

## THE LEVESON INQUIRY

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### APPLICATION BY FULL FACT FOR AMENDMENT OF 28/11/2011 RESTRICTION ORDER

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1. This is an application on behalf of Full Fact, an independent fact-checking organisation which works to promote the availability of trustworthy information for public debate.
2. Full Fact seeks variation of the restriction order dated 28/11/2011, pursuant to paragraph 3 of that order and section 20(4) Inquiries Act 2005 ('the Act'). Section 20(4) of the Act states that:

'the Chairman may vary or revoke a restriction order by making a further order during the course of the inquiry'.

3. The restriction order made on 28/11/2011 prohibits the publication or disclosure, to any person outside the 'confidentiality circle', of any witness statement or document provided to the Inquiry prior to the maker of the statement giving oral evidence or the statement being read or summarised into evidence by a member of the Inquiry Team.
4. Pursuant to paragraph 1 of the order the only exception to this prohibition is where the Chairman has given his express permission.
5. The order binds "all persons".

#### Full Fact's concerns

6. Full Fact's interest in and relationship to the Inquiry stems from its expert role as the UK's only independent factchecking organisation and particular its experience of, and insight into, the extent and nature of press inaccuracy; the relationships between politicians and the press; and the workings of the Press Complaints Commission.
7. Since the start of oral evidence, Full Fact has been concerned that witness statements are not published in advance by the Inquiry. The statements have been provided to core participants; but Full Fact is not a core participant. Without sight of witness statements in advance, it is difficult, nigh on impossible, for a person or group such as Full Fact to suggest pertinent questions. This effect is out of kilter with (i) the assurances given on

04/10/2011, in the context of a discussion as to who did and did not need to be a core participant, that there would be no “*bright line*” between core participants and non-core participants, and (ii) the assurances given in that same discussion as to “*the ability of anyone to suggest questions to [counsel to the inquiry] which ... counsel to the inquiry might wish to pursue*”. In the same vein, on 31/10/2011 the Chairman said the following to counsel for Surrey Police, Mr Beggs QC: “*if there was a witness who was going to come along to criticise the Surrey Police, the rules make it abundantly clear that anybody acting for the Surrey Police, you would be entitled not only to suggest questions that counsel might ask, but also to apply to me to ask questions yourself, whether or not you're a core participant*” (emphasis added).

8. The lack of opportunity to examine witness statements and documents in advance prevents this purported ability from becoming a reality.
9. Until now, Full Fact has hesitated to act on their concerns, because the Inquiry has been at an early stage. They had hoped that the Inquiry would begin to publish witnesses' statements in time for interested parties to formulate suggested questions to the witnesses before, instead of after, questioning has begun.
10. However, the 28/11/2011 restriction order formalises an arrangement which Full Fact feels is unhelpful and which hinders, greatly, the ability of interested parties such as Full Fact to effectively participate. This is particularly so given the massive disparity in resources between organisations like Full Fact and the newspaper groups represented as core participants: Full Fact's entire annual budget being less than what even one junior lawyer representing those groups can expect to earn in a year.
11. This application is made now because Full Fact feels it is their duty to raise it before the Inquiry begins to call vital witnesses, such as the Press Complaints Commission and perhaps newspapers, without giving groups like Full Fact the opportunity to prepare effectively for those witnesses, and without therefore being able to benefit from Full Fact's or others' knowledge in scrutinising their evidence and formulating questions.
12. As matters stand, the Inquiry is trying to do its work with the majority of the few informed contributors, the core participants, representing only one interest in the debate – the press. In light of that, and contrary to that which is set out in the pre-amble of the order, Full Fact do not feel that it is in the public interest for witness statements to be withheld before they are put into evidence. On the contrary, it contributes to the impression of a lack of transparency in what is akin to a policy process. It is in contrast to the “*spirit of complete transparency*” that in the opening remarks the Chairman said “*should be one of the principal objectives of all [the Inquiry's] work*”, and it hinders the goal, also expressed

by the Chairman, of trying to “*ensure that all the evidence and all views upon that evidence have been taken into account*” (emphasis added).

13. Those aims are of obvious importance. Public trust in the Inquiry process is essential to getting the Inquiry’s recommendations taken seriously by the necessary decision makers after the Inquiry concludes. Moreover, the more open the Inquiry can be, the less its work will be understood by the public only through the way it is mediated and presented by the press.
14. In light of all the above, it is felt that the order in its present form specifies restrictions beyond those permitted by the test set out in section 19(3) of the Act.

Other effects of the order

15. In addition to its effect on interested groups such as Full Fact to prepare for witnesses, the order in its current form precludes groups such as Full Fact, who are providing evidence to the Inquiry and making submissions, from any of the following:
  - Publishing their submissions themselves, for example on Full Fact’s own website. It is not clear what harm could result.
  - Sharing their submissions privately with others. For example, Full Fact considers that it would be desirable if organisations like their own could communicate freely with other organisations and interest groups, to ensure that, between them, organisations with complementary areas of expertise cover the necessary ground without overlapping.
  - Sharing the contents of their submissions with interested parliamentarians. This (presumably unintended) consequence is important. It will fall to Parliament to consider even those of the Inquiry’s recommendations not addressed to it. It is felt that newspapers may be doing their best to soften this ground ahead of the Inquiry’s recommendations: through, for example, Op Ed pieces that play down the scale and nature of the problems the Inquiry is considering. Even if the current order were revoked at the conclusion of the Inquiry, newspapers will by that point have had *months* to relay their point of view. The press has an immensely powerful platform from which to propagate a partial view of the Inquiry, and the ability to use that platform in its own commercial interests, day after day. It is counterproductive to restrict what other, relevant, groups can do.
16. Finally, the wording of paragraph 1 of the order appears to prohibit a document which is *not* a statement from ever being disclosed at all. As not all documents submitted to the

Inquiry will be read into evidence, those documents appear to end up in a kind of secret limbo.

The amendment sought

17. Full Fact asks for the order to be revoked, or varied with provision made so that during Part 1 of the Inquiry:

- a. Witnesses, and those providing documents to the Inquiry, are free to publish their own statement, submissions or documents at any stage;
- b. Once a statement, submission or document has been published by the witness concerned, anybody else may republish it;
- c. Witnesses' statements, submissions and documents are published by the Inquiry as soon as practicable before their appearance, so that persons other than core participants are able to effectively prepare and suggest questions;
- d. All evidence should be published by the Inquiry as soon as practicable prior to closing statements.

18. In the alternative, assuming an application for Core Participant status would be refused, Full Fact seeks (in addition to a variation to negate the effects described in paragraph 15 above) the express permission of the Chairman for sight of the witness evidence, exhibits and any other documents provided by the Press Complaints Commission, and witness evidence, exhibits or any other documents provided by newspapers or their representatives where they relate to accuracy or complaints handling, as soon as practicable after those are provided to the Inquiry and in any event before the makers of the statements are called to give oral evidence or the documents are summarised into evidence by a member of the Inquiry Team. However, Full Fact believes that the amendments sought, in paragraph 17 above, serve a wider public interest.

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