



From the Litigation Department

Our ref : PL/jr/legal/zm3530
Your ref :

Direct Line : 020 8752 4339
Fax Line : 0208 752 5080

10th October 2003

Martin Smith
Solicitor
The Hutton Inquiry
The Rt Hon Lord Hutton
2nd Floor
81 Chancery Lane
London WC2A 1DD

Dear Mr Smith

BBC'S SUBMISSIONS IN REPLY

I enclose BBC's Submissions in reply with Annexe A therein referred to.

Yours sincerely

Philip Lawrence
BBC Litigation Department

FSB/8/0001



THE HUTTON INQUIRY

BBC's SUBMISSIONS IN REPLY

1. Paragraph 4(2) on p3; and paragraph 15 at p20 The government prays in aid the conclusions of the FAC and the ISC. In its final submissions the BBC addresses the case that false evidence on central issues was given to both committees and that the ISC appears to have accepted (wrongly) the government's assertion to the ISC that Dr Jones' and his colleagues' letters were customary debate between analysts. In this context the BBC would also question what materials were in fact made available to the FAC and the ISC. It seems clear that Mr Campbell's minute of 17th September, and Mr Scarlett's reply, were produced to neither committee. The FAC were, of course, led to believe that the drafts on the 45 minute claim remained the same from beginning to end. It also seems that Mr Powell's e-mail of 19th September was never produced to either committee. The BBC suggest the conclusions of both Committees are therefore of little real assistance (save for the light shed by the ISC's report on the intelligence background).

2. Paragraphs 5(3) on p4; and 48(4) on pp36-37 In the latter passage especially, the government contend that Dr Kelly did not say to Ms Watts that "the dossier was transformed by Mr Campbell or the government; that pressure was brought to bear on the intelligence services; that people in intelligence were unhappy with the dossier; that the dossier did not reflect their considered views, or that the government was guilty of conscious wrongdoing". The tenor, according to the government, was merely that the intelligence community "would have preferred less black and white language and more caveats". Ironically the government base that submission *only* on Ms Watts' interpretation of what Dr Kelly said and without any reference to what Dr Kelly in fact said to Ms Watts as recorded in the tape transcript. It is in fact an unsustainable submission when set against the transcript. Such phrases in the context of the 45 minute claim as "they were pushing hard for information"; "which is why there is the argument between the intelligence services and the Cabinet Office/Number Ten"; "... there were lots of people saying that" [i.e. don't put it in]; "... that unfortunately wasn't expressed strongly in the dossier because that takes

away the case for war to a certain extent"; "... all I can say is the No 10 press office ...but I think Alastair Campbell is synonymous with that press office" are redolent of political interference (as described by Ms Watts herself in the broadcast of 2nd June as "Downing Street interference")¹. In Ms Watts' notes the words "mistake to put it in [the 45 minute claim]... Alastair Campbell seeing something in there..." are to like effect.

On the issue of programmes (and Mr Scarlett's late change to the title), the BBC should have made the point in its final submissions that Ms Watts' notes actually record Dr Kelly as saying "...[the] reality was they had programmes... not a view that wanted to be heard".

3 Note 1 on p12 A headline on p10 of The Times² read "Missiles fire in 45 minutes" immediately above a boxed heading "biological and chemical weapons" to a map of Iraq's missile sites. The circulation of the Evening Standard at the relevant time was 416,914³ the circulation of the Sun 3,733,052; and the circulation of The Times was 640,424 copies⁴ Readership is, of course, a multiple of circulation.

4 Paragraph 5(5) on p5, and paragraph 60 on p44 It is incorrect to say that the allegations were generally presented abroad in the form of the 6.07am broadcast. The Inquiry is referred to the attached analysis marked Annex A of the foreign publicity relied on by Mr Campbell in support of this contention⁵.

5 Paragraph 5(6) on p6 The BBC's view that the government was seeking to undermine its independence emphatically did *not* stem from the exchanges over Mr Gilligan's broadcasts. It stemmed from the quite different attack made by Mr Campbell in evidence to the FAC. This is made clear beyond doubt in Mr Davies' important first e-mail to the governors of 27th June 2003⁶. The enormous publicity generated by that attack is addressed in paragraph 26(3) of the BBC's Final

¹ SJW/1/51
² BBC/4/286
³ Source : Guardian 30.08.2002
⁴ Source : Audit Bureau of Circulations
⁵ CAB/1/430-2.
⁶ BBC/14/83.

Submissions⁷. The point is distinct from the merits of the government's narrow complaint against Mr Gilligan's broadcasts, though connected in that Mr Campbell's suggestion is that those broadcasts too were part of the political agenda held by "large parts" of the BBC.

6. Paragraph 6(1) on p7 The BBC adopts the government's assertion that concealing matters from Parliamentary Committees "would have been a grave dereliction of duty with serious implications for the relations between government and Parliament" and contrast this stance in relation to Dr Kelly with the stance adopted in relation to Dr Jones, his colleagues and other false or misleading evidence given to these committees without any subsequent correction

7 Paragraph 24 on pp24-5 This issue is fully addressed in the BBC's Final Submissions. The BBC questions whether in any event, in a context as serious as this, delegated authority can cover the excision of material, whose inclusion had been approved by all other JIC members in two previous near final drafts of the dossier that were presumably based on the same information.

8 Paragraph 51 on p40 The government state that "Mr Gilligan was not at any time asked to show the notes of his interview with Dr Kelly to his editors" It is true that the editors did not see Mr Gilligan's original notes. However they did have Mr Gilligan's typed out record of "what my man said"⁸.

9. Paragraph 54 on p41 As to the last sentence, Mr Gilligan is in fact saying that it could be an honest mistake, but his source was saying otherwise.

10. Paragraph 65 on p46 The fourth sentence is not a fair or accurate paraphrase of Mr Davies' evidence. His acknowledgment that his reaction at the time of broadcast (he heard the 6.07) that Mr Gilligan's allegations were routine – "may sound foolish now in retrospect" – is hardly surprising, but it certainly is not an acceptance now that his reaction *was* foolish at the time. The last sentence is also incorrect. Mr Dyke did not have a "significant" part in formulating the BBC's position in correspondence

⁷ Copies of these articles can be supplied.

⁸ BBC/4/203-4

prior to the BBC's letter of 27th June 2003. The fourth sentence might be understood as suggesting that Mr Dyke did know the terms of the broadcast at this early stage, and misjudged them as trivial. Mr Dyke's evidence was that whilst he was aware of the story about the September dossier in general terms he did not become aware of the exact words of the report for "several weeks"⁹.

11. Paragraph 71 on pp48-9 This paragraph does not address at all the crucial passage in Mr Campbell's evidence to the FAC. The extensive media reporting of this aspect of his evidence is addressed in the BBC's Final Submissions and could not have escaped Mr Campbell's attention.

12. Paragraph 78 on p52 The government continue to maintain a grave suggestion that Mr Davies abused his position by successfully seeking to restrict the scope of the governors' discussions in order to appease or protect management. The charge is refuted in detail in the BBC's Final Submissions. The second sentence of paragraph 78 appears to be central to the government's case, but seriously misrepresents Mr Davies' evidence. What he in fact said was:

"...whatever emerges on the 45 minute claim, and whatever we would then have to do – and I made it clear in other e-mails that of course in those circumstances we might have to pass judgment on the news division, but whatever emerges on the 45 minutes claim, what we must not do is give ground that threatens the fundamental independence of our input"

In that passage Mr Davies expressly recognised the possibility of concessions on the 45 minute claim, whilst making clear that the BBC would not concede ground on Mr Campbell's wider attack on the BBC's integrity. Mr Davies was not taking the absurd position that the governors should stand by a report, if it was shown to be wrong. This misreading appears to stem from the important error identified in point 5 above and ignores the importance of Mr Campbell's allegation that large parts of the BBC were motivated by a political agenda. The totality of Mr Davies' e-mails to the governors and their replies, including particularly his first e-mail to them of 27th June, have to be considered for a fair picture

⁹ Dyke: D17/139-140

13. Paragraph 79(5) on p54 The penultimate sentence and footnote 3 is not a fair or accurate account of Mr Sambrook's evidence¹⁰. The last sentence is not correct. Mr Marsh was involved in the drafting of the 27th June letter.

14. Paragraph 80 at p54 The allegation that Mr Davies intervened at the meeting to quash any incipient discussion of the accuracy of the story was challenged as tendentious by Mr Davies in evidence. He pointed out that the governors had already agreed they could not determine accuracy (as they did not have the necessary materials to determine the ultimate truth of the source's allegations) and that his reminder of that fact at the meeting had the agreement of "other governors"¹¹. Moreover the minutes record Mr Davies as immediately thereafter drawing attention to Dame Pauline Neville-Jones' concerns that the JIC's denials may not have received sufficient attention, which is hardly consistent with a bias in favour of management.

15. Paragraph 81 on p55 The reference to "stand up and be counted" in the 29th June e-mail from Mr Davies to the governors¹² has to be read in the wider context of the e-mails including Mr Davies' first e-mail to the governors of 27th June 2003. As to government pressure, and its propriety, the BBC's case is fully set out in the Escalation Section of its Final Submissions.

16. Paragraph 82 on p55 This paragraph focuses almost entirely on the Prime Minister's side of the conversation. Mr Davies made it clear that the BBC was not suggesting that the source's allegations were true. While the Prime Minister did stand by his request for a retraction, Mr Davies made clear his hope that the governors' statement could be used as "an olive branch". He thought at the end of the conversation that both had left feeling "we should put calming pressure on our respective organisations and try to move the decibel count significantly down"¹³.

¹⁰ Sambrook: D19/137:12-21

¹¹ Davies: D23/40:19 to 41-4.

¹² BBC/14/86

¹³ Davies: D12/152 7-14

17. Paragraph 84 on p56 The time issue is addressed in the BBC's final submissions. The Inquiry is reminded of Mr Davies' evidence on the point¹⁴. Further a complaint to the Broadcasting Standards Commission was always available.

18. Paragraph 87 on p58 The quote from Sir Kevin Tebbit in the second sentence underlines the importance in public interest terms of the wider sting of Mr Gilligan's broadcasts (and indeed the unchallenged Newsnight broadcasts).

19. Paragraph 103 on p66 The BBC does not understand the allegation that Mr Sambrook made any improper disclosure to Mr Baldwin on 3rd July to be pursued. It is clearly unsustainable in the light of the terms of Mr Baldwin's article of 5th July. It should also be made clear here that the only information which Mr Baldwin suggested derived from Mr Sambrook in the 5th July article was that which Mr Sambrook himself accepted he communicated to Mr Baldwin on 3rd July. The information was deliberately vague and did not include identifying detail. The word "met" in the second sentence might suggest there was some meeting between Mr Marsh and other BBC journalists on the point. Mr Baldwin only referred to two BBC journalists who "had come into contact with Mr Kevin Marsh"¹⁵. The information they provided was limited.

20. Paragraph 144(1) The BBC notes it is said to be "a cardinal feature of government policy that the press is not to be misled", and contrast that position with the failure to correct the fundamental misreporting of the 45 minute claim, which is still defended despite its appearance in (among others) the country's leading evening newspaper and largest circulation daily newspaper in note 1 on page 12.

The BBC has no comments on the family's submissions

ANDREW CALDECOTT QC

10th October 2003

¹⁴ Davies: D23/57:8-16.

¹⁵ Baldwin: D9/130:5-13.

ANNEX A

INTERNATIONAL REPORTING OF THE BROADCASTS

The following articles constitute (as far as the BBC is aware) the extent of reporting by major international newspapers of the allegations contained in Mr Gilligan's Radio 4 broadcasts on 29th May:

- The Washington Post, 30 May

'BBC Radio fuelled the debate today with a report that British intelligence officials were displeased with a dossier, published by the Prime Minister's Downing Street office last September, that asserted Hussein had weapons of mass destruction ready for use within 45 minutes. Citing unnamed sources, the BBC said intelligence agencies were sceptical about that claim, which they described as coming from a dubious informant, and said they had opposed inserting it into the dossier.

By the BBC's account, the original draft of the report did not include the claim, but the draft was "transformed" on orders from Downing Street. The published version included a preface by Blair that made the claim, one of several that were added against the wishes of intelligence officials, according to the BBC report.'

- The New York Times (also International Herald Tribune), 30 May

'This week a senior British intelligence official told the BBC that under pressure from Downing Street, a dossier on Iraqi weapons had been "transformed" to make it "sexier" - uncorroborated material from a suspect source was added to make the threat appear imminent.'

- The Irish Times, 30 May

'However, the BBC yesterday quoted an unnamed "senior British official" as saying that this was one in a series of unreliable claims included in the dossier against the wishes of intelligence officers, who had been ordered by 10 Downing Street to "sex up" a draft version of the document. "Most people in intelligence weren't happy with the dossier because it didn't reflect the considered view they were putting forward," he said.

According to the BBC, the unnamed senior British official said the dossier was "transformed" in the week before it was published to make it "sexier" He said: "The classic example was the statement that weapons of mass destruction were ready for use within 45 minutes. That information was not in the original draft. It was included in the dossier against our wishes because it wasn't reliable. Most things in the dossier were double source, but that was single source and we believe that the source was wrong "'

- The New York Times (also International Herald Tribune), 31 May

'The BBC reported on Thursday that an intelligence report asserting that Mr. Hussein had the capacity to deploy chemical and biological weapons within 45 minutes, which

was made public by Mr. Blair's government last September, had been "transformed" and made "sexier" on the orders of No. 10 Downing Street -- against the judgment of the intelligence services

"That information was not in the original draft," a senior intelligence official told the BBC. "It was included in the dossier against our wishes. Most things in the dossier were double-source, but that was single-source, and we believe that the source was wrong." According to the BBC, the intelligence official nonetheless added that he believed that Iraq had had a program for illicit weapons.'

- The Sunday Tribune, 1 June

'Meanwhile, the BBC reported on Thursday that an intelligence dossier cited by British prime minister Tony Blair which claimed Hussein had the capacity to deploy chemical and biological weapons within 45 minutes, had been "transformed" on the orders of No 10 Downing Street against the judgment of the intelligence services. At the time, the claims from Downing Street made international headlines and were cited repeatedly by Bush as irrefutable evidence of the imminent danger posed by Saddam's regime. "That information was not in the original draft," a senior intelligence official was quoted as saying by the BBC. "It was included in the dossier against our wishes. Most things in the dossier were double-source, but that was single-source, and we believe that the source was wrong."

In addition, no mention of the BBC's reports appears to have been made at all in the following other major international papers.

- Le Monde;
- Los Angeles Times;
- South China Morning Post,
- The Wall Street Journal.