

LEVESON INQUIRY: CULTURE, PRACTICE & ETHICS OF THE PRESS

MODULE 2 - THE PRESS AND THE POLICE

SUBMISSIONS ON BEHALF OF THE CORE PARTICIPANT VICTIMS

These submissions are made on behalf of the Core Participant Victims (“CPVs”) in Module 2 of the Inquiry.

INTRODUCTION

1. In a democratic society the public are entitled to the fullest possible information about the activities of the various agencies of the criminal justice system including the police. The Police Service relies on the media to help engage public trust, and so encourage confidence and cooperation. The media needs access to information so as to be able to shine a light on successes and failures in policing in general and to expose wrongdoing by individuals. The relationship between them should be based on mutual trust and should be as open and transparent as possible. If this relationship is tainted by actual or apparent impropriety then the entire criminal justice system is damaged.
2. In this relationship, perception is as important as reality. A perception of a corrupt or inappropriate relationship between police and press can have far reaching consequences: a loss of public confidence in the police and a belief that the press have impunity leads to worsening behaviour. A perception that the senior officers are too close to individuals in the press makes it more difficult for their subordinates rigorously to pursue investigations into media wrongdoing. All this has obvious adverse consequences.
3. Police failures in the context of crimes committed by journalists are also important when a new regulatory regime is being considered. Behind any regulatory regime must lie the ultimate sanction of criminal prosecution for wrongdoing. If the police are seen to turn a

blind eye or to downplay the scale of wrongdoing by the media, it is inevitable that the press will develop a sense of impunity. That will make the job of a regulator very much more difficult.

4. The evidence to the Inquiry has demonstrated serious problems in the culture, practices and ethics of both parties to the relationship. Some parts of the Police Service, the Metropolitan Police Service ('MPS') in particular, became excessively sensitive to reputational damage and so pandered to the demands of newspapers. A number of senior MPS officers became too close to reporters, did not fully investigate or disclose evidence of press wrongdoing, and so failed those who they should have protected – the victims.
5. The most telling example is the way in which very close relationships between senior officers in the MPS and News of the World journalists and editors appeared to compromise the investigation into phone hacking in 2006 when the MPS did not pursue evidence of the complicity of numerous journalists in the unlawful interception of voicemails. There is convincing evidence that in 2009 and 2010 those relationships actually affected the police response to concerns raised by the Guardian and the victims. This allowed News International to rely on police assurances in support of their decision not to investigate phone hacking any further. Even in 2012, James Murdoch still sought to justify the company's failure to act by repeated references to the fact that the police had investigated, closed their case and asserted there was no new evidence¹.
6. The House of Commons Culture Media and Sport Committee ("DCMS") opened its third report of May 2012 by recording how *"the unwillingness of police and prosecutors to investigate further"*² had made it impossible for the Committee to conclude in its Second Report³ that the "rogue reporter" line it had been fed in 2009 was misleading.
7. The MPS failure to warn victims between 2006 and 2011 assisted News International in its admitted cover-up of serious criminal offences and has reinforced the impression that relationships with News International were more important to the MPS than its duties to

¹ For example see transcript of J. Murdoch's evidence on 24/04/12 (**DAY63/am/50/5-13**):
A.I asked the question: "Is this true? What's going on?" And the answer came back. Q. And the answer was? A. That it wasn't true, that there was no other evidence, that there -- you know, this is a -- you know, this has been investigated to death and this is, you know, a smear. And I think you saw the statement made by both the company at the time, as well as by the police at that time.

² Culture, Media and Sport Committee - Eleventh Report "News International and Phone-hacking" ¶ 2

³ CMS Select Committee of Session 2009-2010 'Press Standards, Privacy and Libel'

victims and to the public.

8. The Inquiry has also heard evidence from the police and the press of numerous examples of good practices and the way in which the relationship between them can, and regularly does, work in the public interest, particularly outside London. The majority of journalists and police officers cooperate in a transparent way and act with integrity. However, the improper and sometimes unlawful behaviour of a sector of the national press and some senior MPS officers has had a disproportionate impact, both on victims and on the wider public perception of a generally corrupt and unhealthy relationship between the press and the police. These submissions will focus on the problematic and unethical aspects of the relationship, the negative consequences for both policing and the media and the adverse impact on victims. The internal systems operated by the police were clearly insufficiently robust either to prevent the problems arising, or to deal with them when they did arise. Such systems need urgent revision and amendment.
9. The submissions are informed by a picture which emerged from the evidence in Module 1, which is of a sector of the press which was undisciplined and willing to use illegal and unethical means in pursuit of its commercial aims without regard to the damage caused. Module 2 revealed naivety and unethical behaviour among senior MPS officers. Despite the good practices followed by many within the press and Police Service, the impression left by the evidence is that some officers allowed themselves to become indebted to powerful media organisations, and that the internal police systems were incapable of dealing properly with the risks this created.
10. These submissions will start by setting out the CPVs' submissions on the appropriate approach to the evidence before moving on to deal with section 1 and outlining the effect of the press on the police service as a whole and on individual officers. In that context, they will trace the overly close relationships between senior police officers and the tabloid press. They will deal with the consequences by way of examples from the evidence. These included a perception or reality of a lack of independence in pursuing investigations into phone hacking and other data intrusions, leaks, inappropriate practices such as taking the media on operations without proper/any guidelines and revealing details of those under arrest. In light of this analysis of the evidence, the submissions will conclude in Section 2 with the CPVs' recommendations for changes to policy, practice and regulation.

APPROACH TO EVIDENCE

11. Part 1 of the Inquiry focuses on the adequacy of the regulatory regime against the background of any systemic behaviour flowing from the ethos or policies of particular media organisations which are either encouraged or tolerated by senior management or, at least, are the consequence of failure of oversight or supervision at that level⁴.
12. Module 2 focuses on the relationship between the press and the police and the behaviour of each. As the Chairman noted in his Ruling on 7 November, it is necessary for the Inquiry to obtain a *“narrative of events sufficient to ground a consideration of the current policy and regulatory framework and the extent (if at all) to which it has failed, remains essential and the question of the proper construction of these terms of reference itself falls to be addressed”*⁵. In order to construct this narrative, the Inquiry has heard from a number of senior police officers from the MPS and regional forces, from crime reporters and from supervisory bodies such as the IPCC.
13. Having now heard evidence, including that of overly close relationships and excessive hospitality between the press and the police, and details of the police investigation into phone hacking in 2006 and its response to the renewed allegations in 2009, it is imperative that the Inquiry sets out a full and detailed narrative of such evidence and conducts a proper analysis of it. While the Inquiry needs to avoid prejudicing any ongoing criminal investigations, the analysis should be sufficiently detailed to avoid two potential pitfalls:
 - (i) Firstly, the Inquiry could be open to the criticism that conclusions about the adequacy of present methods of regulation and proposals for new mechanisms were insufficiently evidence-based. That is so particularly if it could be suggested that any new regulatory system, howsoever devised or organised, could impact adversely on freedom of expression or have a chilling effect on the responsible journalism which is so critical in our democratic society⁶; and
 - (ii) Secondly, the inevitable questions that are in the public’s mind about the culture, practices and ethics of the press in relation to phone hacking and about the evidence that the Inquiry has heard need to be answered. Public

⁴ Ruling on Approach to Evidence, 7 November 2011, ¶11

⁵ Ruling on Approach to Evidence, 7 November 2011, ¶ 4

⁶ Ruling on Approach to Evidence, 7 November 2011, paragraph 34

anxiety about the behaviour of the press led to the setting up of this Inquiry and it is essential that such anxiety is properly dealt with by providing the public with the full picture⁷. The CPVs share this anxiety and are the best placed Core Participants in Module 2 to reflect the public's position.

14. While the CPVs would not want any steps to be taken which would prejudice a fair trial of any of the suspects, the Report can set out a detailed narrative of events by using the safeguards identified in the Ruling dated 7 November 2011:

- (i) The use of ciphers in relation to those who have been arrested in relation to phone hacking investigation⁸,
- (ii) The personal data of those who are listed in the Mulcaire journal as targets or potential targets is not to be included in the Report although names already in the public domain or where consent has been forthcoming may be. The name of any journalist linked with any entry (so called 'corner names') are also to be anonymised or given a cipher although, again, each coded name will be placed in a band that identifies their comparative seniority but in such terms that do not permit of further identification⁹.

15. Finally, any criticisms of police officers, the MPS or local forces, newspapers, their owners, and individuals, which are justified should be fully and clearly set out in the Report. Following the Ruling dated 1 May 2012, bodies corporate or unincorporate who operate any press titles, and any individuals, should be sent a notice under Rule 13 of the Inquiry Rules warning them and setting out the evidential basis for the criticism which is being contemplated¹⁰.

⁷ The CPVs note that this appears to be the approach that is intended as in the Ruling on 7 November 2011 it is stated that "The notebook belonging to Mr Mulcaire, which has formed an important part of the police investigation, will be summarised so that its true significance and extent may be understood." (¶35(iii)).

⁸ ¶ 35(ii)

⁹ ¶ 35(iii)

¹⁰ ¶ 63

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SECTION 1: PROBLEMS IN THE RELATIONSHIP BETWEEN THE POLICE AND THE PRESS

A. Excessive police concern with reputation management

Introduction

17. Over the past 20 years, the Police Service has faced significant criticism in the press; some of it justified such as that following publication of the 1999 Macpherson Report exposing institutional racism in the Force; some less so, such as intrusive, prurient or highly unfair reporting about individual officers without any public interest defences. Sir John Stevens (MPS Commissioner 2000-2005) introduced a policy of greater openness in the Police Service, but it has arguably been exploited by powerful and undisciplined sectors of the press who have put the service and officers under pressure. As Elizabeth Filkin, the former Parliamentary Standards Commissioner, noted in her report of 4 Jan 2012, *"it is felt by many that the media is now capable of making or breaking the careers of senior people in the MPS"*¹¹.
18. Fearful of this power, senior officers, particularly in the MPS, became excessively deferential to some sectors of the press or excessively defensive about the way in which policing was reported. This anxiety forms the backdrop to the close relationships which have appeared to compromise police independence.

A (1) Organisational reputation

19. The Inquiry has heard evidence from several witnesses about the MPS concern with reputation management. For example, former Deputy Assistant Commissioner ('DAC') **Brian Paddick** explained that there was real anxiety at senior level in the MPS about its reputation and how

*"In order to preserve or enhance their reputation in the eyes of the public, the police have increasingly tried to keep bad news about the police out of the media and have put more and more effort into getting positive news stories about the police into the media"*¹².

He described in evidence how successive Commissioners attempted to conduct

¹¹ 'The Ethical Issues Arising From the Relationship Between Police and Media' Advice to the Commissioner of Police of the Metropolis and his Management Board - **Elizabeth Filkin report January 2012, page 30 ¶ 3.4.1**

¹² W/S ¶ 11

“charm offensives”¹³ with the media, and explained the risk that this reputational anxiety would lead the MPS to cover up behaviour which might be criticised. He referred to a report he wrote about the way in which rape was investigated in London, the conclusions of which were critical of the MPS and which was altered before publication by the Department of Public Affairs (“DPA”) so as to water down the criticisms.¹⁴ He also explained how he was briefed against by the MPS, which issued a false statement accusing him of lying in his statement to the Independent Police Complaints Committee (“IPCC”) about the time when the Commissioner’s office was made aware of details about the shooting of Jean Charles de Menezes.¹⁵ The statement was withdrawn on threat of libel proceedings, but it demonstrated how the DPA was prepared to use the press to cover up the truth. Sir Paul Stephenson (MPS Commissioner January 2009-July 2011) referred to the danger of the organisation becoming obsessed with newspaper headlines.¹⁶

20. Brian Paddick’s view was endorsed by the views of the following journalists who gave evidence:

(1) **Mike Sullivan** (Crime editor of The Sun) stated that the MPS were on the back foot as a result of the Macpherson Report and there was a ‘charm offensive’ in the years following, in which Lord Condon (MPS Commissioner 1993-2000) and Dick Fedorcio (Director of the DPA 1997-2012) visited as many newspaper offices as possible as there was a real concern that Sir Paul (as he then was) might be forced to resign as a result of public concern over the Macpherson Report’s conclusions¹⁷. Mr Sullivan stated that, had Mr. Paddick’s report on rape and the quality of rape investigations been published earlier, it might have had an effect on reinforcing resources into rape investigations¹⁸. He also said that there was a “marking system” within the DPA relating to the number of stories journalists have written that are critical of the MPS and those that praise the MPS¹⁹.

(2) **John Twomey** (Crime correspondent, Daily Express) agreed that the media were on a charm offensive following the Macpherson Report²⁰.

(3) **Sean O’Neill** (Crime editor of The Times) agreed with Mr Paddick about the

13 W/S ¶ 12
 14 W/S ¶ 19
 15 27/02/12 (DAY41/am/104/10-24)
 16 5/03/12 (DAY45/am/11)
 17 15/03/2012 (DAY51/am/38 & 40)
 18 15/03/2012 (DAY51/am/67)
 19 15/03/2012 (DAY51/am/55-57)
 20 19/03/2012 (DAY52/am/19/11)

MPS stating that he found it “defensive”²¹. He said that the DPA did not tell the whole story and was less than frank, particularly when it was concerned to protect the reputation of the MPS. He gave the telling example of the police officer who had been convicted of assault being released but not the information that the officer had head-butted a 14 year old boy²².

21. **Dick Fedorcio** was the only MPS witness who had been on the Management Board of the MPS since Sir John Stevens was Commissioner. He was plainly a highly influential senior figure in the organisation. His witness statement stressed the importance of reputation management and revealed how accommodating the DPA was to the demands of the media, saying; the DPA “*seeks to provide the media with the service it wants in the timescale required*”²³; that he tried to be available 7 days a week to the media and had coffee, drinks or lunch with journalists about once a week; that he networked extensively, including regular meetings in bars²⁴ and the purpose of these meetings was to improve understanding of the MPS, its media coverage and profile. He was also involved in many of the occasions when senior MPS officers were entertained by the media to expensive dinners²⁵. Elizabeth Filkin described in evidence how the DPA acted like a newsroom²⁶

Management Board disputes

22. The evidence demonstrates that some internal battles were being played out in the media, in particular, power struggles within the Management Board and significant race equality disputes:
- (i) **Neil Wallis** (former Deputy Editor of the News of the World) suggested that the Management Board members were briefing against Sir Ian Blair²⁷.
 - (ii) **Brian Paddick** discussed the way in which senior Management Board level officers briefed against one another, exploiting their relationships with the journalists²⁸.
 - (iii) **Stephen Wright** (Crime correspondent, The Mail on Sunday) was not willing to identify who on the Management Board was leaking information to him but

21 W/S ¶ 3
22 21/03/2012 (DAY54/am/25)
23 W/S ¶ 20
24 W/S ¶ 49-53
25 W/S ¶ 68
26 05/03/2012 (DAY45/pm/120)
27 02/04/2012 (DAY59/am/98/4-5)
28 27/02/2012 (DAY41/am/95-96)

clearly implied that this was happening when he said that he was “*fully aware of the camps within the Management Board and [he] had information*”²⁹.

23. While it is legitimate for the police to take steps to promote its successes in order to boost morale and ensure public confidence, they should not be actively involved in taking steps to suppress public criticism. The promotion of police success should be carried out in a transparent and proper manner. After the change in culture promoted by Sir John Stevens, the pendulum swung too far in the direction of “helpfulness”. Senior MPS officers began to use the media to promote their own personal agendas and to advance their own positions in relation to internal disputes. The media should plainly not be used for these purposes.

A (2) Individual reputational concerns

24. The Inquiry can draw on the illuminating evidence of and about **Lord Blair** (MPS Commissioner 2005-2008) as an example of the power of the media to injure those who do not play the “media game” in the way in which the media require. Lord Blair described the impact of a failed relationship with the media and negative publicity on his career. The annex to his statement describes his treatment at the hands of the press (also detailed in his autobiography, *Policing Controversy*)³⁰.
25. **Dick Fedorcio** also described the impact of media coverage on Lord Blair. His evidence to the Inquiry was that:

*“Lord Blair, I think, had a more difficult period in that sections of the media certainly didn't take to him, and he faced a challenge during his period of office, which, on a number of occasions, led to negative stories about him, so I think that he was probably a little more reserved around dealing with the media”*³¹.

26. **Neil Wallis** said that Lord Blair’s failure to establish good relationships with senior editorial figures in the press was partly responsible for the negative press he received.³² Mr Wallis said he tried to help Lord Blair with public relations advice, but Lord Blair had limited interest in following up. He said that Lord Blair did not sit down with Colin Myler or Andy Coulson (editors of the News of the World) or Paul

²⁹ 15/03/2012 (**DAY51/pm/29/7**) and see also the evidence of Sir Paul Stephenson on 05/03/2012 (**DAY45/am/11**)

³⁰ Also see 07/03/12 (**DAY47/am/7-12**) where he was critical of Lord Stevens’ overly media-centric approach in an attempt to mend New Scotland Yard’s “battered reputation”.

³¹ 13/03/2012 (**DAY49/am/49**)

³² 02/04/2012 (**DAY59/am/94**)

Dacre (editor of the Daily Mail) to explain his views and solicit theirs³³. The obvious inference is that those editors, not used to being sidelined by the MPS, took revenge and as a consequence Lord Blair was plagued by such negative media coverage that his career was compromised. This must have had a significant impact and acted as a warning on other senior officers in the MPS who might also come into regular contact with the media or face its criticism.

27. **Lord Condon** had similar experiences. He described how Kelvin MacKenzie (editor of The Sun 1981-1994) ran a campaign in The Sun which Lord Condon described as “go after Paul Condon week”³⁴. It is noteworthy that this related to Lord Condon taking a firm line on unauthorised police leaks to the press – plainly an approach unpopular with The Sun.

*“I remember in early 1998 Kelvin Mackenzie, the former editor of The Sun, writing articles and broadcasting that I was attempting to ‘gag the media’ by preventing leaks to the press by MPS personnel”.*³⁵

28. Lord Blair is to be contrasted with **Lord Stevens** who courted the media and was seen by the press as a like-minded character. He received favourable coverage and later was to work for News International writing a column entitled “The Chief”, largely written by Neil Wallis, for which he received £7,000 per column. Brian Paddick said that the title of this column was widely viewed as a snub to Lord Blair.

29. **John Yates**, former MPS Assistant Commissioner, was obviously sensitive to media coverage, having been, in his view, briefed against during the cash for honours investigation which he led in 2006³⁶.

30. Dick Fedorcio was so keen to maintain a “good” relationship with certain newspapers that he was reluctant to intervene when they threatened the reputation of an officer. The experiences of former DAC **Bob Quick** are a good example of this reluctance. Mr Quick referred to the occasion where the Mail on Sunday published negative articles relating to his wife’s business. Details and photographs of his home address were revealed and he and his family felt that their personal security was at risk. Mr Quick asked Mr Fedorcio and Paul Stephenson to intervene on his behalf but felt they

³³ 02/04/2012 (DAY59/am/101)

³⁴ W/S ¶ 44 and Exhibit PC/1

³⁵ See also, 6/03/12 (DAY46/am/42)

³⁶ “it put me in the public eye in a way that was quite unhelpful. There were allegations made against me about all sorts of things, I was a Kenneth Starr, I was this, I was that, and I was very much in the public eye, and in terms of a counter terrorism lead that’s not necessarily a good thing”.

were unwilling to do so³⁷.

31. When asked by the Inquiry about this perceived lack of assistance, Mr. Quick replied

“I have no real understanding of why they didn't feel able to approach the editor and really just challenge their motives and their behaviours and whether this was really justifiable³⁸.”

Dick Fedorcio's explanation was that the story was about Mr Quick's wife rather than Mr. Quick himself and that there was therefore no obligation assist him³⁹. Given the circumstances and the fact that the story would not have been of any interest to the media but for Mr Quick's position in the police, this explanation is scarcely credible. It is reasonable to assume that, had the intrusion related to some other officer, such as Lord Stevens, the response of the DPA would have been different. Moreover, there is a clear inference that this publication in the “Mail on Sunday”, together with other stories about senior MPS officers, came from a police source⁴⁰.

B Excessively Close Relationships

Introduction

32. The anxiety felt in the police about reputation, together with a shared political agenda, led some senior officers, particularly in the MPS, to foster relationships which were so close as to create a real potential for conflict of interest. The evidence suggested that part of the aim was to keep the media on side. Instead, independence, or at least the appearance of independence, was compromised.
33. The Inquiry has heard evidence of lavish hospitality paid for by the tabloid press and excessively close and secretive relationships between senior MPS officers and NI reporters. News International and some other tabloid journalists were favoured with exclusives and access over other newspapers without the same pro-police agenda. This has had a serious negative impact on public confidence in the police.
34. As Robert Jay QC (counsel to the Inquiry) said in the opening to Module 2 *“Ultimately, the vice here is lack of democratic accountability and the perception, if*

³⁷ At this point I felt a failure by the MPS to protect me and my family from the activities of the Mail on Sunday and that this was unacceptable. Overnight I did not sleep through concern for my children and considered that I should move them to a place of safety until my security could be reassessed in the light of the article” [W/S ¶ 78]

³⁸ 07/03/12 (DAY47/pm/27/4-7)

³⁹ 13/03/2012 (DAY49/am/96)

⁴⁰ 13/03/2012 (DAY49/am/100)

not the reality, of personal gain. The noun "gain" in this context needs, of course, to be broadly interpreted and should certainly be apt to accommodate the enhancement of an individual's professional or personal profile."⁴¹

35. Lord Blair's view was similar: "*Where that problem may have become significant is that a very small number of relatively senior officers increasingly became too close to journalists, not I believe for financial gain but for the enhancement of their reputation and for the sheer enjoyment of being in a position to share and divulge confidences.*"⁴²
36. The evidence of the nature of relationships and the hospitality provided by the press to the police, the MPS in particular, has been shocking and in clear breach of the spirit if not the letter of the Nolan principles. The Inquiry has also heard evidence of relationships whose effect on the proper administration of criminal investigations has been of great concern and has had very serious consequences.

B (1) Hospitality

37. The report prepared by Her Majesty's Inspectorate of Constabulary "*Without Fear or Favour A review of police relationships*" ("HMIC report") found a wide inconsistency in policies and guidance on hospitality and failures to police or follow up the registers in most forces. It also found that in the absence of proper clear guidance, junior officers looked to more senior officers for guidance.⁴³
38. The Inquiry has heard how some senior officers accepted on a regular basis very expensive meals and alcohol from media representatives, (notably News International or individual reporters in the exclusive Crime Reporters Association), and became close personal friends with them. This gave the impression to the public and to the officers' subordinates that they were no longer independent and were in the pockets of the media. As **DAC Mark Simmons** told Elizabeth Filkin, more junior officers felt that "*The bosses are filling their boots*".⁴⁴
39. **Mr Fedorcio** confirmed that he considered it desirable that police officers engage

⁴¹ 27/02/2012 (DAY41/am/14/7-12)

⁴² W/S ¶ 49

⁴³ HMIC report pp 12, 40 and 41

⁴⁴ 05/03/2012 (DAY45/am/106/16-17)

with journalist over a meal or alcoholic drink⁴⁵. Although he accepted that alcohol could loosen tongues, he maintained that in 13 or 14 years of accompanying officers to frequent dinners and lunches where alcohol was drunk, he had no experience of such a thing. That is simply not credible.

40. He also claimed that there was no one media organisation that was given preferential treatment. However, that claim was not borne out by the evidence of the actual meetings⁴⁶. Nor was there even-handedness generally as between tabloid and broadsheet news media. As he accepted, the tabloids were more interested in policing, as they were likely to obtain the sort of sensational stories they needed from the criminal justice system⁴⁷. Elizabeth Filkin gave evidence that exclusive stories were traded with the media to stop reporting about officers' private lives, and that she was told that the style of leadership in the DPA was not impartial and that the DPA gave particular access to certain newspapers.⁴⁸
41. The socialising between the MPS and the media continued even while the first investigation into phone hacking was taking place during 2006. Dick Fedorcio met Andy Coulson (then editor of The News of the World) and Neil Wallis (then deputy editor of The News of the World) with former AC Andy Hayman (who had overall command of the investigation) at a crucial time in the investigation in April 2006 (see below at paragraph 48) and he met Rebecca Moley, (News of the World Crime reporter) on 23 August 2006, two weeks after the arrests of Goodman and Mulcaire. Mr Fedorcio then met Andy Coulson, with the Commissioner, Lord Blair, on 19 September 2006 which was around the time or just before the decision was made not to widen the scope of the investigation by looking at all the evidence and considering the involvement of other journalists. The potential for conflict is obvious and the public are right to be concerned by the possibility of inappropriate influence being exercised over police investigations and decision-making.
42. **John Yates** (MPS Assistant Commissioner 2006-2011) described how a close personal friendship developed between him and Neil Wallis and how he met Mr Wallis regularly for dinners at very expensive restaurants, almost always paid for by others⁴⁹. He vehemently denied that policing matters were ever discussed during

⁴⁵ 13/03/2012 (DAY49/am/60-61)

⁴⁶ See, for example, his hospitality register at MOD200006282

⁴⁷ 13/03/2012 (DAY49/am/53)

⁴⁸ 05/04/2012 (DAY45/pm/138)

⁴⁹ 01/03/2012 (DAY44/pm/17-18)

those evenings (although he then accepted that policing was in fact discussed “*in the margins*”⁵⁰). Mr Yates also described dinners, with alcohol, at very expensive restaurants with others from the News of the World over the same period, in particular Colin Myler (editor of the News of the world 2007-2011) and Lucy Panton. His defence of these meetings and his friendship with Mr Wallis demonstrated that he failed to understand the impact on the public and his subordinates of this close relationship, the value to The News of the World of fostering and maintaining friendships with senior police officers, and the insights he would inadvertently have given. The impression was given that, whether he knew it or not, he had been bought.

43. These meetings continued throughout the period July 2009-January 2011 when The Guardian, some other journalists (notably the New York Times and the Independent) the public and the victims first began to realise the possible scope of the scandal and were pressing for further investigations. Eventually Mr Yates was asked to stop hobnobbing with journalists by Tim Godwin (MPS Deputy Commissioner), but he plainly thought this advice was inappropriate – in Mr Yates’ view there was no investigation and no evidence of wrongdoing until January 2011 and so he was free to continue to accept lavish hospitality⁵¹.
44. Although Mr Yates claimed that the relationship with Mr Wallis was a simple friendship, it was clear that it was not transparent. According to Dick Fedorcio, Mr Yates did not tell him that he met Mr Wallis frequently with other friends. Mr Fedorcio said that, had he done so, he would have solicited views about Mr Wallis from someone else and not Mr Yates when he was considering employing Mr Wallis to provide public relations advice to the MPS. He also said that he might not have appointed Mr Wallis at all⁵². **Sara Cheesley** (senior information officer at the MPS) gave evidence that Mr Yates told her that Mr Wallis was not a close friend⁵³ and, strangely, she was not aware that Mr Wallis had been employed by the DPA. She was not prepared to say clearly whether or not hospitality of the sort described by Mr Yates and Mr Hayman was a necessary part of the job.
45. Mr Yates also made it clear that casual meetings with journalists where both parties were buying drinks were not recorded on the hospitality register, so that the

⁵⁰ 01/03/2012 (DAY44/pm/19)
⁵¹ 01/03/2012 (DAY44/pm/13)
⁵² 13/03/2012 (DAY49/pm/34-36)
⁵³ 13/03/2012 (DAY49/am/20)

numerous meetings he did register were plainly not the whole story of his friendships and close working relationships with journalists⁵⁴.

46. Mr Yates' denial that his relationships led to a perception of independence being compromised was not credible. He tried to pass off as a joke an email between two News of the World journalists, James Mellor and Lucy Panton which said: *"Think John Yates could be crucial here. Have you spoken to him? Really need an exclusive splash line so time to call in all those bottles of champagne ..."*⁵⁵ That demonstrates at best acute insensitivity to the appearance of impropriety created by his relationship with the News of the World.
47. **Andy Hayman** started his evidence dismissing Lord Blair's view that he had become carried away by the power and prestige of his job and spent too much time at dinner with the press and briefed carelessly⁵⁶. However, as his evidence proceeded, it was clear that he had indeed accepted expensive and frequent hospitality from the press, that he did not share his time equally among members of the press and that he exercised very poor judgment.
48. One example can be found in the evidence about a dinner at the News of the World's expense on 25 April 2006 at Soho House attended by Mr Hayman, Mr Fedorcio, Mr Coulson and Mr Wallis.⁵⁷ This was at a crucial time in the phone hacking investigation, just after DSupt Philip Williams (Senior Investigating Officer in the 2006 phone hacking investigation) reported to Peter Clarke (former DAC in the anti-terror command) that the *"practice could be quite widespread amongst those who might be interested"*⁵⁸. Mr Williams sought and had been given additional resources on 18 April 2006. On 20 April 2006 he sought advice from the CPS about searches at the News of the World; that advice was provided on 25 April 2006 (the day of the dinner) and the decision made to proceed with the investigation was made the next day, 26 April 2006.⁵⁹ Mr Hayman had overall command of SO13 and gave evidence that he was briefed by Mr Clarke regularly and was aware of Operation Caryatid.⁶⁰ Being entertained by senior representatives of an organisation which was becoming the

⁵⁴ 01/03/2012 (DAY44/pm/10)

⁵⁵ 01/03/2012 (DAY44/pm/37)

⁵⁶ 01/03/2012 (DAY44/pm/144)

⁵⁷ 01/03/2012 (DAY44/pm/118)

⁵⁸ W/S ¶ 20

⁵⁹ Inquiry Document #MOD20002991 decision log 21

⁶⁰ Although he said he would not be involved in the detail of Operation Caryatid, he said *"It was very regular for me to understand the general scope of it, to try and create that environment and give resources and empower people, 01/03/2012 (DAY44/pm/133/11)*

focus of a criminal investigation was, at best, extremely unwise. The possibility of an inappropriate conversation cannot be excluded, particularly if the meal involved alcohol and the police officers considered that they were amongst “friends”.

49. Mr Hayman had a 2-hour early evening meeting with Neil Wallis on 26 October 2006, just after the decision had been made to prosecute Goodman and Mulcaire alone and not to further examine the material which was seized from Mr Mulcaire and which contained evidence of wrongdoing by other journalists.
50. Mr Hayman was taken through some of the entries in his hospitality register which recorded his being entertained very frequently, particularly by The News of the World, and at some expense. It also recorded his own purchase of a bottle of champagne for a News of the World journalist, probably Lucy Panton, at a cost of £47. The frequency and nature of these meetings was very surprising, but what was more surprising was Mr Hayman’s insistence that all these meetings were of value to the MPS and the only thing discussed at any of them was the newspaper’s support for the anti-terror campaign.⁶¹ This is simply not a credible position.
51. The evidence in relation to hospitality was confirmed by journalist witnesses. **Lucy Panton** admitted in evidence that she invited Mr Yates to her wedding, along with other police officers “of varying rank”. She maintained that these people were merely “work friends” with whom she did not ordinarily socialise outside of a work setting, although her answers on this point could reasonably be viewed as evasive and lacking plausibility⁶². **John Twomey**, a journalist at the Daily Express and Chair of the CRA, said that journalists would choose restaurants directly proportionate to the rank of the officer. This was not necessary but it “*was the tradition*” and what the senior police officers “*were used to*”⁶³. **Jeff Edwards** (the former chief Crime correspondent for The Mirror) said that he “*can’t exclude*” the possibility that younger journalists may have sought favours by fostering overly cosy relationships with police officers⁶⁴. He referred to having to warn younger journalists at the Mirror of the dangers of being compromised. He referred to reporters who entered into inappropriate relationships with police officers⁶⁵.

⁶¹ 01/03/2012 (DAY44/pm/122)

⁶² 03/04/2012 (DAY60/am/4-6)

⁶³ 19/03/2012 (DAY52/am/34)

⁶⁴ 14/03/2012 (DAY50/pm/33/15)

⁶⁵ 14/03/2012 (DAY50/pm/35)

52. **Jane Furniss** (CEO of the IPCC) said that she did not think that journalists wine and dine senior civil servants because they like them but because they want something. In her view, perception is critical because public confidence in bodies like the IPCC and the police is based on the belief that they are doing their jobs in the public interest, with integrity and without any bias⁶⁶.

B(2) Other evidence of over-close and inappropriate relationships

53. It was not only a question of hospitality; the Inquiry also heard about favouritism in the way the MPS entered into relationships with journalists. Following confidential interviews, Ms Filkin expressed concern about the perception within the MPS that the DPA was not impartial in its approach to the media, saying

“This perception appears to have grown as a result of a particular style of leadership. This style legitimised informal contact lacking in transparency and allowed exclusionary practices to develop”⁶⁷.

54. An example of giving special favours to particular journalists was the evidence of Dick Fedorcio that he allowed Lucy Panton to use his MPS computer to file a story. This was plainly inappropriate: it is evidence of a relationship which was very close and exclusive; the story itself was a nasty piece of gossip about a former MPS officer and it left Mr Fedorcio indebted to Ms Panton as it would be embarrassing if the fact that she had used his computer to file copy was revealed. The Inquiry also heard how Dick Fedorcio would use Mike Sullivan as a “sounding board” and talk about his concerns and that when Lord Blair took over there were difficulties⁶⁸.
55. In 2008, when she was editor of The Sun, **Rebekah Wade** decided she wanted to adopt a retired police horse and approached Dick Fedorcio. They had lunch with the Commissioner on the same day as the arrangement was finalised. That is not the sort of access that a member of the public would have been given.
56. The Inquiry also heard evidence from **Neil Wallis** about his extremely close relationship with senior MPS officers. This was not only social – he also helped John Stevens with his application to be Commissioner and provided frequent unpaid PR

⁶⁶ 28/03/2012 (DAY57/am/31-32)

⁶⁷ ‘The Ethical Issues Arising From the Relationship Between Police and Media’ Advice to the Commissioner of Police of the Metropolis and his Management Board - **Elizabeth Filkin report January 2012, page 46**

⁶⁸ 15/03/2012 (DAY51/am/41-42)

advice to the MPS and to senior officers. He gave examples⁶⁹ of advising the police to publish photographs in relation to the Canary Wharf bombing earlier than planned, and to obtain footage from inside tube tunnels after the 7/7 bombings. He claimed this would get the police a bigger splash. He also offered unpaid help with the Commissioner's speeches. As the Chairman noted:

"the upshot of your evidence, as you've gone through the various pieces of assistance that you gave to the police, was that senior officers of the police and the DPA, the director of public affairs, were not very good at PR and doubtless for our own professional reasons, you filled the gap"⁷⁰.

He also provided work experience to various MPS progeny (see below at paragraph 67).

57. This diligent help and the expensive dinners were not without benefit for his newspaper. It put The News of the World at the heart of the MPS. The Inquiry heard how Neil Wallis was able to persuade police to give News International the exclusive footage of what effect the shoe bomb would have had if it had exploded in 2001⁷¹. He also described how he would use his relationships with the Police to assist when his newspaper was running undercover operations. Mr Wallis described a sting operation in which the News of the World was setting up someone who they believed to be a paedophile and asked for Dick Fedorcio's assistance - which he provided.⁷² His newspaper was able to benefit from exclusive serialisation of John Stevens' autobiography⁷³.

58. Mr Wallis admitted the benefit of the hospitality and close relationships in this important exchange:

"If you were to stand back from all of this and you were to take into account the hospitality, all the phone calls with different Commissioners and Assistant Commissioners, writing of these articles, would you agree that it might be said to be part of an overarching strategy to place the News of the World in a special position with the Metropolitan Police Service?"

A. I think it is an example of how journalism worked well to our mutual benefit."⁷⁴

⁶⁹ 02/04/2012 (DAY59/pm/14)

⁷⁰ 02/04/2012 (DAY59/am/18/17-22)

⁷¹ 02/04/2012 (DAY59/pm/7-9)

⁷² 02/04/2012 (DAY59/pm/15-16)

⁷³ "We at the News of the World became aware that Sir John Stevens was writing his autobiography." How did you become so aware? **A. Because I discussed it with him.** Q. Yes, he told you, didn't he. **A. I discussed it with him.** Q. Did he tell you or not? **A. We discussed it.** Q. Once he discussed it – LORD JUSTICE LEVESON: Well, we're dancing now. You would hardly find out unless he told you." 02/04/2012 (DAY59/am/32/11-21)

⁷⁴ 02/04/2012 (DAY59/am/35/6-14)

59. The guidance to the MPS Management Board on relations with the media states that members of the Board should *“avoid being too accessible to journalists in a way that could compromise their position or lead to accusations of favouring any particular media outlet or providing unauthorised information to them.”*⁷⁵ Where Mr Yates, Mr Hayman and Mr Fedorcio were concerned, this guidance was totally ignored, even though it appeared to have been drafted by Mr Fedorcio in response to concerns about the Management Board’s relationships with the media⁷⁶.
60. Those who did not accept lavish hospitality were also those who were more even-handed about the media outlets to whom they spoke (e.g. **Peter Clarke** who stressed that the purpose of speaking to the media was not to make the police look good⁷⁷).

B(3) Traffic in personnel

61. The evidence reveals a culture of ‘favours’ in terms of employment with News International for ex MPS officers and the provision of work experience for relatives of MPS officers or News International employees. This culture reinforces the perception (or reality) of a special relationship between the MPS and News International and therefore the belief that a conflict of interest existed when it came to investigations of News International.
62. When Sir John Stevens left the MPS he was employed to write a News of the World column, “The Chief”, for which he was paid £7,000 per column although it was mostly written by Neil Wallis, as set out at paragraph 28 above.
63. When Andy Hayman left the police in 2007 he was immediately employed by the News of the World to write a column about policing – in which, following the Guardian article of 14 July 2009 which claimed hacking was widespread, he notoriously, and misleadingly, defended the original hacking investigation. In writing that article he used his privileged position in the MPS and his relationship with News International to seek to reassure the public that the Guardian article was wrong. His evidence to the Inquiry about this article was confused and lacking in credibility:

“Q. Had there been evidence, you say in the Times, of tampering in the other cases, that would have been investigated, as would the

⁷⁵ MOD200009621
⁷⁶ 13/03/2012 (DAY49/am/72)
⁷⁷ 01/03/2012 (DAY44/am/11)

slightest hint that others were involved do you stand by that?

A. I didn't -- say that again, please?

Q. Just read it for yourself. It's your own words.

A. Yes, I see the point now.

Q. But what's the answer then, Mr Hayman?

A. Well, they weren't investigated and I don't understand -- you know, I've written that as part of an article, and to go back to in that office and that interaction to remember why things were or weren't done, I just can't do.

Q. Maybe this is to help you out a bit, if I may say so, journalistic licence. Are you reacting perhaps peremptorily to something which you saw in the Guardian, you thought was nonsense -- wrongly, as it happens --and you fire off from the hip with this when in fact you don't mean this, do you?

A. I can see how you can -- others and you could have that view.⁷⁸

64. Mr Hayman claimed that he did not know at the time he wrote his article that the investigation had obtained information about PIN numbers used to get access to victims' voicemails, or that the names of numerous News of the World journalists appeared in the notes taken by Mr Mulcaire (the so called "corner names")⁷⁹. If that is right, it is difficult to see how he felt able so confidently to assert that the investigation had left no stone unturned without even checking the position with officers involved. That led to the perception that defence of News International was more important to him than a proper investigation of the Guardian allegations.
65. **Neil Wallis** said that he assisted Lord Stevens by providing him with PR advice on his Commissioner candidacy. Once Lord Stevens was Commissioner then he would sometimes ask Mr Wallis for his views on policy and strategy⁸⁰. He also provided assistance to Paul Stephenson with speech writing. Conversely Mr Wallis could contact the MPS, explain any concerns he had about criminal justice issues and suggested that MPS should get involved⁸¹.
66. Neil Wallis' company Shami Media was offered a contract to provide PR services to the MPS by Dick Fedorcio. Mr Fedorcio would have awarded the contract to Mr Wallis without tender but procurement processes required him to do so and so he chose two large (and expensive) companies, Hannover and Bell Pottinger, to also put in bids. They were given little time to do so⁸² and their bids were bound to be more expensive than that of Shami Media. Mr Fedorcio accepted that he could have

⁷⁸ 01/03/2012 (DAY44/pm/148)

⁷⁹ 01/03/2012 (DAY44/pm/150/15-16)

⁸⁰ 02/04/2012 (DAY59/am/85)

⁸¹ 02/04/2012 (DAY59/am/87)

⁸² Dick Fedorcio W/S ¶ 89

approached smaller PR companies, but he did not do so. He claimed that, had he known the extent of the close relationship between Mr Wallis and Mr Yates, he would have thought twice about hiring him at all or at least about having Mr Yates' input in the hiring process⁸³. Mr Yates' evidence was that he met Mr Wallis at New Scotland Yard with Dick Fedorcio, to oil the wheels. Mr Fedorcio had met with Mr Yates and Mr Wallis on numerous occasions and his assertion that he wouldn't have known of their relationship is not to be believed. Mr Fedorcio had also known Mr Wallis for a long time – the first meeting recorded in the hospitality register was December 1997. Mr Yates said that he asked Mr Wallis informally if there was anything to embarrass him – and said that the proper due diligence would be done through the MPS procurement procedures⁸⁴. We know from Mr Fedorcio's evidence that there was no full procurement process and no proper due diligence.

67. News International journalists and senior MPS officers also provided frequent work experience for each others' relatives.. Mr Yates was asked about work experience given to Mr Wallis' daughter and showed no understanding whatever of the likely perception that he was using his position as an Assistant Commissioner to help the daughter of his close friend⁸⁵. Evidence was also heard that Mr Fedorcio's son did work experience at the News of the World in 2003 and 2004 and again in about September 2007. Mr Fedorcio also arranged for Lord Blair's son and Lord Condon's son to do work experience at The Sun.⁸⁶
68. This traffic between News International and the MPS reinforced close relationships and led to a risk of both parties feeling indebted to each other. As a result there is a real possibility that News International (certainly the News of the World and The Sun) would not be critical of certain MPS police officers when they ought to be and, conversely, the MPS would not investigate any "media" crimes as robustly as they ought to. It certainly led to an overall perception of a culture of favours, in which close personal relationships and the possibility of paid employment were key.

⁸³ 13/03/2012 (DAY49/pm/35)

⁸⁴ 01/03/2012 (DAY44/pm/39-40)

⁸⁵ 01/03/2012 (DAY44/pm/41/14-19):

Q. *That's the reason why expectations need to be managed. There is at least the perception of influence by you, which might be said by some to have been or at least give the appearance of being causative in Amy Wallis getting the job. Do you see that point?* **A. No. I disagree with you.**

⁸⁶ 07/03/2012 (DAY47/am/30)

B(4) Summary

69. The evidence suggests that the journalists in question fostered close relationships and plied senior officers with expensive food and drink in order to obtain commercial advantage – be it useful background information or unauthorised leaks and gossip. This is dealt with more fully below at paragraphs 152 – 157. All the officers who gave evidence (unsurprisingly) denied this, but the obvious inference is that the reason that the journalists were prepared to invest so much expense, time and effort in wining and dining senior police officers is because it paid off.
70. Hospitality, close friendships and professional traffic blurred the line between personal and professional relationships and led to conflicted or potentially conflicted situations when senior officers were called to investigate the media. Hospitality and friendship were not a necessary part of the relationship – the Inquiry has also heard evidence from many officers who refused lavish or expensive hospitality without damaging the relationship (e.g. current MPS Commissioner, **Bernard Hogan-Howe** and Assistant Commissioner, **Cressida Dick**).
71. Furthermore, the evidence has borne out a real distinction between MPS officers and national media and the regional forces and local media. There has been a frequent suggestion that this is due to a difference in culture amongst the regional forces/media, where the community serves as an effective check on the behaviour of the police and the media. Interestingly, **Anne Pickles**, Acting Editor of The Cumbria Newspapers said that the local police and the local press have a relationship built on an understanding that they serve a common purpose and a common community⁸⁷. She pointed out that the regional and local press have to live with the people about whom they are reporting but the national media are not accountable or accessible in the same way.
72. The fact that the Inquiry has seen how the relationship between the press and the police can function professionally and properly in the regions demonstrates that this is achievable. The operational differences between regional forces and the MPS and between regional and national newspapers do not preclude the same proper professional relationship existing between the MPS and the national press. Nor do they preclude a clear understanding of where the boundaries of information sharing lie. It appears that the procedures need to be tighter for national newspapers than for

⁸⁷ 26/03/2012 (DAY55/pm/4)

regional ones given the difference in accountability.

C CONSEQUENCES OF CLOSE RELATIONSHIPS

Introduction

73. The culture of close relationships between (in particular) senior officers in the MPS, and the press clearly led to potential conflicts of interest. That in turn gave rise to a perceived or actual reluctance to pursue robust investigations of media wrongdoing and a consequential loss of public confidence. The evidence of **AC Sue Akers** about allegations of a corrupt network of public officials and journalists suggests that it also led to a culture of media impunity. Close relationships also gave rise to the inappropriate provision of information to the media which is dealt with more fully at paragraphs 150 – 195 below.
74. Between 2006 and 2011, the press as a whole was remarkably quiet about both the Information Commissioner's reports into the unlawful trade in confidential information driven by the media (*What Price Privacy* and *What Price Privacy Now*) and the phone-hacking allegations. Nevertheless, there is without doubt considerable public anxiety about the culture, practices and ethics of the media and the failures of the police to investigate and prosecute more journalists in 2006, to reinvestigate the hacking allegations promptly in 2009-2010 or to inform the victims.

C(1) Phone hacking investigation, 2006

75. The failures of the MPS to examine and pursue the "*Aladdin's cave*" of evidence of serious wrongdoing by numerous journalists at the News of the World is widely seen by the public to be the product of corruption. The Inquiry has heard that these failures were due to the pressure on MPS resources caused by the threat of terrorist offences in the summer of 2006. Be that as it may, it does not explain the reluctance of the senior investigating officer, **DSupt Williams**, to reveal the full extent and nature of the evidence to the CPS, or to pursue the agreed strategy of informing victims. Nor does it explain his extraordinary (untrue) claim to the CPS in 2006 that there was no evidence that any other journalists were involved.
76. The impact of the close relationships examined above can be pernicious and subtle, particularly in a hierarchical organisation like the MPS. Mr Williams' highly cautious

approach was evident throughout his evidence, and he would no doubt have been aware that his superiors in the MPS hierarchy enjoyed extremely close social relationships with those he was investigating. Mr Williams was the gatekeeper of information about hacking and it was his decision not to inform the CPS, or officers investigating interceptions in 2009-2010 about the wealth of evidence seized from Mr Mulcaire. Although there is no evidence that he made any conscious decision to suppress evidence, it is inevitable that the relationships between very senior MPS officers and the media exerted some influence on his decision-making. It should also be remembered that Surrey Police had become aware that the News of the World had intercepted the voicemail of Milly Dowler in 2002⁸⁸, but no steps were taken to investigate at that stage. The officer in charge, Craig Denholm, like many Surrey officers, also served in the MPS. In 2008 he was appointed to a position as Commander (Counter Terrorism) Special Operations, working directly with John Yates until he returned to Surrey Police in June 2009. Surrey Police and the MPS should have been aware of this background.

WEAKNESSES IN THE INVESTIGATION

The analysis of the evidence

77. Prior to the arrest of Mr Goodman and Mr Mulcaire in August 2006, Mr Williams was certainly alive to the possibility of hacking being a wider issue affecting the whole of the media and he realised that numerous potential victims were vulnerable to voicemail interception⁸⁹. After the arrests this was confirmed when the notebooks were originally examined and the "blue book" was compiled with a list of over 400 potential victims and their Personal Identification numbers (PINs), Direct Dial voicemail numbers (DDNs) and Unique Voicemail numbers (UVNs). Mr Williams also accepted under questioning⁹⁰ that there was call data (for example the records of Mr Mulcaire and/or Mr Goodman calling victims' DDN/UVNs) and that the numbers of times that victims' DDN/UVNs were being called, including victims who were of no interest to Mr Goodman, suggested wider criminality at the News of the World. He was also aware that the notebooks included some corner names of journalists who had commissioned work and that some of the victims were nothing to do with Royal

⁸⁸ See for example DCI Macdonald W/S ¶ 31

⁸⁹ As early as January 2006 he acknowledged that interception was likely to be widespread (Inquiry Document MOD200002930 decision log 8 15 January 2006)

⁹⁰ 29/02/2012 (**DAY43/am/99-102**)

matters⁹¹. He knew about the “For Neville” email, the contract for £7,000 for one story, and he knew that payments had been made for stories about John Prescott⁹². All that would be needed to include additional journalists in relation to counts 16-20 on the indictment was to identify who they were - which involved looking at the corner names and asking News International for a list of journalists. It is remarkable that this simple step was not taken or at least a formal note recorded to ensure that if the investigation was considered again it was identified as an obvious lead to follow up.

78. This was in reality virtually the same evidence as that used to convict Messrs Goodman and Mulcaire⁹³. There would have been very little additional work required to bring a representative sample of journalists into the prosecution – for example, those who appear in the corner names of the documents relating to Simon Hughes MP.

79. However, Mr Williams’ evidence was “*I certainly don't think I saw anything that would have enabled me to present a case in any -- on the basis of any inference or circumstantial evidence.*”⁹⁴ He suggested that the existence of the journalists’ “corner names” was not sufficient to even interview them as it was not evidence that they understood that Mr Mulcaire’s modus operandi was unlawful. His evidence was that he knew that Mr Mulcaire was hacking into voicemails: this should have been properly followed up, as there was little or no evidence of Mulcaire undertaking any lawful activity.

“Q. But in relation to this notebook and the 11,000 pages, it's all part of a completely coherent picture that this is a man who is hacking into voicemails. This is his sole way of being, his industrial activity. That's what he lives for, to hack into voicemails, isn't it?”

A. I know we know that now. At the time my genuine belief was yes he's doing that, definitely, but he may well be doing a raft of other things⁹⁵.

80. Mr Williams also positively misled David Perry QC (lead prosecuting counsel in the 2006 case) by asserting to him on 21 August 2006 that there was no evidence to suggest the involvement of other journalists. He downplayed the number of victims (claiming at the conference that there were 200 victims despite being in possession of a list of over 400) and did not show Mr Perry any of the evidence relating to them, nor

⁹¹ 29/02/2012 (DAY43/am/46)

⁹² 29/02/2012 (DAY43/am/42)

⁹³ While the police went further than this in the preparation of their evidence due to a misconception of the law, it was unnecessary.

⁹⁴ 04/04/2012 (DAY61/am/17/10-13)

⁹⁵ 29/02/2012 (DAY43/pm/7/19-25)

was Mr Perry aware of the wealth of additional evidence, saying he did not see the “For Neville” email or any of the other evidence⁹⁶. His Junior Counsel, Louis Mably, reviewed the unused material in 2006, but this was for the purposes of disclosure and not in order to check whether everything of evidential value had been included⁹⁷. Mr Perry’s understanding was that it was not possible to obtain any evidence from the victims who had been identified, although that is not supported by documentary evidence or the evidence of any of the other officers. Mr Perry gave evidence that in fact Mr Williams told him that there was no evidence to connect Mr Mulcaire to other News of the World journalists⁹⁸. That was not true.

81. Although Mr Williams said that the close relationships at News International were not a factor in his approach, he did say this:

“Q. Was there any sense here that you were taking on a large and powerful organisation, News International, and that there were dangers in doing so?”

A. I think with any large organisation, yes, we were aware of it in terms of a big organisation, which is why we carried out such a thorough investigation, why we sought so much advice from the CPS, in particular in terms of when it came to our arrest phase, because we wanted to be able to seize as much evidence as possible and do it in a proper and professional manner so that we could not be criticised for the way we carried out our investigation.”⁹⁹

82. In light of the false picture given by Mr Williams to Mr Yates, David Perry and to Keir Starmer (DPP) in 2009, the confused nature of his evidence to the Inquiry, his clear belief that there was not sufficient evidence of journalistic involvement to interview any journalists or seize phone records, or to pursue the Production Order (see below), the failure of the victim informing strategy, and the fact that he was the gatekeeper of information from 2006 until late 2010, his evidence was not wholly credible and there remains a strong inference that he was fearful of the influence of the powerful media friends of his superiors.

83. Mr Williams’ evidence can be contrasted with that of DC Surtees, who was also working on the MPS investigation. Mr Surtees confirmed that a crucial piece of evidence was the phone records of Mr Goodman and that it was a relatively straightforward exercise to obtain Mr Goodman’s outgoing call data. As he explained:

“The way to do it is when you have a suspect in mind and you're

⁹⁶ 04/04/2012 (DAY61/am/27-28)
⁹⁷ 04/04/2012 (DAY61/am/34)
⁹⁸ 04/04/2012 (DAY61/am/36-37)
⁹⁹ 29/02/2012 (DAY43/am/105-106)

looking at that suspect, to see whether that suspect particularly is accessing the voicemails or DDNs of particular victims.”¹⁰⁰

84. It would not have been very resource intensive to have obtained the phone records of the limited number of other journalists whose names were in the Mulcaire notebooks – for example the “corner names” in Simon Hughes’ case. That was plainly in Mr Surtees’ contemplation even though he was a Senior Investigating Officer (‘SIO’) in a large number of the serious terrorist investigations identified as a reason for not pursuing other journalists¹⁰¹. Mr Surtees was clearly disappointed in the decision not to investigate any further.¹⁰²

The Search and Production Order

85. Mr Surtees told the Inquiry *“I wanted very much to get into News International, because I wanted to search the desk, I wanted to search the financial areas, I wanted to find evidence around who was involved in this illegal activity”*.¹⁰³
86. Following CPS advice, a Production Order had been drafted in order to obtain additional evidence, in particular financial evidence. However, before any such order could be obtained and executed, it would be necessary to show that the company was not co-operating and a search order was necessary.¹⁰⁴
87. Mr Surtees told the Inquiry that the search was not as full as he would have wanted, describing that there was real difficulty in conducting the search: only four officers obtained access before News International barred the rest; photographers were summoned to take photographs of the officers and lawyers appeared who challenged the legality of the search¹⁰⁵. The search did not extend beyond Mr Goodman’s desk, and a locked safe and computer had to be left behind and were not searched at the time.¹⁰⁶ It was described to Mr Surtees as a *“tense stand off”* and must have been very intimidating. He accepted the suggestion that his evidence indicated that he

¹⁰⁰ 29/02/2012 (DAY43/pm/25/19-22), See too Surtees WS p. 23.

¹⁰¹ 29/02/2012 (DAY43/pm/30)

¹⁰² *“To effect this, there would need to be a full scale criminal investigation sanctioned by senior officers of SO13.” You’re rather suggesting there or you might be suggesting there that was something you would rather have liked to have done. Is that correct? A. Absolutely.*
29/02/2012 (DAY43/pm/58/15-21)

¹⁰³ 29/02/2012 (DAY43/pm/45/2-6)

¹⁰⁴ Inquiry Document #MOD20003628

¹⁰⁵ 29/02/2012 (DAY43/pm/46)

¹⁰⁶ Inquiry Document #MOD20003649

suspected News International would have destroyed evidence and that in itself suggested wider criminality in the organisation.¹⁰⁷ Mr Surtees confirmed that he told Mr Williams that News International were being obstructive¹⁰⁸

88. The investigatory team then wrote to News International's lawyers requesting information about the desk locations and the amount of money paid to Mr Mulcaire for his criminal activities. Simon Hughes exhibited the financial payment schedule which demonstrated that up to £800,000 was paid to Mr Mulcaire. In contrast to Mr Williams, Mr Surtees took the view that broadly the whole of Mr Mulcaire's time was spent on phone hacking¹⁰⁹. However, the response to the police from News International, drafted by its lawyers, was that he earned £12,300 in cash payments. Mr Surtees was asked about this:

"Q. You must have been disappointed, then, that in the criminal proceedings the amount of money that was forfeited was £12,300 and that was it?"

*A. We had some discussions in court around that and the answer to that question is yes, I was disappointed."*¹¹⁰

89. In the event, the Production Order was not pursued and no further searches or investigations were conducted at News International, nor were Mr Goodman's safe and computer seized. That decision was not properly explained to the Inquiry. Mr Williams took the view that News International had been co-operative and so the grounds for justifying any Order would not be made out. That was not supported by the evidence of the other officers, or the evidence of the searches, or the documentary evidence of sums paid to Mr Mulcaire.
90. The Select Committee report of 1 May 2012 refers to obstruction by the company and calls for News International to waive privilege in its correspondence with Burton Copeland so that the company's strategy can be properly understood¹¹¹. The CPVs endorse and repeat that request, subject of course to appropriate redactions requested by Operation Weeting.

Witness Protection Programme

¹⁰⁷ 29/02/2012 (DAY43/pm/48)

¹⁰⁸ 29/02/2012 (DAY43/pm/40)

¹⁰⁹ 29/02/2012 (DAY43/pm/56)

¹¹⁰ 29/02/2012 (DAY43/pm/56/16-20)

¹¹¹ House of Commons Culture, Media and Sport Committee 'News International and Phone-Hacking' Eleventh Report of Session 2010-12, Volume 1, paragraph 277

91. The inquiry has also heard evidence of hacking into the voicemails of people protected by the Witness Protection Programme ('WPP') which suggested serious police corruption and a relationship between Mulcaire or the News of the World and an officer privy to the exceptionally sensitive information held by the WPP. In August 2006, Mulcaire's computer was sent for analysis and a report was compiled showing a print out of "projects" – individual victims targeted by Mr Mulcaire.¹¹²
92. DS Mark Maberly's witness statement in the judicial review proceedings indicated that he recognised some names from the list of projects as being individuals who were under protection in the WPP.¹¹³ That obviously meant that their lives could be at risk if their identities were revealed. Mr Surtees was very aware of the importance of this and it may have informed his view that the investigation should have gone further¹¹⁴. He notified the WPP of the issue, but it is not clear what if any action was taken. It is highly unlikely that any individuals who were under the protection of the WPP would have been of interest to the News of the World's Royal correspondent, so this was potentially additional evidence of hacking by others. However, Mr Mulcaire was not asked any questions in interview about this and Mr Clarke was not aware of it. This was evidence of very serious potential police corruption, yet it did not result in any arrests or prosecutions of police officers, or in any journalists being asked about it. It has been reported that the killers of Jamie Bulger, who have been given new identities for their own protection, had their voicemails intercepted.¹¹⁵
93. The introduction to the project list states that attempts had been made to corrupt serving police officers and there had been improper use of the Police National Computer. That has never been properly explored. It is not clear whether it is a reference to the fact that the names of individuals in the WPP appear in the computer, or to other evidence. Either way, there is no suggestion that disciplinary

¹¹² Inquiry Document #MOD20003823

¹¹³ Inquiry Document #MOD20004205 ¶ 51

¹¹⁴ "Q. But in that context, if the conspiracy was limited to Goodman and Mulcaire, there would be concern but there wouldn't be enormous concern, but if the conspiracy went wider, as you suspected it did, to others at News International, that concern would be multiplied, wouldn't it, in relation to possible prejudice to those on the witness protection programme?

A. Witness protection programme, access to government ministers, access to military, right across. There were lots and lots of concerns, yes, including the witness protection issues, yes. 29/02/2012 (DAY43/pm/73/15-25)

¹¹⁵ See, for example this story from 28 August 2011 in the Sunday Times

http://www.thesundaytimes.co.uk/sto/news/uk_news/National/hacking/article763279.ece and this story from 19 Feb 2012 in the Daily Telegraph

<http://www.telegraph.co.uk/news/uknews/law-and-order/9091851/Bulger-killer-could-be-in-line-for-compensation-from-News-of-the-World.html>

proceedings were pursued, or that the matter was properly investigated internally. It adds to the impression that there were areas of the investigation which were highly sensitive and may have made the MPS unwilling to probe any further.

The decision not to pursue the investigation

94. **AC Peter Clarke**, made the final decision not to pursue the investigation beyond Messrs Goodman and Mulcaire at some point towards the end of September 2006, although there is no written record of that decision. He made it clear that the decision was made in the context of extreme pressure on anti-terror resources given the nature of the threat from terrorists in the Summer and Autumn of 2006. He said that it would have taken extraordinarily compelling evidence, such as technical evidence of other journalists accessing voicemails, for him to widen the investigation.

“A. If officers had come to me and said, “Look, we have very clear technical evidence here that these journalists are involved in phone hacking”, that would have given me something more than to try to move the operation somewhere else, something to explain to colleagues why they should devote their own precious resources to what would inevitably be an enormous operation, but that simply wasn't there.”¹¹⁶

95. There is no suggestion that Mr Clarke allowed extraneous matters to influence his thinking. However, it does appear that he was not given all relevant information. The information came to him through Mr Williams whose view was that there was no evidence of the involvement of other journalists, who downplayed the number of victims at the Case Conference with counsel on 21 August 2006, and who was in charge of overseeing the failed strategy to inform victims. Mr Clarke said there were two or three layers of management between him and Mr Williams and he would not have seen any decision logs¹¹⁷. Keith Surtees also confirmed that he did not himself brief Mr Clarke and did not see any written briefing¹¹⁸. Mr Clarke said simply he was aware they were looking at something endemic and with numbers of victims¹¹⁹. In his witness statement he confirmed that he did not see any of the documents seized from Mr Mulcaire¹²⁰. When the decision was made not to examine all the documents and consider further charges, it was after Mr Clarke had been away for 8 days, he was briefed orally and briefly by his two senior colleagues – Tim White and John McDowall – who were themselves dependent on information provided by Mr Williams

¹¹⁶ 01/03/2012 (DAY44/am/50/6-13)
¹¹⁷ 01/03/2012 (DAY44/am/23-24)
¹¹⁸ 29/02/2012 (DAY43/pm/66-67)
¹¹⁹ 01/03/2012 (DAY44/am/28/19-20)
¹²⁰ W/S ¶ 90

to another officer¹²¹. This was all in the context of extreme pressure on resources. Mr Clarke was not told that there was evidence that Mr Mulcaire had been accessing highly sensitive information in the WPP and that this suggested police corruption.

96. In fact, at that time, there was potentially compelling technical evidence about the involvement of other journalists. DDN or UVN numbers obtained by Mulcaire were, as the victims now know, being rung by journalists directly or through the News of the World hub phone. The police were in possession of that call data. Mr Maberly was asked if the police tried to find out which journalists made which calls, and if the data could be traced back to specific desk phones.

"A....There was an expectation that... News International would be keeping that data, that information for its own records."

Q. *So you were being advised these records would exist..?"*

A. **"That's correct. And in later applications one of my requests was to ask for a list of the desk phones and diagrams as to where people were sitting."**¹²²

97. There was also strong circumstantial evidence in the form of "corner names" of journalists, evidence of the pattern of call data from the mobile phones or land lines of journalists to mobile phone numbers (or to DDNs/UVNs) where PIN numbers had been obtained by Mulcaire, transcripts and recordings of actual voice mail recordings and articles written by the journalists whose names appeared in the relevant corner. There is no evidence that this was explained to Mr Clarke in any detail – it was filtered through Mr Williams whose view was that this did not constitute evidence of involvement by journalists.

Victim Informing Strategy

98. On 21 August 2006 the MPS agreed a strategy to notify all victims and potential victims of interception.¹²³ The decision was to notify first those in certain categories where there could be national security concerns (Royals, Police, Military, Politicians etc). The remainder would be informed thereafter in coordination with their mobile phone providers.

¹²¹ Clarke W/S ¶ 84

¹²² 29/02/2012 (DAY43/pm/84-85)

¹²³ Inquiry Document #MOD20003616

99. In fact, only a tiny fraction of even those victims in the relevant categories were told. There was no decision not to tell victims and Mr Surtees' evidence was that in his view everybody in the Metropolitan Police accepted that the victims should have been told, and that he wrongly thought the mobile phone companies were taking the initiative. No one appears to have checked the position either way. No decision was logged not to inform victims, it was simply abandoned for no apparent reason¹²⁴. Mr Clarke did not know, and still doesn't know, why that didn't work as intended. That failure has fed the perception that the MPS did not want the scale of the interceptions to be known publicly. Those who were the subject of voicemail interception were not told about the invasions into their privacy until much later and suffered as a result.
100. It is noteworthy that an email was sent to John Wellington of the Mail on Sunday to inform him that a number of Associated Newspapers' journalists had been targeted by Glen Mulcaire.¹²⁵ As the Inquiry is aware from an email sent by Tom Crone to Andy Coulson on 15 September 2006, Rebekah Wade was also told about the fact that her telephone voicemail had been targeted and given an insight into the investigation at the News of the World.¹²⁶ It is clear from this evidence that media contacts were being given privileged treatment by the MPS.
101. This is to be contrasted with the approach to the CPVs Brian Paddick, Lord Prescott and Simon Hughes. Mr Paddick was at the time a Commander in the MPS. His name appeared in the project list created from information within Mr Mulcaire's computer, and those who compiled the list specifically highlighted his name in the introduction to the document as someone about whom attempts had been made to obtain information.¹²⁷ There were further pieces of paper in the notebooks which included his name and address, mobile phone number and other numbers. Nevertheless, he was not told about the existence of these documents at any time during the investigation in 2006-7, or thereafter until 2010, contrary to the agreed strategy.
102. Lord Prescott was at the time the Deputy Prime Minister. There can be no doubt that the MPS had recognised that an attempt was made to intercept voicemails left by him or for him with his assistant, Joan Hammell. There are numerous pages in the Mulcaire documents which relate to him or to Ms Hammell. Mr Mulcaire was

¹²⁴ 01/03/2012 (DAY44/am/56)

¹²⁵ Inquiry Document #MOD20003768

¹²⁶ Inquiry Document #MOD20003655

¹²⁷ Inquiry Document #MOD20003823 at 3824

questioned about Mr Prescott at interview¹²⁸ and his name is used in support of the application for a production order.¹²⁹ Mr Williams accepted that he had seen financial documents demonstrating payments had been made for information about Lord Prescott. However, Lord Prescott was not told that his messages had been intercepted, despite the obvious security risk. He noted how he would have had frequent contact with senior officers including Andy Hayman at that time¹³⁰.

103. Simon Hughes was a victim for the purposes of the criminal trial, was named on the indictment and gave a witness statement to the Police. Nevertheless, he was not told that the Police were in possession of pages from Mr Mulcaire's notebook which contained details about him, his friends and family and the names of 3 separate News of the World journalists other than Mr Goodman¹³¹. He gave evidence that he asked if others were involved and was told not.
104. These CPVs are but examples of the numerous victims who were kept in the dark by the failure of the victim informing strategy and the inexplicable Police decision not to inform victims later but to mislead them and the wider public. The Metropolitan Police have now admitted liability in the judicial review (in which the decision not to inform these victims was challenged as an unlawful violation of the positive obligation under Article 8 of the Convention) and apologised to each of the Claimants.¹³² Officers from the investigation are now taking steps to inform all the victims and potential victims – obviously a much more difficult task 6 years on.

Summary

105. Mr Williams (and Mr Maberley) said that they did not consider there to be sufficient evidence to arrest journalists and that the journalists would not comment in interview¹³³. This demonstrates a peculiarly cautious attitude and one which, in the opinion of the CPVs, reflects a wider institutional fear of News International and an awareness of the close relationships fostered by the company with very senior officers.

¹²⁸ Inquiry Document #MOD20003540 at 3558

¹²⁹ Inquiry Document #MOD20003628 at 3632

¹³⁰ W/S ¶ 8

¹³¹ W/S ¶ 16-22

¹³² Rt Hon Tessa Jowell was notified, but she was not told about the extent of the interceptions. Mr Surtees claimed she was asked to provide a statement and refused, but Ms Jowell has given convincing and detailed evidence to contradict Mr Surtees' evidence on that matter, and he was plainly mistaken as his version is incorrect.

¹³³ For example, 29/02/2012 (**DAY43/pm/2**)

106. The MPS opened Module 2 saying that it was not surprising that Mr Mulcaire had a list of individuals and *“what was not known at the time was the nature of the interest he had on them”*¹³⁴. That has been shown to be incorrect. In fact there was a wealth of circumstantial evidence connecting journalists to Mulcaire because their first names appeared in his notebooks along with the information needed to intercept voicemails. There was also a contract with Mr Mulcaire, the “for Neville” email, numerous recordings of voicemails, a recording of someone being told how to access voicemails and several transcripts of voicemails. This evidence was all in the hands of the police and some had already been analysed for the purposes of Counts 16-20 on the indictment.
107. There was also the possibility of an examination of call data from the News of the World hub phone to see if calls were made to unique voicemail numbers or direct dial numbers and the possibility of identifying which journalist made which call. That information is not now readily available. Mr Williams gave evidence that the mobile phone companies were asked to search for suspect numbers calling victims’ UVNs and DDNs. That could clearly have been done without huge drain on police resources in relation to other journalists and a selection of other victims. If the production Order had been pursued, the police would have been able to obtain relevant financial information to show how much Mr Mulcaire had been paid, and emails (many of which have now been deleted) could have been obtained. There was also the possibility of checking articles published in the newspaper to marry them up with information obtained from voicemails. The investigation should have done these things in respect of a wider representative sample of victims and considered the commission of offences by all the journalists identified in the Mulcaire notes. That is not the same as an exhaustive examination of all the material and a vast injection of highly stretched resources. The police should certainly have warned News International that there was evidence of other journalists’ involvement and that the practices had to stop.
108. The CPVs submit that the failures in the investigation are so significant that an inference can be drawn that police officers deliberately sought to downplay the evidence out of fear of News International. This can be illustrated by a hypothetical example. If the police had seized from a burglar 11,000 pages of notes containing home addresses and safe codes, with the names of antique dealers on the corner of

¹³⁴ 27/02/2012(DAY41/am/66)

numerous pages, and had obtained evidence of one such dealer selling antiques stolen from one home using the safe code, then it is inconceivable that the police would have considered that there was not enough evidence to arrest and interview the other antique dealers named in the notes, warn them off, or indeed to warn the home owners that their homes were vulnerable.

C(2) Phone hacking investigation 2009-11

109. The message relayed by the MPS in 2009-2010 was deeply misleading. Intentionally or not, the MPS supported and participated in a cover-up of the facts which has led to suspicions of corruption, particularly in the light of the close relationships between News International and senior MPS officers.

The July 2009 Guardian article

110. Following publication of the article, Mr Yates was asked to “establish the facts” around the phone hacking investigation. He took that to mean a cursory glance at the history of the investigation, without any analysis of the evidence. He relied solely on information provided by Mr Williams (the “informing victim” strategy, the indictment and a briefing document) and did not look at any other documents himself.
111. The police remained in possession of all the incriminating evidence after the convictions in January 2007. There were 11,000 pages of notebooks including PIN numbers, DDN/UVN numbers, victims’ names and corner names of journalists. There were also transcripts of actual voicemails and recordings, contracts between Mr Mulcaire and NGN, some financial documents and some call data. According to evidence to the Select committee, the so-called “For Neville email” was disclosed by the police to both News International and Gordon Taylor’s solicitor as early as November 2007¹³⁵.
112. Mr Williams accepted that it was misleading for Mr Yates to have said that only a very few actually had messages intercepted and that all those who were targeted had been contacted¹³⁶. However, he had a crucial role in perpetuating that misleading message. He spoke to Mr Yates on the day he “established the facts” as the Inquiry

¹³⁵ ¶ 108 & 253 DCMS report
¹³⁶ 29/02/2012 (DAY43/pm/15)

were told¹³⁷ and was the sole gatekeeper of all information about the initial investigation.

113. Mr Yates stated publicly – and was not corrected - that all those who had been potentially intercepted were told. That suggests Mr Williams did not tell him that the informing potential victims strategy had not worked. Mr Williams still claimed in evidence to the inquiry, incredibly, that the Mulcaire notebooks did not lead to a conclusion that other journalists were involved¹³⁸. He also acknowledged the pressure on the MPS reputation at the time – the defensive approach referred to by Mr Paddick.

LORD JUSTICE LEVESON: -- was just too quick? That rather more ought to have been done, so that a far broader analysis of the nuanced position -- which you had from your decision logs, it's all there -- before Mr Yates went out snap? A. I agree in hindsight --

LORD JUSTICE LEVESON: I'm not so sure that necessarily should be in hindsight, but anyway --A. Well, no, from a position now I can see, and I think Mr Yates has said it, at the time what it felt like was that everybody was saying that this was a conspiracy and we'd hidden it, and actually I believe what we were trying to say: that's absolutely not the case here. But in doing that, I agree with you, perhaps we could have just paused for a moment and thought: is it just that? Because we -- in a sense to me it felt we were reacting to the fact that someone was saying we'd hidden something and I knew we had absolutely not hidden anything, and in hindsight, yes, if we had paused, maybe there would have been a different approach. We all learn”¹³⁹

114. The assurance provided by Mr Williams to Mr Perry QC in 2006 that there was no evidence of the involvement of other journalists filtered through to Mr Perry’s advice in 2009 and then to the DPP who followed his lead and declared there was no additional evidence in his statement on 9 July 2009.
115. Mr Perry did not remember seeing the Mulcaire notes relating to Counts 16 to 20, which included reference to other journalists as corner names. Mr Starmer said there were about 40 pages of the Mulcaire notes which had been passed to the CPS by the

¹³⁷ “Q, Did you show Mr Yates any documents? **A. The documents that were produced I showed him my informing potential victim strategy, I showed him a copy of the indictment, and that was it, because we didn't have any other documents on that date. Sorry, there was another short briefing document.** Q. On the basis of that, Mr Yates said that there was no new evidence which would justify reopening the investigation; is that correct? **A. That's correct.** Q. Were you seeking to persuade him that that was the position? **A. I just gave an explanation of exactly what we'd done and the position we had reached. I was just explaining to him exactly what we had done.** Q. But in a very succinct and editorialised way, you were giving him a snapshot picture of what your investigation had established, and he then put that in the public domain at about 5.00 in the afternoon; is that right? **A. Yes”.** 29/02/2012 (DAY43/pm/3-4)

¹³⁸ 29/02/2012 (DAY43/pm/8)

¹³⁹ 29/02/2012 (DAY43/pm/21)

police and he relied in Mr Perry's assurances that there was no evidence to implicate others at the News of the World in 2006¹⁴⁰. It is also notable that Mr Williams¹⁴¹ told the CPS that the victims selected were limited by the willingness of victims to come forward and in a later email¹⁴² he suggested (wrongly) that the victim informing strategy had been implemented and that it was extremely challenging proving that someone was a victim of interception.

116. The DPP then made an additional statement on 15 July, also heavily reliant on what the CPS had been told by Mr Williams in 2006 and July 2009.¹⁴³ That statement said that there was no evidence of the involvement of others at the News of the World.
117. Mr Yates' evidence in July 2009 to the Select Committee did not refer to the terrorist threat and pressure on resources as a reason for not pursuing journalists. Instead, he told the Select Committee that it was due to News International's failure to cooperate. He also made a claim that CPS advice prevented the Police from investigating because of the narrow view of RIPA (that an offence was not committed unless voicemails were intercepted before being listened to by their intended recipient)¹⁴⁴. This was not an accurate summary of the reasons why the police did not pursue the journalists in 2006.¹⁴⁵ Nor was it correct that the narrow view actually hindered any prosecution which could have been for the inchoate offences of conspiracy or attempt to intercept voicemails. Mr Yates took no proper steps to consider the matter for himself, the review having taken all of 6 hours. It also differed considerably from the account given to the Inquiry by Mr Clarke. As Mr Williams was the source of Mr Yates' views, he may have been saying what he believed Mr Yates wanted to hear.
118. Mr Yates spoke to the DPP on 14 July 2009 about the 'For Neville' email. Mr Starmer gave evidence that there was a "degree of pushback" to his suggestion that the email should be investigated, but Mr Yates did agree to meet Mr Starmer on Monday 17 July 2009¹⁴⁶. Mr Yates made it clear that if Mr Starmer had invited him to reopen the investigation, he would not have accepted that invitation¹⁴⁷

¹⁴⁰ 04/04/2012 (DAY61/am/113-116)

¹⁴¹ Inquiry Document #MOD20018305

¹⁴² Inquiry Document #MOD20018307

¹⁴³ Inquiry Document #MOD20018292

¹⁴⁴ Summary at House of Commons Culture, Media and Sport Committee 'News International and Phone-Hacking' Eleventh Report of Session 2010-12, Volume 1, paragraphs 248-9

¹⁴⁵ See 04/04/2012 (DAY61/am/6-7 and 21-23) and 04/04/2012 (DAY61/am/67)

¹⁴⁶ 04/04/2012 (DAY61/pm/8-9)

¹⁴⁷ 04/04/2012 (DAY61/pm/22/23-25)

119. The information given to Mr Yates and his own haste to give the investigation a clean bill of health had serious consequences.
- (1) It was in the context of Mr Yates' very close relationships to News International. He was not, and was not seen to be, independently minded.
 - (2) It permitted News International to perpetuate the "one rogue reporter" lie. There are numerous examples, some in this Inquiry, in which News International has been able to rely on the police decision to close the case in support of its own failures. Tom Crone told the DCMS committee, falsely, that there had been several internal investigations, a massively intense police investigation and "*at no stage did any evidence arise that the problem of accessing by our reporters, or complicity of accessing by our reporters went beyond the Goodman/Mulcaire situation*". None of the police officers who knew this was false stepped forward to contradict the widely reported and repeated company position. Mr Clarke said that if any of the more junior officers in the 2006 investigation had disagreed with his decision they would have made their views known. In fact none of them made their views known about the one rogue reporter defence until they gave evidence in the Judicial Review and this Inquiry, nearly 6 years later.
 - (3) The police failure to reopen the files must have given News International comfort in relation to the other illegal practices at its newspapers. The email evidence of corrupt practices which has now been passed to Operation Elveden was first considered by the company and its lawyers, Harbottle and Lewis, in the context of Mr Goodman's employment claim. However, nothing was done and many reporters and executives at News International must have breathed more easily in July 2009 and been very grateful to their friends in the police. No doubt some did consider, rightly or wrongly, that all those bottles of champagne had paid off.
120. Incredibly, Mr Yates maintained even to this Inquiry that in 2009 there was not sufficient evidence to contradict the rogue reporter defence.

"Q. Mr Myler's position -- we heard his evidence to this Inquiry -- was that there was one rogue reporter. Was that your understanding of the position? Was that affirmatively established to your satisfaction that there was only one rogue reporter at the News of the World?"

A. In terms of what we knew and what the evidence was, yes, that was the position in July 2009 and remained that position up until January 2011. We had no other way of affirming it either way.

Q. In your opinion, there was no evidence at all to suggest that others might be involved; is that correct, Mr Yates?"

A. Well, there was the -- you know, the long spoken about "for Neville" email, which again was covered in terms of what its value to an investigation was on several occasions, not least by the DPP and counsel in terms of what it would value -- its evidential value. There was nothing else that we knew differently then¹⁴⁸.

The response to the New York Times article

121. On 1 September 2010 the New York Times published an article about phone-hacking with specific and carefully researched allegations of widespread wrongdoing, corporate cover-up and police complicity. Again, the company issued public denials of any culture of wrongdoing, and again the police stayed silent, saying that no further investigation was required.
122. In his statement to this Inquiry, Mr Yates continued to claim that the decision not to reopen the investigation was a bad one *only* in the light of what we now know¹⁴⁹. In fact, the police knew or should have known enough to reopen the investigation in 2009 and the emails released to the police in January 2011 were not the sea-change he claimed them to be. He maintained that when News International provided the MPS with further material which appeared to show other journalists were involved in phone-hacking, that was the first new evidence that he was shown and resulted in his decision to hand over the case.¹⁵⁰
123. The DPP Keir Starmer described how he heard that Mr Yates had already decided there would be no new investigation¹⁵¹. He was also asked about the decision to interview Sean Hoare under caution which would inevitably lead to a no comment response. He indicated that he would not have been surprised to have been asked for advice about the mode of interview, that it could be a good thing, but that he was not asked in this instance and officers went ahead and interviewed under caution without reference to the CPS¹⁵². This contributed to the overwhelming sense that the officers were keen to shut this down. Mr Starmer also referred to his own sense that no one wanted to investigate phone-hacking in 2009-2010 and his growing

¹⁴⁸ 01/03/2012 (DAY44/pm/25-26)

¹⁴⁹ W/S ¶122 "Subsequent developments have shown that there were weaknesses in the police response both in the original investigation in 2006/2007 and thereafter". And ¶ 123 "I would emphasize that the decision not to reopen the investigation was based on what we knew at the time and not what emerged in January 2011".

¹⁵⁰ W/S ¶ 124

¹⁵¹ 04/04/2012 (DAY61/pm/28/1-11)

¹⁵² 04/04/2012 (DAY61/pm/32-33)

frustration.¹⁵³ He eventually determined to reinvestigate the material held by the police at the start of 2011, despite John Yates' continuing concerns.¹⁵⁴ Notes of a meeting with the DPP indicate that he said that a new investigation would "*put both organisations in a difficult position. What did we do in 2009*".

124. Mr Yates continued with his close friendships and meetings with journalists throughout the whole of this period. It was not until Operation Weeting was finally set up in January 2011 that the meetings stopped.¹⁵⁵

Informing the victims after 2009

125. In July 2009 Mr Yates told the DCMS Select Committee that he had carefully considered whether or not anyone who should have been informed had fallen through the net. In fact, just 8 additional people were told. Mr Yates told the original committee that where information existed to suggest that some form of interception had taken place, the MPS has been diligent and taken all proper steps to inform the victims were informed¹⁵⁶. That was not the case.

126. Lord Prescott was named in the Guardian article and he wrote on 9 July to the MPS to ask if the Met had information about those whose telephones had been targeted. Mr Yates telephoned Mr Prescott (as he then was) within a few hours, he thought about 2 or 3pm, and said that there was no evidence at all that he had been targeted. That was followed by a press conference at which Mr Yates again dismissed the allegation that Lord Prescott was a victim¹⁵⁷. Mr Prescott entered into correspondence with the MPS over the next months continuing to seek further information and was again told there was none. Over the next 2 years, it emerged that there was a wealth of evidence that voicemails left by and for him on his assistant's phone had been compromised and that all the evidence (except one email) had been in the possession of the Police since 2006. He joined the judicial review which was defended on the basis that there was no evidence that any of the claimants had been subjected to unlawful voicemail interception. That was not true.

127. Mr Paddick wrote by his solicitors with a wide request for information about whether

¹⁵³ 04/04/2012 (DAY61/pm/41)

¹⁵⁴ This is to be contrasted with John Yates letter to Tom Watson in which he claimed responsibility for persuading the CPS to reopen the investigation.

¹⁵⁵ Fedorcio W/S ¶131.

¹⁵⁶ ¶ 28 DCMS report

¹⁵⁷ 27/02/2012 (DAY41/am/51-53)

or not he was mentioned in the Mulcaire files¹⁵⁸. That was, eventually, answered by a letter from the MPS legal department which ducked the question and answered another. He wrote again and was again given misleading information¹⁵⁹. He issued judicial review proceedings in September 2010 which were defended on the false basis that he had been given complete and full information about the information held about him.

128. There are numerous other victims who received very similar misleading (or no) responses to their queries about whether or not their details were in the Mulcaire notebooks. The strategy for informing victims as determined in 2006 was not a handwritten document in a black bin bag; it was a formal police document in the possession of the MPS. There is no excuse for not having executed the strategy in 2006 and certainly not for misleading victims in 2009-early 2011. It is also noteworthy that the MPS failed properly to respond to Freedom of Information act requests about the number of victims submitted by Nick Davies of The Guardian.¹⁶⁰ Whether to protect its own reputation, or to protect relationships with the media, the MPS failed the victims and created justifiable public anxiety about the independence of the police.

C III Motorman/Reproof/Glade

Introduction

129. The material obtained by the Information Commissioner's Office in its investigation into unlawful information gathering ("Operation Motorman") is vital to take into consideration when considering the 'culture, practices and ethics' of the press generally and the activities of certain police officers. This material, together with the additional material obtained in the Reproof and Glade Operations demonstrate that the unlawful obtaining of personal information from sources which include the police for use in stories for commercial gain was endemic and widespread during the relevant period (i.e. up to 2005-2006); and that the failure to adequately investigate or punish the police officers and journalists involved – in particular policy failures and insufficient powers under section 55 of the Data Protection Act 1998 – has led to a sense of impunity which encourages continuing corruption in the press and, it is to be inferred, in the police.

¹⁵⁸ W/S ¶ 31 and Page 1 of Exhibit BP1

¹⁵⁹ W/S ¶ 32

¹⁶⁰ 28/2/2012(DAY43/pm/147-9,184-5)

130. These operations and the information subsequently published in 2006 in the Information Commissioners two reports, *What Price Privacy* and *What Price Privacy Now*, demonstrate that the unlawful obtaining of information (including from sources such as the Police National Computer) was not just carried out by News International, but was undertaken by a huge range of press titles, in particular the “tabloid press”¹⁶¹.
131. Those most at fault are highly unlikely to volunteer any of this information and it is only as a result of civil claims against News Group Newspapers, the work of certain investigative reporters and recent police investigations into the actions of journalists at The News of the World and The Sun that the scale of the activities have been revealed¹⁶². It is therefore critical that bodies who are responsible for investigating such breaches of the law have sufficient resources and powers and that the sanctions in legislation for such “media crimes” are strong enough to act as a deterrent.

Evidence of wrong-doing obtained in Motorman/Reproof and Glade

132. The evidence collated by the Information Commissioner in the Motorman investigation and by the police in the Glade and Reproof investigations demonstrates widespread wrongdoing across the whole of the print media. It is, and should be seen to be, part of the same story as voicemail interception investigation: both concerned the illegal trade in information.
- (i) The number of individuals targeted by Steven Whittamore was on a similar scale to those targeted by Mr Mulcaire (amounting to about 4,000 victims) and many of the individuals targeted were the same.

¹⁶¹ This point was noted by the Chairman in his Ruling dated 1 May 2012 at §50: “...Analysis of *What Price Privacy* and *What Price Privacy Now* by the Information Commissioner (subject to correction identified in evidence) along with the concessions as to what legitimate inferences could be drawn from the material as to prime facie breach of the law by more than one newspaper title, whatever might be said of the services that Mr Whittamore might lawfully have provided, provides evidence of the culture and practices of the press without the need either to identify the details of those about whom information was sought or the journalists who sought it; it was sufficient to identify the titles concerned, which in any event are in the public domain, and the fact that it was widespread”.

¹⁶² James Murdoch stated in his evidence before the Select Committee that the civil actions brought by victims of phone hacking was what revealed the scale of the unlawful activities [uncorrected Transcript of the Oral Hearing of the House of Commons Culture, Media and Sport Committee, 10 November 2011, p. 11]. Mr. Murdoch repeated this in his evidence before the Leveson Inquiry where he stated that once the evidence started emerging during the course of the Sienna Miller litigation, he was concerned that his company act quickly and “get to the bottom of what was going on”. James Murdoch, 24/04/2012, (DAY63/am/53/9).

- (ii) Mr Mulcaire's activities were not confined to intercepting voicemail messages – that was simple and could be done by anyone – his skill was in unlawfully obtaining the PIN numbers, mobile telephone numbers and other private information by deception. It was often the information obtained by “blagging” which made voicemail interception possible and provided information for publication in articles or lines of enquiry for journalists.
- (iii) Mr Whittamore also obtained information by blagging. It is not yet clear to what use this information was put, but it is reasonable to infer that some was used for publication in articles, or for lines of enquiry, or as a platform for further unlawful activities such as voicemail or email interceptions
- (iv) Mr Whittamore was used by some newspapers for a period after his conviction and was paid similar amounts for what appear to be similar enquiries.

133. The claim that the inquiries were either routine or protected by a public interest defence does not survive much scrutiny. The Inquiry has made it clear that, as a result of the criminal investigations and the remit of the Inquiry in Part 2, it will not consider in Part 1 the question of “who did what to whom”. Although this means that there will be no forensic examination of who may have committed criminal offences, it is important that the question of any continuing use of the Whittamore material is addressed by the Inquiry, as well as the issue of what has happened to those journalists that were acquiring the material. This is dealt with further at paragraph 149 below.

134. In any event it is inconceivable that phone hacking was confined to one newspaper. There is huge amount of evidence before the Inquiry that the means of intercepting voicemails was well known in the press¹⁶³. In addition, the traffic of journalists between newspaper titles would have meant that this type of information gathering was known in the industry and all indications are that it was seen as acceptable journalistic practice. As was noted by DS Williams in Operation Caryatid the

¹⁶³ See for example, Piers Morgan 20/12/2011 (**DAY20/pm/65-67**) (NOTW journalists “scapegoats” for a widespread practice); Dominic Mohan 09/01/2012 (**DAY22/pm/63-64**) (Admits making remark at conference thanking Vodafone for their security techniques and it being a “joke” reference to hacking as it was commonly known as a widespread practice); Evidence of Mark Lewis, 23/11/2011 (**DAY6/pm/40-41**); Paul McMullan, 29/11/2012 (**DAY9/pm/52**); James Hipwell, 21/12/2012 (**DAY21/am/13-14**), who remarked that the actions of the Daily Mirror showbusiness journalists gave him the impression that “hacking was considered a bog-standard journalistic tool for gathering information”; Jeremy Paxman, 23/5/2012 (**D76/PM/138-139**) (regarding Piers Morgan's knowledge of mobile telephone voicemail interception and if people didn't put a code on their telephone they were “a fool”).

potential for voicemail interception had been demonstrated and the ability *“is highly unlikely to be limited to Goodman alone and is probably quite widespread...a much wider security issue within the UK and potentially worldwide”*¹⁶⁴

Operation Reproof

135. Operation Reproof was a substantial and detailed investigation into an illegal trade in data which led directly to the Motorman and Glade investigations. The background and details of the Operation are as following:

- (i) It arose as a result of allegations that a local businessman was being blackmailed using details about previous criminal conviction that had been obtained about him from the Police National Computer (“PNC”). This Operation, called Operation Essra, found evidence that a serving police officer in the Devon and Cornwall Constabulary had accessed the PNC record of the victim and had passed the details to private investigators to then sold it to the alleged blackmailer. Operation Reproof was set up to examine the material seized during Operation Esstra and its terms of reference included “identifying documents or reference to documents or data which had originated from the Devon and Cornwall Constabulary”, “to investigate lines of enquiry to establish the route taken from Devon and Cornwall Constabulary to the recipient” with a view to “highlighting possible criminal and misconduct offences”.¹⁶⁵
- (ii) As a result of the investigations evidence was obtained which showed that serving Officers and retired Officers from other forces were involved in similar illegal activities and had links with the suspects in Devon and Cornwall. The other forces that were contacted were: Dorset Police; Northumbria Police; Surrey Police; Essex Police and the Metropolitan Police.
- (iii) A search under warrant on a “data gathering” business in Sussex uncovered a significant amount of information which related to illicit data obtained from the DVLA. It was this data which formed the basis of Operation Motorman which discovered the link between the information and the ultimate recipients which were often the press.
- (iv) Six individuals were charged, including two serving and two retired police officers. One of the retired police officers, Alan Stidwell, had opened up an investigation business after retiring. The prosecutions were not proceeded

¹⁶⁴ file1 tab35 pp54-66

¹⁶⁵ See W/S of ACC Middleton, 26/03/2012, response 3.

with following an indication by the presiding judge, HH Judge Darlow, that he did not regard the fact of a Police Officer accessing the PNC and providing information to an ex colleague as a serious matter that amounted to Misconduct in Public Office.

136. Firstly, it is very surprising and concerning that the abuse of power and disclosure of highly confidential data by a public officer could be viewed as a matter that is “not serious”. This lead to a sense of impunity which can only have the effect of encouraging the same illegal behaviour to continue. It is important to apprehend and prosecute the offenders in such cases and to consider the victims whose personal information had been taken. In addition to their common law rights, individuals have rights under the Data Protection Act 1998 and a right under Article 8 ECHR to ensure that their sensitive personal data is not misused in this way. The police, as a public authority, have a duty under the Human Rights Act 1998 to act compatibly with an individual’s Convention rights.
137. Secondly, there is the key question of identifying the organisations/individuals for whom this information was being obtained. ACC Middleton stated in his witness statement that “*Operation Reproof found no evidence that any media organisation was involved in the obtaining of the data*”¹⁶⁶. However at least two senior politicians were the subjects of searches and it is therefore almost inevitable, certainly highly likely, that the press would be the ultimate recipient. **ACC Middleton** was questioned about this on 9 May 2012 and told the inquiry that the police were not able to find out the ultimate customer as those interviewing would simply answer “no comment”¹⁶⁷.
138. The failure of Operation Reproof suggests that no public official or journalist will be prosecuted for release of personal data to the media or others unless there is proof of payment. The receipt of payment is not an element of either the common law or statutory offences. This requirement places a serious practical barrier in the way of prosecution as in most cases there will not be a payment “paper trail”. If this approach is adopted it makes it unlikely that journalists who procure the wrongful disclosure of information will be prosecuted.

Operation Glade

¹⁶⁶ W/S page 10

¹⁶⁷ 09/05/2012 (DAY67/am/81/7)

139. Operation Glade followed Operation Reproof and was an investigation into the unlawful disclosure of confidential PNC records, in the form of criminal records office (CRO) histories and registered keeper details of privately owned vehicles. The fact that no journalists were charged means that the investigation was inadequate. The leniency of the sentences handed down shows that the penalties for these types of “media crimes” are wholly inadequate.
140. A summary of the background is as follows:
- (i) Paul Marshall, a civilian employee with the MPS, had unlawfully used the PNC to obtain restricted private data information at the request of Alan King, an ex police officer, who was acting on behalf of private detectives Stephen Whittamore and John Boyall. The ultimate customers were journalists.
 - (ii) DCI Gilmour was the Investigating Officer. He decided to interview the journalists under caution but not under arrest¹⁶⁸. Seven journalists were interviewed (2 freelance, 2 from the News of the World, 1 from the Daily Mirror, 1 from the Sunday Mirror and 1 from the Mail on Sunday). All the journalists were interviewed with their legal representatives¹⁶⁹. They all accepted that they had used Mr Whittamore to obtain information but denied knowing that a corrupt police employee or unlawful methods were being used to access the information¹⁷⁰.
 - (iii) The CPS was asked to advise as to the likelihood of successful prosecutions and none were brought against the journalists.
 - (iv) Messrs Marshall, King, Boyall and Whittamore were charged with Conspiracy to Commit Misconduct in a Public Office. Marshall and King pleaded guilty – they were conditionally discharged for a period of 2 years. Messrs Boyall and Whittamore were later also charged with obtaining personal information contrary to s55 (1)(a) Data Protection Act 1998; they both pleaded guilty and the charge of conspiracy was left on file – they were also conditionally discharged and Boyall was ordered to pay costs of £1,250.
141. As with Operation Reproof grave concerns arise as a result of Operation Glade. Quite apart from the fact that the sentences handed down were utterly inadequate

¹⁶⁸ W/S, ¶ 28
¹⁶⁹ W/S ¶ 39-40
¹⁷⁰ W/S ¶ 41

and obviously too lenient¹⁷¹, serious concerns arise as a result of the failure properly to investigate the journalists, who were consumers of the unlawful information.

142. Firstly, the fact that the decision was made not to charge any journalists is a matter of grave concern. The reason for this was, according to **DCI Gilmour**, that there were unable to identify evidence which demonstrated that the journalists knew the source of the information¹⁷². However:

- (i) The speed by which Mr Whittamore was able to obtain the information requested by journalists (sometimes in two or three hours according to DCI Gilmour) meant that they must be taken to have known that it was being accessed or obtained illegally. In addition some of the information sought, such as criminal convictions, would not have been in the public domain and thus as DCI Gilmour admitted must have been obtained illegally:¹⁷³

“Q. In that interview was it put to the journalists: well, information as to previous criminal convictions is not in the public domain, almost by definition it must be obtained illegally?”

A. Yes, it was. It was specifically put to them, and they pleaded ignorance around how the information would have been obtained illegally. They just said they wouldn't have used Whittamore if they had have known it was being obtained illegally.”

- (ii) Despite having this evidence which would have given rise to an inference that the journalists knew the source of the information, there were no further investigations. The journalists simply repeated the mantra that they would not have used Mr Whittamore if they had known the information was being obtained illegally.
- (iii) No search warrants were executed against the journalists. This step ought to have been taken to ensure that any evidence that might have existed was obtained, and also to demonstrate that the investigation against the journalists was being taken seriously. It is highly unsatisfactory for this failure to be seemingly excused on the basis that:

*“In 2003 the concept of the national newspapers routinely using police employees to source sensitive information was till relatively unknown and that...if a similar investigation were to be made now the investigation would be significantly different”.*¹⁷⁴

¹⁷¹ This was acknowledged by DCI Gilmour who stated “The sentences in this case were a disappointment to the police and the CPS and were viewed as being unduly lenient” (W/S ¶ 47)

¹⁷² W/S ¶ 52

¹⁷³ 09/05/2012 (DAY67/am/56/15-23)

¹⁷⁴ W/S ¶ 55

143. Secondly, it is apparent from the evidence of DCI Gilmour that the sensitivity of investigating journalists was a factor for the police and that they were wary of the “fall out” of investigating the press:

Q. The other general question is: you mentioned a few moments ago that the information that was provided to the private detectives eventually found its way into newspapers, so it was plain that the ultimate consumer or customer was a journalist. When you were scoping this exercise, was the sensitivity of investigating journalists discussed?

A. I can't recall specifically. I would imagine it was. We were certainly alive to the sensitivities of investigating journalists and the significance of that. But I can't recall specific discussions.¹⁷⁵

...

Q...Then on the next page, 16102, you say:

"I reviewed this case, which is the subject of CPS advice. It's likely that the advice will be to charge all subjects on 14 January 2004. Careful consideration needs to be given to the interviewing of the journalists who it would appear have required the checks." I've been asked to put this to you: why was careful consideration required in relation to the journalists over and above any consideration you gave to the other suspects?

A. Sir, I should point out that this isn't my entry. I do recognise the signature, I believe it's Detective Superintendent Tony Fuller. So I don't think I'm in a position to answer that. I can give a view, if you wish. I think it's because of the significance of what we were dealing with and recognising that significance and just giving it due consideration to be able to manage the consequences of what we were doing, or the fallout from what we were doing.¹⁷⁶

Conclusion

144. Despite multiple breaches of PNC security the police witnesses say that any change in the status quo is not a matter for them.
145. There has been a failure to investigate these offences properly, particularly in relation to the role of the press. This is of concern, as the power of the press, and the consequential ‘sensitivities’ involved when investigating the media, appear to have acted as a disincentive in Operation Glade. It is also insufficient to rely on the simple assertion that the press did not know that such activities were unlawful or that they were being carried out in the public interest; the facts of the case often give rise to an inference that such material must have been obtained illegally and claims to the

¹⁷⁵ 09/05/2012 (DAY67/am/47/17-48/2)

¹⁷⁶ 09/05/2012 (DAY67/am/60/4-61/2)

contrary defy common sense ¹⁷⁷.

146. The overly lenient sentences handed down in Operation Glade meant that the story “barely registered on the consciousness” of newspaper editors and the press did not see any need to carry out any investigations into the use of Whittamore: see Paul Dacre:

A... Well, I mean -- no, but I mean all newspapers were using -- virtually all newspapers were using Whittamore.

Q. Are you saying that that would be a reason for the Daily Mail not carrying out a proper investigation into the extent of the possible illegality, Mr Dacre?

A. Well, it's very difficult to say that. The story of Operation Motorman barely registered on the consciousness. I don't think it made much in the papers. One was aware of it, I suspect, that the man had been given a conditional discharge. All newspapers were still using this agency. I repeat: we thought it was -- we believed and the journalists believed that it was to get phone numbers quickly. I'm not sure an investigation at that stage was warranted.¹⁷⁸

147. Consequently information newspapers have obtained by unlawful means may have been retained and may still be used by the numerous titles identified by the ICO in his Reports. Only Mr Dacre was asked by the Inquiry about the issue of whether data obtained as a result of Mr Whittamore’s activities was still retained by the Daily Mail. His answers were evasive but it was clear that he had not conducted an investigation into whether the Whittamore material had been retained and was still being used:

Q. ...Is Mr Whittamore's data, or rather data obtained as a result of his activities, still on the Daily Mail's systems?

A. Can you explain that? I'm sorry.

Q. Well, Mr Whittamore provided Associated with a vast array of data. We know from the report 958 transactions had been positively identified. Have those data been erased --

A. No, as I said, when we looked at the books eventually, we found a lot of double counting. But anyway, go on, sorry.

Q. Have you conducted any Inquiry to ascertain whether those data are still on your system?

A. I don't think the data is on the systems, no. I didn't look into it but I'm sure it's not. I think we have references to bills and that's all. In fact, I'm sure that's all. (emphasis added)¹⁷⁹

Indeed, Mr Whittamore has been employed by the media since his conviction. While this alone is insufficient to demonstrate that the press have been acting improperly,

¹⁷⁷ For example, Tom Crone admitted what is obvious – that “turning around’ car number plates is illegal (see DCMS Report, para 138).

¹⁷⁸ 06/02/2012 (DAY37/pm/47/23-50/13)

¹⁷⁹ 06/02/2012 (DAY37/pm/58/19 – 59/10)

there has been no independent check on the media's activities in this regard and an analysis conducted on the evidence heard by the Inquiry (and released into the public domain) relating to the activities of Express Newspapers Limited by Brian Cathcart¹⁸⁰ (Professor of Journalism at Kingston University) give rise to serious concerns. He notes that Express Newspapers commissioned Mr Whittamore to carry out almost £1,000-worth of work in relation to a 'P Wilby', making payment on 22 September 2007, which was almost immediately after an article written by Peter Wilby (the former editor of the Independent on Sunday and the News Statesman) was published by The Guardian on 17 September 2007. Mr Wilby referred to the Express as "a hopeless newspaper that couldn't tell you the time of day" in the article and there is evidence that the Express had taken grave exception to Wilby's jibe¹⁸¹. Mr Cathcart questions what the Express was commissioning Mr Wittamore to do - no articles about a P Wilby appeared in the Express as a result – and who it was that did the commissioning. These issues tie in to the questions which the CPVs submit the Media Core Participants should answer – see paragraph 149 below.

148. Finally, despite having accepted that Mr Whittamore 'may have been' acting illegally¹⁸² and not having carried out any investigation to ascertain the facts, Associated Newspapers relied on the existence of the "public interest" defence as protecting it from the allegation that its journalists had acted unlawfully. It is inevitable that other newspapers would do the same if asked.

Motorman Questions that the CPVs submit the Press should answer

149. On 9 May 2012 Counsel for the CPVs made an oral application to the Inquiry that it obliged the Media Core Participants to answer the two questions set out below¹⁸³. The Media Core Participants responded in oral submission on 11 May 2012¹⁸⁴. The CPVs have replied to make it clear that their position is that there was nothing stated

¹⁸⁰ See "Free Speech? Not when a newspaper sets a private eye on a journalist". <http://inform.wordpress.com/2012/05/08/opinion-free-speech-not-when-a-newspaper-sets-a-private-investigator-on-a-journalist-brian-cathcart/>

¹⁸¹ 'The Guardian has been banned from the offices of the Daily Express after editor Peter Hill blew his top over a column by Peter Wilby in Monday's MediaGuardian section. . . Mr Hill has responded by banning the morning delivery of 18 copies of the Guardian to the Express offices on the banks of the Thames near Tower Bridge. Monkey's man on the inside explained: "He was deeply offended by a thoughtless remark by Peter Wilby, especially as the latter had met him only a couple of weeks previously and had been perfectly cordial. . .'
<http://www.guardian.co.uk/media/2007/sep/21/mediamonkey?INTCMP=SRCH>

¹⁸² Paul Dacre, 06/02/2012 (**DAY37/pm/58/8-23**)

¹⁸³ **D67/PM/74-75**

¹⁸⁴ **(D69PM/71-86).**

by the Media Core Participants to alter the pressing need that these highly relevant questions are answered; they relate to the current practices of the media and go directly to the central issue of the culture, practices and ethics of the press.

- (1) What steps, if any, were taken in relation to those journalists who used the services of Mr Whittamore? Were they in fact fired? Were they disciplined? Were they admonished in any way? Or are they in fact still working for the newspaper, as the CPVs believe, and have even been promoted to senior positions?
- (2) What steps, if any, were taken to identify whether any of the information obtained through the use of Mr Whittamore was and is still being retained and/or used by the newspaper. If no such steps were taken, why not? If no such steps were taken, they need to be taken now.

D. THE UNLAWFUL/INAPPROPRIATE PROVISION OF INFORMATION TO THE MEDIA

Introduction

150. Another obvious consequence of the close relationship between the police and the media was the improper disclosure of information. There is no doubt this is a significant problem. Ms Filkin explained that she was told about contact at all levels resulting in improper disclosure of information, and that payment for information went beyond News International.¹⁸⁵ The Inquiry heard many journalists explain the value of their contacts and how they live and die by their sources. A number of tabloid newspapers invested large amounts of time and money in cultivating relationships with the police. Lord Condon described the relationships between police and journalists as “*grooming*” for the inappropriate provision of information¹⁸⁶. Some senior officers and officials, such as Mr Yates and Mr Fedorcio, claimed the cultivation of relationships was solely in the interests of the police. However, the evidence shows that it was not in the interests of victims or the public or the interests of independent and fair policing. The party to benefit was clearly the media.
151. The inappropriate provision of information took several forms. Leaks of confidential or private information are the most obvious problem. But some approved forms of

¹⁸⁵ 05/03/2012 (DAY45/pm/107)

¹⁸⁶ W/S p 20 “In my view, hospitality can be the start of a grooming process which leads to inappropriate and unethical behaviour.”

communication of information are also highly risky and potentially damaging to individuals such as the practice of taking the media on operations, or revealing information about an arrested person. Each of these matters is dealt with in turn below.

Di Leaks

152. Most officers and journalists giving evidence to the Inquiry denied inappropriate leaks took place. However, those who spoke to Elizabeth Filkin in confidence were more forthcoming and her report says that leaks are a serious concern and that many told her they would not provide information to the DPA for fear it would leak.
153. It was common ground that investigations into leaks are very difficult. The Filkin Inquiry also heard that police leaks to the media are low priority and there is very little internal information about sanctions to deter those who leak – whether for money, for excitement or simply because they can.
154. The approach of the DPA was lacklustre and ineffective – **Mr Fedorcio** said that he was aware of a perception that there were frequent leaks from the MPS management board but took little interest¹⁸⁷ - and that no enquiry was made to ascertain the source of leaks from the management board¹⁸⁸. He said that the new policy was created in response to the leaks, but it was plainly ignored given the volume and nature of press contact that continued thereafter.
155. Mr Fedorcio also accepted that if the journalists were not getting what they wanted through the official channels, they would telephone him on his mobile telephone and did so at practically any time, including at weekends¹⁸⁹.
156. **James Murray** said he has had “tip offs” on stories about “so-and-so” and then, having checked it, he would ask them whether they would like a drink, coffee or meal as a thank you¹⁹⁰. It didn’t surprise Mr Murray that when the police go to arrest a celebrity the photographers are already there¹⁹¹. He referred to scanning into police

¹⁸⁷ W/S page 15
¹⁸⁸ W/S page 82
¹⁸⁹ WS page 88
¹⁹⁰ 19/03/2012 (DAY52/am/70)
¹⁹¹ 19/03/2012 (DAY52/am/71)

communications on the wires in the past whilst he was in television.¹⁹²

157. It did not seem to be well appreciated by the police that such leaks are extremely valuable to the press and may give them a huge commercial advantage by providing exclusives, information to support the editorial line of the paper, or even simply background which will give them a head start on new stories.
158. Without clear policies and ethical leadership concerning the way in which police officers are permitted to interact with the media, there is a clear and obvious risk of leaks. These can range from the leak of a celebrity arrest, to leaks about celebrities who have made complaints about harassment, such as Bryan Adams (see further below at paragraph 189), to leaks about individuals on the Witness Protection Programme (as must have occurred for such individuals to appear in Mr Mulcaire's notebooks).

Interference with Criminal Investigations

159. The Inquiry heard evidence about leaks to the press which resulted in articles being published that contained details about operational matters which had direct and damaging consequences on criminal investigations. These included providing suspects with confidential information about police operation and evidence; creating an atmosphere of distrust between the victims and the police team; and having the effect of distorting the investigation priorities.

The Re-Investigation of the death of Stephen Lawrence

160. The Inquiry heard from **Clive Driscoll**, the Senior Investigating Officer in the 2006 Stephen Lawrence re-investigation. The re-investigation was a very sensitive and high-profile one for obvious reasons. It was essential that the police gain the trust of Mr Lawrence's family. Mr Driscoll explained that the investigating team kept the information "very close" and disseminated information only on a "need to know"

¹⁹² 19/03/2012 (**DAY52/am/72**). Aside from distorting the proper focus of a police investigation, the impact on the individual who is the subject of leaks casting doubt on his innocence is seen, for example in the case of Colin Stagg. His solicitor, Alexander Tribick described in his witness statement how the overly close relationship between the Met Police and the press in relation to the Rachel Nickell murder inquiry created the impression in some sections of the media that, even 20 years after his acquittal, "Colin Stagg was the man who got away with murder" (W/S of Alexander Tribick, March 2012, ¶ 6).

basis¹⁹³. Despite this, information was leaked to the media on more than one occasion:

- (i) On 18 October 2007 an article published in The News of the World identified the fact that there was a forensic review and referred to a secret location.
- (ii) On 8 November 2007 there was an article published in the Daily Mail by Stephen Wright about a confidential meeting at NSY on 7 November 2007 at which Mrs Lawrence, her legal team, the police and the CPS were present. Not only did the article reveal the fact that this confidential meeting had taken place, but it referred to the forensic evidence that was discussed at the meeting¹⁹⁴.

161. These stories, and others like them, which resulted from someone leaking sensitive evidence in a live murder enquiry, disrupted the investigation. At times the Lawrence family felt that the police were deliberately leaking information and slowing down their investigation. Information, such as the forensic tests being undertaken, related to evidence which the police would want to put to suspects in a controlled way, not give them prior notice through publication to the world via the media.

162. Mr Driscoll explained that he did not know the source of the leak but that it could have only been someone within the MPS, the forensics team or the CPS, a few of whom had access to the sensitive material. He did not believe it was a member of his own team. In the lead up to the trial he was told by a contact that it was well known in Fleet Street that there was a named senior member of the MPS who briefed outside official meetings and about whom “a more serious allegation” was also made. Mr Driscoll did not set this allegation out in his witness statement, but stated that it concerned the close relationship between this senior member of the MPS and sections of the media and that the relationship was rumoured to be corrupt¹⁹⁵. Mr Driscoll’s understanding was that an investigation did take place into that senior member of the MPS.

The Ipswich Murder Investigation

¹⁹³ W/S ¶ 8

¹⁹⁴ Mr Wright stated that the source of the information was not the police; however whatever the source, the publication itself had an extremely damaging impact on an investigation. Mr Driscoll accepted that Mr Wright would not have done anything to deliberately undermine the investigation, but that many of the leaked stories were published by the Daily Mail and each such story resulted in him having to repair relations with the Lawrence family (WS ¶15).

¹⁹⁵ W/S ¶ 22

163. The Inquiry heard from **David Harrison**, an officer working with the Serious Organised Crime Agency (“SOCA”) on the Ipswich Murder Inquiry who gave evidence that he was told in a briefing that The News of the World had deployed a surveillance team to find out where the SOCA team was based and that must have been the result of a police leak:

Q. What were you told, if anything, about one newspaper's interest in this operation?

A. At the end of the briefing, as part of the intelligence that had been received, we assumed by Suffolk Constabulary, that a News of the World surveillance team had been deployed to identify who we were and where we were based.

Q. How would the News of the World have obtained that information about SOCA?

A. My opinion is it would have come from someone close to the investigation team, either the Suffolk murder inquiry or SOCA.

Q. Because there are no other possibilities, are there?

A. No, not really.¹⁹⁶

164. Mr Harrison said that the actions of The News of the World jeopardised the murder Inquiry in two respects¹⁹⁷:

- (1) Firstly, murder suspects may return to the scene of the crime to try to dispose of evidence, move bodies, or may try to commit further offences. If such suspects thought they were being followed they may not do these things which would deprive the police of crucial evidence.
- (2) If the suspect was going to commit further murders then SOCA’s job was to apprehend him. SOCA was distracted from the investigation as a result of having to deal with the fact it was being subjected to surveillance.

165. There was also evidence that an article published on 17 December 2006 in the Sunday Mirror interfered with the police investigation. This article included an interview and the identification of Mr Stevens as a suspect¹⁹⁸. **Stewart Gull**, the former Assistant Chief Constable of Suffolk Constabulary, explained that Mr Stevens was formally declared a witness on Friday 15 December and that there was a plan to arrest him on Monday 18 December¹⁹⁹. It was clear that publication of the article had a negative effect on the investigation. Mr Gull also stated that he found some of the

¹⁹⁶ 19/03/2012 (DAY52/am/4/11-24)

¹⁹⁷ 19/03/2012 (DAY52/am/4-10)

¹⁹⁸ Counsel for Mirror Group Newspapers, Mr Browne QC stated that the newspaper had interviewed Mr Stevens for 2 hours in a carpark, 20/03/2012 (DAY53/am/123/20-22). CC Ash of Suffolk Constabulary also stated that they had found evidence to support Mr Harrison’s statement that reports did collect Mr Stevens and took him somewhere to be interviewed 26/03/2012 (DAY55/am/30-31).

¹⁹⁹ See evidence of Mr Gull on 02/04/2012 (DAY59/am/66)

reporting to be sensationalist and distracting, giving the example of the headline: "Find the fat man in the BMW". In fact the police had no interest in a fat man in a blue BMW as the media suggested and operational time had to be devoted to correcting this false story rather than working on the investigation.

The Joanna Yates murder inquiry

166. **Detective Chief Inspector Philip Jones** of Avon and Somerset Constabulary told the Inquiry that the Daily Mail called the Constabulary Communications Department during the investigation and said that low copy DNA was found on Joanna Yates body. This was true and either came from the police or other agencies which had tested the DNA. The leak investigation was still ongoing when he gave evidence. He stated that this leak damaged morale of the police and damaged trust²⁰⁰.

Investigation into the death of Daniel Morgan

167. Jacqui Hames gave evidence regarding surveillance which she and her husband were subjected to during an investigation into corrupt police and private investigators. She indicated that a confidential police file was obtained by the News of the World and that her family was put under surveillance by the News of the World. She suggested that there may have been a wish to "derail" the investigation into Daniel Morgan's death:

*"The fact that within a few days we were being put under surveillance - our mail was being tampered with. A phone call was being put into a previous place of work for David at Surrey Police, trying to get financial information. There were various things that happened, and you can't -- I think any reasonable person would find it very difficult not to put them together and feel that there was in some way -- there was some collusion between people at the News of the World and the people who were suspected of committing the murder of Daniel Morgan. I can't put it any clearer than that".*²⁰¹

Other examples of media distortion of investigations

168. Unhelpful or inaccurate media coverage can also distort investigative priorities. **ACC Jerry Kirkby** of Surrey police provided a number of examples when he gave evidence to the Inquiry:

²⁰⁰ 27/03/2012 (DAY56/am/95)

²⁰¹ 28/02/2012 (DAY42/am/101/4-14)

- (i) Mr Gibson, the SIO in the Milly Dowler investigation, was replaced after the investigation was described as “rudderless” in an article in the Sunday Mirror. Mr Kirkby said that the decision was primarily for operational reasons but that the article also had an effect.²⁰²
- (ii) The Sun offered a reward in the Milly Dowler investigation when the police were not sure it was necessary as there was already significant press interest, The Sun stated that it was going to offer the reward anyway and so the police felt it necessary to be seen to be aligned to it.²⁰³
- (iii) Mr Kirkby also referred to the early and growing interest in the celebrity Matthew Kelly because they had discovered that the police were interested in him and that this necessitated them bringing forward the arrest to a time which was earlier than they would have wished²⁰⁴.
- (iv) Mr Kirkby also gave the example of an SIO, Maria Woodall, who felt pressured at one stage to give out some details of an arrest plan to the press which she was not comfortable with providing but she felt she needed to provide the information to prevent the newspaper publishing damaging material about another aspect of the case²⁰⁵.

169. It was in connection with the arrest of Matthew Kelly referred to above that Piers Morgan then sent his email which stated:

“Thanks for the note. These stories are hideously difficult for both you guys and us. Fame and crime sends most of the usual rules out of the window ...”

In fact, as the Chairman noted at the time, the rules are even more important in these very big, very, very high profile cases, not less important.²⁰⁶

170. It is clear from the evidence that media coverage can seriously disrupt criminal investigations. This often arises as a result of publication of leaked information about the police investigation; the police are one obvious source of this information. Proper policies and guidelines need to be introduced to deter such leaks, to investigate them when they do occur, and to force the media into acting more responsibly when dealing with operational material. The possibility of derailing investigations (as with

²⁰² 27/03/2012 (DAY56/am/12-13)

²⁰³ See 27/03/2012 (DAY56/am/16). The Surrey Police were also persuaded by the News of the World to investigate the false lead into the factory job in the Milly Dowler case as a result of the voicemail interception.

²⁰⁴ W/S ¶ 26 and 27/03/2012 (DAY56/am/28/8-23)

²⁰⁵ 27/03/2012 (DAY56/am/17/11-24)

²⁰⁶ 27/03/2012 (DAY56/am/111)

the Ipswich Murder Inquiry), of causing victims additional distress (as with the Lawrence family) or of allowing the potential defendant to claim that he or she is unable to have a fair trial, are all very real and steps need to be taken to avoid them materialising.

Dii: “Media Ride-Alongs”

171. “Media ride-alongs” are the phenomenon whereby the press are given a specific invitation to accompany the police at raids or other operations. This gives those invited special access to, and advance notice of, operations which are not publicly known about.
172. The ACPO Guidance in relation to this issue is vague and does not give consistent advice to officers. In relation to media “ride-alongs” the guidance simply states “*There is no law to prevent the police taking the media on operations*” (Paragraph 4.27). Although some factors are listed for consideration, there is no clear guidance on how to balance the risks to the individuals under investigation with the potential benefits of inviting the media along. A number of questions were put to Andrew Trotter, the author of the ACPO guidance, and the questions and his answers are attached at Appendix 1. It is clear from the answers that revision is needed to a number of the policies. The CPVs submit that this should be the responsibility of an independent body rather than ACPO.
173. The Guidance annexes sample agreements which are mainly concerned to ensure that the media indemnifies the police for any financial loss, and that the media obtains its own permission to enter the premises. However obtaining the permission of the person being arrested is complex and in any event, permission may be required of the family and/or the owners of the home as well, especially as they may be identified. Mr Trotter’s written answers indicate that the police have relied on the media to comply with their own ethics and standards and have not checked whether or not permission has been obtained. He indicates that the approach will be reviewed after the Chairman’s report.
174. This Guidance is ineffective as a means of regulating press behaviour. Mr Trotter accepted in his response to questions that a suspect may assume that any media representative accompanying the police on operations has been authorised to enter the property by the police. It leaves the decision about what to publish entirely in the

hands of the media and permits irresponsible press members to seek cover from the police: see the evidence of Neil Wallis on this issue:

"A...We pretty much took the view if the police were inviting us along, that it was pretty much fair game.

Q. Okay. We've heard evidence from those in the regional press along the lines that on such occasions when they went along, they pixelate the faces of the arrestees to protect their Article 8 and fair trial rights. Are we to understand from your evidence that that would not have been your practice?

A. Children, possible innocent bystanders -- well, actually, no, I do remember now. It's three years since I left newspapers, but in the main, we would take our lead from the police. The police would tell us: "We want you to pixelate the faces", or: "We don't want you to pixelate the faces." We would always pixelate undercover police officers and we would always make sure there was no embarrassment or difficulties there, but we would take the lead from whatever our instructions were from the -- we were there as their guest. We did what they said.

Q. Would it be fair to say that you, of course, would look after the interests of your hosts, namely the police officers, and take care to pixelate their face, but you didn't really care too much about the faces of anybody else?

A. We would take the lead from what the police were telling us.

Q. You didn't have an internal policy --

A. No²⁰⁷"

175. Serious breaches of an individual's Article 8 rights can arise as a consequence. **Mark Thomson**, a partner at the media law firm Atkins Thomson, gave the example of one of his clients, **Mohammed Amar**, who was a professional person and who was arrested unannounced at his family home by the police²⁰⁸. The police had invited and/or allowed a film crew to the raid and part of the arrest was filmed. In fact the police had made a serious mistake and Mr Amar was completely innocent of any crime: he was released the same day and no charges were brought. Unfortunately the BBC broadcast the arrest footage and implied that Mr Amar was guilty. This led to the BBC making an apology, a statement in open court and paying £50,000 in damages. This demonstrates the dangers of allowing the media to accompany the police on raids. While Mr Amar was able to take legal proceedings to clear his name, not all individuals are in a position to take these steps to vindicate their reputations.
176. 'Media ride alongs' and the vagueness of the guidelines also leads to other unwelcome consequences:
- (i) the press invited to the arrest will be indebted to those issuing the invitation which can lead to an improperly close relationship developing and/or the

²⁰⁷ 02/04/2012 (DAY59/pm/49-1/50-3)

²⁰⁸ See Mark Thomson witness statement, 6 March 2012

- press reporting only what the police want to be reported;
- (ii) in some circumstances the press will be keen for something salacious or exciting to report, such as a dawn raid, and this could lead to the police making inappropriate decisions in order to impress the media;
 - (iii) the presence of the police can lend allegations which turn out to be false with the spurious imprimatur of truth.
177. While there may be a public interest in informing the public that the police are taking action in relation to particular types of crime, there is no public interest – certainly at the time of arrest – in informing the public of the identity of the subject of the investigation. This was acknowledged by Bernard Hogan-Howe in his evidence when he talked about media ride-alongs:
- “A ... But usually great care is taken to make sure that, first of all, the press who are at the event are chaperoned. They have no right of entry into the properties so they should not go into the properties. Number two is that the individuals who are the suspects and are the subject of arrest when you get there, or were being sought when you arrived, are not identified, and there should be nothing, the written nor the visual accounts, that allow that to happen. It is really to get the story that the police are taking action in an area about a particular type of crime, be it drugs or whatever, not that this individual was a subject of the investigation.”²⁰⁹*
178. The policy and position adopted by certain regional forces and regional press on media ride-alongs is also worth noting, as it demonstrates how the police and the press can operate together in this area in a responsible manner that is in the public interest:
- (i) **Chief Constable Chris Sims** of the West Midlands Police stated his force does have a policy on ride-alongs. The privacy rights of individuals are considered and they make sure that photographs are pixellated and that images of people that have not been charged do not enter the public domain.²¹⁰
 - (ii) **Chief Constable Simon Ash** of Suffolk Constabulary stated that they are aware of the Article 6 rights and Article 8 rights of individuals. The police have to balance the interests in the media accompanying them against the private rights of individuals.²¹¹
 - (iii) **Colin Adwent**, the Crime Reporter at the East Anglia Daily Times, stated that he had been on raids with the police and that it is his newspaper’s practice to

²⁰⁹ 20/03/2012 (DAY53/am/32/3-15)
²¹⁰ 20/03/2012 (DAY53/pm/205-206)
²¹¹ 26/03/2012 (DAY55/am/14)

pixellate out the faces of the persons arrested.²¹²

- (iv) **Adrian Faber**, journalist stated that The Wolverhampton Express & Star referred to being invited by the police on raids and stated that his newspaper has an editorial policy of normally blanking out the faces of the suspects or the arrestees.²¹³

Diii: Identification of suspects and media intrusion during criminal investigations

179. The identification of suspects is frequently carried out by the media, particularly where the suspect is well-known or connected to someone well known. At that point the individual concerned is thrust into the public arena and can often be subject to “trial by media”. Not only does this cause huge reputational damage and invade the privacy of the individuals concerned at a point when they are presumed innocent in the eyes of the law but, if they are charged, it can lead to applications that a fair trial is not possible in light of the prejudicial media coverage. Moreover, while the media is swift to publish a prominent story about a celebrity suspected of wrong doing as a result of police investigations or an arrest, follow up articles which inform the public about the release of a suspect or the dropping of charges are few and far between.
180. The ACPO Guidance is wholly deficient in this regard, simply stating that those under investigation are not routinely identified as a matter of practice although there is no law against their names being publicly available (see Guidance at paragraphs 4.3 – 4.5). This is in stark contrast to the guidance relating to police officers which states that other in exceptional cases, the identities of officers or civilian staff suspected of wrongdoing should not be released when they have been suspended (see paragraph 11.7). Mr Trotter, the author of the guidance, indicated in his response to questions (at Appendix 1) that the terms of the Guidance will be reviewed in light of recommendations to be made by this Inquiry. The CPVs submit that the guidance should be issued by the Home Office or the IPCC and that it should prohibit the identification of suspects (see recommendations section below at paragraphs 206-12).
181. In his evidence to the Inquiry Commissioner Bernard Hogan-Howe explained that his view is that there was no need or reason to identify suspects, the caveat being when there was a suspect who was a danger to the public:

²¹² 26/03/2012 (DAY55/am/72-73)

²¹³ 20/03/2012 (DAY53/am/156)

"You know, there are times when you will announce an arrest and there are times you may not, but there should be no reason for you to say, "And this man, this woman, are people who we are interested in and we are now pursuing a case against them." I can see no benefit in that and no reason for it. I suppose the only caveat to that would be if you have someone who you believe is dangerous and is on the run, as we may find in France from the events of yesterday, is that if you have someone who you believe is a strong suspect in a case and if you do not arrest them quickly, with the public's assistance, then they will go on and hurt someone else or commit some very serious crime, then on those occasions -- and I think we used that in the -- we did use it in the Anthony Walker case, is that we put into the public domain who we were looking for".²¹⁴

182. **Mr Trotter**, of the British Transport Police and the Chair of the ACPO Communications Advisory Code said in evidence that the general position should be that people who have been arrested should not be named. His view is that the police *"shouldn't be identifying people who have been arrested"*²¹⁵. This must plainly include not just naming the individuals but providing sufficient information to render them identifiable, as with Mr Jefferies who was obviously the 65-year old man living in the street identified by the police.

183. Mr Trotter also suggested that the media ought to redress the position when someone who it had reported as having been arrested is released²¹⁶:

MR TROTTER: Whilst it's the responsibility of the police to ensure that factual information is released, getting things right and redressing perhaps something that's been put out before lays with the media to ensure that they do redress something they may have said about someone's previous arrest or something such as that. In the public mind, someone being arrested could well be tantamount to the fact that there is some guilt, and if that's not to be the case, there must be some obligation on the media to redress that position".²¹⁷

184. While the CPVs accept that the position is more complex regarding the position of the duties and responsibilities of the police in such circumstances, particularly when an individual has been arrested and though charges are dropped, the investigation is still continuing, the police are under a duty under s.6 of the Human Rights Act 1998 as a public authority not to act in a way that is incompatible with the Article 8 rights of individuals. In certain situations, particularly where there has been media coverage, that must include taking steps to set the record straight when individuals who were

²¹⁴ 20/03/2012 (DAY53/am/27/17-18/8)

²¹⁵ 28/03/2012 (DAY57/am/46/18-19)

²¹⁶ The issue of whether the police were also under a duty to correct the position if they had issued a public statement that someone had been arrested was raised.

²¹⁷ 28/03/2012 (DAY57/am/48/16-25)

suspects are found not to have been involved²¹⁸.

185. From the CPVs' perspective it is regrettable that Commissioner Hogan-Howe and Mr Trotter's views are not fully reflected in the ACPO Guidance (of which Mr Trotter is the author). The CPVs submit that this matter is best dealt with by Home Office Guidance to all police forces rather than guidance from ACPO which is a private, unaccountable, body representing the interests of senior police officers rather than those of the public.
186. The Inquiry also heard evidence of media intrusion on friends and family of victims during police investigations. DCI Jones of Avon and Somerset Constabulary stated that Rebecca Scott, Joanna Yates best friend, received over 160 telephone calls and the media were camped outside her house. There were at least 4 satellite vans parked outside Canynge Road, where Ms Yates lived, 24 hours a day. Hampshire police intervened as they were threatening to arrest some of the media for harassment. There was also evidence that the press had paid people for information. Mr Jones said that they were not witnesses in the trial, they were members of the public who lived nearby²¹⁹.
187. The reason for this media coverage, in reality, is that the press is less concerned with acting as a "public watchdog" and more concerned with its commercial interests in selling newspapers. The Sun news editor admitted to Avon & Somerset Police that the Joanna Yates story "*was selling newspapers and there was a strong drive from on high to keep the exclusives and the stories on the front page*"²²⁰. Press coverage of investigations and arrests is often sensationalised and inaccurate. Whilst there is, of course, nothing wrong with the press promoting their own commercial interests these should not be confused with the public interest and the police should be astute to make this distinction in their dealings with the press.
188. This is an important general point as the press often seek to portray themselves as substitutes for the public, whereas in fact they have very different interests to the public. One example where the interests of one media outlet were prioritised was when Mr Hayman provided The News of the World with footage of the effect the shoe bomb would have had after Mr Wallis said he told him that if it went to the

²¹⁸ See 28/03/2012 (DAY57AM/50-51) for a discussion.

²¹⁹ 27/03/2012 (DAY56/am/91-92)

²²⁰ See Amanda Hirst, Head of Corporate Communications, Avon & Somerset Police, 27/03/2012 (DAY56/pm/123)

paper's website it "*would go viral worldwide*". It was plainly wholly inappropriate that this video which was of national public interest was only provided by the MPS to The News of the World, who thereby gained highly valuable material for its website with all the additional commercial benefits of having 'broken' the story²²¹.

Div: Evidence of harmful effects on individuals

189. Police information that is leaked to the media can have drastic consequences for the individuals involved. It can undermine their confidence in police investigations in relation to which they may be victims or witnesses. It may infringe their privacy and damage their reputations when media coverage relates to what are subsequently found to be unfounded allegations. It may cause unnecessary distress to individuals who are harassed by the media because they are friends or witnesses of a victim. Some examples, such as that of the Lawrence Family, Bryant Adams, Mohammed Amar, Chris Jefferies and Jacqui Hames have been referred to above and further examples that were before the Inquiry are set out below. However this evidence provides only a very small snapshot of what is a very significant problem in an area where, understandably, many victims are very reluctant to come forward to give evidence, which has the inevitable consequence of inviting further media comment about a traumatic time in their lives²²².
190. The fact that the police leak information to the media undermines public confidence in the integrity of investigations. For example, Jane Winter expressed a "general unease" that the investigation into her claim that her email was hacked was being led by the MPS when it was her understanding that officers from the same force were being investigated for passing information to the press.²²³ The risk of police leaks may make victims reluctant to come forward, particularly if they are individuals who are well known to the public.

²²¹ The response of Neil Wallis when questioned about this in suggesting that "*it was rather a good idea*" because it subsequently appeared in other newspapers and on television misses the point completely, see 02/04/2012, **(DAY59/pm/9-11)**

²²² Reports and photographs of 'celebrity' arrests is an obvious example where the Inquiry will be well aware of the frequency of such reports in the media despite the difficulty in obtaining this formal evidence.

²²³ Supplementary Witness Statement of Jane Winter, 21/02/2012 ¶3. *See also*, Witness Statement of Bryan Adams dated 21/02/2012. He describes seeing a report in The Sun that he had been the victim of stalking only after he had reported it to the Metropolitan Police. It was his view that the information could not have come from anybody other than a source within the police. Mr. Adams made the point that on no occasion has he had any problems with leaks to the press when he dealt with his local police station.

191. Leaks under the guise of “unnamed police sources” in the Press can cause serious damage to individuals. In addition to the examples set out above, another is given by **Magnus Boyd**, the lawyer who represented Tamil hunger-striker, **Parameswaran Subramanyam** in his successful libel claim against the Daily Mail.²²⁴ The article, written by Stephen Wright was entitled: “*Hunger Striker’s £7m Big Mac*” and accused Mr Subramanyam of secretly eating burgers while on hunger strike. The article quoted its sources as being a “Scotland Yard surveillance team”, a “police insider” and other “senior sources” in support of its claims against Mr Subramanyam. This obviously lent the story greater credibility and the public were more inclined to believe it.²²⁵
192. When Mr Subramanyan’s legal team contacted the MPS Superintendent running the operation it was told the charges attributed to “police sources” in the article were entirely false.²²⁶ Mr Subramanyan subsequently succeeded in his claim for damages against the Daily Mail. This incident was put to Stephen Wright, the author of the article during his evidence to the Inquiry. He confirmed that the information had come from unauthorised “police sources” and that he had not verified their truth. Although Mr. Wright had contacted Scotland Yard before running the piece, they had simply declined to comment. He admitted that it had been the “wrong call” to run the article without confirmation that the information he received was correct.²²⁷ Mr. Subramanyam suffered significant damage to his reputation as a result of this “wrong call”: he was perceived as a liar and a fraud in the Tamil community and received death threats as a result of the article.²²⁸
193. **Sean Bellew**, director of Atelier PR Ltd and a public relations adviser to Vincent Tchenguiz, explained how when Mr Tchenguiz was arrested on 9 March 2011 following a 7am dawn raid carried out by the City of London Police (“CLP”) and the Serious Fraud Office (“SFO”) as part of the SFO investigation into the collapse of the Icelandic bank Kaupthing, a photographer from Associated Newspapers had been “tipped off” and was present outside the building from 5am²²⁹. Mr Bellew also stated that it was clear from the timing of the stories on 9 March 2011 that both Bloomberg and the Financial Times were also “tipped off”²³⁰. Mr Tchenguiz was released on 9

²²⁴ W/S of Magnus Boyd, 22/02/2012
²²⁵ W/S of Magnus Boyd, 22/02/2012 ¶ 2-3.
²²⁶ W/S of Magnus Boyd, 22/02/2012 ¶ 4.
²²⁷ Stephen Wright, 15/03/2012 (**DAY51/pm/31**).
²²⁸ W/S of Magnus Boyd, 22/02/2012 ¶ 3.
²²⁹ W/S of Sean Bellew, ¶ 10 and 24
²³⁰ W/S of Sean Bellew, ¶ 25

March 2011 without charge.

194. Mr Bellew's evidence is that the only people who would (or should) have had this information were the SFO, the CLP and the Icelandic investigators. He and Mr Tchenguz believe that it must have been a source within the SFO and/or the CLP. It appears that the SFO had conducted an enquiry into the leak and there was no evidence that came to light to support it being an SFO leak. However, it is clear that there was some leak and this fact raises very serious concerns as the Daily Mail covered the story of the raid in huge detail with 5 stories on 10 May 2011 and a further front page "splash" on the 11 May 2011 when the story was "old news". Mr Tchenguz considers that Associated Newspapers are determined to destroy his reputation through the publication of numerous articles, most of which are the subject of a legal complaint by his solicitors²³¹.
195. The NGO "Inquest" has raised concerns about instances where there have been leaks by the IPCC to the media in relation to cases that it has been investigating. In addition, Inquest documents a failure on the part of the IPCC to challenge information provided by the police and reported in the media when the IPCC knew that the information given was inaccurate.²³²
- (i) One example cited by Inquest relates to the Jean Charles de Menezes case. Here the IPCC did not correct inaccurate information put into the public domain by the police after Mr de Menezes was shot – for example, the false information that he was wearing a bulky jacket and had jumped the ticket barrier. Ironically, it was only as a result of a leak from the IPCC that the inaccuracy of this information came out at all.²³³ When asked about this during her evidence, Jane Furniss of the IPCC said that she believed the misinformation stemmed from journalists asking members of the public who had witnessed the shooting to give a description of Mr de Menezes. The inaccurate information provided was subsequently reported as fact by senior police officers. In her view this was not surprising as "*the thirst for information is greatest when we all know least, and people are inclined to answer questions they might be better not answering that point.*"²³⁴ As to the leaked information, Ms Furniss said that this caused "*considerable damage*" to the organisation and that, although leaked in the interests of the family, if the staff

²³¹ W/S of Sean Bellew, ¶ 27

²³² Inquest Statement to Leveson Inquiry, Module 2 [28 March 212] "Inquest Statement", ¶ 57.

²³³ Inquest Statement, ¶ 35.

²³⁴ Jane Furniss, 28/03/2012 (DAY57/am/21).

member in question had not resigned she would have been subject to gross misconduct proceedings.²³⁵

- (ii) Similarly inaccurate information was given in an MPS press release relating to Ian Tomlinson which presented an unbalanced and inaccurate picture of the circumstances surrounding his death by failing to mention that there had been police contact with Mr Tomlinson prior to his death and exaggerating the account of the throwing of bottles by protestors at police while they were administering first aid.²³⁶ It is believed that this press release was agreed with the IPCC prior to its publication, although Ms Furniss was unable to verify this when asked about it during her evidence.²³⁷
- (iii) The final example highlighted by Inquest relates to the shooting of Mark Duggan. Here, the IPCC stated that there had been an exchange of fire when this turned out not to have been the case.²³⁸ Ms Furniss placed some of the blame at the door of the press and their desire for an almost immediate turnaround of information after the fact. In her view, there are real difficulties faced by press officers when confronted with such a persistent and news hungry press but one which is extremely quick to criticize when information is incorrect.²³⁹ She accepted that her press officer should not have given this information and that an apology and a correction were issued as soon as the error was known.²⁴⁰ CC Andrew Trotter accepted in his response to questions that there should be consultation with the family before any statement about a death in custody is released by the police.

SUMMARY CONCLUSION

196. The Inquiry has heard evidence of a sector of the press exercising pernicious and wide-ranging influence on the MPS and its senior officers. This led to an inappropriate relationship in which officers became close to tabloid editors to obtain better coverage and entry into an exciting world of lavish dinners. Editors and reporters used these contacts and influences to obtain information and advantage for their newspapers' commercial gain. In the absence of clear or appropriate policies or guidance, some officers have followed the lead of senior MPS officers and failed to challenge inappropriate media behaviour or fully to investigate media crimes. The

²³⁵ Jane Furniss, 28/03/2012 (DAY57/am/22-23).

²³⁶ Inquest Statement, ¶ 45.

²³⁷ Jane Furniss, 28/03/2012 (DAY57/am/24)

²³⁸ Inquest Statement, ¶ 50

²³⁹ Jane Furniss, 28/03/2012 (DAY57/am/25-26)

²⁴⁰ Jane Furniss, 28/03/2012 (DAY57/am/25)

public and the victims have been given the impression that the media are too powerful to be confronted and that the police may not act independently. That is a very dangerous situation and without decisive measures it will continue to damage the criminal justice system and press. It does a disservice to the majority of journalists who wrote independently about the police in the public interest, and police officers who were not seduced into a potentially corrupt relationship with senior editors, or influenced by it.

SECTION 2 – RECOMMENDATIONS

197. This section is divided into A - recommendations for changes in practices in the police force and B - recommendations for changes to practices in the press. The recommendations are intended to help eliminate the unethical culture and practices and their consequences set out in the preceding narrative sections. Some initial suggestions as to practical and procedural changes are made, but it is recognised that many will require consultation or legislative change. The CPVs urge the Inquiry to adopt these recommendations in its final report.
198. The CPVs strongly support the introduction of an independent press regulator, with statutory underpinning, which has sufficient powers to inhibit intrusive, unethical and unlawful practices, and to provide sanctions for breaches of its Code and proper remedies for individuals or groups affected by such breaches. The recommendations below are made in the expectation of a new, effective press regulator.

A. RECOMMENDATIONS FOR POLICE SERVICE

A (1) Policies

Introduction

199. The HMIC report found there were “*stark and concerning*” inconsistencies in Police policies across the 44 forces. It was noted that many policies were inadequate or inadequately enforced²⁴¹. The report stated “*The absence of clarity in the boundaries of relationships with the media represents a significant gap across the service*”²⁴². Without adequate guidance or enforcement, policies are ignored and the culture and values of the organisation are confused and led by the behaviour of senior officers, particularly those in the MPS. As set out above, that behaviour was sometimes unethical and reprehensible. The CPVs recommend a complete overhaul of policies governing police relationships with the media.

²⁴¹ HMIC Report ‘Without fear or favour – a review of police relationships’ December 2011 pages 40-42 and page 60

²⁴² HMIC Report, page 15

Mandatory system of recording contact with the media

200. The record should be transparent, publicly disclosable and regularly audited. It should include the summary details of the meeting (date, location, length, parties) and note the summary content of the conversation (in a form which could be redacted for public disclosure when strictly necessary to protect confidentiality or for good operational reasons). The records should be in a consistent form so as to make auditing easier. In the MPS police officers should disclose and keep the DPA informed of out of office contact they have with the media, save where such contacts would be considered to be 'de minimis'.
201. There was little opposition to this recommendation from the police witnesses. It was clear that it can work in practice and is supported by new Commissioner Bernard Hogan Howe (p.31). He disagreed that it would lead to a chilling effect and said that the principle is to establish an open and accountable relationship with the press. The operation of it in the first few months does not appear to have produced great bureaucracy. The random sampling further down the organisation has shown that the same number of contacts are taking place. The proposal was also supported by the HMIC in its report.
202. A proper record would make notoriously difficult leak investigations easier. It has also been used to protect officers, for example, by Chief Constable Vaughan who used the record to challenge the accuracy of a story in the press. Chief Constable Vaughan said he did not see it as overly onerous and that police officers are in the business of recording evidence. It is plainly important that open and healthy relationships are supported and that a system for recording contact should be seen in that context, not as a barrier.
203. The CPVs also recommend an end to private briefings for select groups of journalists such as those in the CRA. Briefings should be open to all who have a legitimate and proper interest and all sectors of the media should be invited to attend. Personal relationships with crime reporters or editors should be treated as notifiable associations.

Gifts and hospitality policy

204. The failures in the current policy are dealt with above at paragraphs 37 - 52. A clear,

consistently applied, national policy in relation to the acceptance of gifts or hospitality is urgently required. Paul McKeever, Chairman of the Police Federation, agreed that Officers need guidance on hospitality at a national level²⁴³. Chief Constable Sims said the policy needs to concentrate on where the gift has come from and what implicit expectations come with it and what the public might think²⁴⁴.

205. The policy should include the following elements:
- (1) The presumption should be firmly against accepting expensive meals, presents or drinks. There should only be rare exceptions clearly identified in the policy.
 - (2) The gifts and hospitality register should be regularly audited and checked against officers' diaries. There should be appropriate penalties for breach of the policy.
 - (3) The gifts and hospitality register should always be cross-checked in any procurement process.

Policies governing provision of information to media

206. The policies governing provision of information to the media should be issued by the Home Office nationally and consistently applied. ACPO is a non-accountable private body which should not be given the responsibility for issuing such guidance to the police. The CPVs note Ms Filkin's key message 5 that *"it has not been sufficiently clear to police officers and staff what principles should underpin contact with the media"*. The HMIC report noted that only 3 out of 44 forces have a policy or guidance about the integrity of relationships with the media generally and found that *"few forces had these issues on their radar"*²⁴⁵.
207. The CPVs recommend that the practice of taking **media on operations** is generally prohibited and only permitted in exceptional circumstances where there are clear public interest reasons to do so. In such cases there should be a written record made in advance of the reasons why the public interest in allowing the media to accompany the police outweighed the Article 8 and Article 6 rights of the subject of the operations. These would not include the mere fact that the subject is well-known. Any such operations must be subject to a strict and enforceable policy which ensures that victims **would not be** identified in any subsequent media publications. The current

²⁴³ 02/04/2012 (DAY59/am/14)

²⁴⁴ 20/03/2012 (DAY53/pm/193)

²⁴⁵ HMIC report page 4

guidance and the risks it creates are dealt with above at paragraphs 171 - 178. Mr Trotter, the author of the ACPO media guidance, said that this issue is not going to be addressed by the new guidance due to come out in April 2012 but will be addressed later as a result of the Inquiry's Report²⁴⁶. This is therefore an issue about which the Inquiry needs to make recommendations.

208. **Tipping off** – alerting the media to the arrest of a famous or notorious person - should be prohibited. Tip offs, even where no money changes hands, represent a potential conflict of interest as the advance notice gives a huge commercial advantage to a media outlet desperate for exclusives in an increasingly competitive environment. The risks to the reputational rights of the person accused are clear, and the media is not usually as interested in reporting any subsequent decision not to charge an arrested person.
209. The CPVs recommend that the practice of 'back door' **identification of suspects** is prohibited (see paragraphs 179 - 188 above). The current ACPO guidance simply recites the inappropriate practice of not volunteering but confirming the names of those arrested. It permits the release of information which could lead to identification of innocent people. This is contrary to the views held by the Current Commissioner, Hogan-Howe and Mr Trotter, whose views are that suspects should not be identified (see paragraphs 181 – 182 above). A clear Home Office policy should state that (save in exceptional and clearly identified circumstances) the names or identifying details of those who are suspected or arrested should not be released to the press or the public.

Leaks

210. Leaks to the media are serious and can have very grave consequences; this does not appear to be appreciated by the police generally. Roger Baker from the HMIC gave evidence that leak investigations are made more difficult by "*the fact that there is a sloppiness of rules about what is permissible and what isn't*"²⁴⁷ and stressed that national guidance is needed²⁴⁸. The MPS has not provided appropriate leadership and the widely held view that the DPA briefed selectively and sometimes improperly, as noted by Ms Filkin, has influenced the whole of the MPS. The Police Standards of Professional Behaviour deals with confidentiality, but the Standards are not being

²⁴⁶ 28/03/2012 (DAY57/am/57)
²⁴⁷ 05/03/2012 (DAY45/pm/163/174)

consistently applied and guidance is not well understood. Leaks policy needs to be brought up to date with guidance by the Home Office and sanctions for breach need to be made clear.

211. The questions put by the CPVs to Roger Baker in respect of PNC leaks (at Appendix 2) show that there is an ongoing issue of inappropriate access to the PNC. The recommended level of audits is not taking place across the country. The number of people with access to PNC data is too large and the CPVs recommend that the rules around access are tightened. For example, access codes should be regularly changed in each force to ensure that only those entitled to access the computer do so.
212. Inquest gave evidence about police leaks designed to smear victims in the context of deaths in custody or allegations of police brutality. Any statements made by the police should only be made in consultation with the family. At present complaints about such leaks are dealt with internally by the relevant force. The CPVs recommend that they should be incorporated into any Article 2 compliant investigation being carried out by the IPCC in order to ensure independence and to prevent inefficiencies caused by twin track investigations.

A (2) Recommendations for procedural changes to support implementations of new policies

Guidance and complaints

213. The CPVs recommend the **IPCC issue statutory guidance** using powers under s.22 of the Police Reform Act 2002. The IPCC has the power to issue recommendations and give advice in relation to matters within its remit, including anything which goes to the deterrence of misconduct or complaints about misconduct or disciplinary matters. The recommendations and advice must be followed by those to whom it refers and so can give a firm statutory basis for matters which are not explicitly referred to in Standards of Professional Behaviour. *See Appendix 3 for relevant extracts of the Act.*
214. Police officers are entitled to **complain to the IPCC** about other officers who breach policies or who may be guilty of misconduct. They should be encouraged to use this system, and be entitled to anonymity in certain circumstances. They should be formally protected from any subsequent victimisation. Internal police complaints

about the behaviour of police officers in relation to the media should be **supervised by the IPCC.**

Professional standards

215. The CPVs recommend amendment of the **Standards of Professional Behaviour** to stress the importance of appearances when considering the issue of conflicts and independence. The Guide to the Code of Conduct for Members of Parliament makes it clear that the purpose of registering financial interests is to avoid any payment which might reasonably be thought to affect the conduct of a Member. The importance of appearances is not fully reflected in the police Standards and the HMIC report stresses the importance of this as a guiding principle for the Police.²⁴⁹ The close relationships between police and media which have caused such public disquiet were mostly forged outside police working hours and it should be made clear that the Standards and policies apply on or off duty (the current Standards say that there should not be any discreditable conduct off duty, but it is unlikely that would encompass close social relationships with the media). Home Office or IPCC guidance to The Standards should clarify the way in which the Standards apply to relationships with the media. Breaches of policies should be treated as a disciplinary matter

Whistleblowing

216. Public interest journalism and tough media investigations into wrongdoing are a vital part of democratic accountability. As the Chairman pointed out, a mechanism is needed which allows for safe discussion between police and media which works for the public interest, respects freedom of expression but respects the integrity of the investigation, so as to avoid problems like that which occurred in the Lawrence investigation.²⁵⁰ The CPVs recommend a new whistleblowing system so as to protect those police officers who report wrongdoing to the media. The current MPS system (Rightline) is considered by Elizabeth Filkin following her interviews with officers to be neither trusted nor properly used. That view is also taken by the HMIC in its report²⁵¹.

217. The CPVs consider that whistleblowing is such an important counterbalance to the stricter policies on contact with the media recommended above that it should be dealt with by an independent external body and propose that the IPCC to use its statutory

²⁵¹ HMIC Report p.54

oversight remit to provide this service.

218. A police whistleblowing system operated by the IPCC would need to be supported by an “ethics line” which could be used as part of the system, so that an officer would be able to call the line anonymously for confidential ethical guidance, or advice on the existence of and proper application of the policies (see recommendation below at paragraph 221).
219. Lord Macdonald pointed out the inherent difficulties in insisting that an internal procedure is exhausted first²⁵², and it may be that the policy should allow for direct access to the media on occasion. This could be supported by advice from the ethics line which could then be referred to as a mitigating feature or in support of a defence (not an entire defence) to misconduct proceedings if the officer was subsequently accused of improper leaking.
220. A clear and consistent definition of the public interest should be applied, and this should be reflected in any new guidance to the press so that the role of the media to seek out and report problems or wrongdoing within the Police Service is supported

Ethics guidance

221. The conduct codes in the police are geared around disciplinary proceedings or complaints to the IPCC which can lead to a recommendation of a sanction for misconduct. “Soft” mechanisms for cultural change, providing guidance and education and reinforcing positive messages are very much less well understood and little used in the police service. The CPVs support Ms Filkin’s recommendation for a senior officer to be appointed **ethics champion**, and call for the work to be properly resourced, and supported by an **ethics line** to provide confidential advice to police officers on the interpretation of policies and on ethical dilemmas. This could be used in conjunction with the whistleblowing policy (see para 216 above).
222. The CPVs also support the **HMIC integrity check list** appended to its report²⁵³.

Training

²⁵² 04/04/2012 (DAY61/am/ 88)
²⁵³ HMIC report page18 and appendix B

223. The CPVS recommend a **national training scheme** for officers, including junior officers, to reinforce the messages of the new policies and ethics guidance in relation to media contact.
224. The CPVs also agree with the HMIC that senior leaders need specific training in integrity issues and support the proposal for these issues to form part of the training on the Strategic Command Course and the High Potential Development Scheme

A (3) National register of crimes committed by media

225. Although questions were asked of most police officers, none recognised “media crime” as a specific category. The DPP gave evidence that no media organisations or journalists had been prosecuted during his tenure. The HMIC report made it clear that anti-corruption activity is focused on the possibility of corrupt relationships with organised crime rather than the media.
226. It is not the case that the media are peculiarly law-abiding. The Inquiry has heard evidence of potentially unlawful data access on a massive scale by nearly all press organisations (Motorman, Glade, Reproof), unlawful interception of voicemails by News International on almost the same scale (Operation Weeting), of e-mail accessing (Operation Tuleta) and of a continuing and serious conspiracy of payments by journalists to police and other public officials for information (Operation Elveden). In Module 1 the Inquiry heard evidence of intrusion and bullying, some of which amounted to unlawful harassment. Editors and newspaper lawyers did not appear to take some of these allegations very seriously, and it appears that unlawful behaviour continues (for example, Alastair Brett’s evidence of e-mail hacking at The Times, evidence of unlawful access to the Westminster Registry for details of a birth, evidence of Paul Dacre in relation to Operation Glade). The evidence in relation to the continuing use of improperly obtained confidential information was confusing and incomplete.
227. The lack of success in prosecutions, the scarcity of prosecutions of media crimes and the failure of police and newspapers to appreciate the seriousness of such crimes suggest that there should be a national strategy – in which crimes committed by the media are specifically identified and logged and audited nationally. This would help to iron out the differences in approach the Inquiry has heard about, ensure that the police were seen to be even-handed in their approach to the media, and give the

police some protection when it came to investigating powerful media organisations with a megaphone to the public.

228. Importantly, this would also give protection to the press as a co-ordinated national approach could ensure that Article 10 rights were taken into consideration and that public interest defences were applied in a proper and consistent way. The DPP should give guidance as to the proper application of these defences and the appropriate criteria for prosecution. A national register and strategy would allow media organisations access to information so as to monitor how such crimes were being approached and recognise any potential backlash.

A (4) Split in the function of the MPS Department of Public Affairs

229. The Inquiry heard evidence about extreme sensitivity in the MPS to potential reputational damage and how this distorted the approach to the whole of the media, particularly tabloid newspapers. Much of this was driven by the DPA. This is described above at paragraphs 19 - 21 and its consequences are explained at paragraphs 32 – 36.

230. The CPVs recommend that the MPS Department of Public Affairs is divided into two sections: one to cover matters such as corporate reputation management, branding, and so on, and the other to deal with contact with journalists, the provision of information about operations to the media, requests for co-operation in national appeals and so on. This is intended to avoid the blurring of boundaries which has led to inappropriate relationships in the past.

A (5) Cooling off period before employment as journalist/private investigator

231. The closeness of relationships between the MPS and the media was reinforced by the traffic of personnel between police and press (see above paragraphs 61 - 68). As is well known, private investigators sometimes use improper or illegal methods to obtain confidential information to pass on to the media. The private investigator industry is a significant employer of ex police officers and the Inquiry is aware of the role played by police officer private investigators in the Jonathan Rees matter.

232. The CPVs recommend the introduction of restraint of trade clauses on retirement or leaving the Police Service. Bernard Hogan-Howe suggested that the period before

any police officer leaving the MPS joins a media employment should be 12 months to 2 years²⁵⁴. The CPVs agree that 2 years is an appropriate cooling off period before employment with the media or as a private investigator working with the media.

233. The HMIC report refers to the fact that some forces permit officers to take second jobs with the media or as private investigators whilst being employed as police officers²⁵⁵. In light of the evidence to this Inquiry, that should not be permitted for any serving police officer. The risks of inappropriate use of the PNC or leakage of confidential information are far too high.
234. The CPVs also recommend that any new IPCC or Home Office guidance in support of the Standards of Professional Behaviour should stress that any confidential or operational information obtained as a result of service should not be used for any other purpose.

A(6) New methods of engaging with the public

235. The evidence indicated that the Police Service as a whole was very anxious about its reputation and about the power of the tabloid media to attack and injure its senior members (see, for example, paragraphs 24 - 31). That has created excessive deference to and reliance upon certain sectors of the national press.
236. The CPVs recommend that the police service nationally encourages alternative direct ways of engaging with the public – online, via local radio and press - to reduce its reliance on the national press. It was apparent from the evidence that some officers, particularly the DPA at the MPS, treated a few commercial companies as synonymous with the public, and education and training in alternative means of communication are necessary to overcome that presumption.
237. The HMIC report identified a lack of training and guidance in relation to the use of social media sites²⁵⁶. The CPVs recommend clear unambiguous guidance on the boundaries between professional duties and private life in the context of social media and interactions with the media.

B RECOMMENDATIONS APPLICABLE TO THE PRESS

²⁵⁴ 20/03/2012 (DAY53/am/58).

²⁵⁵ HMIC report page 14

²⁵⁶ HMIC report page 15

B (1) Custodial sentences for breaches s.55 Data Protection Act 1998

238. It was clear that press lobbying against custodial sentences was intense, and that the lack of a custodial sentence in appropriate cases has had serious consequences (see ICO evidence, Glade, Reproof). The introduction of a custodial sentence (which can now be done simply by way of Statutory Instrument) was supported by Richard Thomas and Jack Straw among others. There can be little argument against this. Journalists are protected from prosecution or conviction where they obtain or procure private information for legitimate reasons by the existence of the public interest defence.
239. The DPP should issue clear guidance in conjunction with the introduction of custodial sentences, which is incorporated into the new Press Code, so that journalists are clear about when their activities are legitimate and when they might be considered unlawful and liable to be prosecuted.
240. The CPVs also recommend a **regulatory sanction for breaches of the Data Protection Act 1998** to reinforce s.55 where it is not in the public interest to prosecute, or it is unlikely that a breach could be proven to the criminal standard.
241. The CPVs recommend better co-operation between the ICO and the police in the investigation of Data Protection Act crimes, and the allocation of appropriate resources to investigate breaches of data protection legislation.

B (2) Complaints under new regulatory system

242. A new regulatory system should include the **right for the police to complain** about inappropriate publications or intrusive behaviour by the press which interfere in Police operations or in the rights of individuals where there is no proper public interest. This proposal is supported by CC Andrew Trotter in his response to questions at Appendix 1.
243. There should also be the means for affected or representative groups to complain to the regulator about their representation in the media and for the regulator to be able to refer the police to the IPCC for the provision of false or confidential information. For example, Inquest should be able to complain about smears of people who died in

custody, campaign groups representing minority groups who are regularly vilified in the press with the assistance of the police such as travellers or asylum seekers should be able to complain to the press regulator who could then refer the police to the IPCC.

B (3) Advice to the Press on how to report crime in the new Press Code

244. The CPVs recommend clear rules in any new Press Code on identifying suspects, treatment of victims and witnesses, and advice about avoiding contempt and protecting the integrity of the judicial system and the rights of individuals. These should be co-ordinated with the new police policies suggested above on identifying suspects, accompanying police on operations and leaks. Persistent or deliberate breaches without clear public interest defences should be subject to sanction.

B (4) Regulation and licensing of private investigators

245. The evidence has revealed a systematic pattern of the media using private investigators to conduct illegal searches and obtain information unlawfully or improperly. This appears to have been an attempt to provide a layer of deniability for the media who were the customers of this practice and who “drove the trade” in confidential information. Confidential information is extremely valuable and it is inevitable that media organisations will use the services provided by private investigators. The issue of regulating and licensing private investigators is therefore crucial.

246. This issue was of concern to HMIC in its report and is currently under consideration by a Home Affairs Select Committee. HMIC noted that there may be as many as 10,000 people working as private investigators in the country²⁵⁷. It also noted, that the Crime Reporters Association said that reporters consider that they have a responsibility and accountability to their employers to ensure that everything the private detective does on their behalf is legitimate and within the law²⁵⁸.

247. However, that does not appear to happen. The Association of British Investigators (ABI) is quoted by HMIC as saying that the activities of informants or bladders cannot be considered legitimate as they handle illegal information and have a narrow skill set

²⁵⁷ HMIC Report page 32

²⁵⁸ HMIC Report page 32

APPENDIX 1

CHIEF CONSTABLE ANDREW TROTTER'S ANSWERS TO WRITTEN QUESTIONS PROVIDED BY THE CPVs

Guidance on media handling and communication activity at major incidents

Question 1

The Guidance encourages very close co-operation with the media, saying that the media should be accommodated and helped, that space and time should be made for them at an early stage (p.1902), and that requests for access to incident scenes should be passed to the SIO who "should allow access in appropriate cases as soon as practicable". (p.1903).

Are the rights of victims, witnesses and suspects considered when making a decision? Do you not agree that all of these categories of individuals have Article 8 rights to privacy and the police as a public authority need to respect these rights? Suspects also have Article 6 rights. If this has been considered where is the guidance?

The ACPO Guidance on Media Handling and Communication Activity at Major Incidents was implemented in September 2008, when the ACPO Media Advisory Group Guidance Notes of 2003 were current. The question ignores the contents of this earlier general guidance which sets out the relevant legal framework and refers specifically to the rights to a fair trial and respect for privacy enshrined in Articles 6 and 8 of the Human Rights Act 1998. The general notes contain sections devoted to suspects and also the victims or witnesses of crime respectively.

For example at paragraph 1.1 at page 32, the following explanation is given in relation to victims and witnesses: *The main purpose of this note is to clarify the procedure concerning the free flow of information between the Police Service and the media. All forces try to achieve a balance between their policies of openness in giving full and accurate information to the media, and their responsibilities for victim care together with legitimate rights to*

personal privacy underpinned by the Data Protection and Human Rights Acts. These, together with the common law, have been taken fully into account in preparing this note.

The guidance on media handling at major incidents is limited to major incidents as the name describes. *A major incident is any emergency (including known or suspected acts of terrorism) that requires the implementation of special arrangements by one or all of the emergency services, and will generally include the involvement, either directly or indirectly, of large numbers of people.* (See definition at top of page 4 of the guidance.) They are generally on going emergencies on a large scale where the primary police focus is saving life. The intensity of media interest usually requires special arrangements to be put in place in order to maintain public confidence. This guidance is directed primarily to this end. There is no need to reiterate what has already been set out in the General Guidance in relation to suspects, victims and witnesses.

Question 2

The guidance also suggests that the Police should not intervene if someone who is distressed or bereaved asks them to intervene to prevent members of the media filming or photographing them. (p.1902). This is reiterated in the CAG advice.

What is the justification for not intervening in those circumstances?

This question relates to paragraph 4 of Appendix (vi) which are guidelines for Metropolitan Police staff. These guidelines need to be viewed in the context of the main guidance to which they are appended. At page 33 there is the following paragraph devoted to Victim/Witness Family Support: *There are some key groups of people who can have an impact on the media management. These include victims, their families, witnesses, those arrested and their families. Measures need to be put in place operationally to support individuals affected by warrants or activity which can be through the consequence management group. This can be something to positively explain to the media to avoid some criticism. Advice should also be provided to individuals, where appropriate, on how to handle the media, particularly in the return to normality.* In other words, the police should be alive to difficulties experienced by victims, witnesses and others as a result of media interest and pressure. Jo Bird, the British Transport Police's Media and Marketing Director, gave an example in evidence of police assistance. She described how she had helped a deceased's family to deal with media intrusion by suggesting that they refer all enquiries to her.

The police are alive to ways in which they may assist others in dealing with the media but they cannot exceed their powers. Police officers have no power to restrict filming or photographing save where a criminal offence is committed or threatened.

Would you welcome the opportunity to make a complaint about members of the media to a regulator on behalf of victims or witnesses, or to protect operational integrity?

Generally it is for those whose rights have been infringed to make a complaint to any regulator. However, there are examples where referrals have been made to the Press Complaints Commission with successful outcomes. Referral to a media regulator in order to protect operational integrity may assist when dealing with the behaviour of the media. When dealing with an individual organisation, it is often effective to speak directly to them. There would not necessarily be a need to refer a matter to a media regulator.

Question 3

The guidance leaves the responsibility for gaining permission to access private property to the media. The media will have a strong commercial reason to obtain exclusive photographs and the owner of the property may assume that anyone accompanying the police has permission to enter.

Do you confirm with the media that they have gained this permission when they accompany you on raids? If not, why not and do you now think that you should? In these circumstances, can it ever be appropriate to bring media on operations?

The guidance is clear that the media need to obtain permission from the owner to enter private property. Your question suggests it is the responsibility of the police to police whether this has been given. To date, we have not assumed this responsibility and have relied on the media to comply with their own ethics and standards and ensure this is done. This approach will be reviewed when the media guidance is updated following Lord Justice Leveson's recommendations. Clearly, where permission is not given by the owner, the media may still attend an operation if appropriate, but not enter any private premises.

Question 4

The Inquiry has heard evidence that leaks and media coverage can significantly hamper investigations (e.g. Jerry Kirkby, Clive Driscoll, Dave Harrison). The guidance envisages the

need to “allocate police resources to manage the media at the scene of an incident” (page 1863) and says that the media may become frustrated if they are kept waiting for photographs and if they are, “the more risk there could potentially be to the operational and investigative management of the incident. To help them, all possible ways of facilitating or providing visual material should be positively considered” (p1877).

Given this risk to operations, and the commercial imperative of the media to sensationalise and obtain exclusives, why does the Guidance encourage media attendance at incidents? Do you consider that other ways of informing the public and keeping their confidence (such as the internet, social media etc) may provide better protection for the privacy rights of individuals?

Please see the answer given to question 1. The guidance does not encourage media attendance at incidents and relates specifically to major incidents where the media will attend frequently and in great numbers. The resulting imperative is to reassure the public and maintain confidence by keeping the media updated. These considerations may outweigh individual rights. The extract relates purely to photographs and I do not see how the need for press photographs can be avoided, whether they are subsequently published on the internet or in the newspapers.

Question 5

The guidance does not mention the privacy rights of suspects or witnesses. It refers to victims and suspects as follows: “there are some key groups of people who can have an impact on the media management. These include victims, their families, witnesses, those arrested and their families. Measures can be put in place operationally to support individuals affected by warrants or activity, which can be through the consequence management group. This can be something to positively explain to the media to avoid criticism” (page 1888).

Was any legal advice taken about the privacy rights of suspects or witnesses or victims?

In the light of evidence to the Inquiry about the affect of leaks or inaccurate reporting of crime, do you accept that this Guidance is slanted towards accommodating the media and pays insufficient attention to the privacy and fair trial rights of victims and suspects and their families?

Please see the answer to question 1.

Guidance on the release of images of suspects and defendants

Question 6

The objective of the guidance is firstly to “encourage the release of images to the media where appropriate and at the earliest opportunity” (p.1929)

Why should this be encouraged?

The encouragement of the release of images is adopting the general principle of openness and accessibility advocated in the Media Advisory Group Guidance of 2003 which states *the Police Service is committed to openness and accessibility. It believes in the greatest possible flow of information to the media.* The police frequently receive requests from the media for images of suspects and defendants. There are also situations when they wish to instigate the publication of images. Detailed guidance is provided on the considerations to be applied in a variety of situations when considering the release of images.

Was any legal advice taken about the risks to privacy rights of releasing images to the media?

Appendix A to the guidance sets out the legal framework and refers specifically to Article 8. It notes that *it is necessary in each case to balance the rights of the individual, including his or her immediate family, to privacy with the right of the community to be protected.*

Question 7

The letter at p 2153 refers to the release of video footage of suspects in the interview room and at police stations to the media.

How could this be justified according to the guidance? Were any further steps taken as a result of the judiciary’s concern?

The release of video footage of suspects in the interview room can only be justified in exceptional circumstances. Any release should be done in accordance with the guidance which I have provided and with the agreement of the Crown Prosecution Service.

Communication Advisory Group Guidance 2010
Individuals and companies under police investigation.

Question 8

The guidance lists practice including that of giving general details of arrests which are designed to be informative but not identify, and the usual practice of confirming the identity or addresses of people under investigation or suspicion. The guidance simply says there is no law against this. (page 2793-4). Did you take legal advice as to this and consider the law protecting privacy rights?

At paragraph 4.14 of the Guidance it is noted that forces refer to general rather than specific locations in practice and so full details of the address are usually not given.

This question ignores the contents of Annex 1 to the Guidance, headed "The law". Specific reference is made to the Data Protection and Human Rights Acts and the considerations that need to be weighed before information is released. The reference at paragraph 4.3 to *no specific law to prevent forces identifying those they have arrested* and at paragraph 4.14 to *there is no law to say addresses should not be given* refers to the absence of any mandatory prohibition. This phraseology will be reviewed post Leveson.

Do you agree that, as a public authority, the Police Service itself has a responsibility under the HRA to protect Article 8 and Article 6 rights and that the practice described represents a significant risk to these rights?

The Police Service has a duty to comply with the Data Protection and Human Rights Acts when considering the release of information it holds. Annex 1 sets out a summary of the relevant principles.

Question 9

Taking the media on operations

The ACPO guidance on "ride-alongs" says there is no law to prevent the police taking the media on operations. The Guidance also leaves to the media the question of obtaining consent to enter property or to film suspects.

Do you agree that a suspect who is the target of an investigation is likely to assume that the media accompanying the police has a right to enter the property?

I accept this is a possibility. Please see the answer to question 3 above.

Do you agree that, as a public authority, the Police Service itself has a responsibility under the HRA to protect Article 8 and Article 6 rights and that inviting journalists on operations to film or photograph without the permission of the suspect would inevitably be an interference with the rights protected under those Articles unless it can be properly justified?

Please see the answer to question 3 above.

The Police have positive obligations to protect Article 8 and Article 6 rights. Were these considered in the drafting of the guidance?

Please see Annex A to the Guidance.

Question 10

Police under investigation

The guidance suggests that it is best practice to release a statement which confirms details of the deceased and cause of death.

In view of evidence from Inquest about the reporting of deaths in custody and the release of inaccurate information by the Police, do you agree that there should be consultation with the family before releasing any such statement?

I agree that there should be consultation with the family before releasing any such statement.

Question 11

Paragraphs 5 and 6 of your statement – you refer to occasional complaints about the behaviour of the media and to the strain media attention can cause. Would it assist you to be able to complain to a media regulator about the behaviour of the media and its impact on operational matters or on victims or witnesses?

The referral to a media regulator may assist when dealing with the behaviour of the media. There are examples where referrals have been made to the Press Complaints Commission, with successful outcomes. When dealing with individual organisations it is often effective to speak directly to them and in such circumstances would not necessarily require the need for referral to a media regulator.

APPENDIX 2

CPV QUESTIONS FOR ROGER BAKER

Question 1

Para 38.4 – In your role as HMIC you are aware of the audits of PNC security which are also available on the HMIC website? In this paragraph you refer to transaction validation under your command in Essex and you say that 3-9 PNC/intelligence transactions were being validated by supervisors on a daily basis. Is that your recommendation for the right level of transaction validation?

Question 2

The HMIC website carries reports of inspections between 2004-7 which refer to PNC security. These reveal numerous security shortcomings (see attached document for examples extracted directly from the reports). Some of these are serious – for example

- In Lancashire 61 people were in a position to grant access to the PNC. (Some other forces limited this power to a single person.)
- In Kent there were 4,050 PNC user ID numbers, equivalent to 80 per cent of the workforce.
- The Metropolitan Police Service was told that the checks it carried out on actual requests for data were “totally unacceptable”.
- In Sussex, Gloucestershire and Lincolnshire staff shared PNC passwords and access codes.
- In Northumbria PNC access cards were left in unattended computers, “allowing anonymous access by others”.

Twenty-four forces were told that their procedures for granting or removing access to the PNC were unsatisfactory. Some forces were conducting no audits of the access lists, meaning that retired and even suspended staff might continue to have passwords etc..

Fourteen forces are criticised for inadequate transaction monitoring, ranging from relatively minor flaws in their monitoring systems up to habitual failures to check. (In Northamptonshire, for example, “if a reason for a transaction looked legitimate, the reason was automatically accepted” and transaction monitoring at Lancashire Constabulary had not taken place for approximately 2 years at the time of the inspection..)

- Given these recurrent problems, do you consider that the current system of checks is working? What are your recommendations for changes to the PNC system to ensure that it is not misused?

- Given the sentences imposed following Operation Glade, and the collapse of the trial in Operation Reproof, do you take the view that there should be a different approach to the prosecution and sentencing of those within the police who misuse PNC information?

APPENDIX 3

The IPCC procedures are governed by the Police Reform Act 2002 and associated regulations. It has general powers to investigate complaints brought by members of the public, and a wider power to issue guidance on various matters.

Section 10 Provides:

General functions of the Commission

(1)The functions of the Commission shall be—

(a) to secure the maintenance by the Commission itself, and by police authorities and chief officers, of suitable arrangements with respect to the matters mentioned in subsection (2);

(b) to keep under review all arrangements maintained with respect to those matters;

(c) to secure that arrangements maintained with respect to those matters comply with the requirements of the following provisions of this Part, are efficient and effective and contain and manifest an appropriate degree of independence;

(d) to secure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to those matters;

(e) to make such recommendations, and to give such advice, for the modification of the arrangements maintained with respect to those matters, and also of police practice in relation to other matters, as appear, from the carrying out by the Commission of its other functions, to be necessary or desirable;

(f) to such extent as it may be required to do so by regulations made by the Secretary of State, to carry out functions in relation to.. bodies of constables maintained otherwise than by police authorities which broadly correspond to those conferred on the Commission in relation to police forces by the preceding paragraphs of this subsection;

(g) to carry out functions in relation to the Serious Organised Crime Agency which correspond to those conferred on the Commission in relation to police forces by

paragraph (e) of this subsection; and

(h) to carry out functions in relation to the National Policing Improvement Agency which correspond to those conferred on the Commission in relation to police forces by paragraph (e) of this subsection.

(2) Those matters are—

(a) the handling of complaints made about the conduct of persons serving with the police;

(b) the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;

(ba) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a person serving with the police;

(c) the manner in which any such complaints or any such matters as are mentioned in paragraph (b) or (ba) are investigated or otherwise handled and dealt with.

S.22 gives the IPCC the power to give general guidance 22 Power of the Commission to issue guidance

(1) The Commission may issue guidance—

(a) to police authorities,

(b) to chief officers, and

(c) to persons who are serving with the police otherwise than as chief officers, concerning the exercise or performance, by the persons to whom the guidance is issued, of any of the powers or duties specified in subsection (2).

(2) Those powers and duties are—

- (a) those that are conferred or imposed by or under this Part; and
 - (b) those that are otherwise conferred or imposed but relate to—
 - (i) the handling of complaints;
 - (ii) the means by which recordable conduct matters or DSI matters are dealt with; or
 - (iii) the detection or deterrence of misconduct by persons serving with the police.
- (3) Before issuing any guidance under this section, the Commission shall consult with—
- (a) the Association of Police Authorities;
 - (b) the Association of Chief Police Officers; and
 - (c) such other persons as it thinks fit.
- (4) The approval of the Secretary of State shall be required for the issue by the Commission of any guidance under this section.
- (5) Without prejudice to the generality of the preceding provisions of this section, the guidance that may be issued under this section includes—
- (a) guidance about the handling of complaints which have not yet been recorded and about dealing with recordable conduct matters or DSI matters that have not been recorded;
 - (b) guidance about the procedure to be followed by the appropriate authority when recording a complaint or any recordable conduct matter or DSI matter;
 - (c) guidance about—
 - (i) how to decide whether a complaint is suitable for being subjected to local resolution; and
 - (ii) about the information to be provided to a person before his consent to such resolution is given;
 - (d) guidance about how to protect the scene of an incident or alleged incident which—

(i) is or may become the subject-matter of a complaint; or

(ii) is or may involve a recordable conduct matter or DSI matter;

(e) guidance about the circumstances in which it is appropriate (where it is lawful to do so)—

(i) to disclose to any person, or to publish, any information about an investigation of a complaint, conduct matter or DSI matter; or

(ii) to provide any person with, or to publish, any report or other document relating to such an investigation;

(f) guidance about the matters to be included in a memorandum under paragraph 23 or 25 of Schedule 3 and about the manner in which, and the place at which, such a memorandum is to be delivered to the Commission.

(6) Nothing in this section shall authorise the issuing of any guidance about a particular case.

(7) It shall be the duty of every person to whom any guidance under this section is issued to have regard to that guidance in exercising or performing the powers and duties to which the guidance relates.

(8) A failure by a person to whom guidance under this section is issued to have regard to the guidance shall be admissible in evidence in any disciplinary proceedings or on any appeal from a decision taken in any such proceedings.