

## **The Leveson Inquiry into the Culture Practices and Ethics of the Press**

**Witness:** Russell Middleton

Statement No: 1

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**Occupation:** T/ Assistant Chief Constable

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I have been asked to provide this statement for the purpose of assisting the Leveson Inquiry. In preparing this statement I have sought to address all the questions asked of me in the Notice served pursuant to s.21 (2) of the Inquiries Act 2005.

### **1. Who you are and a brief summary of your career history**

I am Russell Charles Middleton and I am a Temporary Assistant Chief Constable in The Devon and Cornwall Police, holding the portfolio for Crime and Criminal Justice. My portfolio includes Local Investigation and CID, Major Crime, Serious and Organised Crime, Scientific Services, Public Protection, Intelligence Directorate, Force Authorities, Custody and Criminal Justice. I have 24 years police service, having joined the service in 1988.

I have served as a detective in all ranks and I have also held various uniformed operational roles throughout my service. I was promoted to Superintendent in 2004 and served as the Head of Professional Standards and then moved to Plymouth as the lead for Operations for 2 years. I then took on the role of the Force Senior Investigating Officer (SIO) and Head of Major Crime, followed by Serious Organised Crime and covert policing for the Force. In 2010 I was promoted to Detective Chief Superintendent as Commander of Crime department for Devon and Cornwall. I was appointed as T/ACC in October 2011.

**2. The Inquiry understands that you were the Senior Investigating Officer for Operation Reproof; please describe in broad terms the events that led to Operation Reproof being set up and the context of the Operation.**

Operation Reproof was set up in January 2002. I was a Detective Inspector at that time, and I undertook the role of Deputy Senior Investigating Officer, with the Senior Investigating Officer (SIO) being Detective Superintendent Stuart Newberry. Mr Newberry has since retired from the Devon and Cornwall Constabulary.

The Operation was set up following an investigation carried out by police officers in Plymouth led by Detective Sergeant Kittle ( also now retired ), into an allegation of Blackmail, made by a local businessman.

The allegation centred around the fact that another local businessman had obtained details relating to the victims criminal convictions from the Police National Computer (PNC), and that he was releasing them into the public domain, to prevent the victim from being considered for a lucrative building contract. There was no alleged criminal involvement of any media in this case.

The initial investigation into the Blackmail allegation, which was called Operation Esstra, found evidence that a serving officer in the Devon and Cornwall Constabulary had accessed the PNC record of the victim and it was suspected that the details had been passed out to individuals working as Private Investigators, and ultimately into the hands of the alleged suspect in the Blackmail.

In December 2001 a series of warrants were executed in and around the Plymouth area, and a number of individuals were interviewed in relation to the offence of Blackmail as well as Computer Misuse Act offences.

As a result of those warrants it was clear to the investigation team at that stage, that there was information indicating that there were more Police Officers involved in the unlawful disclosure of information from Police Computer systems, as well as individuals within other organisations and companies, e.g.:- Benefits agency, Prison Service and Mobile phone companies.

The Force then took the decision to set up Operation Reproof to scope the material found during the course of the warrants, with a view to establishing the extent of the unlawful activities, as well as identifying individuals within the Constabulary who were potentially placing it at risk. This was referred to as 'Phase 1'

**3. What were the terms of reference of Operation Reproof and who established them?**

The initial terms of reference were as follows:

A) To examine the material seized during Operation Esstra with a view to identification of any documents or references to documents or data which had originated from the Devon and Cornwall Constabulary.

B) To preserve the material identified for forensic examination.

C) To investigate lines of enquiry to establish the route taken from the Devon and Cornwall Constabulary to the recipient.

D) To obtain independent legal advice concerning the retention of material seized during Operation Esstra, taking due cognisance of the Criminal Procedures and Investigations Act 1996 and relevant civil law.

E) To eliminate material seized during Operation Esstra which was non- relevant to this investigation.

F) To submit an interim report of findings to ACC R.Stowe highlighting possible criminal and misconduct offences by 4<sup>th</sup> February 2002.

The terms of reference were established following discussions between the SIO and ACC Arnold and agreed on 11 January 2002, with the intention being that, at the end of the scoping phase of the operation, the implications would be considered and if appropriate new terms of reference would be established.

**4. Who briefed/tasked you in relation to the Operation? Did they give you any direction for the investigation other than the terms of reference?**

My initial briefing for the Operation was by the SIO, Detective Sergeant Kittle and staff from within the Force Professional Standards Unit, who had been assisting with the original Blackmail investigation.

The initial direction of the investigation was agreed with ACC Arnold and was undertaken in line with the terms of reference; however the investigation developed and changed in line with the information that was uncovered during the scoping of the material seized during Operation Esstra.

**5. Was the scope or direction of the investigation reviewed or altered in the light of developments as the investigation progressed? If so, please give details and explain why any changes were made.**

The initial scoping exercise (Phase 1) was completed in April 2002 and a report was submitted to ACC Stowe who had taken over from ACC Arnold as the ACPO Lead, a summary of that report is as follows.

At the conclusion of Phase 1 the number of persons who had been identified as being suspected of committing offences ranging from Corruption to Computer Misuse and Data Protection Act Offences, were as follows:-

- 9 Serving Police Officers from Devon and Cornwall
- 5 Serving Support Staff from Devon and Cornwall
- 6 Retired Police Officers
- 2 Serving Police Officers from Dorset Police

The scoping exercise also revealed the alleged infiltration of other agencies where confidential information had potentially been revealed illicitly. These included the Prison Service, Housing & Benefits Agency, British Telecom, Orange Telecom, and the South Western Electricity Board (SWEB). There was no information or evidence of any involvement with the press or media. The main issues involved Police Officers

and staff allegedly passing information to Private Investigators. These Private Investigators were, in the main, retired Police Officers.

As a result, new Terms of Reference were agreed with ACC Stowe as follows:

- A) To investigate the alleged offences and conduct interviews of the individuals identified as being in "Jeopardy".
- B) To establish links with other agencies to identify individuals who had unlawfully revealed confidential information, and to preserve evidence in support of suspected offences and to interview those individuals.
- C) To report to the Crown Prosecution Service and the Police Complaints Authority.

It was clear at this point that the investigation was going to be protracted and required more resources to deal with the enquiries that were to be undertaken.

The investigation team was increased with officers brought in from the Force Major Crime Team, as well as officers from specialised departments such as our High Tech Crime Unit and the Professional Standards Department.

The investigation was placed on HOLMES due to the volume of material already seized, and the anticipated enquiries that were to be undertaken.

The direction of the investigation continued in line with the terms of reference detailed above, and were constantly reviewed following discussions with the Crown Prosecution Service (CPS), the Police Complaints Authority (PCA), the Information Commissioner, and Counsel briefed on behalf of the Prosecution (Alan Rawley QC, Outer Temple Chambers and Mark Bryant-Heron, Bell Yard Chambers).

During the course of the investigation frequent updates were provided to the CPS and the PCA with regards to the progress being made and any new proposed areas of investigation. However the terms of reference remained in broad terms the same throughout the investigation.

**6. To what extent, if at all, was there liaison during the investigation with other police forces? If there was liaison, please give details of the extent to which that liaison shaped or guided the investigation (if at all).**

The investigation was focused around serving and retired Police Officers from the Devon and Cornwall Constabulary, with evidence of information being released to retired Officers, who were operating private investigation businesses locally in Devon and Cornwall.

Evidence was also obtained to show 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 investigation team made contact with the relevant Police Forces, primarily to gather intelligence/evidence to support the Operation Reproof investigation and the offences being investigated.

Police forces contacted included the following;

Dorset Police

Northumbria Police

Surrey Police

Essex Police

Metropolitan Police

These Forces also provided support to the investigation when my Officers travelled to carry out arrests and searches of homes/businesses relating to Operation Reproof suspects.

The liaison with other Forces was similar to that of other agencies and Companies, in that evidence was required for our investigation. However there were a number of matters that were passed on to other Forces/Agencies for them to carry out their own investigations. This was done where it was felt that the evidence and associated links were not going to feature as part of the evidence for any proceedings as part of Operation Reproof.

This included a significant line of enquiry that was generated as a result of a Warrant that was executed at the Offices of a "data gathering" business based in Horley, Sussex called "Data Research".

The Warrant was executed by the Operation Reproof team; however representatives from the Information Commissioners office were present during the Warrant, as they had an ongoing investigation in to that Company. They specifically asked to be present and were named on the search warrant.

During the course of the Warrant a significant amount of information was found which related to illicit data obtained from the DVLA. This was seized on behalf of the Information Commissioner, and they then commenced their own analysis and investigations.

My understanding was that this data formed the basis of "Operation Motorman" an investigation conducted by the Information Commissioners office , and "Operation Glade" which was an investigation conducted by the Metropolitan Police, to whom the Information Commissioner , had passed material from their own investigations. Operation Reproof had no further involvement in the direction of these investigations.

**7. Did the CPS play any part in shaping or guiding the investigation in any way? If so, please give full details.**

The CPS were initially briefed in relation to Operation Reproof in June 2002, with the supervising Lawyer being Mr Chris Brown of the Special Casework Directorate, Ludgate Hill, London. However, Mr Brown only had the brief for a short period of time before it was passed to Mr Fuat Emin from the same department. Mr Emin retained the brief until the conclusion of the proceedings.

The initial briefings to CPS took place alongside briefings that were given to the then PCA, who were overseeing the investigation. In addition, detailed briefings were given to the Information Commissioner office due to the nature of the matters under investigation.

Regular briefings and meetings were held with the CPS as well as Prosecuting Counsel following their appointment, and guidance was provided by them in relation to a number of factors involving persons being arrested, premises being searched and the formulation of the prosecution case papers. However the primary advice given by CPS which shaped the Operation Reproof investigation was in relation to focusing on the systematic abuse of illegal data release to Private Investigators.

The advice given by the CPS and the PCA was that we were to focus on individuals who were either systematically providing or receiving illegal information from databases, and those "customers" who knew or should have known where the illegal information was obtained from.

This enabled the investigation to remain focused and the prosecution could proceed to a conclusion in a timely manner.

Based on this advice the investigation team then created a number of Tiers for suspects, depending on the evidence that was available, taking into account the number, and type of illegal accesses made into databases, as well as taking into account the suspects background and association with other suspects.

Tier 1 - suspects directly involved in systematic abuse.

Tier 2 - suspects who were receiving illicit information on a regular basis.

Tier 3 - suspects who had been involved in the obtaining or receiving of illicit information on a less frequent basis.

I will detail later in this statement the criminal charges that were brought against individuals which ultimately reflects those that were in Tiers 1 and 2, as well as the action taken against those that came within Tier 3.



**8. Describe the level of cooperation from the media with your investigation. Was it satisfactory? Please explain your answer.**

There was no direct evidence found during the course of the investigation that any media organisation was in anyway involved in the obtaining of illicit information being investigated, and, therefore, there was no contact made with any such organisation.

As the investigation was primarily carried out covertly there was minimal contact with the press until the suspects were charged and the case appeared in the Magistrates Court.

**9. Please set out, in broad terms, the findings of the Operation. Please outline in particular the evidence of corruption among police personnel, both police officers and civilian staff, and the involvement of the media in the same (irrespective of whether that evidence was intended to be relied upon in support of the prosecutions or was part of the unused material)**

As far as the findings of the investigation are concerned, it was evident from an early stage that there was a small number of retired Police officers conducting private investigations on behalf of the commercial market, who were able to obtain information from ex colleagues still working within the Police service and other agencies.

There was a network of companies and individuals throughout the United Kingdom acting as investigators, who were able to source the information they required, either directly from a Police source or through a third party.

The investigation looked at each suspected unlawful release of information to ascertain who was involved in the process, from the individual accessing the data unlawfully, back to the originating "customer".

In the majority of cases there was a customer who requested either a specific piece of information about an individual, or a more complete package, which could include details of their Criminal background, their financial situation, medical history, telephone records and current whereabouts.

The originating customers ranged from individuals involved in matrimonial matters up to multi national financial institutions looking to obtain information in relation to a range of civil matters.

The majority of the matters investigated were in the latter category, particularly Insurance companies looking to gather derogatory information in defence of civil claims. In these cases there were a number of individuals involved in the processing of the illicit data before it got in to the possession of the insurance company.

There was no evidence that these companies were aware that the people they were hiring to get the information were obtaining some of the data illegally.

In total the investigation was able to show in excess of 100 instances where illicit information had been obtained and passed through the network of individuals, to an originating customer.

These cases involved the individuals who were subsequently charged with criminal offences, which will be detailed later in this statement.

Despite an extensive financial investigation no evidence was found of any payment to the individuals who accessed the various databases illegally on behalf of ex-colleagues. There was clearly money paid by those involved in processing the data back to the originating customer.

This ranged in value with lesser amounts being paid to the person obtaining the information and the originating customer being charged the greater amount. In some cases many thousands of pounds, depending on the type of information obtained.

The investigation found no evidence that any media organisation was involved in the obtaining of the data.

**10. Who was charged and with what offences were they charged?**

The defendants were charged with a series of Misconduct Offences and Data Protection Act Offences as follows:-

Philip Francis Diss (Serving Police Officer at the time of the Offence, now deceased)

1 count of Misconduct in Public Office by passing data to Alan Charles Stidwill between 01/06/00 and 31/05/01.

Robert Alan Cornish (Serving Police Officer at the time of the Offence)

1 count of Misconduct in Public Office by passing data to Alan Charles Stidwill between 01/01/99 and 11/06/99.

Peter James Hill ( Retired Police Officer working for East Devon District Council)

1 count of Misconduct in Public Office by passing data to Alan Charles Stidwill between 01/01/00 and 31/12/01.

Alan Charles Stidwill (Retired Police Officer operating an investigation business)

1 count of Aid & Abet, Counsel and Procure Robert Alan Cornish to commit the Offence of Misconduct in Public Office between 01/01/99 and 11/06/99.

1 count of Aid & Abet, Counsel and Procure Philip Francis Diss to commit the Offence of Misconduct in Public Office between 01/06/00 and 31/05/01.

1 count of Aid & Abet, Counsel and Procure Peter James Hill to commit the Offence of Misconduct in Public Office between 01/01/00 and 31/12/01.

Christopher Paul Dewse (Associated with investigation business, "Data Research")

1 count of Aid & Abet, Counsel and procure Philip Francis Diss to commit the Offence of Misconduct in Public Office between 01/06/00 and 31/05/01.

4 counts of Knowingly or Recklessly obtaining and disclosing personal data contrary to the Data Protection Act.

Andre Alexei Laloi (Associated with investigations business, "Data Research")

1 count of Aid & Abet, Counsel and Procure Philip Francis Diss to commit the Offence of Misconduct in Public Office between 01/06/00 and 31/05/01.

4 counts of Knowingly or Recklessly obtaining and disclosing personal data contrary to the Data Protection Act.

**11. What involvement, if any, did you have in the charging decisions? Who made the charging decisions?**

Throughout the latter stages of the investigation a number of case conferences were held with the CPS Lawyer and prosecuting Counsel to discuss those who were to be charged. I, along with others within the investigation team clearly had an input providing details of the individuals who featured in the three Tiers that I discussed earlier, and the evidence against them.

The charging decisions were ultimately made by the CPS.

**12. Why did the prosecutions fail?**

On 17 October 2005 a pre trial hearing was held at Exeter Crown Court before the trial Judge His Honour Judge Darlow. The purpose of the hearing was to deal with a number of issues, which included an argument put forward by defence Counsel representing all of the defendants in relation to the Indictment charged.

The key element to their argument was that the conduct of the defendants did not amount to Misconduct in Public Office by those who had carried out the alleged unauthorised access into the Computer database, and therefore this would have a knock on effect upon those charged with aiding and abetting those offences.

Their argument was that the accessing of databases, and the subsequent passing of information that related to matters being dealt with by Insurance Companies, and the like was not that serious and a Jury would form the same view, and that the illegal accessing of the Police National Computer could never be Misconduct in a Public Office. In furtherance of this argument the defence highlighted examples of individual cases investigated by the Operation Reproof team that were carried out on behalf of Insurance Companies.

It was argued by the Prosecution that it was irrelevant as to what the data was going to be used for - it was the actual act of a Police Officer passing out the information that amounted to a deliberate breach, and a serious one, and that this was an abuse of that public office. On that basis it was wholly appropriate to proceed with the Indictment, and the Misconduct in Public Office.

On 19 October 2005, having listened to the arguments His Honour Judge Darlow provided a judgement that in his view, under these circumstances, he did not regard the act of a Police Officer accessing the PNC and providing the information to an ex colleague, as a serious matter that amounted to Misconduct in Public Office.

His Honour Judge Darlow stated that in his view the defendants had no case to answer if the Prosecution proceeded with the Charge of Misconduct in Public Office.

The Judge informed the Prosecution that he could not prevent the Prosecution case going ahead for other offences, but emphasised his position.

Following the ruling made by the Judge, the Prosecution, through the CPS and Counsel, applied to the Attorney General for some guidance in relation to the ruling to see if it could be overturned, however that was not successful.

A number of case conferences took place with CPS and Prosecution Counsel and, with the Judge's comments in mind, it was decided not to proceed with the prosecution on the basis that to proceed would not be in the public interest given the potential costs that would be incurred.

In addition to the criminal investigation an internal misconduct enquiry, supervised by the PCA ran alongside. At the conclusion of the criminal proceedings Devon and Cornwall Police proceeded against 5 Police officers and 2 members of Police staff for misconduct issues and Dorset Police proceeded against 2 Police officers.

**13 With the benefit of hindsight, should the scope of your investigation and the prosecutions been broader? Please explain your answer.**

Operation Reproof was a protracted and very detailed examination of alleged unlawful release of confidential data from Police systems by serving and retired Police Officers and Support staff within the Devon and Cornwall area.

During the course of the investigations extensive enquiries were carried out which generated the following:

Actions - 910

Reports - 539

Statements - 1,047

Exhibits - 2,010

Documents - 3,028

The allegations were taken very seriously by the Devon and Cornwall Constabulary and in my view investigated professionally and proportionally taking into account the terms of reference set and the supervision that was provided by the PCA and the CPS.

Following submissions made by the Prosecution at the conclusion of the case, Mr Alan Rawley QC commended the Police investigation and told the Court that it was a long, hard, painstaking and skilful investigation. Those sentiments were echoed by His Honour Judge Darlow.

This statement and the contents within are true to the best of my belief and knowledge.

Signed :



Dated :

26/3/12

R Middleton  
T/Assistant Chief Constable