed during the Gordon Taylor legal action contradicted this claim, and that Mr Myler had therefore misled the PCC, 'albeit in good faith'.

2.3 In its 2007 report into the Goodman/Mulcaire episode and the use, more generally, of subterfuge by journalists, the PCC made 6 specific recommendations to the industry to ensure that illegal snooping of the type undertaken by Goodman and Mulcaire was not repeated. Although a close reading of the July 2009 *Guardian* articles revealed an implicit acceptance that the events described took place before the PCC's recommendations had been published in 2007, the absence of dates in the pieces seemed to give rise to concern in some quarters that the allegations of widespread illegal activity at News International related to current or recent behaviour. Had this been the case, it would have suggested that the steps taken by the PCC in 2007 to prevent a repetition of the scandal had failed. Additionally, the PCC was obviously concerned about the allegation that it had been misled during its 2007 inquiry. Therefore, on the 9th July 2009 - the day of the *Guardian's* initial claims - the PCC issued a statement saying that:

"The PCC has previously made clear that it finds the practice of phone message tapping deplorable. Any suggestion that further transgressions have occurred since its report was published in 2007 will be investigated without delay. In the meantime, the PCC is contacting the *Guardian* newspaper and the Information Commissioner for any further specific information in relation to the claims, published today about the older cases, which suggest the Commission has been misled at any stage of its inquiries into these matters."

3.0 Select Committee inquiry

3.1 The Select Committee on Culture, Media and Sport - which had, coincidentally, been carrying out an inquiry into the press, privacy, and libel - announced that it would be extending its inquiry to look at whether it had been misled by News International during a

2007 hearing into the matter, and to examine whether there was any evidence of a widespread conspiracy at the News of the World to engage in illegal behaviour. The Committee took evidence in public from a number of people including representatives from News International; the former editor of the News of the World, Andy Coulson; the Information Commissioner; the Metropolitan police; the editor of the *Guardian*, Alan Rusbridger, and the journalist Nick Davies who researched the story; and the Director of the PCC.

4.0 *Guardian* evidence to the Select Committee

4.1 During their appearance before the Committee, Mr Rusbridger and Mr Davies made a number of points:

- Mr Rusbridger said that the significance of the *Guardian's* story was that the Gordon Taylor case showed that the practice of phone message tapping was not limited to one journalist at the *News of the World*, and that the Select Committee and the PCC had been misled. A secondary element, he said, was the evidence of two sources familiar with the case who had said that 'thousands of individuals may have been targeted' for illegal snooping.
- He suggested that one way ahead would be for the Editors' Code of Practice Committee to review the definition of what is in the public interest to help ensure that any intrusion into privacy was proportionate to the seriousness of the case.
- Mr Davies produced evidence that he said suggested that people at the *News of the World* other than Clive Goodman were aware of the illegal phone message hacking. Specifically, he produced an e-mail from a junior reporter at the *News of the World* to Glenn Mulcaire which said at the top, "hello, this is for Neville", and which was a transcript of a mobile phone message. Mr Davies said that 'Neville' was Neville Thurlbeck, the Chief Reporter of the *News of the World*, and suggested that the existence of the e-mail showed that people other than Clive Goodman at the newspaper were aware of the phone message hacking.
- He also produced a *News of the World* contract which offered Glenn Mulcaire a bonus of £7000 if he delivered a story about Gordon Taylor. He said that both these documents were in the possession of the police who were investigating the allegations of phone message hacking.
- Additionally, both documents were disclosed by Scotland Yard to Gordon Taylor's legal team in April 2008. Once the *News of the World* was aware of them, they did not approach the PCC to correct the statement they had given during the PCC's 2007 inquiries that no-one other than Clive Goodman at the paper was involved in phone message hacking.
- The relevance of the old Information Commissioner cases was that, after Gordon Taylor's legal team obtained further details about them, they were one of the reasons why News Group agreed to settle the action on a confidential basis.

5.0 Further PCC inquiries

5.1 The PCC was concerned about two discrete issues: whether it had been misled during its 2007 inquiry; and whether there was any evidence that its recommendations to the industry to help prevent a repetition of the illegal Mulcaire/Goodman situation had failed. During this latest inquiry, the PCC took evidence from:

- The *News of the World*;

- The Information Commissioner's Office;
- Nick Davies;
- Alan Rusbridger;
- National newspaper executives.

6.0 Alan Rusbridger's evidence

6.1 Mr Rusbridger told the Commission that he would not be 'much use' as he had 'no first hand knowledge of the matters we published', but that Mr Davies had carried out 'extensive research' and would speak to the PCC. He suggested that the Commission should:

- Ask the Information Commissioner to provide the material about journalists' use of private investigators obtained during the Operation Motorman inquiry;
- Ask News International to send those documents relating to its use of private investigators that were in the possession of the police, and make 'direct inquiries... of *News of the World* executives and reporters around the time of the Gordon Taylor, Clive Goodman and Motorman exercises', and ask the former editor of the *News of the World*, Andy Coulson, to give evidence.

7.0 Nick Davies's evidence

7.1 The PCC asked Nick Davies a number of questions aimed at finding out the extent of the evidence for his claims.

7.2 He referred to the evidence that he produced before the Select Committee, but added that because 'journalists working on a story about a powerful individual or organisation often find themselves in the position of having evidence of one kind or another which has been supplied on the basis that it will not be disclosed' he was 'not in a position to supply [the PCC] with any other evidence'. He took care to point out that he himself had not claimed that 'thousands' of people had had their phone messages hacked: his story, he said, had referred to "Murdoch journalists using private investigators who hacked into the phones of 'numerous' public figures. The allegation of 'thousands' is made by two well-placed sources whom we quote."

7.3 Finally, he said: "I have no evidence of phone-hacking after May 2007 beyond the conversations which I have had with journalists from various titles who say that the practice continues although, they say, it has become more tightly controlled, largely for budgetary reasons."

8.0 Evidence from the Information Commissioner's Office

8.1 The Director of the PCC contacted the ICO about journalists' compliance with the Data Protection Act, given that the *Guardian* articles had extensively referred to News Group journalists appearing in the ICO's 2006 report *What price privacy now?* The Assistant Information Commissioner, Mick Gorrill, replied. He said that the ICO would not make further information from Operation Motorman available - including the names of journalists who had used the private investigator Steve Whittamore - because it was personal information. However, he added:

"Since the Motorman investigation we have not had any investigations where we have uncovered evidence of journalists using private investigators or other third parties to

unlawfully obtain personal information. We have received one complaint since Motorman where a member of the public complained that details of her medical record appeared in a national newspaper and that the journalist had unlawfully obtained it. It was clear that details of her medical record had appeared in the newspaper but we were unable to show that it had been unlawfully obtained.

"We are of the view that the threat of imprisonment and other high profile convictions of private investigators unlawfully obtaining information (not on behalf of journalists) have had an effect on this practice which has significantly reduced across the board. The PCC's own work will also have made a contribution so far as journalists are concerned. From our records there has been a marked reduction in complaints about journalists unlawfully obtaining personal information via third parties. This does suggest that unless journalists are now using other improper methods to obtain personal information there has been an improvement in standards."

9.0 The News of the World

9.1 In light of the allegations in the *Guardian*, and the evidence presented to the Select Committee, the PCC wrote to the editor of the *News of the World*, Colin Myler, on 27th July 2009 with a number of questions.

9.2 Mr Myler sent a detailed reply to the Commission on the 5th August which can be summarised as follows:

- Allegations by the *Guardian* that police officers on the Goodman inquiry 'found evidence of News Group's staff using private investigators who hacked into thousands of mobile phones', and that the police findings 'put the figure at two or three thousand mobiles' were, he said, 'not just unsubstantiated and irresponsible, they were wholly false'.
- The officer in charge of the Mulcaire/Goodman investigation had said that the *Guardian's* estimates were wrong and that the number of mobile phones hacked was 'a small number - perhaps a handful', while Assistant Commissioner John Yates had made the same point on the 9th July 2009.

In response to the PCC's specific questions, Mr Myler said:

- "Our internal enquiries have found no evidence of involvement by *News of the World* staff other than Clive Goodman in phone message interception beyond the e-mail transcript which emerged in April 2008 during the Gordon Taylor litigation and which has since been revealed in the original *Guardian* report. That e-mail was dated June 29 2005 and consisted of a transcript of voicemails from the phone of Gordon Taylor and another person which had apparently been recorded by Glenn Mulcaire. The email and transcript were created by a junior reporter (who has since left the newspaper). When questioned after the e-mail was supplied to us by Gordon Taylor's lawyers in April 2008, the junior reporter accepted that he had created the relevant e-mail document but had no recollection of it beyond that. Since by the end of June 2005 he had been a reporter for only a week or so (having been promoted 'off the floor' where he had been a messenger) and since the first months of his reporting career consisted

largely of transcribing tapes for other people, his lack of recollection when questioned three years later is perhaps understandable.

"E-mail searches of relevant people, particularly the junior reporter, Neville Thurlbeck and Greg Miskiw failed to show any trace of the e-mail being sent to or received by any other News of the World staff member. Those who might have been connected to the relevant story, particularly Neville Thurlbeck and Greg Miskiw, denied ever having seen or knowing about the relevant e-mail and no evidence has been found which contradicts these assertions".

- Mr Myler said that the process of internal investigation had been rigorous and that News Group had instructed Burton Copeland, an independent firm of solicitors, to deal with further police inquiries after the arrests of Mulcaire and Goodman. 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'.
- In addition, Mr Myler said that after he was appointed editor in January 2007, "an e-mail search was conducted involving up to 2,500 separate e-mail messages in order to discover whether other News of the World staff were aware of the Goodman/Mulcaire criminal activity. These e-mail searches were conducted by our IT department under the supervision of News International's Director of Legal Affairs, the Director of Human Resources and an independent firm of solicitors. No such evidence was discovered during this search".
- Asked to explain the relationship between Mulcaire and Neville Thurlbeck, Mr Myler said that Mulcaire had had an entirely legitimate role working for the newspaper in obtaining information such as land registry checks, electoral roll and credit status checks and the legitimate provision of telephone numbers of sports stars. Neville Thurlbeck made use of these services from June 2001 to April 2003 while he was news editor at the News of the World and occasionally, but seldom, after that point.
- Glen Mulcaire had never been paid by the News of the World for information relating to Gordon Taylor. The information in the June 29th 2005 e-mail did not result in any story being published.
- No further details could be provided about the story connected to the Greg Miskiw/Paul Williams (a pseudonym for Glenn Mulcaire) contract as to do so would put the paper in breach of the confidentially agreement to which the settlement with Gordon Taylor was subject.
- In response to a suggestion made by Adam Price MP - and put to the editor by the PCC - Mr Myler said it was nonsense to suggest that the article headlined 'Chelsy tears a strip off Harry' could only have come from phone message hacking. The story was about a telephone conversation, not a message - and the information was based on an interview with a Spearmint Rhino dancer called Annabella. However, Clive Goodman had already admitted, through his counsel, that one part of the story had come from illegal activity. This was the information that Chelsy Davy was 'due to fly

in on Tuesday for Harry's official passing-out celebrations'. This was the only piece of information that had been obtained illegally.

9.3 Mr Myler concluded by saying that 'since I became editor in January 2007, I am as sure as I can be that the activities at the heart of the Goodman/Mulcaire case have had no place at the News of the World and that my newspaper and my journalists fully comply with the law and the requirements of the Code'.

9.4 There was a further exchange of correspondence between the PCC and Mr Myler, in which he responded to the PCC's inquiries with two further points:

- Glenn Mulcaire had contact with a number of reporters on the *News of the World* other than Clive Goodman. But that did not mean to say that they were aware of his illegal activities, and there was no evidence from the inquiries undertaken by the newspaper since 2006 to suggest that they were;
- Clive Goodman had been editor of the Blackadder column between March 2005 and February 2006, and the stories in this column were not confined to those about the Royal Family. Between March 2006 and the time of his arrest, most - but not all - of the stories published under his name concerned the Royal Family.

10.0 Evidence from the police to the Select Committee

10.1 After the PCC began this latest inquiry, the Culture, Media and Sport Select Committee held an oral evidence session with Assistant Commissioner John Yates and Detective Chief Superintendent Philip Williams from the Metropolitan Police. A number of relevant points arose during this hearing:

- Mr Yates said of the *Guardian* article that "there is essentially nothing new in the story other than to place in the public domain additional material which had already been considered by both the police investigation into Goodman and Mulcaire and by the CPS and the prosecution team. There was certainly no new evidence and, in spite of a huge amount of publicity and our own request of the *Guardian* and others to submit to us any additional evidence, nothing has been forthcoming since".
- With regard to the 'for Neville' e-mail, he said that "Mulcaire's computers were seized and examined. There is nothing in relation to Neville or Neville Thurlbeck in those computers and, supported by counsel latterly and by the DPP, they both are of the view, as we are, that there are no reasonable grounds to suspect that Neville has committed any offence whatsoever and no reasonable grounds to go and interview him".
- In relation to the remarks by the judge in the Mulcaire/Goodman case that Mulcaire had been dealing with 'others' at the News of the World, Mr Yates said "of course he worked with others because that is his job. He is a private investigator and he works with journalists".
- Mr Williams said that they had "no evidence as to who he was doing those inquiries for [when Mulcaire worked with 'others'] and whether anything ever came of it".
- He said that, in relation to other journalists, "there is nothing there [in the unused evidence] that points me to any other journalists at the *News of the World*. The only person, if you like, unfortunately, is Goodman quite clearly taking part in this activity".

- Mr Yates said that Mulcaire had had contact with other journalists 'in relation to the activity that we took [Goodman and Mulcaire] to court for in 2006'.

11.0 Other relevant evidence to the Select Committee

11.1 The Committee also heard evidence from Gordon Taylor's lawyer, Mark Lewis, who said that a Detective Sergeant from the Metropolitan Police called Mark Maberly had told him that the files in the Goodman case showed that 6000 people were involved in the phone message hacking, although he did not know whether that meant that that figure referred to 6000 people whose phones had been hacked or 6000 people in total. Following this evidence, the PCC attempted to contact Mr Maberly by post, e-mail and telephone in order to see whether he was in a position to provide the Commission with any further information. For whatever reason, no response was forthcoming.

11.2 Andy Coulson, who had been the editor of the News of the World at the time of the Goodman/Mulcaire offences told the Committee that he had no 'recollection of there being any instances... where [phone message hacking] was used'. Indeed, Nick Davies also told the Committee that he had seen no evidence linking Mr Coulson to the phone message hacking.

11.3 Les Hinton, the Executive Chairman of News International at the time of the Goodman/Mulcaire convictions, confirmed that he had seen no evidence that anyone other than Clive Goodman from the News of the World staff was involved in phone message hacking. In response to questions suggesting that termination payments to Mulcaire and Goodman could be interpreted as an attempt to prevent them speaking out about practices at the newspaper, he said he had authorised the payments on the advice of specialist employment lawyers. He denied that this was to buy their silence. Subsequently, he moved to the US to become Chief Executive of Dow Jones in December 2007, before the Gordon Taylor legal action was settled.

12.0 Evidence from other national newspapers

12.1 In order to reassure itself and the public that measures were in place across the industry to safeguard against the use of illegitimate subterfuge, the Commission conducted a broader investigation in 2007 which resulted in the publication of 6 key recommendations. The Commission took the opportunity of the renewed awareness of the issue that followed the *Guardian's* July 2009 stories to write to national newspaper chief executives to make sure that these recommendations had been implemented.

12.2 The Commission was impressed both by the extent to which this had happened, and also by other initiatives that had clearly been taken by some companies. The Commission can report that the following measures are widespread:

- Requirements on journalists to comply with the editors' Code of Practice;
- References in contracts of employment to compliance with the Data Protection Act;
- Regular training seminars on privacy matters, including both the Data Protection Act and the PCC Code of Practice;
- Keeping freelancers informed of their obligation to abide by the terms of the DPA;
- Highlighting that the Code of Practice and the editors' Codebook had both recently changed in order to deal with the Information Commissioner's concerns about compliance with the DPA;

- Internal procedures requiring journalists to seek senior editorial and legal advice if they anticipate relying on a public interest defence to a breach of the Data Protection Act;
- Clear and auditable processes for the authorisation of cash payments to sources;
- One major newspaper group said it had entirely banned the use of inquiry agents in April 2007;

12.3 Another newspaper group suggested that the PCC could provide a list of experts who could regularly train journalists on discrete legal and self-regulatory matters at newspaper offices. This is something the Commission will consider.

13.0 Conclusions

13.1 The Commission's latest inquiry into this matter has been concerned with whether it was misled by the *News of the World* during its 2007 investigation, and whether there is any evidence that phone message hacking has taken place since 2007, when it published a list of recommendations to the industry about the use of subterfuge. The Commission has not lost sight of the fact that the genesis of all this activity was the deplorable, illegal and unethical behaviour of two people working for the *News of the World* in 2006. *The Guardian* newspaper was performing a perfectly legitimate function in further scrutinising activity at the paper, and it had produced one new significant fact in its revelation that the *News of the World* had privately settled a legal action brought by Gordon Taylor for a large amount of money. Indeed, such scrutiny by the media - taken with the activities of the PCC, Select Committee, Information Commissioner and others - will inevitably help prevent abuses by journalists. Neither should it be forgotten, however, that in presenting its story the *Guardian* too had obligations under the Code requiring it to take care not to publish distorted or misleading information.

Was the PCC misled?

13.2 The Commission has spoken to and obtained information from a number of people and sources. Set against the *Guardian's* anonymous sources are a significant number of on the record statements from those who have conducted inquiries, and have first hand knowledge of events at the newspaper. While people may speculate about the email referencing 'Neville', the Taylor settlement, and the termination payments to Mulcaire and Goodman, the PCC can only deal with the facts that are available rather than make assumptions. The PCC has seen no new evidence to suggest that the practice of phone message tapping was undertaken by others beyond Goodman and Mulcaire, or evidence that *News of the World* executives knew about Goodman and Mulcaire's activities. It follows that there is nothing to suggest that the PCC was materially misled during its 2007 inquiry.

13.3 Indeed, having reviewed the matter, the Commission could not help but conclude that the *Guardian's* stories did not quite live up to the dramatic billing they were initially given. Perhaps this was because the sources could not be tested; or because Nick Davies was unable to shed further light on the suggestions of a broader conspiracy at the newspaper; or because there was significant evidence to the contrary from the police; or because so much of the information was old and had already appeared in the public domain (or a combination of these factors). Whatever the reason, there did not seem to be anything concrete to support the implication that there had been a hitherto concealed criminal conspiracy at the *News of the World* to intrude into people's privacy.

Is there evidence of ongoing phone message tapping by any journalists?

13.4 Even though the allegations against Mulcaire and Goodman had been dealt with by the police and the legal system in 2007, the PCC proactively took the initiative to conduct an inquiry aimed at minimising the risk of repetition and at reassuring the public about the future integrity of undercover journalism. This work extended beyond the issue of phone message hacking, and has been endorsed by the Information Commissioner so far as it relates to the Data Protection Act. The industry willingly collaborated with it. The Commission was gratified to note the conclusion of the Information Commissioner's Office that there seemed to have been an improvement in journalists' compliance with the Data Protection Act.

13.5 Despite the manner in which the *Guardian's* allegations were treated in some quarters - as if they related to current or recent activity - there is no evidence that the practice of phone message tapping is ongoing. The Commission is satisfied that - so far as it is possible to tell - its work aimed at improving the integrity of undercover journalism has played its part in raising standards in this area.

13.6 It also further underlines the important role that a non-statutory, flexible body such as the PCC has in adding value to the work of the legal system to help eliminate bad practice, and it would be regrettable if the renewed controversy over the historical transgressions at the *News of the World* obscured this. While there is no room for complacency in the drive to improve standards and ensure compliance with the Code and the law, the Commission trusts that the value of its work in this area is something that others - notably the Select Committee, which is still examining these matters - will recognise.

ENDS