

**IN THE MATTER OF THE INDEPENDENT INQUIRY INTO CHILD
SEXUAL ABUSE**

ALLEGATIONS OF CHILD SEXUAL ABUSE LINKED TO WESTMINSTER

**WRITTEN CLOSING SUBMISSIONS ON BEHALF OF THE
COMMISSIONER OF POLICE OF THE METROPOLIS**

Introduction

1. These written closing submissions are made on behalf of the Commissioner of Police of the Metropolis. They supplement the oral closing submissions made on 29th March 2019¹ and address five matters:
 - a. The role of the Metropolitan Police Service (“the MPS”) and its approach to the Inquiry’s Westminster Investigation.
 - b. The approach which the Inquiry should adopt to the evidence of ‘deference’.
 - c. The allegations made by Don Hale.
 - d. The submissions made on behalf of Harvey Proctor as to alleged failures by the MPS.
 - e. Recommendations for the future.

The role and approach of the Metropolitan Police Service

2. In the four years since the Inquiry was established, the MPS has dedicated considerable resources to investigating allegations of non-recent child sexual abuse and complaints of wrong-doing by current and former police officers in connection with such abuse.
3. The officers and staff of Operation Winter Key – led by Detective Superintendent Ang Scott – have approached these investigations with an open mind and a determination to identify and uncover wrong-doing. The MPS has adopted a

¹ Transcript 29.3.19, p.78, l. 24 – p.89, l. 4.

deliberately low threshold in deciding whether an investigation should commence. All allegations, irrespective of their age and source, and irrespective of whether or not corroboration existed, have been accorded proper consideration. They have followed the evidence where it has taken them and have shown no fear or favour to anyone in a prominent position. We invite the Inquiry to make such a finding.

4. The MPS has worked closely with the Inquiry over a number of years to ensure that all relevant material has been available for consideration. The MPS has approached its disclosure obligations with openness, transparency and candour. Very many documents and statements have been provided. Much of the work that has been undertaken has been distilled into the closing reports provided by the MPS and the Independent Office for Police Conduct (“the IOPC”). Those reports have now been examined in detail.
5. In addition, the MPS has worked closely with the IOPC on its managed investigations. We invite the Inquiry to note the comments made by Mr Mahaffey about the nature of the working relationship between the MPS and the IOPC. The IOPC is independent of the MPS. The working relationship has been “collaborative” but also, as Mr Mahaffey explained, “intrusive and challenging”².
6. It is within that context that we invite the Inquiry to find and record that insofar as any person or organisation is inclined to suggest that the IOPC and / or the MPS have ‘whitewashed’ the allegations made, any such suggestion can and should be rejected. Such a suggestion – which we note no core participant has made in closing – would be without evidential foundation. Nevertheless, the Inquiry can and should allay public concern by so recording.

The evidence as to ‘deference’

7. One of the themes explored by the Inquiry during the Westminster Investigation has been whether the police generally or individual officers specifically were too deferential to people of public prominence with the result that allegations of child sexual abuse were not investigated or investigations terminated prematurely. The

² Transcript 5.3.19, p.23, ll. 3 – 4.

suggestion that such conduct did occur is serious and one which the Inquiry – through Counsel to the Inquiry – has explored with various witnesses.

8. The MPS has no intention of being defensive about the evidence which has emerged either during the IOPC and MPS investigations or those of this Inquiry. However, the Inquiry should examine carefully what the evidence in fact reveals and the extent to which conclusions can be drawn about a police-wide culture or, as was put by Mr Scorer, “that canteen culture can be as important in shaping the culture of an organisation as official top-down orders”³.
9. The Inquiry will wish to examine the evidence which has been heard and should ensure that it is placed within its proper context. For example, Lord Taverne gave evidence about a conversation between the then Home Secretary, Roy Jenkins, and Sir Joe Simpson, the then Commissioner of Police. That conversation should be placed within its historical context. As Lord Taverne explained, Sir Joe’s response to Mr Jenkins’ concern was to point out the constitutional impropriety of a Home Secretary telling him as a policeman how he should operate⁴. There is no evidence as to why – if it is correct that police officers did in fact cease visiting all public lavatories looking for cottagers (and there is limited evidence as to this) – this practice ceased.
10. Much emphasis has been placed on the extract of the statement of John Hoodless as set out in the Operation Jordana Closing Report⁵. Mr Hoodless was not called as a witness and his statement was not admitted into evidence. Commander Roper, along with other witnesses, was asked about the comment made by Mr Hoodless. Contrary to the suggestion that she “dismissed” this evidence, she “absolutely recognise[d] the evidence that’s been given” but explained that “in relation to the investigation that we’ve conducted, either as directed by the IOPC or independently, we have found no evidence to suggest that that this in fact is what has happened” apart from one case where it was not possible to come to a finalised conclusion because the former officer was dead and therefore could not be interviewed⁶. Commander Roper continued:

³ Transcript 29.3.19, p.29, ll. 17 – 19.

⁴ Transcript 5.3.19, p.195, ll. 17 – 21.

⁵ IPC000842.

⁶ Transcript 26.3.19, p.159, ll. 6 – 18.

I don't doubt the evidence that's been given. I'm saying there's no wider evidence to support what is being suggested by some of the people over the last few weeks.⁷

11. Commander Roper was asked about her understanding of Mr Hoodless' statement and she pointed out – quite correctly – that the context of the conversation was that it was taking place in a pub in a social context:

...what I'm unclear about is whether this was driven by anything other than conjecture and discussion in a social context, or whether this was driven by any particular piece of evidence that either they would come across somebody high profile or indeed a senior officer was directing them in that way.⁸

12. Whilst the meaning and reasoning behind Mr Hoodless' comment is not clear and therefore open to speculation, it is plain from his account that no person of prominence was in fact encountered during the course of the operation. Further, Mr Hoodless' recollection should be contrasted with that of other officers including the Senior Investigating Officer of Operation Circus, Colin Reeves, who said that there was no strategy on how to deal with persons of public prominence. Mr Reeves said that if any persons of prominence had come to notice “they would have been dealt with in the same way as any other suspect”⁹.

13. The Inquiry should be careful not to reach unsafe conclusions by extrapolating from the evidence which has been heard. For example, when Howard Groves' account was tested, what it amounted to was (emphasis added) “an inference that if we had identified anyone of prominence, that that [the investigation being halted] could be a possibility”¹⁰ and it was “sort of an implied suggestion that that could be a possibility”¹¹. Whilst it may be felt – as was suggested by Counsel to the Inquiry – that Mr Groves' account is not “a million miles away” from what Mr Hoodless stated¹² – the Inquiry should not infer a police-wide practice or culture based on limited and objectively weak evidence.

⁷ Transcript 26.3.19, p.159, ll. 15 – 18.

⁸ Transcript 26.3.19, p.163, ll. 1 – 6.

⁹ Operation Jordana Closing Report, §§59-60 [IPC000842_013].

¹⁰ Transcript 6.3.19, p.11, ll. 1 – 8.

¹¹ Transcript 6.3.19, p.15, ll. 12 – 17.

¹² Transcript 5.3.19, p.81, l. 18.

14. As to the accounts heard during the first week of evidence from and about former police officers who believed that they were removed from particular investigations or operations were closed down prematurely because of inappropriate interference by more senior officers, Commander Roper and Mr Mahaffey confirmed that in light of new information which emerged during that evidence the MPS and IOPC would revisit some of the closing reports. The Inquiry will be kept updated as to the status of those reviews.
15. The MPS does not prejudge the outcome of those reviews, but notes that one of the striking issues is how lack of communication, particularly from senior officers to more junior officers, may explain the origins of a number of the concerns articulated. To borrow Gyles Brandreth's phrase: "mystery makes for mischief"¹³. For example, had Andrew Surplice been told the reason why his observations had been cancelled, or had Mr Collins been made privy to the content of the red file which has subsequently been examined, they may not have harboured such concerns about why certain action was apparently not taken. This lesson has not been lost on the MPS and a more comprehensive regime of debriefing officers involved in major enquiries now exists.
16. The Inquiry should also be careful about speculating as to the reasons why particular operational decisions may have been taken, particularly where the officers implicated are unable to provide their accounts because they are now deceased. This is particularly the case where serious allegations of impropriety are made. For example, Mr Holmes gave evidence about a decision to end an inquiry into the alleged activities of Roddam Twiss. Mr Holmes was asked by Counsel to the Inquiry for his view as to why that inquiry was halted. Mr Holmes speculated that "there were three possible reasons": (i) "very senior officers were actually criminally involved themselves", (ii) "corruption, in the sense of receiving money to terminate enquiries", or (iii) taking such a matter to a supervising officer would have been "career ruinous"¹⁴. There are of course in fact any number of other possible innocent explanations to which Mr Holmes may not have been privy. It is not possible to explore those with the officer who is alleged to have given the instruction because Mr Holmes was unable to

¹³ INQ004169_017.

¹⁴ Transcript 7.3.19, p.117, l. 21 – p.120, l. 12.

identify the officer. Consequently, enquiries could not be made of that more senior officer.

17. In his oral closing submissions Mr Scorer said¹⁵:

...not only did both officers [Mr Mahaffey and Commander Roper] fail to acknowledge the culture of deference which plainly existed during the period under examination, but they also gave evidence which suggests that they may themselves, however unwittingly, be continuing to operate within a continuing culture of deference today.

Ms Roper spoke of a need to take a more “holistic approach” to the arrest of persons of prominence and to be mindful of the impact that such an investigation could have. It wasn't entirely clear what this meant or what tests would be applied. But we say the equality before the law requires that if the threshold for arrest is met, then the suspect could be arrested, however prominent he or she is. So their evidence on that point did leave a nagging concern that, to this day, persons of public prominence may be treated differently to others, and that cannot be right.

18. We invite the Inquiry to consider what, in fact, Commander Roper said in evidence on 5th and 26th March 2019. In particular, the Inquiry will note from Commander Roper's evidence on 26th March 2019¹⁶:

- a. She did not accept Counsel to the Inquiry's suggestion that more junior officers might develop an aversion to pursuing “high-profile suspects” because senior officers might need to be involved in the decision-making processes. Whilst we accept that Commander Roper cannot speak to the thought processes of every officer, there is no evidence that this is currently the case (*cf* Mr Scorer's submissions). In the absence of any such evidence the Inquiry should accept Commander Roper's answer.
- b. Commander Roper's careful evidence reflects the subtle but inherent tension in treating all suspects the same when the consequences of taking executive action by making an arrest or executing a warrant may not be the same. Commander Roper explained:

Just to touch on what I mean by the wider issues, it's not that they would need to necessarily -- the same processes need to be gone through, the same legal processes, but we would be mindful of the impact on a particular community, for example, or an impact on witnesses or victims, or we would just be more mindful of the more

¹⁵ Transcript 29.3.19, p.30, ll. 8 – 25.

¹⁶ See transcript p.167, l. 19 – p.169, l. 12.

holistic issue of investigating somebody of prominence, and I don't just mean of establishment prominence, I mean of anybody.¹⁷

- c. The fact that a person is of 'public prominence' means that the consequences of, for example, making an arrest would raise different issues from those who were not 'prominent'. The latter would be unlikely to be of interest to the media whereas the former would. This is a different consideration which requires thought even if the same action is in fact taken.
19. These are undoubtedly difficult and sophisticated issues, however the Inquiry can take some confidence from the MPS' recent history that persons of public prominence who are accused of child sexual abuse or any such criminality are investigated and, where appropriate, arrested and prosecuted. This is not to suggest that the MPS has not learnt important lessons from the manner in which some of those cases were handled.

The allegations made by Don Hale

20. On 8th March 2019 the Inquiry heard evidence from Don Hale. We do not address the substance of Mr Hale's evidence, *viz.* his allegations that members of Special Branch attended his offices and seized a dossier, provided to him by Dame Barbara Castle, listing the names of individuals connected to PIE. This has been examined in the IOPC-managed investigation, Operation Hawthorn¹⁸.
21. There appears little basis to doubt the conclusion of the Operation Hawthorn closing report. Indeed, the Inquiry may conclude in light of Mr Hale's account having been exposed to forensic scrutiny for the first time, that there are serious questions over the fundamental accuracy of his account.
22. In evidence, Mr Hale made a number of very serious allegations about the process adopted in taking his statements in 2014 and again in 2017. He criticised both the MPS and the IOPC for the way in which Operation Hawthorn was conducted and the conclusions reached. The MPS takes those allegations very seriously and as explained in oral closing submissions, the MPS will consider, together with the IOPC,

¹⁷ Transcript 26.3.19, p.168, ll. 6 – 14.

¹⁸ IPC000843.

whether a further investigation is warranted. However, at this stage, the following observations are made:

- a. First, Mr Hale raised concerns that manuscript amendments and deletions made to his 2014 statement were not reflected in the typed version provided to the Inquiry. The manuscript copy was located and disclosed¹⁹. There are no material differences between the two. The only differences are minor typographical errors. Mr Hale's criticisms are plainly ill-founded.
- b. Second, Mr Hale objected to the non-inclusion of apparently relevant information contained within 46 emails passing between himself and a police constable attached to Operation Winter Key. The emails are set out within one of Mr Hale's 18th March 2019 statements²⁰.
- c. The emails are, in the main, of little relevance. Most concern practical arrangements to meet and take Mr Hale's statement. What is clear from those emails is this: a copy of the typed 2014 statement was provided to Mr Hale at his request: Mr Hale was asked to, and did, sign two further statements. They were sent as editable documents. Those statements were examined during the course of his evidence²¹. He signed both of them.
- d. Third, Mr Hale criticised the IOPC and MPS for proceeding on the erroneous basis that a cleaner was, or may have been, present during the course of the alleged raid on his office. In his 2014 statement (which contained the same declaration as set out above) Mr Hale said:

I arrived first around 8am and then the cleaner arrived, this was before all the other staff arrived. With this three plain clothes Police Officers and a dozen uniformed Police Officers, who were not wearing Police helmets, came into the office...²²

- e. This was accurately reflected in the Operation Hawthorn Closing Report at §31²³ and §§55 and 80²⁴ which notes that in his second statement and in a CRIS (Crime Reporting Information System) report that he was not aware if

¹⁹ MPS003550.

²⁰ INQ004203.

²¹ OHY005511 and OHY005507.

²² OHY005512_005.

²³ IPC000843_005.

²⁴ IPC000843_008 and 013.

the cleaner was present or, if she was, her name. On any objective reading, the closing report accurately reflects the information provided by Mr Hale.

23. Whilst the MPS proposes to look into these matters further, on the basis of what we have seen thus far, there appears to be little basis for criticising the police constable who took the statements.

The submissions made on behalf of Harvey Proctor

24. During the course of his closing submissions, counsel for Mr Proctor made a series of submissions concerning alleged failures by the MPS in the manner in which it investigated Mr Proctor. This is not the forum in which to address submission, however insofar as the Inquiry is urged to consider and make recommendations about “the failures, particularly, by the police”²⁵, we make the following observations:

- a. The Inquiry has heard no evidence as to the MPS’ investigations into Mr Proctor, nor as to allegations which may have given rise to those investigations. There is therefore no basis to make any such findings at this stage (if that is what is suggested).
- b. There is good reason why the Inquiry has not heard such evidence. The reasons are addressed expressly in the Chair’s ruling of 16th January 2019 in granting Mr Proctor core participant status. That determination in turn reflects Counsel to the Inquiry’s submissions at the January 2018 preliminary hearing and the Chair’s determination of 8th May 2018.
- c. As to the submission that the Inquiry should hold “a Westminster investigation part 2”²⁶, whilst ultimately a matter for the Chair, we question whether such an investigation is necessary or appropriate. We note that this issue was addressed expressly as long ago as the January 2018 preliminary hearing during which Counsel to the Inquiry set out the reasons why it was not necessary or appropriate for the Inquiry to examine *inter alia* Operation Midland²⁷.

²⁵ See Mr Wagner’s submissions, transcript 29.3.19, p.50, ll. 2 – 5.

²⁶ See transcript 29.3.19, p.51, ll. 19 – 20.

²⁷ See, in particular, Counsel to the Inquiry’s submissions at p.28, l. 23 – p.31, l. 7 of the transcript of 31.1.19.

Recommendations for the future

25. The Inquiry has been invited to make recommendations for the future. Undoubtedly this is an important aspect of the Inquiry's work, however if recommendations are to be made there should be an evidential basis for them.
26. The Inquiry has not called evidence in this Investigation as to the MPS' current approach to investigating allegations of child sexual abuse by persons of public prominence, albeit that Commander Roper provided some evidence on day twelve of the Investigation. Insofar as there is evidence as to the manner in which the MPS investigates such matters, the Inquiry can have confidence that allegations of child sexual abuse are investigated without fear or favour. If the Inquiry requires reassurance as to this issue it need only reflect on the submissions made on behalf of Mr Proctor.
27. During the course of his closing submissions, Mr Scorer made four suggestions for recommendations relating to the IOPC²⁸. Whilst it was suggested that these are matters for the IOPC, if adopted they would have a significant impact on all police forces and therefore we address them briefly.
28. First, it was suggested that:
- ...part of the reason why the quality of [Mr] Holmes' evidence may have been overlooked may have been because he was interviewed over the phone rather than face to face. In this context, this was clearly a false economy and this mistake should be avoided in the future.
29. The telephone conversation referred to appears to have been conducted by a detective constable of the Wiltshire Police as part of Operation Conifer²⁹. As is suggested by the note made by DC Cearn, there may well have been good reasons why the conversation took place by telephone rather than in person (Mr Holmes is noted to have resided in Italy and often travelled as a result of his work). The Inquiry has heard no evidence as to the possible effect of the method by which the officer and Mr Holmes spoke, nor as to how the IOPC or police forces generally would conduct such interviews (if in fact this was 'an interview').

²⁸ Transcript 29.3.19, p.32, l. 9 – p.33, l. 3.

²⁹ WTP000012.

30. Plainly, however, decisions as to how, when and where interviews should take place will be a matter of individual judgement, informed by relevant policies and guidance, and operational efficacy. It would not be appropriate to make a recommendation in the terms proposed.

31. Second, it was suggested that:

...the IOPC should attempt to make a more rounded and reflective assessment of the credibility of witnesses that they have interviewed.

32. The MPS makes no comment as to whether the implicit criticism of the IOPC is fair or well-founded. However to the extent that such a recommendation could impact upon the MPS, the following brief points are made:

- a. The premise of this suggestion appears to be that the IOPC (or other relevant decision-makers) have failed to make “rounded and reflective” assessments of the credibility of witnesses. This suggests that there has been and is a systemic failure to do so. There is no evidence for this. On the contrary, as is clear from the many closing reports considered by the Inquiry the MPS and the IOPC have approached their task with an open mind, have followed the evidence where it has taken them and drawn appropriate conclusions.
- b. Where evidence emerged during the course of the hearing, specifically from Mr Holmes, the IOPC and the MPS have undertaken to revisit the relevant Closing Reports.

33. Third, it was submitted that:

...the IOPC has the power to compel serving police officers to attend witness interviews in specified circumstances. Given the apparent reluctance of some retired officers to assist with these investigations, we suggest that this power be extended to former officers in certain investigations where serious allegations are being made.

34. The premise for this suggestion appears to arise from Mr Mahaffey’s evidence³⁰ and the IOPC Overview Report³¹. In fact, Mr Mahaffey’s evidence suggested that former officers refusing to cooperate was “rare”: in only one of 37 investigations did a

³⁰ Transcript 5.3.19, p.32, l. 19 – p.35, l. 22.

³¹ IPC000830_012 – 013 at §§40 – 45.

former officer expressly refuse to engage³². As to the reasons why witnesses (including former officers) may be reluctant to engage, the Inquiry will note the careful comments made by the IOPC at §§42-45 of their Overview Report.

35. If the Inquiry were minded to make such a recommendation, notwithstanding the lack of evidence as to this being a systemic issue, it may wish to seek evidence from the Home Office, the National Police Chiefs' Council, the College of Policing, the Police Federation and the Police Superintendents' Association (the latter two being the representative body of rank and file police officers in England and Wales).
36. Fourth, it was submitted that "we clearly need new regulations regarding the retention and destruction of police files and documents".
37. This is not a matter upon which the Inquiry has heard much evidence and none of the relevant policies have been adduced. However, this is plainly a matter of great significance that has an impact in a very wide range of cases. The policies concerning the retention of documents and data by the MPS and other police forces are complex and subject to, amongst other things, statutory guidance provided by the Secretary of State, the Data Protection Acts of 1998 and 2018, and the General Data Protection Regulations (GDPR). To complicate matters further, this is also an area in which there has been a considerable amount of litigation, including cases against the Commissioner which have been adjudicated upon by the Supreme Court and the European Court of Human Rights (see, for example, *R (Catt and T) v. Commissioner of Police of the Metropolis* [2015] UKSC 9, [2015] AC 1065 and *Catt u. United Kingdom* [2019] ECHR 43145/15).
38. If the Inquiry does choose to make recommendations then the MPS will give those recommendations careful attention.

15th April 2019

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³² These were identified by the IOPC in its Overview Report as Operations Bonsai, Rowan and Kamala. In Operation Kamala the former officer initially refused to cooperate but then did. In Operation Rowan the witness was an anonymous source who purported to be a retired or former police officer. It will be noted that within each investigation very many witnesses were contacted and did engage with investigators.