

**An Independent Review of the Metropolitan Police  
Service's handling of non-recent sexual offence  
investigations alleged against persons of public  
prominence.**

**Sir Richard Henriques**

**31<sup>st</sup> October 2016**

## **Independent Review**

### **Terms of Reference**

1.1 The Independent Review will examine and report upon the actions of the Metropolitan Police Service (MPS) in investigating allegations of non-recent sexual offences said to have been committed by prominent public individuals. The objective of the review will be to identify any lessons for the Service and to make recommendations as to how the MPS conducts such investigations in the future.

1.2 The Independent Review will examine, in particular, the following matters:

- a. The way in which information about such investigations has been released into the public domain;
- b. The problems associated with investigations initially based on the evidence of a single complainant and how far an investigation should go in order to corroborate a complainant's account;
- c. The approach that has been adopted towards establishing the veracity of complainants;
- d. The length of time such investigations have taken;
- e. What steps can be taken to protect the interests of complainants

so as to ensure that victims of crime can come forward with confidence;

- f. Any other matters that the Independent Review considers relevant.

1.3 The Independent Review will also make such recommendations it feels appropriate in the light of the examination set out above, including, if appropriate, recommendations about MPS policy and procedures for the handling of such investigations.

1.4 The Independent Review will produce a report for the Commissioner of Police for the Metropolis.

## **Background**

1.5 In February of this year I was asked by the Metropolitan Commissioner of Police, Sir Bernard Hogan-Howe QPM, to conduct this review. We had never previously met. I was selected from a panel of retired High Court Judges with a background in the criminal law. I practiced in crime at the Junior Bar between 1967 and 1986. I was Queen's Counsel from 1986 to 2000. I sat as a Deputy Circuit Judge from 1978 to 1980, as an Assistant Recorder from 1980 to 1983, and as a Recorder from 1983 to 2000. In 2000 I was appointed to the High Court of Justice and spent the great majority of time in the Criminal Courts. I remain authorised by the Lord Chief Justice to sit in the Court of Appeal (Criminal Division).

1.6 I visited Sir Bernard at New Scotland Yard and was told that, in the immediate aftermath of the exposure of Jimmy Savile by ITV, Operation Yewtree had been commenced. A very large number of sexual allegations had been received within the Operation, some against Savile, some linked to Savile, and others independent of Savile. At the same time a complaint had been received by a person, with the pseudonym of 'Nick', in which grave allegations had been made against a number of very high profile individuals. This allegation was hived off and became Operation Midland. Sir Bernard wanted me to review Operation Yewtree and Operation Midland. My review was to be wholly independent of the Metropolitan Police. He wished to know what lessons could be learned. I would have unrestricted access to all information some of which could not be placed in the public domain. He had knowledge of a report which I had recently written for the Director of Public Prosecutions in which I had criticised the police (another force) and, if there was criticism to be made, he wanted to be made aware of it. He had already confronted two regrettable errors, namely, a failure to inform the late Lord Brittan, during his lifetime, that no further action would be taken against him in relation to an allegation of rape made many years earlier and an error by a senior officer in stating that allegations made by 'Nick' were credible and true. He regretted both matters, had made his regrets known to the public, was about to meet Lady Brittan and had already apologised to her. Sir Bernard provided me with his mobile phone number and invited me to contact him directly if I encountered any difficulties. Accompanying us

was Assistant Commissioner Martin Hewitt who would, together with his Staff Officer, Chief Inspector Dionne Mitchell, provide the necessary point of contact. In due course A/C Hewitt transferred to other duties and was replaced by Assistant Commissioner Helen King. I have received every assistance throughout. I must stress, however, that the actual conduct of this review has been entirely independent of any member of the MPS.

1.7 I have been assisted throughout, administratively, by Louise Oakley of the independent Bar. She has collated volumes of written material, arranged and attended interviews, and liaised with the police and interviewees. I must stress that any conclusions or recommendations in this report are mine and mine alone.

### **Scope of Review**

1.8 I informed Sir Bernard that I could not re-investigate any matter and I did not see that as my prospective function. I intended to examine the decision making of the MPS at every stage of the investigations that I reviewed. I would also consider the whole investigation process, including its speed and fairness, both to the complainant and any suspect. I intended to examine all guidance given to members of the MPS in the investigation of non-recent sexual allegations. I would give particular attention to decisions to investigate, interview, search, arrest, charge and to take no further action. My review is very different from

the IICSA Inquiry. I did meet very briefly with Justice Goddard and, for a short time, with Ben Emmerson QC and his team of lawyers to understand our respective functions. The task of that Inquiry is considerably more extensive and ambitious than my own and I see no conflict. Any onward transmission of my report is entirely a matter for the Commissioner.

## **Guidance**

1.9 I have considered with care two recent publications, namely Operation Hydrant SIO Guidance, written by Chief Constable Simon Bailey, Norfolk Constabulary, National Police Lead for Child Protection and Abuse Investigation, dated November 2015, and the Report of the Independent Review into the Investigation and Prosecution of Rape in London, chaired by the Rt. Hon Dame Elish Angiolini DBE QC, which was commissioned by Sir Bernard in June 2014. I have also considered the response to the recommendations in Dame Elish's report by the MPS and CPS London. I have received material from the College of Policing, the Code of Practice for Victims, a joint MPS and NSPCC report into allegations of sexual abuse made against Jimmy Savile entitled 'Giving Victims a Voice', CPS Guidelines on Prosecuting Cases of Child Sexual Abuse, the Code for Crown Prosecutors, and CPS Material on Child Sexual Abuse Review Panel. There is no shortage of guidance.

1.10 I had considered developing a draft code for the investigation of non-recent sexual allegations. The Operation Hydrant document is, however, specifically directed towards abuse alleged to have been perpetrated by persons of public prominence. It was drafted with the aim of *'improving the police service response', 'providing operational co-ordination for all police forces'* and *'to identify or develop effective practice and produce national guidance'*. A further modified guide is unlikely to prove an asset. I had considered a form of code specifically designed for cases involving prominent suspects but the cardinal rule that all are equal before the law must prevail unmodified. I do, however, have a number of recommendations to make.

### **'Complainants' or 'Victims'**

1.11 Throughout Dame Elish's Report she describes a person making a complaint as a 'complainant'. Operation Hydrant guidance describes the same person as a 'victim'. In the MPS and CPS joint response to Dame Elish's 46 recommendations, every recommendation is set out with the word 'complainant' used, whilst the response invariably uses the word 'victim'. This issue requires resolution. I have canvassed it at length with the authors of the Hydrant guidance and with every party I have interviewed during this review.

1.12 I have a clear and concluded view. All 'complainants' are not 'victims'. Some complaints are false and thus those 'complainants' are not

'victims'. Throughout the judicial process the word 'complainant' is deployed up to the moment of conviction where after a 'complainant' is properly referred to as a 'victim'. Since the entire judicial process, up to that point, is engaged in determining whether or not a 'complainant' is indeed a 'victim', such an approach cannot be questioned. No Crown Court judge will permit a 'complainant' to be referred to as a 'victim' prior to conviction. Since the investigative process is similarly engaged in ascertaining facts which will, if proven, establish guilt, the use of the word 'victim' at the commencement of an investigation is simply inaccurate and should cease.

1.13 The authors of the Hydrant guidance strongly oppose this view. Chief Constable Simon Bailey writes:

*'If we don't acknowledge a victim as such, it reinforces a system based on distrust and disbelief. The police service is the conduit that links the victim to the rest of the criminal justice system; there is a need to develop a relationship and rapport with a victim (particularly in challenging and complex cases) in order to achieve the best evidence possible. Police officers and police staff investigators through their roles are required to deal with the emotional turmoil often presented by a victim and to determine what is relevant to the complaint that has been made. The term "victim" features in important legislation, statutory guidance, the policies of the police and Crown Prosecution Service. To remove this and replace it with the word 'complainant' will have a*



*significant detrimental effect on the trust victims now have in the authorities and fundamentally damage the efforts of many organisations re-built over the years'.*

1.14 With respect, this is an attempt to justify inaccurate terminology. A criminal justice system that deliberately describes those it serves inaccurately is a flawed system and Chief Constable Bailey's argument ignores the consequences of false terminology. Firstly, it gives the impression of pre-judging a complaint. When a suspect is informed that the victim alleges that he assaulted him/her, the suspect loses confidence in the neutrality of the investigator. It may be said that an interviewer should not use the word 'victim' during an interview. That is impossible in practice, so ingrained in the system is the word 'victim'. Every accused person that I interviewed expressed the view that by describing his accuser as a victim, his guilt had been assumed and thus pre-judged. Secondly, the use of the word is grossly inapt in the case of false complaints. Mr. Bailey, in interview, countered this argument by asserting that only 0.1% of all complaints were false and thus any inaccuracy in the use of the word 'victim' is so minimal that it can be disregarded. I take considerable issue with that estimate of false complaints and will confront that assertion in due course. It should be sufficient to say, at this stage, that since the whole of the investigative process is engaged in the task of collating evidence to determine whether a complaint is true or false, any device which seeks to ignore or minimise that possibility should be put aside.

1.15 The fact that the word 'victim' is used in legislation does not answer the charge that its use is inaccurate and, thus, inappropriate. The Home Affairs Committee of the House of Commons do not use the word 'victim' when the word 'complainant' is available, e.g./ 19/03/2015:

*'Suspects should have the same right to anonymity as 'complainants'.*

*'For years all complainants in sexual cases were referred to in the Crown Court as victims until Senior Judiciary realised the injustice of the practice. In every Crown Court there were signs directing complainants to Victim Support rooms within the Court building. Those signs are now replaced with signs to Witness Support rooms. Legislation is not always perfect'.*

1.16 Mr. Bailey's argument, that removing the word 'victim' and replacing it with 'complainant' will have a significant detrimental effect on the trust victims now have in the authorities, is necessarily speculative and, I believe, wrong. I have interviewed as many complainants in my review as I have suspects, and have canvassed with every one of them the use of the words 'victim' and 'complainant'. I have found no support amongst them for the use of the word 'victim'; indeed, quite the contrary. One victim found the description 'victim' to be disempowering and inappropriate. Another said that she was focused on not being perceived as a victim nor perceiving herself as a victim. A third, who was trained as a journalist, said that her training taught her that the word

should not be used as it was 'unfair to a defendant'. Not one complainant spoke in favour of the word 'victim'.

1.17 Mr. Bailey's suggestion, that changing a single inaccurate word will *'fundamentally damage the efforts of many organisations re-built over the years'*, underestimates the powers and high reputations of those organisations with whom I have spent some time during this Review. I have visited NSPCC Offices in Stratford and Camden and interviewed senior staff members. They perfectly well understood the necessity for 'victims' to be called 'complainants' in Court. I have no doubt that they would understand the necessity for the word to be removed from the investigative process. I have interviewed Peter Saunders, of NAPAC, who was, himself, abused in childhood and describes himself as a survivor. My note of his evidence is this:

*'To use the word 'victim' implies the crime has been committed. It is a tough one and language is very important...I don't consider the use of the word 'complainant' before conviction is something that would cause an outcry. Personally, I agree that the use of the word 'complainant' before conviction is the fairest way of referring to an individual before a finding of guilty'.*

This is important evidence from a man of the highest standing. I was most impressed by the fairness of his approach and his manner singularly countered Simon Bailey's rhetoric. The NSPCC habitually

explain to their clients that in Court they will be referred to as 'complainants' and they accept it as they must. I have no doubt that they would accept a similar explanation at the outset of the investigative process without *'any detrimental effect on trust'* spoken of by Simon Bailey.

1.18 It is my judgement, and that of the complainants that I interviewed, that police officers gain the confidence of those who complain of sexual abuse not by the use of false language but by the manner in which complainants are dealt with; namely, by the response to the initial phone call, by an early appointment, by being given a choice of venue for the meeting, a choice of male or female officer, by the manner in which a statement is taken, by receiving regular information and being part of a highly organised professional process that is fair to both complainant and suspect. The complainants I interviewed did not expect to be instantly believed. They wanted their complaints fully and professionally investigated and, only then, to be believed. They expected the difficult questions and were ready to answer them. Complainants expect to be asked why they did not complain at the time, who saw their injuries, did they keep a diary, what has caused them to complain now, and do not anticipate instant belief nor to be treated as if the crime is proven before it is even investigated.

1.19 My recommendation that the word 'victim' should be excluded from the investigative process is limited to that process. I was told in interview, by

Mr. Bailey's two colleagues, that any recommendation to substitute the word 'victim' with the word 'complainant' would be highly unpopular with the several organisations, mostly charities, that represent victims. I have no ambition to trespass on their territory. I understand that it is far easier to raise money for 'victims' of crime than it would be for 'complainants'. Those charities are outside the criminal justice process. If they believe a complainant is a victim, then they must so describe them. On receipt of a complaint a police officer is in a very different position. A police officer has a duty to investigate, as part of the criminal justice process, determining whether or not a complainant is proved to be a victim. Mr. Bailey describes the police service as the conduit that links the victim to the rest of the criminal justice system. I prefer to consider the police service as a critical part of the criminal justice system under an absolute duty to use accurate language.

1.20 It is not necessary to set out the dictionary definition of 'victim' to demonstrate how very inappropriate the word is to describe many of those who complain to the police of sexual abuse. Those who continue to contend for the use of the word are seeking to gain an advantage for complainants at the expense of those accused. The accurate use of language should be fundamental in any criminal justice process.

#### **RECOMMENDATION 1:**

**Throughout both the investigative and the judicial process those who**

**make complaints should be referred to as 'complainants' and not as 'victims' by the MPS.**

## **Belief**

1.21 The stated policy of the College of Policing is:

*'At the point when someone makes an allegation of crime, the police should believe the account given and a crime report should be completed'.*

The letter containing this policy is dated the 18<sup>th</sup> March 2016. The obligation to believe a complainant has its origins in a police Special Notice, from 2002, dealing with rape investigation which stated that:

*'It is the policy of the MPS to accept allegations made by the victim in the first instance as being truthful. An allegation will only be considered as falling short of a substantiated allegation after a full and thorough investigation.'*

In 2014, a report on police crime reporting, by Her Majesty's Inspectorate of Constabulary, recommended, that:

*'The presumption that the victim should always be believed should be institutionalised.'*

Dame Elish questioned the approach of *'always believing'* a complainant, stating that *'it may prejudice the impartiality of the officer's role and lead to their failing to recognise or give weight to other evidence inconsistent with the complainant's account'*.

1.22 The College of Policing stresses a two stage approach. The first involves believing the account given by the victim, whilst the second stage, entitled *'crime investigation'*, involves a thorough investigation of the facts and allegation made.

1.23 The approach to 'belief' during Operation Yewtree and during Operation Midland was that of believing the complainant during the course of the complaint. One difficulty of this approach is that the complaint process may last for a considerable period not least when a series of ABE interviews are involved. 'Nick's' complaints were received by the MPS on 22/10/2014, 23/10/2014, 3/11/2014, 5/1/2015, and 27/4/2015. Was the obligation to believe the complainant to continue over a six-month period?

1.24 I spent some considerable time with Operation Hydrant officers discussing this topic. I understand the strategic aim of improving the Police Service response to complaints of sexual abuse and the aim to make it easier for victims of sexual abuse to make a complaint to the police. The officers steadfastly insist that the *'victim must be believed during the taking of the statement'*. I disagree. It is the duty of a police

officer to investigate. Many decisions in the criminal justice process have to be taken on paper. The police officer taking a statement from a complainant has a unique opportunity to assess the complainant's veracity. The effect of requiring a police officer, in such a position, to believe a complainant reverses the burden of proof. It also restricts the officer's ability to test the complainant's evidence.

1.25 The Irish Supreme Court Judge, Adrian Hardiman, wrote:

*'in sexual cases particularly, even very old ones, some people seem inclined to think that there should be a different presumption to the presumption of innocence; that the accuser is to be believed'.*

It is, of course, fundamental in any respectable criminal justice system that no erosion of the presumption of innocence is tolerated. In many allegations of non-recent sexual abuse, the only pieces of evidence are the complaint and the suspect's response. Is the investigating officer required to believe the complainant and then suddenly become objective and impartial as he interviews the suspect? Surely objectivity and impartiality should prevail throughout the whole process. This was the view of several officers that I interviewed, one making the point that *'unquestioning belief of a complainant can result in problems further down the line'*. A gentle inquiry at initial interview may result in a critical lead or obviate a possible defence. It may also result in no further action being taken sooner rather than later. There is plain evidence, in the



cases that I have reviewed, that an instruction to believe complainants has over ridden a duty to investigate cases objectively and effectively. An instruction to remain objective and impartial whilst interviewing a complainant will not detract from the obligation to support complainants through the criminal justice process nor deprive any complainant of rights under the Victims Charter. It is important that an interviewing officer demonstrates no show of disbelief at any stage of the interview and that the format of the questioning is non-confrontational. The purpose of the interview is to permit a complainant to give as full and detailed account as possible as part of an impartial fact finding exercise. At present the public are told 'If you make a complaint you will be believed'. I consider that they should be told 'If you make a complaint we will treat it very seriously and investigate it thoroughly without fear or favour.'

1.26 Chief Constable Bailey and his team have argued, both face to face and on paper, that the March 2016 guidance should remain the stated policy of police forces nationally. Again, I take issue with him. Any policy involving belief of one party necessarily involves disbelief of the other party. That cannot be a fair system. Mr. Bailey seeks to bolster his argument by speaking and writing of the bad old days when:

*'For many years, victims of abuse had little trust in the police. They were not confident in reporting some of the most horrendous crimes to the very organisations established to protect them. This state of affairs was*

*caused by some officers operating within a culture of cynicism and disbelief that was systemic within the police service'.*

Replacing an unsatisfactory state of affairs with a flawed system is no solution.

1.27 Mr. Bailey stresses:

*'It is important to highlight that whilst the starting point for the police service is one of belief, this is not a 'blind' belief that has no regard for credible evidence that suggests something contrary to that reported by a victim'.*

In cases of sexual allegations, and in particular non-recent cases, there are mostly only two versions of the facts; the complainant's and the suspect's. When a complainant gives a straightforward account of sexual misconduct, with no variation or inconsistency, the present policy requires an officer to believe it unless there is 'credible evidence to the contrary'. That is a simple reversal of the burden of proof. Rupert Butler, Counsel of 3 Hare Court, writes:

*'The assumption is one of guilt until the police have evidence to the contrary. This involves an artificial and imposed suspension of forensic analysis which creates three incremental and unacceptable consequences. Firstly, there is no investigation that challenges the*

*complainant; secondly, therefore, the suspect is disbelieved; and, thirdly, and consequently, the burden of proof is shifted onto the suspect'.*

Any process that imposes an artificial state of mind upon an investigator is, necessarily, a flawed process. An investigator, in any reputable system of justice, must be impartial. The imposed 'obligation to believe' removes that impartiality.

1.28 Since a complainant may or may not be telling the truth, the present policy causes those not telling the truth to be artificially believed and, thus, liars and fantasists, and those genuinely mistaken, are given a free run both unquestioned and unchallenged. The obligation to believe at the outset can and does obstruct the asking of relevant and probing questions designed to elicit the truth. The asking of such questions can be achieved in a sympathetic, kindly and professional manner. Criminal investigation should include the process of investigating from the outset and not waiting for some evidence to the contrary to turn up. It was most encouraging to observe that in the SCRG review in Operation Midland Recommendation 27 was:

*'It is recommended that the MPS reviews the terminology 'believing victims' to avoid any suggestion of prejudice to a suspect'.*

1.29 In spite of my having spent some considerable time with officers representing the National Police Chiefs' Council endeavouring to explain

the fallacy of the policy by letter dated 4<sup>th</sup> August 2016, they reaffirmed the policy of March 2016 namely that '*when an allegation is received police should believe this account*'. That same circular, distributed to all chief constables, police and crime commissioners and heads of public protection units, contained these words:

*'To start an investigation from a position of doubt is unlikely to encourage victims to come forward'*.

The plain intended consequence of this policy is that, by believing allegations when they are made, the investigation is started with no existing doubt. Doubt or indecision at the start of an investigation is the hallmark of impartiality. A starting point that eliminates doubt has the hallmark of bias.

1.30 The policy of 'believing victims' strikes at the very core of the criminal justice process. It has and will generate miscarriages of justice on a considerable scale. The recent successful appeal of David Bryant (CACD 20/07/2016) is but one example. The police force was not the MPS and the Appellant was not a prominent person. The Complainant was, however, a compulsive liar who invented a single allegation of buggery between 1976 and 1978. The Police believed his account. He solicited a friend to say that the assault deprived him of a promising boxing career; an invention also believed by the police. Mr. Bryant denied the allegation throughout. He was asked in interview by the police why he

thought the Complainant would make up the incident. He had no idea and it was impossible to provide an alibi over a 3-year period some 35 years ago. Mr. Bryant had nothing but his word to gainsay the Complainant's version. He was convicted by a majority. Following the trial, the Complainant issued civil proceedings, claiming damages against Mr. Bryant. He was obliged by the CPR to reveal his medical history for lying for the purpose of psychiatric assessment of his damages, so elevating the importance of the untruthful evidence relating to his boxing career. His wife instructed a private investigator and, after exhaustive work, the truth emerged. It is clear that the police believed Danny (he chose to waive anonymity). So did the majority of the jury. Skilled liars are credible. Because the police believed him they did not investigate the boxing invention and they did not seek his medical records. They may have assumed, by the same processes as the Midland Officers, that the Complainant had no reason to make this allegation up. The question put in interview would suggest that. If so, they failed to investigate this case without fear or favour, having, I suspect, been misdirected by the policy of 'believing victims'.

1.31 Lord Finkelstein, writing in The Times (May 18 2016), expressed his concern thus:

*'Our current, entirely justified concern about child abuse, carries with it particular dangers. It is an extremely difficult area in which to establish guilt and innocence and we are using very alarming techniques. First*

*there is a dangerous principle: the accuser must always be believed. This goes far beyond the idea the accuser must be treated with respect and their allegations taken seriously, which is correct. The new principle is dangerous not just because it defies common sense. The real problem is that the police don't seek the truth, they construct cases. Starting with a rock-solid assumption that the victim is indeed a victim and the victim's story is correct, the temptation is strong to fit the facts to the story rather than test the story with the facts.'*

1.32 I would go further than Lord Finkelstein. The instruction foisted upon investigators to believe a 'victim' perverts our system of justice and attempts to impose upon a thinking investigator an artificial and false state of mind. If a judge were to direct a Jury to believe a complainant during evidence in chief, and only to question credibility thereafter, it would constitute a most serious misdirection. It would be an instruction to the jury to assume the guilt of the defendant whilst the complainant gave evidence; a ludicrous approach to the task of decision making but no worse than the instruction presently given to investigators nationwide.

1.33 Observing a complainant recalling details of an event for the first time to a person in authority presents the best possible opportunity to assess veracity and accuracy. An imposed, compulsory 'belief' negates that process and inhibits the asking of relevant and necessary questions. Further, an imposed 'belief' over a prolonged duration may prove

difficult to put aside in order to transfer into investigative mode. In Operation Midland the ABE interviews lasted for 17hours. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] Requiring an investigator to believe a complaint which may or may not be true is a recipe for injustice.

1.34 The Commissioner has clearly appreciated the flaw. He wrote to Sir Tom Winsor, HM Chief Inspector of Constabulary, on 22 February 2016 saying:

*'I do though have a real concern in this context that the term 'belief' itself is not helpful. It does not connect to the investigative requirements which – as I said in my Guardian article and on the Today programme – means that those making serious allegations should be taken seriously and be shown professional empathy. The idea of 'belief', however, in my view does not sit easily with the essence of an investigation which needs above all to proceed with an open mind. An effective investigation is not contingent on 'belief'. Nor does 'belief' appear to be compatible with the most basic principle of the criminal justice system, that a person is innocent until proved guilty of an offence beyond reasonable doubt.'*

1.35 My experience during this review has been that 'belief' campaigners are zealously opposed to any change asserting that an abandonment of 'belief' would result in a return to the bad old days when victims of

crime were frightened to complain and, if they did so, their complaints were too readily rejected. Unhappily, they fail to acknowledge the fundamental flaws in the 'belief' policy, not least the dreadful consequences of false complaints upon the innocent. A genuine and truthful complainant has nothing to fear from a directive that prioritises investigation ahead of 'belief'.

#### **RECOMMENDATION 2:**

**The instruction to 'believe a 'victim's' account' should cease. It should be the duty of an officer interviewing a complainant to investigate the facts objectively and impartially and with an open mind from the outset of the investigation. At no stage must the officer show any form of disbelief and every effort must be made to facilitate the giving of a detailed account in a non-confrontational manner.**

#### **RECOMMENDATION 3:**

**In future, the public should be told that 'if you make a complaint we will treat it very seriously and investigate it thoroughly without fear or favour'.**

### **False Complaints**

1.36 I was concerned at the suggestion made by Chief Constable Bailey



that 0.1% of all complaints may be false. That assessment, admittedly 'off the cuff', bore no relation to my own experience over a lifetime in the Courts nor to my assessment of several complaints during this review. In fact, nobody knows, nor can ever know, the extent of false complaints. It is critical, however, that those charged with the responsibility of investigating crime, or instructing others in that process, have in mind the real, as opposed to the remote, possibility that a complaint may be false.

1.37 Dame Elish, at pages 38 to 42 of her review, seeks to analyse the extent of *'false reporting of sexual violence'*. An analysis of 299 cases identified 36 cases of false complaint (12%) using a broad definition or just 9 cases (3%) using a narrow definition. From the perspective of an innocent suspect, the definition is irrelevant. A false complaint equates to innocence. In a 17-month period, in 2013-2014, 159 cases of false allegations of rape and/or domestic violence were referred to the Director of Public Prosecutions for charging decisions relating to false allegations nationwide. This was from a total of some 117,000 prosecutions. The number of cases referred for a charging decision will necessarily be very much smaller than the actual number of false complaints. The only relevant conclusion is that false complaints of sexual abuse are made and that investigators, and the practices prescribed for them, must recognise that fact.

1.38 Dame Elish consulted focus groups and reported that a focus group of

first response officers believed there to be a high level of false allegations seemingly made by individuals for their own ends. Amongst the examples given was reporting rape to cover up a one-night stand or an affair. Detective Constables referred to 'regret sex', describing a situation where, following consensual sex, one has regrets and makes a false report to create some form of justification for the event. A focus group of Haven (a sexual assault referral centre) staff accepted that people sometimes *'make up something to explain things'*. They identified an important category of complainant, distinct from the deliberately untruthful, namely *'troubled people often have something that happened in life, even if it's not what they've reported. It could be a flash back or something that happened years ago'*.

1.39 In the case of prominent people, it appears that they are more vulnerable to false complaints than others. The cases I have reviewed involve individuals, most of whom are household names. Their identities are known to millions. They are vulnerable to compensation seekers, attention seekers, and those with mental health problems. The internet provides the information and detail to support a false allegation. Entertainers are particularly vulnerable to false allegations meeting, as they do, literally thousands of attention seeking fans who provoke a degree of familiarity which may be exaggerated or misconstrued in their recollection many years later. Deceased persons are particularly vulnerable as allegations cannot be answered.

1.40 A further and significant category of false complainant is referred to, by Paul Gambaccini, as a 'bandwagoner'; namely a person who learns that a complaint has been made and decides to support the original complaint (true or false) with a false complaint. It can be seen that, when an arrest or bail renewal is publicised involving a prominent person, further complaints are frequently made. These may be, and often are, true complaints. There is, however, within the cases I have reviewed, significant evidence of false complaints immediately following upon publicity. In many cases those complaints were withdrawn or the complainant simply disengaged, declining to make a statement in support of the complaint.

1.41 I remain most concerned that the Hydrant team fail to appreciate the danger of false complaints and that a cardinal principal of the criminal justice process is that a complaint may be false. Arguments advanced in support of retaining the word 'victim' and the culture of 'belief' appear to have been based on the supposition that the level of false complaints is so small that it can be disregarded. There is, of course, a significant difference between the number of false complaints and the number of persons who make false complaints. In Operation Yewtree one complainant, whilst residing in prison, made complaints of the most serious nature against a total of in excess of 40 suspects involving several sexual allegations against many of the suspects. He was interviewed over six days and the subsequent investigation was thorough and proportionate. Officers concluded that *'his evidence is*

*fatally undermined and is not something that can be relied upon in Court*'. I have reviewed the investigation and it is above criticism. In Operation Fairbank the SIO observed that the vast majority of 400 complaints were without merit. [REDACTED]

[REDACTED] The allegation against Ken Clarke was unquestionably false, as were several other complaints from the same source. I have encountered two very clear cases of mistaken identity, both accepted as such, after very diligent investigation. There are cases where complainants, after many years, may have, in the words of a highly respected District Judge, *'misremembered the detail'*. Whilst victims of sexual abuse are entitled to, and deserve, compensation, it is simply wrong to turn a blind eye to the possibility that a complaint may have been motivated by financial consideration. In short, investigation should start at the outset and not part way through.

#### **RECOMMENDATION 4:**

**Investigators should be informed that false complaints are made from time to time and should not be regarded as a remote possibility. They may be malicious, mistaken, designed to support others, financially motivated, or inexplicable. When considering non-recent allegations against prominent people they should give full consideration to all background information.**

## **Non-Recent Complaints**

1.42 In cases of non-recent complaints, that is complaints of criminal conduct taking place several years ago, it is of critical importance that the complainant is asked by the investigator to explain the reason for the delay in making a complaint. The reason may add substance to the allegation, e.g./ my daughter is now the same age as me when I was assaulted. If this aspect of the case is not confronted by the complainant when making a statement, it surely will be during the trial process. It is essential to ascertain by questioning what opportunity the complainant had to complain. Did they have a close friend at the time? How did they get on with their parents or family members? A complainant should also be asked whether a claim for compensation has been made and whether there has been any contact with the press and, if so, the nature of the relationship. Page 25 of the Hydrant guide sets out a number of critical matters for an investigator's consideration. A check list of topics specifically crafted for non-recent complaints against prominent individuals would assist in the statement taking process. Failure to deal with critical topics can result in either a barrage of questions from the defence shortly before the trial or the complainant being taken by surprise in Court.

### **RECOMMENDATION 5:**

**A check list of critical topics to be covered in the complainant's**

**statement should be made available to all investigators designed specifically for non-recent allegations against prominent people.**

### **Confidentiality Agreements and Witness Contracts**

1.43 It is inevitable that cases involving allegations against prominent people will attract the media. The link that sometimes exists between a complainant and the media can prove a hindrance to an investigation and frequently causes a suspect to lose anonymity. The payment of money by the media to complainants can prove fatal to a successful outcome. I applaud any attempt to avoid any such interference. I cannot envisage that any confidentiality agreement can be enforceable or attract any sanction for a breach. However, if a complainant signs such a document, I agree that confidentiality is more likely to be preserved. This is an initiative of Operation Hydrant and I wish it well.

#### **RECOMMENDATION 6:**

**In cases involving prominent people, consideration should be given to inviting complainants to sign confidentiality agreements and witnesses to sign witness contracts.**

### **First Response to Complainants**

1.44 The considerable majority of complaints to the police are by

telephone to a uniformed officer known as the 'first responder'. They will wish to know what happened, when, who was responsible and whether the complainant is in any immediate danger. In almost all non-recent cases there will be no immediate risk and the responder will face two tasks, namely recording the crime, unless there is credible evidence to the contrary, and arranging for an officer to contact the complainant. In the immediate aftermath of the launch of Yewtree following up complaints in timely manner presented problems but this was achieved via a triage system being used. For example, on the 31<sup>st</sup> October 2012, 313 complainants had made contact. As at that date the aim was for all the victims to be spoken to within the next ten days. The rate of reporting offences has, of course, abated but the critical factor, from a complainant's perspective, is when and how they will be contacted. The availability of officers to make contact will necessarily vary dependent on workload but the first responder should be in a position to inform the complainant when contact will be made 'at the latest'.

#### **RECOMMENDATION 7:**

**First Responders should be able to inform complainants of the latest time that contact will be made with them. Such time scale should be variable and dependent on other commitments.**

#### **Contacting Complainants**

1.45 The Hydrant Report states, at p15, that:

*'the letter drop method of contact is a highly effective approach to tracing potential witnesses of abuse.....However, it is important to remember that, a letter drop is something that may not be suitable for many victims or witnesses. Letters can be a shock for people if unexpected, or could be intercepted by another person.'*

In non-recent cases, complainants have almost always embarked on a new way of life, having kept their allegation away from a partner or a family unit which did not exist at the time of the alleged offence. Letters to witnesses may fall into the wrong hands, particularly when allegations have been made against prominent persons. It may be that discovery of the alleged event by a partner is the complainant's greatest fear. A letter drop runs the very real risk, certainly in a non-recent case, of interception. My conclusion is that letters should not be used. Particular care needs to be taken in complying with the Code of Practice for Victims which entitles a victim to a written acknowledgement that a crime has been reported, including the basic details of the offence. This may be by email or text or, where there is a risk of harm, it may be dispensed with. Again, care must be taken to ensure that no unfortunate interception occurs.



#### **RECOMMENDATION 8:**

**Contacting a complainant, or potential complainant or witness, by letter, in non-recent cases involving prominent persons, should only take place if a constable is satisfied that there is no risk of interception by another member of the same household.**

#### **MPS Media Policy / Anonymity for Suspects**

1.46 Lord Justice Leveson's advice and MPS Policy are identical. The current MPS policy is that people who have been arrested are not named by police unless there are exceptional circumstances. In the eight cases I have considered, the names of suspects were reported by the media at a very early stage of the investigation. I have considered MPS policy and I have interviewed the Director of DMC (Directorate of Media and Communications) and the Head and Deputy Head of Media. I have also been supplied with a 16-page document setting out the objectives of the MPS Media Policy and responding to concerns I raised relating to Operations Yewtree and Midland.

1.47 Prominent suspects necessarily pose far greater problems for those seeking to preserve anonymity. The Press, the internet, bloggers, complainants, witnesses, and leaks, are all candidates for causing or contributing to identity being disclosed. I consider it vital, however, that the MPS does not contribute to that process or facilitate it.

1.48 Sir Bernard has expressed himself thus:

*'We want a healthy and trusted relationship with journalists. Media can help us detect crimes and to make sure the public are engaged when it comes to fighting crime and holding the police to account. My message to my officers is that I want them to have an open and professional relationship with reporters'.*

Fostering and preserving a good working relationship with the Press is plainly important to the MPS and in the best interests of the public. Information passes in both directions. Investigative journalists have contributed much to the Criminal Justice system over the years. Policing can depend heavily, at times, on the media to conduct appeals in major investigations. When high profile, prominent people are under investigation the Media are thirsty for knowledge. They can be persistent and demanding in their enquiries.

1.49 The genesis of Operation Yewtree was the investigation into the many allegations made against Sir Jimmy Savile. Problems of preserving anonymity did not arise as Savile had died. It soon became obvious that allegations were also being made against living, prominent persons. A media strategy was set by the SIO and approved by the Gold Group. The strategy included a commitment to protect the confidentiality of complainants and suspects. The overall strategy was to be pro-active in informing the media of developments and, in particular, a decision was

made that the MPS would not wait for the media to find out about an arrest but would release the information first. This, it is said, would not include sufficient information to identify the suspect but would follow the normal practice of providing the gender, age (or age-range), broad location in which the suspect lived or was arrested, and broad location of the police station in which they were questioned.

1.50 The reasons advanced for this strategy included the public interest in transparency around this high-profile investigation, the need to maintain public confidence in the police investigation and, it is said, the likelihood that information about arrests would quickly reach the media given the public profile of the suspects. Further, the police have a formal responsibility, under the Victim's Charter, to keep complainants informed of arrests, searches, interviews etc., within five working days, or one working day in the most serious of cases, and there is no legal obligation on the part of the complainant to maintain confidentiality. Several complainants were confiding in journalists or politicians with every possibility that the complainant would divulge the identity of the suspect.

1.51 I am told that journalists frequently seek information from the MPS, either as a result of their own researches or having received information from complainants. There are two options, either to make no comment or to confirm that an arrest/search/interview has taken place but without naming the suspect. The problem of making no comment is

that it gives rise to an allegation of secret policing and has, quite understandably, been rejected. In Operation Yewtree some 20 people would have been arrested with no official comment having been made. A journalist will not obtain any information without correctly identifying the nature of the offence, the location and date of arrest. They must already know the key facts before the MPS will confirm that operational activity has taken place. When they are so informed the suspect is not named, but when a journalist puts forward a name it is not policy to confirm the name but it is policy to state the age of the person arrested.

1.52 It follows that there are two routes by which the media receive information, namely, proactive and reactive. In cases of non-prominent suspects, the proactive publication that a fifty-year-old man in Brighton has been arrested for an indecent assault, will deprive nobody of their anonymity. In the case, however, of a celebrity, and an arrest as part of Yewtree or Midland, the provision of the suspect's age and location of home address is all but certain to result in a loss of anonymity. Further, in a reactive situation where the press put forward the identity of a suspect and the DMC respond with the age of the person arrested, it is all but inevitable that anonymity will be lost. Once anonymity has been lost the repeated proactive release of bail return dates, re-arrests (if they occur), further interviews (if they occur), can have a corrosive effect upon a suspect's standing, particularly if the information is linked to other suspects by being disseminated simultaneously.

1.53 With the resources and ability to 'doorstep' of the national press, the likelihood of their deducing the identity of the man in his 60's from Warwickshire arrested on the 1<sup>st</sup> November 2012, or the man in his 60's from Bedfordshire arrested on the 15<sup>th</sup> November 2012, or the man in his 70's from Cambridgeshire arrested on the 11<sup>th</sup> November 2012, or the man in his 80's from Berkshire arrested on the 29<sup>th</sup> of November 2012, was extremely high as each was arrested as part of Operation Yewtree and each given a Yewtree number.

1.54 It is contended that this was a 'solid and defensible position' for the MPS during Operation Yewtree. I readily accept that an arrest of a 50-year-old man in London would have defeated the most resourceful of journalists and my attention is drawn to the case of Rolf Harris where caution appears to have delayed publication. I readily accept that journalists will frequently have independent information of an arrest, but it is likely to be the confirmation derived from the MPS of the date, the age, and geographical location that gives the confidence to publish. I cannot say, in any particular case, that the MPS caused publication because I do not have access to all the information in the possession of the media. I can only comment on the likelihood of MPS information contributing to the decision to publish.

1.55 As to Operation Midland, the decision to pro-actively release information was made on the basis that the same principles that had been applied to popular entertainers and media figures should also be

applied to political and establishment figures. The decision made was that arrests and interviews under caution would be pro-actively released without identifying the suspects. Since 'Nick' had already provided a number of names to the media, of whom only four now remained alive, and they were of very different ages living in different localities, any proactive information would effectively identify the suspect. Concurrent searches took place at the homes of Lord Bramall and Harvey Proctor and at the two homes of the late Lord Brittan on 4<sup>th</sup> March 2015. Many officers were involved in those searches in Farnham, Grantham, Pimlico, and Leyburn and an assumption can be made that the media must have received at least some information. Exaro News, indeed, informed the Press bureau that they were aware that the MPS went to Belvoir Estate and carried out a number of searches. They wanted to know if any arrests had been made. The MPS disclosed:

*'We can confirm that officers from Operation Midland are carrying out a search of an address in Grantham in connection with their enquiries'.*

On the 6<sup>th</sup> March enquiries were received from both the BBC and Exaro, the latter making it clear that they knew of the other searches, giving full details of the addresses. DMC responded by confirming details of the other three searches, without identifying the properties or the individuals to whom they belonged. There can be no doubt that the media had an independent source or sources of the information derived, no doubt, from the scale of each search.

1.56 When it came to interviews under caution, a statement was proactively issued to media saying '*A man in his 90's from Farnham was today interviewed under caution*' together with other details, including the fact that he was not arrested and that the interview was conducted by Operation Midland officers. Unsurprisingly, the BBC, Exaro, and the Press Association, ran stories identifying Lord Bramall without making any further enquiries.

1.57 In Harvey Proctor's case, a similar situation prevailed on the 18<sup>th</sup> June. A statement was issued that a man in his 60's from Grantham was interviewed under caution together with other details, including the fact that he was not arrested, and that the interview was conducted by Operation Midland officers. A follow up call was made by Exaro asking if the man interviewed was the same man whose house was searched earlier in the year. The MPS said they would not comment on the identity. Unsurprisingly, on the 19<sup>th</sup> of June, Mr. Proctor was named as having been interviewed in a number of newspapers.

1.58 On the 31<sup>st</sup> July Lord Bramall was again interviewed by Operation Midland officers. His wife had recently died and the SIO, out of respect and kindness, decided not to make a pro-active statement. There was no media enquiry and no media coverage.

1.59 On the 24<sup>th</sup> August Mr. Proctor was again interviewed. In advance of

the interview, two newspapers reported that the interviews were about to take place. After the interview a pro-active statement, in similar terms to the earlier one, was released beginning '*A man in his 60's from Grantham...etc.*'. Again, the matter was fully reported.

1.60 On the following day, 25<sup>th</sup> August, Mr. Proctor made a substantial statement to the invited media at the St Ermin's Hotel in Victoria asserting his innocence and making a number of complaints about the manner in which the MPS had conducted itself. On the topic presently under consideration he said:

*'Anonymity is given to anyone prepared to make untruthful accusations of child sexual abuse whilst the alleged accused are routinely fingered publicly without any credible evidence first being found'.*

1.61 I have no doubt that the DMC Policy of pro-active information to include an age range and a geographical clue is incompatible with MPS policy that suspects should retain anonymity until they are charged. Whilst the information will rarely be sufficient, on its own, to identify a suspect, the detail will frequently, in conjunction with other information, give the media the confidence to publish. In Operation Midland, the statements released may just as well have named the accused. There was only one candidate in his 90's in the small village of Farnham and only one candidate in his 60's from Grantham.



1.62 In their written submission the DMC seek to answer the question:

*'Why not just say 'a man has been interviewed under caution by detectives from Operation Midland?'*

They submit, firstly, that the MPS decided that their approach should be consistent with the approach on Yewtree. They did not wish to appear to afford greater protection to former politicians or senior establishment figures than to celebrities and entertainers. Secondly, they submit that the information put out by the MPS was insufficient to identify the individuals without the journalists obtaining additional information from other sources.

1.63 That explanation is unconvincing. The fact that Lord Bramall and Mr. Proctor were immediately identifiable as having been interviewed under caution was attributable to the information published by the DMC. In releasing the information, the DMC breached the stated policy of the MPS. The same point can be made in relation to the searches at their homes and at Lady Brittan's home. It is, with respect, no answer to say that the same approach was taken as in Yewtree if the policy deployed therein was flawed. Whilst journalists doubtless had other information in advance of the DMC information, or collated it afterwards, the fact is that the pro-active information must have contributed to a material degree in the loss of anonymity in numerous Yewtree cases.

1.64 I acknowledge the necessity for the MPS, in general, and the DMC, in particular, to foster and maintain good relations with the media. I appreciate also, from reading the MPS Press Bureau Log containing thousands of requests from the media for information, just how assiduous and competitive they are in their pursuit of information in this field. Compliance with the media must not, however, be in breach of the MPS stated policy on anonymity, nor must it be to the disadvantage of accused persons. Public confidence in the MPS must remain a more substantial aim than assisting the media in their hunt for information. There are indications that the wrong aim has been taken. In March 2015 the Home Affairs Committee, in its report on police bail, wrote:

*'It is in the interests of the police, post Leveson, to demonstrate that they understand the level of public distrust that has built up over the informal relationship between the police and the media'.*

That distrust reached its peak when a helicopter filmed the search of Cliff Richard's home; an event unconnected with the MPS. The fact remains that the reputation of the police service, as a whole, has been damaged and real attention must be focused on the anonymity afforded to accused persons.

1.65 The Home Affairs Committee, in publishing its report on police bail, concluded that suspects should have the same right to anonymity as the

complainants in sexual offences, until the time they are charged. One difficulty, at present, is that the police are obliged by statute to inform complainants of arrests, interviews under caution, release without charge, and release on bail within 5 working days, or one working day in the most serious cases, pursuant to the Code of Practice for the Victims of Crime. Complainants are frequently in contact, either directly or indirectly via the internet, with media. Until anonymity is enforced by statute it is inevitable that many accused will lose their anonymity at an early stage of an investigation and well before charge.

1.66 One consequential factor in the loss of anonymity is the exposure of those named as suspects to false complaints by those referred to as 'bandwagoners'; that is those who make false allegations to support those who have already complained. A careful examination of the cases I have reviewed demonstrates, most graphically, the co-relation between publicity and complaint. I readily acknowledge that publicity may also flush out genuine and truthful complaints. A number of successful prosecutions demonstrate this fact. In certain cases, it is necessary to appeal for witnesses, but I am satisfied that such occasions should be controlled by application either to a Court or to a Senior Officer. The real weakness in the present system is that all subsequent complainants are exposed to the assertion that they have been influenced to make their allegation by what they have read in the press or in social media, or heard on the grapevine. A complaint in a case where anonymity has prevailed is necessarily protected from that form

of attack and thus more likely to be believed.

1.67 I consider it most unlikely that a Government will protect the anonymity of suspects pre-charge. To do so would enrage the popular press whose circulation would suffer. Present arrangements, however, have caused the most dreadful unhappiness and distress to numerous suspects, their families, friends and supporters. Those consequences were avoidable by protecting anonymity. Nobody is safe from false accusation and damaging exposure under present arrangements. A reputation built on a lifetime of public service or popular entertainment can be extinguished in an instant. I sincerely believe that statutory protection of anonymity pre-charge is essential in a fair system. In every case I have reviewed in which there was no charge, anonymity was lost. It is frequently impossible to trace the leak. The more famous the suspect, the more difficult it is to preserve anonymity, and the more damaging the consequential loss. I am aware that a number of celebrities are engaged in advancing this argument in Westminster. I wish them well. Their cause is a just one.

**RECOMMENDATION 9:**

**DMC policy should be amended to avoid any details of age or geography being released to the public in relation to an arrest, search, interview, or bail of any suspect.**

## **RECOMMENDATION 10:**

**A suspect should have the right to anonymity prior to arrest enforced by statute and criminal sanctions.**

### **Loss of Anonymity in Exceptional Circumstances**

1.68 Current MPS policy is that people who have been arrested but not charged are not named by police unless there are exceptional circumstances. This is in line with Lord Justice Leveson's advice. There are those who contend that the identity of suspects should be confirmed or disclosed by the police to encourage or allow other victims to come forward with allegations. There are case studies which demonstrate that publicity in one case will result in further allegations resulting in a successful prosecution. A counter argument requires a charge to be brought in relation to the initial allegation which will then trigger the loss of anonymity and further allegations if multiple offences have been committed. This latter course is in accord with MPS policy but the conditions in which exceptional circumstances will be judged to exist are unclear.

1.69 The relevant policy document states:

*'Exceptions to the policy of not naming those arrested would include circumstances such as police having made a public warning about a*

*wanted individual who is then arrested. It could also be in the public interest to name someone who could be responsible for many other crimes, in order to encourage other victims to come forward. The naming of an arrested person before they are charged should be authorised by an ACPO rank officer and the reason for doing so logged with the Media Desk. The authorising officer should also give consideration to consulting with the CPS about the release of the name. The MPS continues to keep the circumstances under which it may be appropriate to name someone arrested under review and further guidance may be issued in the future'.*

1.70 I question whether, in cases of non-recent sexual allegations against prominent individuals, there could ever be exceptional circumstances justifying such an authorisation. If there is information amounting to a sufficiency of evidence, then the suspect should be arrested and charged. The mischief that must be avoided is the use of publicity as 'flypaper', namely releasing details of a suspect in the hope that others will come forward to support an insubstantial initial allegation.

**RECOMMENDATION 11:**

**The exceptional circumstances in which suspects will be named or identified before charge should be clearly defined and included in MPS policy documents. In most cases qualifying for removal of anonymity there will be sufficient evidence to justify a charge.**

## Leaks

1.71 On the 20<sup>th</sup> March 2015 the Rt. Hon. Keith Vaz, then Chairman of the Home Affairs committee, observed:

*'Police use of the 'flypaper' practice of arresting someone, leaking the details, then endlessly re-bailing them in the vague hope that other people come forward is unacceptable and must come to an immediate end.....The police must advocate zero tolerance on leaking names of suspects to the press before charge'.*

1.72 In the witness statement of Ed Stearns, MPS Head of Media, he stated:

*'It is important to emphasise that in practical terms when looked at in context, leaks of information actually held by the MPS are comparatively small. If the public had any sense of the vast amount of highly confidential information that is held by the MPS that is not leaked prior to prosecution or is never publicly revealed because it would never be appropriate (for example the identity of victims) it really would put the issue of information leaks in a proper context. Of course unauthorised leaks do happen but the vast majority of information remains properly and appropriately confidential until such time as it should, if at all, be made public. And if a leak does occur it is taken very seriously and considered very seriously by the MPS Professional Standards teams. It is*

*easy for unsubstantiated claims to be made that the MPS and/or press officers leak information'.*

1.73 Several suspects I have interviewed complain bitterly of deliberate leaks of information from the MPS to the media. It is not possible to establish or reject those complaints for a number of reasons. The Press, of course, never reveal their sources of information. The complainants, or their associates or the internet, may have provided the information. There is one exception, namely in the case of [REDACTED] [REDACTED] which I will amplify when I consider his case. Information found its way to a journalist concerning the number of offences that [REDACTED] was to be re-arrested for. The journalist telephoned and then emailed [REDACTED] with specific information asking him to confirm it. The detail could only have been known to very few persons and certainly not a complainant. A complaint was made by [REDACTED] of Misconduct in a Public Office to the MPS Professional Standards team. The complaint was upheld but, as the leak remained unknown, no misconduct or gross misconduct was found in respect of any officer. That is highly likely to be the outcome of any similar complaint. As a result, there will be a continuing lack of public confidence in the relationship between the police and the media. A statutory right to anonymity until charge on similar terms to that of complainants, and enforced by criminal sanctions, would go some considerable way towards dissolving a suspicion which may exceed reality. In the meantime, there must be a concern that leaks do occur and are apparently accepted as inevitable in



an organisation as large as MPS. A finding of the Select Committee was that:

*'if the police wish to release information on a suspect, for policing reasons, then they should do so in a formal way'.*

This does not obviate the risk of a deliberate leak whilst statutory anonymity prior to charge would. In the meantime, every effort should be made to counter leaks, not only by severe sanctions but also by examining present systems and any weakness therein. I accept as inevitable the conclusion that some leaks of information are inevitable albeit by officers of the law.

#### **RECOMMENDATION 12:**

**Every effort should be made to minimise leaks of information by examining current systems and increasing sanctions.**

#### **Bail / Arrest**

1.74 A reform of police bail is imminent and may well have taken place before this report is complete. The granting of bail and its serial renewal, reported at every stage, was the most repeated and convincing criticism of the handling of the cases I have reviewed. Paul Gambaccini articulated the criticism in powerful terms to the Home Affairs

Committee. He was bailed on the 29/10/2013, re-bailed on 12/12/2013, re-bailed on 08/01/2014, re-bailed on 25/03/2014, re-bailed on 01/05/2014, re-bailed on 04/07/2014 and on 12/09/2014 his bail return date was varied to 13/10/2014. The papers in the case had been passed to the CPS on the 10/02/2014 so that the majority of the period was whilst the CPS were considering the papers. The Rt. Hon. Keith Vaz commented:

*'Paul Gambaccini was left in limbo for what he described as 'twelve months of trauma', his life was put on hold, his employer stopped his contract and his costs from lost earnings and legal fees totalled £200,000'.*

This was, by no means, the only case of repeated re-bails causing considerable trauma.

1.75 There are a number of adverse effects of persistent re-bailing. Firstly, the suspect assumes that the return date represents the date on which a decision will be made as to whether he is charged or not and, accordingly, informs employers, friends and family to that effect. When he is simply re-bailed his name is proactively supplied to the media time and again and his name reappears repeatedly in connection with sexual allegations and linked to Operation Yewtree. In Mr Gambaccini's case reports of re-bail were on several occasions linked to other Yewtree cases thereby attracting greater publicity even though he had no link

with such other cases or, indeed, with Savile. Further, throughout the whole process, a suspect receives little or no information as to the progress of the investigation. In the cases of several suspects, they sustained severe mental anguish through not knowing what was happening and when a decision would be made.

1.76 These matters were not lost on the Home Affairs Committee and it is now anticipated that there will be a limit on the length of pre-charge bail at 28 days, with further extension only permitted in certain circumstances. I feel bound to observe that 28 days is unrealistic to anticipate a completion of an investigation in cases of sexual allegations against prominent persons. A critical analysis of the pending legislation is, however, outside the parameters of this review but with a view to learning lessons and improving performance, it is important to consider the necessity of arrest.

1.77 The Revised Code G of the Police and Criminal Evidence Act 1984, which was implemented on 12<sup>th</sup> November 2012, provided that prior to arrest alternatives must be considered:

*'1.3 - The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Arrest must never be used simply because it can be used. Absence of justification....may lead to challenges should the case proceed to court...'*

If an SIO considers that a search, interview, taking of samples etc., can be achieved without the necessity for an arrest, then an arrest will not be appropriate. Those who cooperate will not be taken into custody. An interview should be carried out on a voluntary basis unless voluntary attendance is not considered a practicable alternative. In certain cases, an arrest will, of course, be necessary. If the suspect appears to represent a potential danger to the public, or is likely to abscond, or to destroy potential evidence, or is a danger to himself, then an arrest will be appropriate. Paragraph 2.9 of Code G provides a number of examples for guidance.

1.78 In a number of cases I have reviewed an arrest may have been avoided. The majority of suspects were of good character, the offences were non-recent, there was no suggestion that they were a danger to the public; indeed, they were released from custody as soon as the interview process was completed. Had they been asked, the indications are that they would have agreed to be interviewed. Searches could have taken place pursuant to warrant. Several of the traumatic effects of arrest would have been avoided assuming that anonymity had been preserved. Those in the entertainment world may have been able to continue working. Early morning arrests would be avoided. Lengthy waits in police cells whilst solicitors attended would be avoided. Re-bails would be avoided. There would be no re-arrests provided cooperation continued. The obligation to carry out the investigation expeditiously would remain but a suspect would have been spared much of the

anguish of which they complained.

1.79 I mention a conflicting view expressed by certain Yewtree officers. When I suggested that many, if not all, prominent persons accused of non-recent sexual offences need not be arrested, I was told that the police may still need to consider arrest as it provides many powers that go with it, such as search, forensic examination, ID parades etc. In addition, bail has many benefits including bail conditions for the protection of the complainant or to restrain a suspect seeking to influence the investigation. It is their view that, more often than not, an arrest will be necessary and that 28 days will rarely be sufficient time to complete an investigation. In cases of downloading pornography, it can take months to examine vast amounts of digital equipment. In such cases several applications to Court may be necessary. Problems will also arise where further allegations are received during an investigation. The officers pointed out that a suspect not on bail would face the same ordeal of waiting to hear if and when he would be charged or NFA'd. It may well be that the forthcoming Bail provisions create as many problems as they solve. I detected a degree of apprehension concerning the number of applications that may have to be made for extensions.

**RECOMMENDATION 13:**

**In non-recent cases particular consideration should be given to the necessity to arrest or re-arrest in accord with Code G and the guidance**

therein.

### **Informing the Suspect**

1.80 A common complaint amongst suspects has been that after arrest and release on bail they expect the investigation to be completed by the bail return date but find themselves re-bailed with no explanation, either then or later, as to the progress of the investigation or how long they must wait before a decision is made. This is in contrast to the complainant who is kept fully informed pursuant to the Victim's Charter and will have ready access to the investigating officer. In the case of suspects, no such code of practice exists. This shortcoming has been recognised by the MPS and I have seen a letter from A/C Gallan to the Rt. Hon. Keith Vaz, dated 26<sup>th</sup> January 2016, in which her concluding sentence reads:

*'We agree with the Committee that suspects should be regularly informed of the progress of their case albeit it will rarely be possible to give them details of what enquiries are being undertaken'.*

1.81 This is a difficult area. There are problems in investigating officers communicating on a regular basis with suspects. Prominent people, however, invariably have solicitors and thus information as to progress can be received by them. AC Gallan informed Mr. Vaz that:

*'a regular review of the status of investigations is now undertaken when a suspect remains under investigation but not on police bail. The rationale for how frequently suspects are updated is clearly set out. Whilst this is especially relevant for cases involving high profile suspects the principle is also applicable in all other cases'.*

1.82 This is a reassuring development. I invite consideration, however, of actual time limits imposed by a supervising officer at an early stage of the investigation, commensurate with its the size and complexity. Such time limits would be disclosed to the suspect. The time limit could be extended in the event of unforeseen circumstances and an explanation given to the suspect. Updates are of little assistance to a suspect without an end date. In custody cases there is a custody time limit which has proved effective. The CPS have recently imposed a time limit on charging decisions, which is also proving effective.

1.83 The problem with fixing a time limit for completion of an investigation, in cases of sexual allegations, is that further allegations are frequently received thereafter. Such further allegations are most frequently made by those who have learned of the earlier allegation. I see no problem in such cases. Either an extension can be granted or the initial allegation can be the subject of a charge or no further action. A new time limit can then be put in place.

**RECOMMENDATION 14:**

**A protocol for keeping suspects, who are not in custody, informed of the progress of the investigation should be published.**

**RECOMMENDATION 15:**

**At the commencement of an investigation a time limit should be fixed by a supervising officer and communicated to a suspect. Such time limit can be extended in appropriate circumstances.**

**Allegations not communicated to the suspect**

1.84 In several cases allegations were made by complainants and never communicated to suspects for a variety of reasons. Putting aside those which were not criminal offences, e.g./ he seduced me when I was nineteen or he called me onto the stage and then made a fool of me, there may be a number of reasons for not proceeding with the allegations. After investigation they may not be judged to be credible, the allegation may be made and then withdrawn, the allegation may be so vague and lacking in detail that it could never pass the full code test, the allegation may be at odds with evidence of a complaint, it may add little to existing complaints, or the allegation, although criminal, is of little significance in the context of the case. Such non-communicated allegations were never canvassed in interview and the suspects remain



entirely unaware that any allegation has been made other than those they were interviewed about or charged with. I have concluded that, when reviewing their cases in this report, it would be manifestly unfair to disclose details of those allegations which have already been discarded by the police and which the suspects have no method of answering. It is not impossible that the IICSA take a different view having regard to their much fuller terms of reference. Suffice it to say that the decision making in each case not pursued appears to be fully justified. In some cases, the decision was straightforward and, in others, a matter of judgement, but I saw no clear error of judgement. I am assured by SIOs that MPS policy is not to inform suspects of non-pursued allegations. I fully understand the reasoning. It can, however, be argued that this is wrong in principle. If a charge is brought, a suspect may wish to argue that he has been set up, or that false complaints are so prevalent that none can be relied upon, and may have wished, had he known of the several other complaints, to have adduced them in evidence. Such cases may be rare but not unheard of. In all cases it may be said that a citizen, in a transparent system of justice, is entitled to know if an allegation has been made against him. He may wish to record events in case the allegation is revived at a later date. He may wish to avoid the complainant. It may be considered unacceptable that a very serious allegation may be made against another, and then withdrawn before interview, resulting in the accused person never knowing that a grave allegation had been made, and that a record of that allegation remained extant.

## **RECOMMENDATION 16:**

**Consideration should be given, at the highest level, to the question of whether suspects should be informed of every allegation against them when one or more of those allegations has not been pursued. On balance, I agree with present arrangements having regard to the duty to disclose in the event of a trial resulting.**

### **No further action**

1.85 In the cases I have reviewed there are a number of occasions where a suspect was interviewed in connection with an allegation which the police subsequently investigated having heard the suspects version. Having investigated that allegation, they concluded that the allegation was either incredible or would not pass the Full Code Test but decided to proceed with other allegations. In the meantime, the suspect having been interviewed, instructed an enquiry agent/investigator who proceeded to investigate every allegation canvassed in interview. The agent spent considerable time and effort, at the suspect's expense, investigating the allegation that the police had decided not to pursue. The first that the suspect knew of the police decision not to pursue that allegation was when he was charged. This is far from satisfactory. It is essential that, when a decision is made by the police not to proceed with an allegation, the suspect's solicitors are informed that no further action will be taken on that particular allegation. This is particularly

important as a privately funded criminal litigant is now unable to recover costs even when successful.

1.86 In rape cases, Dame Elish recommended that the basis for discontinuing should always be articulated in exact terms and should specify whether the reason related exclusively to the sufficiency of the evidence or to additional issues of credibility and reliability. The joint MPS/CPS response indicated that work was being undertaken to implement a system whereby a personal letter is hand delivered to every victim of rape or serious sexual assault, whose case has been subject to no further action by police, explaining the rationale behind the decision. There is no mention, in either document, of the suspect receiving formal notification of the 'no further action' decision. If such a document is provided to the complainant, I can see no reason for not supplying a similar formal document to the suspect additionally stating the circumstances in which further action may be taken.

1.87 In one instance amongst the cases I have reviewed, the police notified the solicitor of the suspect by email of the decision to take no further action. Unfortunately, the media were notified before the solicitor logged on to her emails resulting in the suspect reading in the press that no further action had been taken against him. The email to the solicitor should require a response confirming that the client has been notified before the information is released to the press.



**RECOMMENDATION 17:**

**When a decision is made to take no further action on any complaint, but the investigation continues on others, the suspect, or his solicitor, must be informed at the earliest opportunity of any decision to discontinue in relation to any allegation communicated to them.**

**RECOMMENDATION 18:**

**At the conclusion of an investigation, when no further action is to be taken against a suspect, he should be supplied with a similar written document to that provided to the complainant coupled with an explanation of the circumstances in which an investigation may be re-opened.**

**RECOMMENDATION 19:**

**Before information is released to the media that no further action is to be taken against a suspect, police must ensure that the suspect has received the information.**

**Public statements after 'no further action'**

1.88 Statements are invariably made when a decision has been taken that there will be no further action. It is, of course, in the interests of a

former suspect that the public should know that he is no longer under investigation and will face no criminal charge. However, such statements are invariably made either by the CPS or the MPS without consultation with the former suspect or his solicitor. On occasions these statements have caused controversy and have been arguably unfair to the former suspects. One such statement, made by the CPS, was in the case of Paul Gambaccini when details of allegations which were not being pursued were made public.

1.89 Particular criticism has been made of the decision taken on numerous occasions to state publicly that no further action is being taken 'due to an insufficiency of evidence', when the complainant has been shown to be lacking in credibility or totally discredited, or has withdrawn the allegation. The problem with 'insufficiency of evidence' is that it implies that there is some evidence. If I say there was insufficient water in my hotel room, it suggests that there was some water but not enough. Aggrieved suspects contend for 'no credible evidence' or 'no evidence'. Both the CPS and the MPS are of a mind that they cannot grade every decision to take no further action. Some cases come close to passing the evidential test, some nowhere near. If grades were used, then numerous cases would result in controversy as to an appropriate grade. I understand that argument. A possible improvement on 'insufficiency of evidence' which I canvas is 'the allegation failed to pass the evidential test'. Such wording does not imply that there was some evidence.

1.90 Finally, I would add that in a case which has received very significant publicity, as is the case with a number of allegation of sexual offences against prominent people, it may be necessary, in the interests of justice, to depart quite exceptionally from standard procedure and to give a reasoned decision fully exculpating suspects where complainants have been shown to be unreliable or untruthful. Suspects in such cases are the victims of crime and every step should be taken to rehabilitate their reputations. Early publication of this report would greatly assist.

**RECOMMENDATION 20:**

**When announcing publicly that no further action will be taken, rather than stating that there was an insufficiency of evidence, an alternative, and arguably preferable reason, is that 'the case failed to meet the evidential test'.**

**RECOMMENDATION 21:**

**When announcing publicly that no further action will be taken, no details of the allegations not already published should be disclosed.**

**RECOMMENDATION 22:**

**In exceptional cases, and very rarely, consideration should be given to issuing a reasoned statement explaining why no further action has**

been taken.

## The Press

1.91 In two quite different respects the Press, in the form of investigative journalists, have demonstrated an unwelcome intrusion. Firstly, during the investigation, photographs were shown to 'Nick' of both suspects and missing boys (hopelessly in breach of PACE), names were supplied to him and he was shown buildings that could have been significant. Had a prosecution resulted from the investigation, very considerable difficulty would have resulted in identification procedures sufficient to render convictions impossible. It would no doubt be said, on behalf of the individuals responsible, that they believed 'Nick' and were attempting to see that justice was done. What is needed is some form of statutory control once a matter is under police investigation.

1.92 Secondly, several of the complainants that I interviewed, and others, complained that they were contacted at home by members of the Press. Some of these approaches were pre-trial [REDACTED] [REDACTED] and some were after a complainant had given evidence. The approaches caused the complainants a degree of anxiety and also caused them to question the source of the information since they thought that only the police would know their addresses.



**RECOMMENDATION 23:**

Consideration should be given at NPCC level to both of these concerns. It may be that some form of statutory control is needed to prevent investigative journalists intruding on investigations in circumstances such as these. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In an endeavour to encourage witnesses to come forward and to give evidence in high profile cases some statutory control may be necessary to prevent 'door stepping' of witnesses.

**Reviews**

1.93 During this review I have had the pleasure of meeting Det. Supt. [REDACTED] the senior officer in the Specialist Crime Review Group (SCRG), which was formed after the Lawrence enquiry and formed part of the MPS response to McPherson. The SCRG performs a critical and essential role for the MPS and, whilst they conducted a review in Operation Midland, this was not commissioned until 12 months after the commencement of the investigation. The nature of the review was a progress review asking what further steps can be taken. Critically, and unusually, no review of any kind had taken place at 24 hours, 7 days or

28 days and no review of any kind had taken place before search warrants were applied for. A review did take place conducted by a single experienced senior detective in March 2015 but that was also a progress review. A thematic review by the SCRG, at an early stage of Operation Midland, [REDACTED] [REDACTED] would have proved invaluable. I learned that reviews can be 'progress', 'thematic', 'forensic', or 'concluding'. I also learned that bespoke reviews can be arranged by negotiation with Det. Supt. [REDACTED]. From reading the Gold Group minutes, it is clear that a number of perceived difficulties had arisen in the investigation. I have no doubt that an earlier involvement with the SCRG would have resolved those problems.

#### **RECOMMENDATION 24:**

**Senior Detectives should be reminded, or be made aware, of the full range of reviews that are available from the SCRG and should be encouraged to make use of them.**

#### **Innocent Suspects**

1.94 As part of this process I have interviewed or corresponded with several innocent persons accused of grave criminal offences. Harvey Proctor must stand first in line; having been accused of the murder of three children, in addition to a catalogue of the gravest sexual offences.

He is, in my judgement, an innocent man; as indeed are all the [REDACTED] men named by 'Nick'. Several other men whose cases I have reviewed are also innocent of allegations made against them. It is difficult, if not impossible, to articulate the emotional turmoil and distress that those persons and their families have had to endure. The allegations have had a profoundly damaging effect upon the characters and reputations of those living and those deceased. In differing ways those reputations have been hard won, over several decades, and yet in Operation Midland they were shattered by the word of a single, uncorroborated complainant [REDACTED]. Those accused remained isolated and uninformed of the progress of these several investigations until finally being informed that there was an insufficiency of evidence against them. In short, these men are all victims of false allegations and yet they remain treated as men against whom there was insufficient evidence to prosecute them. The presumption of innocence appears to have been set aside.

1.95 I have received a written submission on behalf of the Janner family, and have read a similar submission by Mr. Proctor in the national press, inviting me to recommend the prosecution of 'Nick' for 'attempting to pervert the course of justice'. Such a course is well outside my terms of reference and might well be cited as a ground for staying any criminal proceedings against 'Nick'. [REDACTED]

[REDACTED]

[REDACTED]



1.96 It is impossible to depart this chapter without observing that 'Nick' has received continuous support and liaison, whilst those falsely accused have received no such consideration. The explanation for this may well be that the decision making officers in this investigation decline to recognise the innocence of those accused by 'Nick'. I earnestly hope that once the reality of the situation is appreciated that those accused and their families will receive offers of similar support and a fulsome recognition of their, or their relatives, innocence.

**RECOMMENDATION 25:**

In exceptional cases where suspects have been falsely accused of crime, they, and their families, should be treated the same as 'victims of crime' invariably are and should be offered support and liaison compatible with the gravity of the allegations made.